VOLUME 45, NUMBER 9 LEGISLATIVE RESEARCH COMMISSION MARCH 1, 2019

ADMINISTRATIVE REGISTER OF KENTUCKY

The submission deadline for this edition of the *Administrative Register of Kentucky* was noon, February 15, 2019.

MEETING NOTICES

The **Administrative Regulation Review Subcommittee** is **tentatively** scheduled to meet on March 11, 2019, at 1:00 p.m. in room 149 Capitol Annex.

ARRS Tentative Agenda - 2563

INDEXES & OTHER INFORMATION

Regulation Review Procedure 2568
ARRS Report 2830
Other Committee Reports 2838
Locator Index - Effective Dates ..... I – 2
KRS Index ..... I – 18
Certifications ..... I – 36
Technical Amendments ..... I – 48
Subject Index ..... I – 49

REPRINT

Board of Cosmetology
201 KAR 012:280. Esthetic practices restrictions. 2569

EMERGENCIES

None

AS AMENDED

Department of Revenue
Income Tax; Corporations
103 KAR 016:250. Net operating loss computation and deduction for corporations. 2571
Board of Pharmacy
201 KAR 002:370. Pharmacy services in long-term care facility (LTCF). 2575
Board of Nursing
201 KAR 020:062. Standards for advanced practice registered nurse (APRN) programs of nursing. 2577
201 KAR 020:161. Investigation and disposition of complaints. 2580
201 KAR 020:162. Disciplinary proceedings. 2582
201 KAR 020:215. Continuing competency requirements. 2583
201 KAR 020:226. Repeal of 201 KAR 020:235, 201 KAR 020:420, 201 KAR 020:430, 201 KAR 020:440, and 201 KAR 020:460. 2585
201 KAR 020:240. Fees for applications and for services. 2585
201 KAR 020:260. Organization and administration standards for prelicensure registered nurse or practical nurse programs of nursing. 2586
201 KAR 020:280. Standards for developmental status, initial status, and approval of prelicensure registered nurse and practical nurse programs. 2589
201 KAR 020:310. Faculty for prelicensure registered nurse and practical nurse programs. 2591
201 KAR 020:320. Standards for curriculum of prelicensure registered nurse and practical nurse programs. 2593
201 KAR 020:360. Continuing approval and periodic evaluation 2594
201 KAR 020:362. Fines for programs of nursing. 2597
201 KAR 020:411. Sexual Assault Nurse Examiner Program standards and credential requirements. 2597
Office of Kentucky Nature Preserves
400 KAR 002:060. Definitions. 2599
400 KAR 002:070. The Office of Kentucky Nature Preserves. 2600
400 KAR 002:080. Dedication of nature preserves and registration of natural areas. 2601
400 KAR 002:090. Management, use, and protection of nature preserves and natural areas. . 2602
400 KAR 002:100. Hearings and appeals. 2605
Rare Plant Recognition
400 KAR 003:020. Criteria for identifying and designating endangered or threatened species of plants. 2606
400 KAR 003:030. Procedures for inclusion, removal or change of status of plant species on the state endangered or threatened list. 2607
400 KAR 003:040. Endangered or threatened plant list. . 2607
Wild Rivers
400 KAR 004:110. Definitions for 400 KAR Chapter 4. ... 2610
400 KAR 004:125. Wild rivers administration. 2611
400 KAR 004:130. Wild rivers change of use permit procedures. 2615
400 KAR 004:140. Wild rivers change of use permit standards. 2617

Division of Waste Management
Hazardous Waste
401 KAR 039:060. General requirements. 2621
401 KAR 039:090. Hazardous waste permit program..... 2624
Underground Storage Tanks
401 KAR 042:005. Definitions for 401 KAR Chapter 42.. 2630
401 KAR 042:020. UST system requirements, notification, registration, and annual fees. 2634
401 KAR 042:060. UST system release and corrective action requirements. 2642
401 KAR 042:250. Petroleum Storage Tank Environmental Assurance Fund reimbursement. 2644
401 KAR 042:330. Small Owners Tank Removal Account. 2655
Office of Kentucky Nature Preserves
General Administrative Procedures
418 KAR 001:010. Definitions for 418 KAR Chapter 1.... 2658
418 KAR 001:020. Administrative procedures of the board. 2659
418 KAR 001:040. Grant applications. 2660
418 KAR 001:050. Procedures for acquisition of land..... 2661
418 KAR 001:060. Management. 2661
418 KAR 001:070. Remedies. 2663
Department of Juvenile Justice2662
Child Welfare
505 KAR 001:100. Department of Juvenile Justice Policies and Procedures: Admissions. 2663
505 KAR 001:110. Department of Juvenile Justice Policy and Procedures Manual: program services. 2664
505 KAR 001:180. Department of Juvenile Justice Policy and Procedures Manual: day treatment services..... 2665
505 KAR 001:190. Department of Juvenile Justice Policy and Procedures: Interstate compact for juveniles. 2665
Department of Highways: Contract Procurement: Preconstruction
603 KAR 002:015. Prequalification for construction, certificate of eligibility, and contract claims dispute. 2671
Department of Alcoholic Beverage Control
Advertising Distilled Spirits and Wine
804 KAR 001:030. Prohibited alcoholic beverage advertisements..... 2672
Department of Natural Resources: Mine Safety
Miner Training, Education and Certification
805 KAR 007:080. Training, certification, and annual retraining of mine emergency technicians. 2674
Real Estate Authority
Board of Home Inspectors
815 KAR 006:001. Definitions for 815 KAR Chapter 6.... 2674
815 KAR 006:010. Licensing requirements..... 2678
815 KAR 006:030. Standards of conduct, complaints, and discipline. 2681
815 KAR 006:040. Education requirements and providers. 2683
Office of Health Data and Analytics: Health Information
Kentucky Health Information Exchange
900 KAR 009:010. Kentucky Health Information Exchange participation. 2684

Department for Medicaid Services: Policy and Operations
Medicaid Services
907 KAR 001:270. Podiatry program services..... 2684
Department for Community Based Services: Protection and Permanency
Child Welfare
922 KAR 001:050. State funded adoption assistance..... 2685

AMENDED AFTER COMMENTS

Department of Revenue
Income Tax; Corporations
103 KAR 016:270. Apportionment; receipts factor. 2688
Board of Nursing
201 KAR 020:065. Professional standards for prescribing Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone by APRNs for medication assisted treatment for opioid disorder. 2702
Board of Licensure for Marriage and Family Therapists
201 KAR 032:110. Telehealth. 2705
Board of Education: Department of Education2705
Assessment and Accountability
703 KAR 005:270. Kentucky's Accountability System. ... 2716
Department of Insuran07
Surplus Lines
806 KAR 010:030. Surplus lines reporting and tax payment structure. 2716
Horse Racing Commission
General
810 KAR 002:001. Definitions. 2718
Flat and Steeplechase Racing
810 KAR 004:001. Definitions. 2720
810 KAR 004:020. Weights. 2723
Department of Medicaid Services: Policy and Operations
Medicaid Services
907 KAR 001:560. Medicaid hearings and appeals regarding eligibility. 2725
907 KAR 001:563. Medicaid covered services appeals and hearings unrelated to managed care. 2729
Department for Aging and Independent Living: Operations and Support
Aging Services
910 KAR 001:240. Certification of assisted-living communities. 2733
Department for Community Based Services: Family Support
K-TAP, Kentucky Works, Welfare to Work, State Supplementation
921 KAR 002:055. Hearings and appeals. 2738

PROPOSED AMENDMENTS

Division of Emergency Management
Disaster and Emergency Services
106 KAR 001:081. Kentucky Emergency Response Commission (KERC) Tier II reporting and fee schedule requirements; Extremely Hazardous Substance (EHS) facility planning participation requirements. 2743
106 KAR 001:091. Kentucky Emergency Response Commission (KERC) fee account grant requirements for Local Emergency Planning Committees (LEPCs). 2745
106 KAR 001:101. Kentucky Emergency Response Commission (KERC) fee account grant requirements for state agencies. 2750
106 KAR 001:111. Kentucky Emergency Response Commission (KERC) fee account grant review committee..... 2751
106 KAR 001:121. Kentucky Emergency Response Commission (KERC) fee account grant distribution formula. 2753

Board of Physical Therapy
201 KAR 022:020. Eligibility and credentialing procedure..... 2755
Kentucky Lottery Corporation
202 KAR 003:040. Internal audit. 2757
Board of Emergency Medical Services
202 KAR 007:520. Allocation of block grant funding assistance for emergency medical services. 2760
Department of Fish and Wildlife Resources
Game
301 KAR 002:178. Deer hunting on Wildlife Management Areas, state parks, other public lands, and federally controlled areas. 2765
Hunting and Fishing
301 KAR 003:022. License, tag, and permit fees. 2772
Kentucky Board of Education: Department of Education
General Administration
702 KAR 001:160. School health services. 2774
Department for Public Health: Maternal and Child Health
Kentucky Birth Surveillance Registry
902 KAR 019:010. Kentucky Birth Surveillance Registry. 2777
Office of Inspector General: Healthcare
Health Services and Facilities
902 KAR 020:111. Medically managed intensive inpatient withdrawal management. . 2781
Department of Medicaid Services: Policy and Operations
Medicaid Services
907 KAR 001:022. Nursing facility services and intermediate care facility for individuals with an intellectual disability..... 2784
907 KAR 001:330. Hospice services..... 2790
907 KAR 001:340. Reimbursement for hospice services. 2793
907 KAR 001:755. Preadmission Screening and Resident Review Program..... 2796

NEW ADMINISTRATIVE REGULATION

Education Professional Standards Board
Administrative Certificates
016 KAR 003:011. Repeal of 016 KAR 003:010, 016 KAR 003:020, 016 KAR 003:040, and 016 KAR 003:050..... 2801
Board of Accountancy
201 KAR 001:290. Standards of practice. 2802
201 KAR 001:310. Expungement of minor violation. 2804
Board of Emergency Medical Services
202 KAR 007:575. Posting of fee schedules of licensed ambulance providers..... 2805
Department of Agriculture: Office of the Commissioner
302 KAR 003:011. Repeal of 302 KAR 003:010..... 2807
Kentucky Board of Education: Department of Education
Assessment and Accountability
703 KAR 005:211. Repeal of 703 KAR 005:200..... 2808
Office of Learning Support Services
704 KAR 007:081. Repeal of 704 KAR 007:080..... 2809
Academic Standards
704 KAR 008:060. Required Academic Standards for Social Studies. 2810
Office of Inspector General: Healthcare
Health Services and Facilities
902 KAR 020:076. Repeal of 902 KAR 020:073..... 2812
Department of Medicaid Services: Policy and Operations
Medicaid Services
907 KAR 001:441. Repeal of 907 KAR 001:436..... 2813
Office for Children with Special Health Care Needs
Aging Services
911 KAR 001:010. Application to office for children with special health care needs clinical programs.....2814
911 KAR 001:020. Billing and fees. 2819
911 KAR 001:060. Office for children with special health care needs medical staff. 2823
911 KAR 001:071. Repeal of 911 KAR 001:070 and 911 KAR 001:080. 2828

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

Administrative Regulation Review Subcommittee
Tentative Meeting Agenda
Monday, March 11, 2019, 1:00 PM
Annex Room 149

1. Call to Order and Roll Call

2. Regulations for Committee Review

EDUCATION AND WORKFORCE DEVELOPMENT CABINET: Education Professional Standards Board
Administrative Certificates
016 KAR 003:090. Certifications for advanced educational leaders. (Deferred from February)

DEPARTMENT OF STATE: Kentucky Registry of Election Finance
Reports and Forms
032 KAR 001:050 & E. Political organization registration. ("E" expires 07-13-2019)
032 KAR 001:070 & E. Waiver from filing candidate election finance statement. ("E" expires 07-13-2019)

FINANCE AND ADMINISTRATION CABINET
Teachers' Retirement System
General Rules
102 KAR 001:060. Refunds.
102 KAR 001:163. Collection of life insurance benefits.
102 KAR 001:168. Survivor's benefits.
102 KAR 001:320. Qualified domestic relations orders.

Department of Revenue
Income Tax; Corporations
103 KAR 016:151. Repeal of 103 KAR 016:100, 103 KAR 016:110, 103 KAR 016:120, 103 KAR 016:130, 103 KAR 016:145, and 103 KAR 016:150. (Deferred from January)
103 KAR 016:270. Apportionment; receipts factor. (Amended After Comments)

Department for Facilities and Support Services
State-Owned Buildings and Grounds
200 KAR 003:020 & E. Use of State-Owned facilities and grounds. ("E" expires 07-03-2019)

BOARDS AND COMMISSIONS
Board of Medical Licensure
201 KAR 009:270. Professional standards for prescribing or dispensing Buprenorphine-Mono-Product or Buprenorphine-Combined-with Naloxone.

Board of Nursing
201 KAR 020:065. Professional standards for prescribing Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone by APRNs for medication assisted treatment for opioid disorder. (Amended After Comments)

Board of Physical Therapy
201 KAR 022:070. Requirements for foreign-educated physical therapists and physical therapist assistants. (Deferred from February)

Board of Social Work
201 KAR 023:150. Complaint procedure, disciplinary action, and reconsideration. (Deferred from December)

Boxing and Wrestling Commission
201 KAR 027:005. Definitions for 201 KAR Chapter 027.
201 KAR 027:008. License requirements and fees.
201 KAR 027:011. General requirements for boxing and kickboxing shows.
201 KAR 027:016. General requirements for mixed martial arts matches, shows, or exhibitions.
201 KAR 027:020. Tickets.
201 KAR 027:022. Repeal of 201 KAR 027:017.

Board of Licensure for Marriage and Family Therapists
201 KAR 032:110. Telehealth. (Amended After Comments)

TOURISM, ARTS AND HERITAGE CABINET: Department of Fish and Wildlife Resources
Game
301 KAR 002:095 & E. Importation of cervid carcasses and parts. ("E" expires 06-15-2019)
301 KAR 002:172. Deer hunting seasons, zones, and requirements.

DEPARTMENT OF AGRICULTURE
Office of Consumer and Environmental Protection
Agricultural Pest Control
302 KAR 027:010. Definitions for 302 KAR Chapter 027.
302 KAR 027:020. General provisions.
302 KAR 027:031. Repeal of 302 KAR 027:030.
302 KAR 027:040. Prison inmates.
302 KAR 027:050. Certification.
302 KAR 027:060. Fine schedule for violation of KRS 217B.120.
Ornamental Turf Lawn and Interior Plantscape Pest Control
302 KAR 028:010. Definitions for 302 KAR Chapter 028.
302 KAR 028:020. General provisions.
302 KAR 028:030. Ornamental and interior plantscape posting.
302 KAR 028:040. Prison inmates.
302 KAR 028:050. Certification.
302 KAR 028:060. Fine schedule violation of KRS 217B.120.
Office of Agricultural Marketing
Industrial Hemp
302 KAR 050:090. Enforcement, corrective action plans, and mandatory reporting to state and federal agencies, Department to retain growing site information for at least three (3) years. (Deferred from February)
Weights and Measures
302 KAR 085:010. Requirements to establish fee schedules for calibrations, adjustments, weights and measures.

JUSTICE AND PUBLIC SAFETY CABINET
Special Law Enforcement Officers
500 KAR 002:020. Filing and processing SLEO commissions. (Deferred from January)
500 KAR 002:030. Special law enforcement officers: evaluation examination. (Deferred from December)

Department of Juvenile Justice
Child Welfare
505 KAR 001:080. Kentucky Educational Collaborative for state agency children.

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Driver Licensing
601 KAR 002:030 & E. Ignition interlock. ("E" expires 07-07-2019)

PUBLIC PROTECTION CABINET: Kentucky Claims Commission
Tax Appeals
802 KAR 001:010. Tax appeal procedures.

LABOR CABINET
Department of Workplace Standards: Division of Occupational Safety and Health Compliance: Division of Occupational Safety and Training
Occupational Safety and Health
803 KAR 002:320. Toxic and hazardous substances.
803 KAR 002:505. Cranes and derricks in construction.

Department of Workers' Claims
803 KAR 025:270 & E. Pharmaceutical formulary. ("E" expires 06-25-2019) (Not Amended After Comments)
803 KAR 025:290. Continuation of medical benefits. (Deferred from February)

PUBLIC PROTECTION CABINET
Department of Insurance
Administration
806 KAR 002:092. Disclosure of local government taxes and collection fee. (Deferred from December)
806 KAR 002:100. Disclosure of insurance premium surcharge. (Deferred from December)
806 KAR 002:121. Repeal of 806 KAR 002:120 and 806 KAR 002:150. (Deferred from December)
Kinds of Insurance; Limits of Risk; Reinsurance
806 KAR 005:011. Repeal of 806 KAR 005:010 and 806 KAR 005:020. (Deferred from December)
Surplus Lines
806 KAR 010:030. Surplus lines reporting and tax payment structure. (Amended After Comments)

Department of Financial Institutions
Administration
808 KAR 001:060. Automated teller machines. (Deferred from February)
808 KAR 001:140. Fees. (Deferred from February)
808 KAR 001:161. Repeal of 808 KAR 001:020, 001:050, 001:090, 001:120, 001:130, 001:150, and 001:160. (Deferred from February)
808 KAR 001:170. Licensing and registration. (Deferred from February)
808 KAR 001:180. Use of special restricted funds. (Deferred from February)
Credit Unions
808 KAR 003:050. Conduct of credit unions. (Deferred from February)
808 KAR 003:061. Repeal of 808 KAR 00:020 and 003:060. (Deferred from February)

Industrial Loans
808 KAR 005:041. Repeal of 808 KAR 005:040. (Deferred from February)
Consumer Loans
808 KAR 006:095. Mandatory availability for repayment. (Deferred from February)
808 KAR 006:121. Repeal of 808 KAR 006:015, 006:105, 006:115, and 006:120. (Deferred from February)
Check Cashing
808 KAR 009:010. Deferred deposit database compliance. (Deferred from February)
808 KAR 009:031. Repeal of 808 KAR 009:020 and 009:030. (Deferred from February)
808 KAR 009:040. Customer account transfers. (Deferred from February)
808 KAR 009:050. Licensee change of control. (Deferred from February)
Multibank Companies
808 KAR 011:021. Repeal of 808 KAR 011:020. (Deferred from February)
Mortgage Loan Companies and Mortgage Loan Brokers
808 KAR 012:050. Processing and closing charges for real estate loans to consumers. (Deferred from February)
808 KAR 012:055. Uniform standards for mortgage loan processor applicant employee background checks. (Deferred from February)
808 KAR 012:111. Repeal of 808 KAR 12:002, 12:021, 12:022, 12:023, 12:024, 12:026, 12:030, and 12:110. (Deferred from February)
Administrative Hearing
808 KAR 014:010. Record retention. (Deferred from February)
808 KAR 014:020. Annual reporting. (Deferred from February)
General
808 KAR 015:010. Exceptions to bank lending limits. (Deferred from February)
808 KAR 015:020. Stay of notice of intention to remove from office. (Deferred from February)
808 KAR 015:030. Bank branches, offices, and loan production offices. (Deferred from February)
808 KAR 015:040. Multibank companies. (Deferred from February)

Horse Racing Commission
Thoroughbred Racing
810 KAR 001:301. Repeal of 810 KAR 001:004, 810 KAR 001:005, 810 KAR 001:007, 810 KAR 001:008, 810 KAR 001:009, 810 KAR 001:010, 810 KAR 001:012, 810 KAR 001:014, 810 KAR 001:015, 810 KAR 001:016, 810 KAR 001:017, 810 KAR 001:018, 810 KAR 001:021, 810 KAR 001:024, 810 KAR 001:026, 810 KAR 001:027, 810 KAR 001:028, 810 KAR 001:029, 810 KAR 001:030, 810 KAR 001:037, 810 KAR 001:040, 810 KAR 001:050, 810 KAR 001:060, 810 KAR 001:070, 810 KAR 001:080, 810 KAR 001:090, 810 KAR 001:100, 810 KAR 001:110, 810 KAR 001:130, 810 KAR 001:140, 810 KAR 001:145, 810 KAR 001:150, and 810 KAR 001:300. (Deferred from January)
General
810 KAR 002:001. Definitions. (Amended After Comments)
810 KAR 002:010. Racing commission and administrative staff. (Deferred from January)
810 KAR 002:020. Thoroughbred and flat racing officials. (Deferred from January)
810 KAR 002:030. Chemical dependency. (Not Amended After Comments)
810 KAR 002:040. Stewards. (Deferred from January)
810 KAR 002:050. Judges and Standardbred racing officials. (Deferred from January)
810 KAR 002:060. Owners' authorized agents and jockey agents. (Deferred from January)
810 KAR 002:070. Thoroughbred and other flat racing associations. (Not Amended After Comments)
810 KAR 002:080. Standardbred racing associations. (Deferred from January)
Licensing
810 KAR 003:001. Definitions. (Deferred from January)
810 KAR 003:010. Licensing of racing associations. (Deferred from January)
810 KAR 003:020. Licensing of racing participants. (Deferred from January)
810 KAR 003:030. Licensing totalizator companies. (Deferred from January)
810 KAR 003:040. Advance deposit account wagering. (Deferred from January)
810 KAR 003:050. Simulcast facilities. (Deferred from January)
Flat and Steeplechase Racing
810 KAR 004:001. Definitions. (Amended After Comments)
810 KAR 004:010. Horses. (Deferred from January)
810 KAR 004:020. Weights. (Amended After Comments)
810 KAR 004:030. Entries, subscriptions, and declarations. (Deferred from January)
810 KAR 004:040. Running of the race. (Deferred from January)
810 KAR 004:050. Claiming races. (Not Amended After Comments)
810 KAR 004:060. Objections and complaints. (Deferred from January)
810 KAR 004:070. Jockeys and apprentices. (Deferred from January)
810 KAR 004:080. Steeplechase racing. (Deferred from January)
810 KAR 004:090. Owners. (Deferred from January)
810 KAR 004:100. Trainers. (Deferred from January)
Standardbred Racing
810 KAR 005:001. Definitions. (Deferred from January)
810 KAR 005:010. Registration and identification of horses. (Deferred from January)
810 KAR 005:020. Eligibility and classification. (Deferred from January)
810 KAR 005:030. Claiming races. (Deferred from January)
810 KAR 005:040. Farm, corporate, or stable name. (Deferred from January)
810 KAR 005:050. Stakes and futurities. (Deferred from January)
810 KAR 005:060. Entries and starters. (Deferred from January)
810 KAR 005:070. Running of the race. (Deferred from January)
810 KAR 005:080. Harness racing and county fairs. (Deferred from January)

Pari-Mutuel Wagering
810 KAR 006:020. Calculation of payouts and distribution of pools. (Deferred from January)
Incentive and Development Funds
810 KAR 007:010. Backside improvement fund. (Deferred from January)
810 KAR 007:020. Kentucky thoroughbred breeders' incentive fund. (Deferred from January)
810 KAR 007:030. Kentucky thoroughbred development fund. (Deferred from January)
810 KAR 007:040. Kentucky Standardbred development fund and Kentucky Standardbred breeders' incentive fund. (Deferred from January)
810 KAR 007:060. Kentucky Quarter Horse, Paint Horse, Appaloosa, and Arabian development fund. (Deferred from January)
810 KAR 007:070. Violations, discipline, disputes, and investigation. (Deferred from January)
Medication Guidelines
810 KAR 008:010. Medication; testing procedures; prohibited practices. (Not Amended After Comments)
810 KAR 008:020. Drug, medication, and substance classification schedule and withdrawal guidelines. (Not Amended After Comments)
810 KAR 008:030. Disciplinary measures and penalties. (Deferred from January)
810 KAR 008:040. Out-of-competition testing. (Not Amended After Comments)
810 KAR 008:050. International medication protocol as condition of a race. (Not Amended After Comments)
810 KAR 008:060. Post-race sampling and testing procedures. (Deferred from January)
Hearings and Appeals
810 KAR 009:010. Hearings, reviews and appeals. (Not Amended After Comments)
Harness Racing
811 KAR 001:301. Repeal of 811 KAR 001:010, 811 KAR 001:015, 811 KAR 001:020, 811 KAR 001:025, 811 KAR 001:030, 811 KAR 001:035, 811 KAR 001:037, 811 KAR 001:040, 811 KAR 001:045, 811 KAR 001:050, 811 KAR 001:055, 811 KAR 001:060, 811 KAR 001:065, 811 KAR 001:070, 811 KAR 001:075, 811 KAR 001:080, 811 KAR 001:085, 811 KAR 001:90, 811 KAR 001:093, 811 KAR 001:095, 811 KAR 001:100, 811 KAR 001:105, 811 KAR 001:110, 811 KAR 001:115, 811 KAR 001:120, 811 KAR 001:130, 811 KAR 001:140, 811 KAR 001:150, 811 KAR 001:185, 811 KAR 001:215, 811 KAR 001:220, 811 KAR 001:225, 811 KAR 001:230, 811 KAR 001:240, 811 KAR 001:260, 811 KAR 001:280, 811 KAR 001:285, 811 KAR 001:290, and 811 KAR 001:300. (Deferred from January)
Quarter Horse, Paint Horse, Appaloosa, and Arabian Racing
811 KAR 002:301. Repeal of 811 KAR 002:015, 811 KAR 002:020, 811 KAR 002:030, 811 KAR 002:035, 811 KAR 002:040, 811 KAR 002:045, 811 KAR 002:050, 811 KAR 002:056, 811 KAR 002:065, 811 KAR 002:070, 811 KAR 002:075, 811 KAR 002:080, 811 KAR 002:085811 KAR 002:090, 811 KAR 002:093, 811 KAR 002:096, 811 KAR 002:100, 811 KAR 002:105, 811 KAR 002:110, 811 KAR 002:130, 811 KAR 002:140, 811 KAR 002:150, 811 KAR 002:170, 811 KAR 002:180, 811 KAR 002:185, 811 KAR 002:190, 811 KAR 002:200, and 811 KAR 002:300. (Deferred from January)

Department of Professional Licensing
Athlete Agent Registry
830 KAR 002:010. Registration and Fees.

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Inspector General: Division of Certificate of Need
Certificate of Need
900 KAR 006:075 & E. Certificate of need nonsubstantive review. ("E" expires 04-25-2019) (Amended After Comments) (Deferred from February)

Office of Health Data and Analytics: Division of Analytics
Data Reporting and Public Use Data Sets
900 KAR 007:030. Data reporting by health care providers.

Division of Health Benefit Exchange
Kentucky Health Benefit Exchange
900 KAR 010:021. Repeal of 900 KAR 010:010, 900 KAR 010:020, and 900 KAR 010:110.

Department of Medicaid Services: Division of Policy and Operations
Medicaid Services
907 KAR 001:560 & E. Medicaid hearings and appeals regarding eligibility. ("E" expires 5-31-2019) (Amended After Comments)
907 KAR 001:563 & E. Medicaid covered services appeals and hearings unrelated to managed care. ("E" expires 5-31-2019) (Amended After Comments)
907 KAR 001:604 & E. Recipient cost-sharing. ("E" expires 06-26-2019)
Payments and Services
907 KAR 003:170. Telehealth service coverage and reimbursement.
Division of Program Integrity
907 KAR 005:005. Health Insurance Premium Payment (HIPP) Program.

Department for Behavioral Health, Developmental and Intellectual Disabilities: Division of Behavioral Health
Substance Abuse
908 KAR 001:341. Repeal of 908 KAR 001:340.
908 KAR 001:370. Licensing procedures, fees, and general requirements for nonhospital-based alcohol and other drug treatment entities.
908 KAR 001:372. Licensure of residential alcohol and other drug treatment entities.
908 KAR 001:374. Licensure of nonhospital-based outpatient alcohol and other drug treatment entities.

Department for Aging and Independent Living: Division of Operations and Support
Aging Services
910 KAR 001:240. Certification of assisted-living communities. (Amended After Comments))

Department for Community Based Services: Division of Family Support
K-TAP, Kentucky Works, Welfare to Work, State Supplementation
921 KAR 002:015 & E. Supplemental programs for persons who are aged, blind, or have a disability. ("E" expires 06-26-2019)
921 KAR 002:055 & E. Hearings and appeals. ("E" expires 5-31-2019) (Amended After Comments)

Supplemental Nutrition Assistance Program
921 KAR 003:060 & E. Administrative disqualification hearings and penalties. ("E" expires 4-30-2019) (Deferred from January)
921 KAR 003:070 & E. Fair hearings. ("E" expires 4-30-2019) (Deferred from January)

3. Regulations Removed from March's Agenda

STATE BOARD OF ELECTIONS
Forms and Procedures
031 KAR 004:120. Additional and emergency precinct officers. (Comments Received; SOC ext., due 03-15-2019)

CABINET FOR HEALTH AND FAMILY SERVICES
Department of Medicaid Services: Division of Fiscal Management
Hospital Service Coverage and Reimbursement
907 KAR 010:820 & E. Disproportionate share hospital distributions. ("E" expires 6-26-2019) (Comments Received; SOC ext., due 03-15-2019)

Department for Community Based Services: Division of Family Support: Division of Protection and Permanency
Child Welfare
922 KAR 001:140. Foster care and adoption permanency services. (Comments Received; SOC ext., due 03-15-2019)
922 KAR 001:305. Licensure of child-caring facilities and child-placing agencies. (Comments Received; SOC ext., due 03-15-2019)
922 KAR 001:400. Supporting services. (Comments Received; SOC ext., due 03-15-2019)
922 KAR 001:565. Service array for a relative or fictive kin caregiver. (Comments Received; SOC ext., due 03-15-2019)
Daycare
922 KAR 002:160 & E. Child Care Assistance Program. ("E" expires 6-26-2019) (Comments Received; SOC ext., due 03-15-2019)

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.

REPRINT

201 KAR 12:280 was amended at the November 9, 2018, meeting of the Interim Joint Committee on Licensing, Occupations, and Administrative Regulations. The applicable changes are marked in bold, italic font.

GENERAL GOVERNMENT CABINET
Board of Cosmetology
(As Amended at IJC on Licensing, Occupations, and Administrative Regulations, November 9, 2018)

201 KAR 12:280. Esthetic practices restrictions.

RELATES TO: KRS 317A.130
STATUTORY AUTHORITY: KRS 317A.060*, 317A.130*
NECESSITY, FUNCTION AND CONFORMITY: KRS 317A.060 requires the board to establish appropriate standards of practice for individuals licensed by the board. This administrative regulation establishes the required restrictions and limitations placed on esthetic practices.

Section 1. Definitions. (1) ***"Basic exfoliation during dermaplane techniques" means only the uppermost layer of the stratum corneum may be removed.***

(2) "Cosmetic resurfacing exfoliating procedures" means the application of cosmetic resurfacing exfoliating substances by a licensed health care practitioner for the purpose of improving the aesthetic appearance of the skin. This includes services such as acid or chemical peels, microdermabrasion, and other forms of exfoliation or resurfacing of a cosmetic nature.

(3)[~~(2)~~] "Direct supervision" means to be within immediate distance, such as on the same floor, and available to respond when needed.

(4)[~~(3)~~] "Health care practitioner" means any individual certified by the Kentucky Board of Nursing, or the Kentucky Board of Medical Licensure to perform esthetic specialties.

(5)[~~(4)~~] "Immediate supervision" means a licensed physician is physically present in the same room and overseeing the activities of the esthetician at all times.

(6)[~~(5)~~][~~(3)~~] "Microdermabrasion" means a gentle, progressive, superficial, mechanical exfoliation of the uppermost layers of the stratum corneum using a closed-loop vacuum system.

(7)[~~(6)~~][~~(4)~~] "Microneedling" means the use of multiple tiny solid needles designed to pierce the skin for the purpose of stimulating collagen production or cellular renewal. Devices used may be in the form of rollers, stamps, or electronic "pens". Microneedling is also known as:

(a) Dermal needling;
(b) Collagen Induction Therapy (CIT);
(c) Dermal rolling;
(d) Cosmetic dry needling;
(e) Multitrepannic collagen actuation; or
(f) Percutaneous collagen induction.

(8)[~~(7)~~] "Physician" means a medical doctor licensed by the Kentucky Board of Medical Licensure to perform services within his or her scope of practice.

Section 2. Supervision of Restricted Practices. An esthetician licensed by the board shall not perform any of the activities listed in KRS 317A.130(2) unless under the immediate supervision of a licensed physician. Medical procedures shall not be performed by an esthetics or cosmetology licensee. Services under the direct supervision of a licensed health care practitioner shall fall within the category of cosmetic resurfacing exfoliating procedures.

Section 3. Microdemabrasion. (1) To be approved for use, a microdermabrasion device shall[~~must~~]:

(a) Be specifically labeled for cosmetic or esthetic purposes;
(b) Be a closed-loop vacuum system that uses a tissue retention device; and
(c) Not result in the removal of the epidermis beyond the stratum corneum from the normal and customary use of the device.

(2) Loose particle microdermabrasion systems shall not be used[~~are prohibited for use~~].

Section 4. Acids and Chemical Exfoliations. (1) The use of any acid or acid solution, which would exfoliate the skin below the stratum corneum, including those listed in subsection (2) of this section shall not be used[~~below are prohibited~~] unless[~~used~~] under the direct supervision of a licensed health care practitioner.

(2) The following acids or acid solutions shall not be used[~~are prohibited~~] unless[~~used~~] under the direct supervision of a licensed health care practitioner:

(a) Phenol;
(b) Bichloroacetic acid;
(c) Resorcinol;
(d) Any acid in any concentration level that requires a prescription;
(e) Modified jessner solution on the face and the tissue immediately adjacent to the jaw line;
(f) Alpha hydroxy acids with a pH of not less than one (1.0) and at a concentration of fifty (50) percent shall[~~must~~] include partially neutralized acids, and any acid above the concentration of fifty (50) percent is prohibited;
(g) Beta hydroxy acids with a concentration of not more than thirty (30) percent;
(h) Trichloroacetic acid (TCA), in a concentration of not more than fifteen (15) percent, but no manual, mechanical, or acid exfoliation may[~~can~~] be used prior to treatment unless under the direct[~~general~~] supervision of a licensed health care practitioner; and
(i) Vitamin-based acids.

(3) Limited chemical exfoliation for a basic esthetician shall[~~does~~] not include the mixing, combining, or layering of skin exfoliation products or services, but shall[~~does~~] include:

(a) Alpha hydroxy acids of thirty (30) percent or less, with a pH of not less than three (3.0); and
(b) Salicylic acid of fifteen (15) percent or less.

(4) A licensee may not apply any exfoliating acid to a client's skin that has undergone microdermabrasion or microneedling within the previous seven (7) days, unless under the direct[~~general~~] supervision of a licensed physician.

(5) A licensee shall prepare and maintain current documentation of the licensee's cumulative experience in chemical exfoliation, including:

(a) Courses of instruction;
(b) Specialized training;
(c) On-the-job experience; and
(d) The approximate percentage that chemical exfoliation represents in the licensee's overall business.

(6) A licensee shall provide the documentation required by subsection (5) of this section[~~(4)~~] to the board upon request.

(7) A licensee shall not use an acid or perform a chemical exfoliation that the licensee is not competent to use or perform through training and experience, and as documented in accordance with subsection (5) of this section.

(8) Only commercially available products utilized in accordance with manufacturers' instructions shall be used for chemical exfoliation purposes.

(9) A patch test shall be administered to each client prior to beginning any chemical exfoliation series.

Section 5. Devices. No mechanical or electrical apparatus that is considered a prescription medical device by the FDA may be used by a licensee, unless such use is under the immediate supervision by a licensed physician and within that licensed physician's appropriate scope of practice.

Section 6. Disclosure. Before applying a chemical exfoliant or using a microdermabrasion machine, a licensee shall inform a client that:

(1)[~~(a)~~] The procedure shall only be performed for cosmetic

and not medical purposes; and

(2)[~~(b)~~] The benefits and risks of the all procedures shall be disclosed prior to application[~~divulged~~].

Section 7. Prohibited Practices. (1) A licensee shall never use any preparation, product, device, or procedure that pierces or penetrates the skin beyond the stratum germinativum layer, also known as the basal layer of the epidermis.

(2) Dermaplane procedures, dermabrasion procedures, microneedling procedures, blades, knives, and lancets are prohibited***,*** except for:

(a) Advanced extraction of impurities from the skin ***shall use a lancet of 2mm or less***; and

(b) Dermaplane procedures for advanced exfoliation under direct supervision of a licensed physician.

(3) ***Dermaplane procedures for basic exfoliation may be practiced without the direct supervision of a licensed physician only if the following apply. A licensee shall maintain current documentation of the licensee's training in dermaplaning, including:***

(a) Courses of instruction; and

(b) Specialized training.

(4) A licensee shall provide the documentation required by subsection (3) of this section to the board upon request.

(5) A licensee shall not use any procedure in which human tissue is cut or altered by laser energy or ionizing radiation.

R. KAY SWANNER, Board Chair

APPROVED BY AGENCY: June 8, 2018

FILED WITH LRC: June 12, 2018 at noon

CONTACT PERSON: Julie M. Campbell, Board Administrator, 111 St. James Ct. Ste A. Frankfort, Kentucky 40601, phone (502) 564-4262, fax (502) 564-0481, email julie.campbell@ky.gov.

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, February 11, 2019)

103 KAR 16:250. Net operating loss computation and deduction for corporations.

RELATES TO: KRS 141.011, 141.200, 141.201, 141.202
STATUTORY AUTHORITY: KRS 131.130~~, 141.018~~
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 141.018 requires the department to promulgate administrative regulations necessary to explain or implement 2005 Ky. Acts ch. 168 relative to the imposition of the tax assessed under KRS Chapter 141 on individuals, the passed-through income of entities taxable under KRS 141.040, and any related item of income, deduction, or credit.~~] This administrative regulation establishes methods of computing a corporation's net operating loss deduction and application of the deduction to[~~prior and~~] subsequent taxable years on taxable net income as authorized by KRS 141.011, [~~and~~] 141.200(11)(b), and KRS 141.202(5).

Section 1. Definitions.
(1) "Combined group" is defined by KRS 141.202(2)(a). [~~"Allowable net operating loss carryforward from a previous period" means for a nexus consolidated filer, a net operating loss carryforward computed under the provisions of Section 2(3) or (4) of this administrative regulation.~~]
(2) "Combined group filer" means a group of corporations filing in accordance with KRS 141.202.
(3) "Combined group return" means a return filed under KRS 141.202(3).
(4)[~~(2)~~] "Corporation" is defined by:
(a) KRS 141.202(2)(b)[~~141.200(2)(d)~~] for a combined group[~~an elective consolidated~~] return; or
(b) KRS 141.010(4)[~~141.010(24)~~] for a separate[~~ or nexus consolidated~~] return for periods beginning on or after January 1, 2018; or[~~2005~~]
(c) KRS 141.201(2)(d) for an elective consolidated return.[~~(3) "Corporation income tax nexus" means being subject to the corporation income tax imposed by KRS 141.040(1).~~
~~(4) "Current year loss limitation" means the limitation provided by KRS 141.200(11)(b).~~
~~(5) "Current year loss limitation adjustment" means the amount of net operating losses of the includible corporations in a nexus consolidated return, including any allowable net operating loss carryforward from a previous period that exceeds the current year loss limitation.~~]
(5) "Doing business in this state" is defined by KRS 141.010(7).
(6) "Elective consolidated filer" means a corporation as defined in Section 7701(a)(3) of the Internal Revenue Code, 26 U.S.C. 7701(a)(3), filing in accordance with KRS 141.201[~~141.200(3) and (4)~~].
(7) "Elective consolidated return" means a return defined under KRS 141.201(2)(b)[~~141.200(2)(b).~~
~~(8) "Includible corporation" is defined in KRS 141.200(9)(d)~~].
(8)[~~(9)~~] "Net operating loss" ***or "NOL"*** means net operating loss defined under the Internal Revenue Code as adjusted for differences between KRS Chapter 141 and the Internal Revenue Code.
(9)[~~(10)~~] "Nexus consolidated filer" means a corporation as defined under KRS 141.010(4) or 141.900(24)[~~141.010(24)~~], filing in accordance with KRS 141.200(8), (9), (10) and (11).
(10)[~~(11)~~] "Nexus consolidated return" means a return defined under KRS 141.200(9)(g)[~~(f)~~].
(11)[~~(12)~~] "Separate return" is defined by KRS 141.201(2)(c)[~~141.200(2)(c) or 141.200(9)(g)~~].
(12)[~~(13)~~] "Separate return filer" means a corporation filing in accordance with KRS 141.201(3)[~~141.200(3) or 141.200(10)~~].

Section 2. Computation and Application of Net Operating Loss.
(1) Combined group filers, elective consolidated filers, and separate[~~"Separate~~] return filers[~~" and "elective consolidated filers"~~] shall compute net operating loss for Kentucky purposes in the following manner:
(a) For combined group returns and elective consolidated returns, the net operating loss shall be multiplied by the group's apportionment[~~Apportionment~~] factor provided by KRS 141.120 or 141.121;[~~shall be applied to the net operating loss; and~~]
(b) For separate returns, the net operating loss shall be multiplied by the apportionment factor provided by KRS 141.120 or KRS 141.121; and
(c)[~~(b)~~] The apportioned net operating loss shall be available for carryforward.[~~(2) "Nexus consolidated filers" shall compute net operating loss for Kentucky purposes in accordance with this subsection:~~
~~(a) Net operating loss computations shall be made before application of the apportionment factor provided by KRS 141.120.~~
~~(b) The current year loss limitation adjustment shall be:~~
~~1. Added to net income if the total of the net operating losses for the includible corporations that have incurred a net operating loss for the current taxable year and any allowable net operating loss carryforward from a previous period exceeds the current year loss limitation; or~~
~~2. Subtracted from net income if the current year loss limitation is greater than the total of the current year losses of includible corporations and any allowable net operating loss carryforward from a previous period.~~
~~(c) Any current year loss limitation adjustment that exceeds the current year loss limitation shall be available as a Kentucky net operating loss carryforward, and shall be available to be applied against the current year loss limitation for future taxable periods pursuant to KRS 141.200(11)(b).~~
~~(3) Separate return loss year rules for a nexus consolidated return. This subsection shall apply if a corporation that previously filed a separate return, and incurred net operating losses as a separate entity, will now be filing as part of a consolidated nexus return, and establishes how those separate net operating losses shall be treated as part of the consolidated nexus return.~~
~~(a) Separate entity filers having a net operating loss carryforward for the most recent period that began prior to January 1, 2005, may carry that loss forward to the first return filed under the nexus consolidated requirements pursuant to KRS 141.200(11), if:~~
~~1. The separate return filer had nexus for Kentucky corporation income tax purposes for the separate return periods that generated the loss; and~~
~~2. A supplemental statement as required by paragraph (c) of this subsection of this subsection, is attached to the return.~~
~~(b) The net operating loss carryforward shall be adjusted to a pre-apportionment amount unless an election has been made to utilize the net operating loss carryforward as an apportioned amount.~~
~~(c) A supplemental statement shall be attached to the Kentucky consolidated return that reflects a breakdown of the separate return loss carryforward amounts by entity.~~
~~(4) Elective consolidated net loss carryforward to a nexus consolidated return period. This subsection shall apply if an elective consolidated filer who incurred net operating losses as a consolidated group will now be filing as part of one or more consolidated nexus returns, and establishes how those elective~~

~~consolidated net operating losses shall be treated for purposes of the consolidated nexus return.~~

~~(a) An elective consolidated filer having a net operating loss carryforward for the last elective consolidated return may carry that loss forward to the first return filed under the nexus consolidated requirements pursuant to KRS 141.200(11).~~

~~(b) Any net operating loss carryforward from the last return of an elective consolidated group shall be computed under the provisions of Section 1502 of the Internal Revenue Code, 26 U.S.C. 1502 and related federal regulations and be adjusted for the differences between KRS Chapter 141 and the Internal Revenue Code.~~

~~(c) The net operating loss carryforward amount shall be on a pre-apportionment basis unless an election is made to carry forward a post-apportionment loss to be utilized in computing the current year loss limitation.~~

~~(d) If any of the corporations that filed as part of the elective consolidated return did not have nexus with Kentucky for the consolidated return periods that generated the net operating loss, that corporation's share of the net operating loss shall not be carried forward to a nexus consolidated return.~~

~~(e) If the election period defined in KRS 141.200(2)(c) has expired and the elective consolidated return group is survived by one or more nexus consolidated groups, the requirements established in this paragraph shall apply.~~

~~1. Compute on a separate entity basis, the pre-apportionment loss for each corporation that was included as part of the consolidated net operating loss computation on the last return filed by the elective consolidated group. The separate entity loss shall reflect adjustments for the differences between KRS Chapter 141 and the Internal Revenue Code. A columnar schedule shall be included with the consolidated return reflecting this computation.~~

~~2. The net operating loss carryforward amount shall be on a pre-apportionment basis unless an election is made to carry forward a post-apportionment loss to be utilized in computing the current year loss limitation.~~

~~3. Each net operating loss corporation's share of the net operating loss carryforward shall be determined in the following manner:~~

~~a. Add all separate entity losses together;~~

~~b. Divide each separate entity loss amount by the total of the separate entity losses; and~~

~~c. Multiply the resultant percentage by the consolidated net operating loss carryforward.~~

~~4. Carry the loss carryforward amount calculated in subparagraph 3c of this paragraph to the nexus consolidated return in which the corporation is an includible corporation under the provisions of KRS 141.200(9) through (14).~~

~~(5)~~](2) Elective consolidated filer net operating loss carryforward to a combined group return or separate returns[~~return filer~~]. This subsection shall apply if an elective consolidated filer who has incurred net operating losses as a consolidated group will now be filing combined group returns or separate entity returns, and establishes how those elective consolidated net operating losses shall be treated for purposes of the combined group returns or separate entity returns.

(a) An elective consolidated filer having a net operating loss carryforward on[~~for~~] the last elective consolidated return may carry that loss forward to combined group returns or separate returns[~~filed pursuant to KRS 141.200(2)(c) or 141.200(9)(g)~~]. The following requirements shall apply to this situation:~~.~~

1. Determine the post-apportioned elective consolidated group net operating loss carryforward. The elective consolidated group's apportionment factor provided by KRS 141.120, KRS 141.121, or KRS 141.901 shall be used to determine the post-apportioned net operating loss.

2. Determine the years that are in the post-apportioned elective consolidated group net operating loss carryforward. All post-apportioned net operating loss carryforwards shall be used on a first-in-first-out basis (i.e., most recent losses remain).

3. Determine each loss corporation's share of the net operating loss for each year in the following manner:

a. Allocate the post-apportioned elective consolidated group net operating loss carryforward by year to each loss corporation in each year. For a year in which the total loss generated exceeds the carryforward allocated to that year, the post-apportioned net operating loss shall be prorated for that year proportionally based on the loss generated by each member***[;]***;

b. Add together each loss corporation's allocated share of the losses for each year it was a member of an elective consolidated group; and

c. Carry the separate entity net operating loss carryforward computed in clauses a. ***and b.[to c.]*** of this subparagraph to the first combined group return or separate return due after the elective consolidated return.

4. No prior year net operating loss carryforward shall be available to separate entities that were not doing business in this state prior to becoming part of an elective consolidated return.

(3)[~~Compute on a separate entity basis, the post-apportionment Kentucky loss for each corporation that was included as part of the consolidated net operating loss computation on the last return filed by the elective consolidated group. The separate entity loss shall reflect adjustments for the differences between KRS Chapter 141 and the Internal Revenue Code. A columnar schedule shall be included with the consolidated return and the separate corporation returns reflecting this computation.~~

~~2. Each net operating loss corporation's share of the net operating loss carryforward shall be determined in the following manner:~~

~~a. Add all separate entity losses together;~~

~~b. Divide each separate entity loss amount by the total of the separate entity losses;~~

~~c. Multiply the resultant percentage by the consolidated net operating loss carryforward; and~~

~~d. Carry the separate entity loss computed in clauses a to c of this subparagraph to the first separate return due after the expiration of the elective consolidated return.~~

~~(6)~~] Nexus consolidated net operating loss carryforward to a combined group return, an elective consolidated return, or a separate return period. This subsection shall apply if a nexus consolidated filer ceases to exist who had incurred net operating losses as a consolidated group[~~, and will now be filing separate entity returns,~~] and establishes how those nexus consolidated net operating losses shall be treated[~~for purposes of the separate entity returns~~].

(a) If a nexus consolidated filer ceases to exist or a member leaves the group and a consolidated net operating loss carryforward exists, that net operating loss carryforward may be carried forward to the combined group return, the elective consolidated return, or the separate returns[~~ filed pursuant to KRS 141.200(2)(c) or 141.200(9)(g)~~]. The following requirements shall apply to this situation:[~~.~~]

1. Determine the pre-apportioned nexus consolidated group net operating loss carryforward.

2. Determine the years that are in the pre-apportioned nexus consolidated group net operating loss carryforward. All pre-apportioned net operating loss carryforwards shall be used on a first-in-first-out basis (i.e., most recent losses remain).

3. Determine each loss corporation's share of the net operating loss for each year in the following manner:

a. Allocate the pre-apportioned nexus consolidated group net operating loss carryforward by year to each loss corporation in each year. For a year in which the total loss generated exceeds the carryforward allocated to that year, the pre-apportioned net operating loss shall be prorated for that year proportionally based on the loss generated by each member in that year***;[;]***

b. Multiply the pre-apportioned net operating loss carryforward amounts as assigned to the members by ***the*** nexus consolidated group's apportionment factor ***for[in]*** each year a net operating loss exists to determine the post-apportioned net operating loss ***carryforward*** that member may carryforward in the future. The apportionment factor calculation is provided by KRS 141.120, KRS 141.121, or KRS 141.901;

c. Add together the ***post-apportioned*** losses generated for each loss corporation during the time in which it was included in a nexus consolidated return; and

d. Carry the separate entity net operating loss carryforward computed in clauses a. to c. of this subparagraph to the first combined group return, elective consolidated return, or separate return due after the nexus consolidated group ceases to exist.

4. No prior year net operating loss carryforward shall be available to separate entities that were not doing business in this state prior to becoming part of a nexus consolidated return. To generate a net operating loss in this state, a taxpayer ***shall[~~must~~]*** be doing business in this state in the year in which the loss is generated.[~~Compute on a separate entity basis, the post-apportionment Kentucky loss for each loss corporation that was included as part of the consolidated net operating loss computed on the last return filed by the nexus consolidated group. The separate entity net operating loss carryforward shall reflect adjustments for the differences between KRS Chapter 141 and the Internal Revenue Code. A columnar schedule shall be included with each separate corporation return reflecting this computation.~~

~~2. Each net operating loss corporation's share of the net operating loss carryforward shall be determined in the following manner:~~

~~a. Add all the separate entity computed losses together;~~

~~b. Divide each separate loss amount by the total consolidated loss amount;~~

~~c. Multiply the resultant percentage by the consolidated net operating loss carryforward; and~~

~~d. Carry the separate entity net operating loss carryforward computed in clauses a to c of this subparagraph to the first separate return due after the nexus consolidated group ceases to exist.~~

~~(7) Partnerships and limited liability entities that are subject to the corporation income tax imposed by KRS 141.040 that are owned by corporations as defined by KRS 141.010(24) shall be allowed to take a net operating loss deduction on their corporate income tax return for taxable periods beginning on or after January 1, 2006 for net operating loss carryforwards at the entity level.~~]

Section 3. Net Operating Loss Limitation. (1) Corporations that generated net operating losses may carryforward those losses to deduct against taxable net income. The deduction for losses generated for tax years beginning on or after January 1, 2018, shall be limited to eighty (80) percent of the taxable net income as allowed by Section 172 of the Internal Revenue Code.

(2) Nexus consolidated returns shall be subject to the fifty (50) percent limitation as required in KRS 141.200(11)(c).

Section 4. Net Operating Losses by Corporations Included in a Combined Group Return. This ***section[~~subsection~~]*** shall apply if a net operating loss is generated by a corporation included in a combined group return.

(1) Net operating losses generated by corporations included in a combined group shall not be used to offset income of other corporations included in the combined group.

(2) Net operating losses may be carried forward to subsequent years.

(3) Net operating losses may only be used if the corporation that generated the loss has taxable net income in subsequent years.

(4) All net operating loss carryforwards shall be used on a first-in-first-out ***basis[~~bases~~]*** (i.e., most recent losses remain).

(5) No prior year net operating loss carryforward shall be available to separate entities that were not doing business in this state prior to becoming part of a combined group return.

Section 5[~~3~~]. This administrative regulation shall apply to the computation of the net operating loss deduction of corporations for taxable years beginning on or after January 1, 2018[~~2005~~], except where otherwise noted in this administrative regulation.

Section 6. Examples for the computation and application of net operating losses. The following examples relate to the net operating loss computations found in Section 2 of this administrative regulation:

(1) Example 1 – Member Leaves Nexus Consolidated Group Parent Corporation and its three subsidiaries, Sub A, Sub B, and Sub C, have nexus in Kentucky. Parent Corporation files nexus consolidated group returns for Year 1 through Year 4, but Sub A will not be included in the group in Year 4. Parent Corporation has a pre-apportioned nexus group NOL carryforward of $85,000 at the end of Year 3 (see Figure 1-1). Apportionment factors for each member are given below (see Figure 1-2).

Figure 1-1

	Year 1	Year 2	Year 3
Sub A Income/(Loss)	($25,000)	($25,000)	($15,000)
Sub B Income/(Loss)	(10,000)	(10,000)	(10,000)
Sub C Income/(Loss)	(5,000)	30,000	50,000
Parent Corporation Income/(Loss)	(5,000)	(5,000)	(15,000)
Group Income/(Loss)	($45,000)	($10,000)	$10,000
Nexus Group NOL Adjustment	45,000	25,000	15,000
Group Taxable Income	0	15,000	25,000
Accumulating Group NOL Carryforward	$45,000	$70,000	$85,000

Figure 1-2

	Year 1 Apportionment Factor	Year 2 Apportionment Factor	Year 3 Apportionment Factor	Year 4 Apportionment Factor
Nexus Group	23%	28%	32%	17%

The following steps determine the post-apportioned net operating loss ("NOL") assigned to Sub A when it departs the group as well as the pre-apportioned NOL that will be carried forward by the group to Year 4.

(a)[~~1.~~] Determine the pre-apportioned group NOL carryforward: $85,000 (see Figure 1-1).

(b)[~~2.~~] Determine what years are in the pre-apportioned group NOL carryforward assuming all pre-apportioned NOL carryforward amounts are used on a first-in-first-out basis (i.e., most recent losses remain).

1.[~~a.~~] Year 3 Losses Remaining: $40,000

2.[~~b.~~] Year 2 Losses Remaining: $40,000

3.[~~c.~~] Year 1 Losses Remaining: $5,000

(c)[~~3.~~] Allocate the pre-apportioned group NOL carryforward by year to each loss corporation in each year. For a year in which the total loss generated exceeds the carryforward allocated to that year, prorate the pre-apportioned NOL carryforward for that year proportionally based on the loss generated by each member (see Figure 1-3).

Figure 1-3

	Year 1*	Year 2	Year 3
Sub A Loss	$2,777	$25,000	$15,000
Sub B Loss **	1,111	10,000	10,000
Sub C Loss **	556	-	-
Parent Corporation Loss **	556	5,000	15,000
Group NOL	$5,000	$40,000	$40,000
** Remaining Members' NOL	$2,223	$15,000	$25,000

* Sub A: $25,000/$45,000 X $5,000 = $2,777

Sub B: $10,000/$45,000 X $5,000 = $1,111

Sub C: $5,000/$45,000 X $5,000 = $556

Parent Corporation: $5,000/$45,000 X $5,000 = $556

(d)[~~4.~~] Multiply the pre-apportioned NOL carryforward amounts assigned to the member that is leaving the group by the nexus consolidated group's apportionment factors in each year an NOL ***carryforward*** exists to determine the post-apportioned NOL that member may carryforward in the future (see Figure 1-4).

Figure 1-4

	Year 1	Year 2	Year 3
Sub A NOL Carryforward	$2,777	$25,000	$15,000
Nexus Group Apportionment Factor	23%	28%	32%
Post-Apportioned NOL Carryforward	$638	$7,000	$4,800

The nexus consolidated group will carryforward a pre-apportioned NOL of $42,223 ($2,223+$15,000+25,000) to Year 4 (see Figure 1-3), and Sub A will carryforward a post-apportioned NOL of $12,438 ($638+$7,000+$4,800) to Year 4 (see Figure 1-4).

(2) Example 2 – Remaining Nexus Consolidated Group Dissolves
This example is a continuation of Example 1.
Parent Corporation and its two ***(2)*** remaining subsidiaries, Sub B and Sub C, have nexus in Kentucky. Parent Corporation files nexus consolidated group returns for Year 1 through Year 4, but each group member will file separately in Year 5. Parent Corporation has a pre-apportioned nexus group NOL carryforward of $42,223 at the end of Year 3 (see Figure 1-3 from Example 1). Apportionment factors for each member are given below (see Figure 2-2).

Figure 2-1

	Year 1	Year 2	Year 3	Year 4
Sub B Income/(Loss)	($10,000)	($10,000)	($10,000)	($10,000)
Sub C Income/(Loss)	(5,000)	30,000	50,000	60,000
Parent Corporation Income/(Loss)	(5,000)	(5,000)	(15,000)	(30,000)
Group Income (loss)				$20,000
Nexus Group NOL Adjustment				10,000
Group Taxable Income				30,000
Group NOL Generated	$2,223*	$15,000*	$25,000*	***$10,000 [$52,223]***
Cumulative Carryforward				***$52, 223***

* See Figure 1-3 from Example 1

Figure 2-2

	Year 1 Apportionment Factor	Year 2 Apportionment Factor	Year 3 Apportionment Factor	Year 4 Apportionment Factor
Nexus Group	23%	28%	32%	17%

The following steps determine the post-apportioned NOL that will be carried forward separately by each group member to Year 5 when the nexus consolidated group dissolves.

(a)[~~1.~~] Determine the pre-apportioned group NOL carryforward: $52,223 (see Figure 2-1).

(b)[~~2.~~] Determine what years are in the pre-apportioned group NOL carryforward assuming all NOL carryforward amounts are used on the first-in-first-out basis (i.e., most recent losses remain).

1.[~~a.~~] Year 4 Losses Remaining: $40,000

2.[~~b.~~] Year 3 Losses Remaining: $12,223

(c)[~~3.~~] Allocate the pre-apportioned group NOL carryforward by year to each loss corporation in each year. For a year in which the total loss generated exceeds the carryforward allocated to that year, prorate the pre-apportioned NOL carryforward for that year proportionally based on the loss generated by each member (see Figure 2-3).

Figure 2-3

	Year 3	Year 4
Sub B Loss	$4,890	$10,000
Parent Corporation Loss	$7,333	30,000
Group NOL	$12,223	$40,000

* Sub B: $10,000/$25,000 X $12,223 = $4,890
Parent Corporation: $15,000/$25,000 X $12,223 = $7,333

(d)[~~4.~~] Multiply the pre-apportioned NOL carryforward amounts assigned to each member that is leaving the group by the nexus consolidated group's apportionment factors in each year an NOL exists to determine the post-apportioned NOL that member may carryforward in the future (see Figure 2-4).

Figure 2-4

	Year 3	Year 4
Sub B NOL Carryforward	$4,890	$10,000
Nexus Group Apportionment Factor	32%	17%
Sub B Post-Apportioned NOL Carryforward	$1,564	$1,700
Parent Corporation NOL Carryforward	$7,333	$30,000
Nexus Group Apportionment Factor	32%	17%
Parent Corp Post-Apportioned NOL Carryforward	$2,346	$5,100

Sub B will carryforward a post-apportioned NOL of $3,264 ($1,564+$1,700) to Year 5, and Parent Corporation will carryforward a post-apportioned NOL of $7,446 ($2,346+$5,100) to Year 5 (see Figure 2-4). The total post-apportioned NOLs carried forward to Year 5 is $10,710 (see Figure 2-4).

(3) Example 3 – Member Leaves Elective Consolidated Group
Parent Corporation and its three subsidiaries, Sub A, Sub B, and Sub C, file elective consolidated group returns for Year 1 through Year 4, but Sub A will not be included in the group in Year 4. Parent Corporation has a post-apportioned elective consolidated group NOL carryforward of $23,500 at the end of Year 3 (see Figure 3-1).

Figure 3-1

	Year 1	Year 2	Year 3
Sub A Income/(Loss)	($25,000)	($25,000)	($15,000)
Sub B Income/(Loss)	(10,000)	(10,000)	(10,000)
Sub C Income/(Loss)	(5,000)	30,000	50,000
Parent Corporation Income/(Loss)	(5,000)	(5,000)	(15,000)
Group Income/(Loss)	($45,000)	($10,000)	$10,000
Group Apportionment Factor	50%	40%	30%
NOL Generated/(Used)	22,500	4,000	(3,000)
Accumulating Group NOL Carryforward	$22,500	$26,500	$23,500

The following steps determine the post-apportioned NOL assigned to Sub A when it departs the group as well as the post-apportioned NOL that will be carried forward by the group to Year 4.

(a)[~~1.~~] Determine the post-apportioned group NOL carryforward: $23,500 (see Figure 3-1).

(b)[~~2.~~] Determine what years are in the post-apportioned group NOL carryforward assuming all post-apportioned NOL carryforward amounts are used on a first-in-first-out basis (i.e., most recent losses remain).

1.[~~a.~~] Year 3 No NOL Generated

2.[~~b.~~] Year 2 Losses Remaining: $4,000

3.[~~c.~~] Year 1 Losses Remaining: $19,500

(c)[~~3.~~] Prorate the post-apportioned group NOL carryforward by year to each loss corporation in each year proportionally based on the loss generated by each member (see Figure 3-2).

Figure 3-2

	Year 1*	Year 2**
Sub A Loss	$10,833	$2,500
Sub B Loss ***	4,333	1,000

Sub C Loss ***	2,167	-
Parent Corporation Loss ***	2,167	500
Group NOL	$19,500	$4,000
*** Remaining Members' Loss (per year)	$8,667	$1,500

* Sub A: $25,000/$45,000 X $19,500 = $10,833
Sub B: $10,000/$45,000 X $19,500 = $4,333
Sub C: $5,000/$45,000 X $19,500 = $2,167
Parent Corporation: $5,000/$45,000 X $19,500 = $2,167

** Sub A: $25,000/$40,000 X $4,000 = $2,500
Sub B: $10,000/$40,000 X $4,000 = $1,000
Parent Corporation: $5,000/$40,000 X $4,000 = $500

The elective consolidated group will carryforward a ***total*** post-apportioned NOL of $10,167 to Year 4, and Sub A will carryforward a ***total*** post-apportioned NOL of $13,333 to Year 4 (see Figure 3-2).

(4) Example 4 – Remaining Elective Consolidated Group Dissolves
This example is a continuation of Example 3.
Parent Corporation and its two remaining subsidiaries, Sub B, and Sub C, file elective consolidated group returns for Year 1 through Year 4, but each group member will file separately in Year 5. Parent Corporation has a post-apportioned elective consolidated group NOL carryforward of $10,167 at the end of Year 3 (see Figure 4-1).

Figure 4-1

	Year 1	Year 2	Year 3	Year 4
Sub B Income/(Loss)	(10,000)	(10,000)	(10,000)	(15,000)
Sub C Income/(Loss)	(5,000)	30,000	50,000	25,000
Parent Corporation Income/(Loss)	(5,000)	(5,000)	(15,000)	(20,000)
Group Income/(Loss)				($10,000)
Group Apportionment Factor				30%
NOL Generated/(Used) per year	$8,667*	$1,500*	$ -	3,000
Accumulating Group NOL Carryforward	$8,667	$10,167	$10,167	$13,167

* See Figure 3-2 from Example 3

The following steps determine the post-apportioned NOL that will be carried forward separately by each group member to Year 5 when the elective consolidated group dissolves.
(a)[~~1.~~] Determine the post-apportioned group NOL carryforward: $13,167 (see Figure 4-1).
(b)[~~2.~~] Determine what years are in the post-apportioned group NOL carryforward assuming all post-apportioned NOL carryforward amounts are used on a first-in-first-out basis (i.e., most recent losses remain).
1.[~~a.~~] Year 4 Losses Remaining: $3,000
2.[~~b.~~] Year 3 No NOL Generated
3.[~~c.~~] Year 2 Losses Remaining: $1,500
4.[~~d.~~] Year 1 Losses Remaining: $8,667
(c)[~~3.~~] Prorate the post-apportioned group NOL carryforward by year to each loss corporation in each year proportionally based on the loss generated by each member (see Figure 4-2).

Figure 4-2

	Year 1**	Year 2**	Year 4*
Sub B Loss	4,333	1,000	1,286
Sub C Loss	2,167	-	-
Parent Corporation Loss	2,167	500	1,714
Group NOL	$8,667	$1,500	$3,000

* Sub B: $15,000/$35,000 X $3,000 = $1,286
Parent Corporation: $20,000/$35,000 X $3,000 = $1,714
** See Figure 3-2 from Example 3

Sub B will carryforward a post-apportioned NOL of $6,619 ($4,333+$1,000+$1,286) to Year 5, Sub C will carryforward a post-apportioned NOL of $2,167 to Year 5, and Parent Corporation will carryforward a post-apportioned NOL of $4,381 ($2,167+$500+$1,714) to Year 5 (see Figure 4-2). The total post-apportioned NOLs carried forward to Year 5 is $13,167 (see Figure 4-2).

DANIEL BORK, Commissioner
APPROVED BY AGENCY: December 14, 2018
FILED WITH LRC: December 14, 2018 at 9 a.m.
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GENERAL GOVERNMENT CABINET
Kentucky Board of Pharmacy
(As Amended at ARRS, February 11, 2019)

201 KAR 2:370. Pharmacy services in long-term care facility (LTCF).

RELATES TO: KRS 315.010, 315.020, 315.030, 315.121
STATUTORY AUTHORITY: KRS 315.002, 315.005, 315.191
NECESSITY, FUNCTION, AND CONFORMITY: KRS 315.191(1) authorizes the Kentucky Board of Pharmacy to establish requirements to regulate and control pharmacies. KRS 315.002 and 315.005 require standards of practice in all settings where drugs are handled and ***require[~~requires~~]*** the board to ensure safety of all drug products provided to the citizens of Kentucky. This administrative regulation establishes requirements for pharmacy services in long-term care facilities.

Section 1. Definitions.
(1) "Automated Dispensing System" ***or [(]***"ADS"***[)]*** means a mechanical system that performs operations or activities, other than compounding or administration, relative to the storage, packaging, counting, labeling, and dispensing of medications, and which collects, controls, and maintains all transaction information.
(2) "Emergency Drug" means***[~~those~~]*** drugs***[~~that are~~]*** required to meet the immediate therapeutic needs of patients that are not available from any other authorized source in sufficient time to prevent risk of harm to patients because of delay.
(3) "Emergency Medication Kit" ***or [(]***"EMK"***[)]*** means an onsite manual or automated mechanism for delivering emergency medications.
(4) ***"Immediate supervision" is defined by KRS 315.010(12).***
(5) **"Individual dose" means smallest unit that is commercially available.**
(6)[~~(5)~~] "Long-term care facility" ***or [(]***"LTCF"***[)] is defined by KRS 216.510(1), excluding family-care homes [~~means:~~***
[~~(a) An intermediate care facility;~~
[~~(b) A skilled nursing facility;~~
[~~(c) An intermediate care facility for intellectually and developmentally disabled;[or]~~
[~~(d) A nursing home, or[.]~~
[~~(e) A personal care home ("PCH") with personnel licensed to lawfully administer medications~~].
(7)[~~(6)~~] "Long Term Care Facility Drug Stock" ***or [(]***"LTCF drug stock"***[)]*** means a dose or doses generated from a prescription order sufficient until the next pharmacy business day or IV fluids that are used for replenishment, which contain no additive drugs, or irrigation solutions.
(8) "Pharmacist-in-charge" or "PIC" means a pharmacist mandated as in charge under KRS 315.020 and who meets the

requirements of 201 KAR 2:205.

(9) "Supervision" is defined by KRS 315.010(27).

Section 2. General Requirements.

(1) The pharmacist-in-charge of the dispensing pharmacy shall***:***

(a) Be responsible for policies and procedures governing the procurement, distribution, storage, security, ***access, administration,*** and control of all drugs that are provided to a LTCF***;***

(b)[, and shall] Review all policies and procedures at least once every twelve (12) months***;***

(c)[.

(2) The pharmacist in charge of a dispensing pharmacy shall:

(a)] Provide LTCF drug stock or an EMK only to facilities that authorize entry by a board agent for the purposes of inspection or investigation of the LTCF drug stock or EMK at the facility;

(d)1. Maintain[(b)] written authorization for entry***[shall be maintained by the PIC of the dispensing pharmacy]***; and

2. Immediately provide[(c)] written authorization for entry ***[shall be immediately provided]*** to the board***[by the PIC]*** upon request of a board agent***; and***

(e)[.

(d)] Maintain a current list of all locations where LTCF drug stock or an EMK are stored, which shall be made immediately available upon request by a board agent.

(2)[(3)] Dispensing.

(a) Controlled substance medications shall be dispensed only by prescription drug order ***of a licensed practitioner***.

(b) Non-controlled substance medications shall be dispensed only on a medical order or prescription drug order of a licensed practitioner.

(c) A medical order entered on the medical record of a patient at a LTCF shall contain:

1. Name of patient;

2. Date of issuance;

3. Name, strength, and dosage form of drug prescribed;

4. Directions for use; and

5. Practitioner's name.

(d) Each licensee shall comply with United States Pharmacopeia (USP) Chapter 7 ***Labeling*** regarding labeling and packaging.

(3)[(4)] The services of a pharmacist shall be readily available at all times.

(4)[(5)] Emergency drugs.

(a) Emergency drugs for controlled substances in a LTCF EMK shall be stocked pursuant to 902 KAR 55:070.

(b) Emergency drugs for non-controlled substances in an EMK shall not exceed six (6) individual doses of thirty (30) different non-controlled substances, per LTCF.

(c) The pharmacist-in-charge may request a waiver from the board to increase the number of doses or numbers of non-controlled substances in the EMK based on evidence of use.

(d) An EMK shall be assessed for outdated, damaged or adulterated drugs, and stock adequacy by:

1. A pharmacist or any lawful person as stated in 902 KAR 55:070 on a monthly basis for controlled substances***; or[.]***

2. A pharmacist, a PIC authorized pharmacist intern, or certified pharmacy technician on a monthly basis for non-controlled substances.

(e) EMK drugs shall be supplied in unit dose packaging unless precluded by manufacturer packaging.

(f) An EMK shall be conspicuously labeled.

(g) An EMK drug shall be accessed only upon a lawful prescription order.

(h) All prescription orders shall be reviewed by a pharmacist within one (1) pharmacy business day.

(i) An EMK shall not be stocked in a personal care home without personnel lawfully licensed to administer medications.

(5)[(6)] Initial dose of LTCF drug stock in a LTCF.

(a) ***Excluding personal care homes,*** LTCF drug stock of drugs shall not exceed fifteen (15) individual doses each of 150 non-controlled substances.

(b) ***LTCF drug stock in a personal care home shall not exceed five (5) individual doses each of thirty (30) non-controlled substances.***

(c) The pharmacist-in-charge may request from the board a waiver to increase the number of non-controlled substance items to be placed in LTCF drug stock based upon evidence of use.

(d)[(c)] The pharmacist-in-charge shall be responsible for authenticating the need for LTCF drug stock.

(e)[(d)] A pharmacist shall review the prescription drug or medical order before the release of medication.

(f)[(e)] LTCF drug stock shall be inspected by pharmacy personnel at least monthly and documentation shall be maintained to determine if:

1. Medications are outdated; and

2. Stocks are maintained at adequate levels.

(g)[(f)] Except for LTCF drug stock of intravenous fluids with no additive drugs or irrigation solutions, the LTCF drug stock shall be replenished by:

1. A tamper-resistant secure container delivered from the pharmacy;***[or]***

2. A tamper-resistant secure container for the stocking of an ADS;***[or]***

3. A pharmacist, pharmacist intern, or a certified pharmacy technician who shall be under the immediate supervision of a pharmacist on-site, if there is no pharmacy on-site; or

4. A pharmacist, pharmacist intern, or a certified pharmacy technician who shall be under the supervision of a pharmacist, if there is a pharmacy on-site.

Section 3.***[(1)]*** The pharmacist-in-charge of an ADS in a LTCF shall be responsible for the following:

(1)[(a)] Initial validation of the ADS accuracy prior to use for distribution to patients assuring that the ADS:

(a)[1.] Is in good order and accurately dispenses the correct strength, dosage form, and quantity of drug prescribed; and

(b)[2.] Complies with the recordkeeping and security safeguards pursuant to Section 4 of this administrative regulation.

(2)[(b)] Assuring that non-controlled substance prescription drug orders and medical orders are reviewed and approved by a pharmacist prior to access, except for emergency drugs;***[and]***

(3)[(c)] Assuring that controlled substance prescription drug orders are reviewed and approved by a pharmacist prior to accessing the controlled substance emergency drugs***;[;]***

(4)[(d)] Implementing an ongoing quality assurance program that monitors performance of the ADS, pursuant to the written policies and procedures***;[.]***

(5)[(e)] Assigning, discontinuing***,*** or changing personnel access to the system***; and***

(6)[. (f)] Assuring appropriate access to medications.

Section 4. Standards.

(1) A permit holder utilizing an ADS shall comply with the following provisions:

(a) A pharmacy shall maintain the following documentation:

1. Name and address of the LTCF where the system is being used;

2. The ADS manufacturer's name, model, and serial number;

3. An operations manual;

4. Description of how the system is used;

5. Written quality assurance procedures to determine continued appropriate use of the system; and

6. Written policies and procedures for system operation, safety, security, accuracy, access***,*** and malfunction.

(2) All written policies and procedures shall be maintained in the pharmacy responsible for the ADS.

(3) An ADS shall maintain adequate security systems and procedures, pursuant to written policies and procedures, that prevent unauthorized access to patient records and maintain patient confidentiality.

(4) ADS records and data shall meet the following requirements:

(a) All events involving the contents of the ADS shall be recorded electronically; and

(b) Records shall be maintained by the pharmacy for five (5)

years, be available to the board, and shall include the following:

1. The time and location of each system access;

2. Identification of the individual accessing the system;

3. Name of the patient for whom the drug was ordered;

4. Name, strength, dosage form, and quantity of drug accessed;

5. Type of transaction;

6. The prescription or transaction number if assigned; and

7. The name of the prescriber.

(c) All events involving user database modifications shall be recorded electronically and maintained.

(d) A twenty-four (24) hour emergency call center shall be available for any ADS malfunction.

(5) The stocking of all medications in an ADS shall be performed by a:

(a) Pharmacist;

(b) Pharmacist intern; or

(c) Certified pharmacy technician who shall be under the***[general]*** supervision of a pharmacist on-site.

(6) If the pharmacy utilizes a tamper resistant barcoding technology, microchip, or other equivalent tamper-resistant ADS, a pharmacist-verified drug ***may[can]*** then be loaded by a pharmacist-in-charge trained pharmacist, pharmacist intern, or certified pharmacy technician.

(7) A record of medications stocked in an ADS shall be maintained for five (5) years and shall include identification of the person stocking the ADS and the pharmacist checking for accuracy.

(8) The pharmacist-in-charge shall provide a policy for accounting for medications removed from an ADS and subsequently wasted.

(9) The pharmacist-in-charge shall provide a policy for accounting for medications returned to an ADS.

Section 5. Incorporation by Reference.

(1) "USP Chapter 7 Labeling", (December 1, 2017), is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Pharmacy, State Office Building Annex, Suite 300, 125 Holmes Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. through 4:30 p.m.[~~Section 1. Definitions. (1) "Immediate supervision" is defined by KRS 315.010(11).~~

~~(2) "Long-term care facility" or "LTCF" means:~~

~~(a) An intermediate care facility;~~

~~(b) A skilled nursing facility;~~

~~(c) A hospital other than an acute care hospital licensed pursuant to 902 KAR 20:016;~~

~~(d) An intermediate care facility for intellectually and developmentally disabled; or~~

~~(e) A personal care facility.~~

~~(3) "Pharmacist-in-charge" means a pharmacist mandated as in charge under KRS 315.020 and who meets the requirements of 201 KAR 2:205.~~

~~(4) "Supervision" is defined by KRS 315.010(25).~~

~~Section 2. General Requirements. (1) The pharmacist-in-charge of the dispensing pharmacy shall be responsible for policy and procedures governing the procurement, distribution, and control of all drugs that are provided to a long-term care facility.~~

~~(2) Dispensing.~~

~~(a) Medications shall be dispensed only on the medical order (for a non-controlled sub-stance) or a prescription drug order of a licensed practitioner.~~

~~(b) A medical order (for a non-controlled substance) shall be considered a prescription drug order if it is entered on the medical record of a patient at an LTCF and if the medical order contains the:~~

~~1. Name of patient;~~

~~2. Date of issuance;~~

~~3. Name, strength, and dosage form of drug prescribed;~~

~~4. Directions for use;~~

~~5. Quantity of length of therapy as defined in policy and procedures or as defined by medical order; and~~

~~6. Practitioner's name.~~

~~(3) Emergency Drugs.~~

~~(a) The pharmacist-in-charge of the dispensing pharmacy shall establish policy and procedures for supplying emergency drugs.~~

~~(b) For expediency and efficiency, emergency drugs shall be limited in number to include controlled substances stocked pursuant to 902 KAR 55:070 that shall not exceed six (6) individual doses of six (6) different controlled substances and shall not exceed six (6) individual doses of thirty (30) different non-controlled substances, and whose prompt use and immediate availability are generally regarded as essential in the proper treatment of sudden and unforeseen patient emergencies.~~

~~(c) The pharmacist-in-charge may request from the board a waiver to increase the number of non-controlled substance items to be included in the emergency kit based upon evidence of use.~~

~~(d) Emergency drug stock shall be inspected by pharmacy personnel on at least a monthly basis and documentation maintained to determine if contents have become outdated and if the stocks are being maintained at adequate levels.~~

~~(e) Emergency drug stock shall not be stocked in a personal care facility.~~

~~(4) Long Term Care Facility Pharmacy Stock.~~

~~(a) Pharmacy stock of drugs in an LTCF shall not exceed fifteen (15) individual doses each of 150 non-controlled substances.~~

~~(b) Pharmacy stock of drugs in a personal care facility shall not exceed five (5) individual doses each of thirty (30) non-controlled substances.~~

~~(c) The pharmacist-in-charge may request from the board a waiver to increase the number of non-controlled substance items to be placed in pharmacy stock based upon evidence of use.~~

~~(d) The pharmacist-in-charge shall be responsible for authenticating the need for pharmacy stock.~~

~~(e) A pharmacist shall review the prescription drug or medical order before the release of medication.~~

~~(f) Pharmacy stock shall be inspected by pharmacy personnel on at least a monthly basis and documentation maintained to determine if contents have become outdated and if stocks are being maintained at adequate levels.~~

~~(g) Pharmacy stock shall be used for a patient for no more than the next business day.~~

~~(h) Except for pharmacy stock of intravenous fluids with no additive drugs or irrigation solutions, the pharmacy stock shall be replenished by:~~

~~1. A secure box delivered by the pharmacy; or~~

~~2. A pharmacist or a pharmacist intern, or a certified pharmacy technician, who shall be un-der the immediate supervision of a pharmacist on-site, unless there is a pharmacy on-site, then the pharmacy stock shall be replenished by a pharmacist or a pharmacist intern or a certified pharmacy technician under the supervision of a pharmacist on-site.~~]

CATHY HANNA, R.Ph., President

APPROVED BY AGENCY: November 818, 2018

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GENERAL GOVERNMENT CABINET
Board of Nursing
(As Amended at ARRS, February 11, 2019)

201 KAR 20:062. Standards for advanced practice registered nurse (APRN) programs of nursing.

RELATES TO: KRS 314.011, 314.042, 314.111, 314.131

STATUTORY AUTHORITY: KRS 314.042, 314.111(3), 314.131(1), (2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS

314.111(3) and 314.131(2) require the board to promulgate administrative regulations to set standards for the establishment and outcomes of nursing programs, to approve schools of nursing preparing persons for advanced practice registered nurse (APRN) licensure, and to monitor standards for APRN competency under KRS Chapter 314. KRS 314.131(1) authorizes the board to promulgate administrative regulations to implement KRS Chapter 314. This administrative regulation establishes standards for APRN programs of nursing[~~standards~~].

Section 1. Definitions.

(1) "APRN program coordinator" means that individual who is responsible for the administrative oversight of the educational unit that prepares a person for practice and licensure as an APRN and is licensed as an APRN in one (1) of the four (4) roles[~~in the designated role and in the same population focus as the program~~].

(2) "APRN program of nursing" means the educational unit [~~that~~] for which the curricular design prepares a person for practice and licensure as an advanced practice registered nurse in one (1) of the four (4) roles.

(3) "APRN track coordinator" means that individual responsible for the oversight of the APRN track and is licensed as an APRN in the same role and population focus as the track***.[;]***

(4) "Chief nurse administrator[~~nursing academic officer~~]" means the registered nurse who has academic and administrative authority for the overall nursing program.

(5)[~~(4)~~] "National nursing accrediting body" means the Accreditation Commission for Education in Nursing (ACEN), the Commission for Collegiate Nursing Education (CCNE), the Commission on Nursing Education Accreditation (CNEA), the Council on Accreditation of Nurse Anesthesia Educational Programs (COA), or the Accreditation Commission on Midwifery Education (ACME).

(6)[~~(5)~~] "Preceptor" means an advanced practice registered nurse, a physician, or a physician assistant who meets the standards established in Section ***5[4]*** of this administrative regulation.

(7) "Role" means certified registered nurse anesthetist, certified nurse midwife, certified nurse practitioner, or clinical nurse specialist, as designated by the board pursuant to KRS 314.042.

(8) "Track" means the educational unit that prepares a person for practice and licensure as an APRN in one (1) of the four (4) roles and in a population focus as defined in KRS 314.011(20).

Section 2. ***Accreditation Communications.*** Copies of all correspondence and reports between the APRN program of nursing or track**,** and the national nursing accrediting body regarding accreditation shall be forwarded to the board by the APRN program of nursing or track at the time of receipt or submission, but no later than thirty (30) days of receipt***[by the program]***.

Section 3. Establishing a New APRN Program of Nursing or Track.

(1) An institution may receive consultation from the board prior to establishing an APRN program of nursing or track.

(2) An institution that desires to establish and conduct an APRN program of nursing or track shall be accredited as outlined in 201 KAR 20:260, Section 2(1)(a).

(3) An institution shall submit [~~information in the form of~~] a letter of intent to establish an APRN program of nursing or track along with the fee required by 201 KAR 20:240, Section 1(2)***(o) and (p)[(q)]***.

(4) When the letter of intent[~~information~~] is submitted to the board, the institution shall begin the accreditation[~~application~~] process with a national nursing accrediting body and the Council on Postsecondary Education, if applicable.

(5)[~~The information shall be submitted to the board at least one (1) year prior to the first intended admission of students.~~

~~(6)~~] The letter of intent[~~information~~] shall be completed under the direction of the registered nurse who shall serve as the chief nurse administrator[~~nursing academic officer~~] or the APRN program coordinator.

(6)[~~(7)~~] The letter of intent[~~information~~] shall include:

(a) General information about the governing institution including the:

1. Mission;
2. Ownership;
3. Accreditation;
4. Enrollment;
5. Geographical area served; and
6. Resources that are sufficient to support defined outcomes and goals;

(b) A description and rationale for the APRN role and track[~~population foci program~~]**,** which includes the post-graduate certificate or graduate degree to be awarded;

(c) Approval from the governing body of the institution planning [~~proposing~~] the APRN program of nursing or track or other empowered approval bodies as applicable;

(d) Results of a needs assessment, including availability of an adequate number of potential students and employment opportunities for program graduates;

(e) Evidence of support from the community of interest;

(f) A description of physical or virtual resources adequate to meet the needs of the faculty and students; and

(g) Evidence of a sound financial base and demonstrated financial stability available for planning, implementing, and maintaining the [~~proposed~~] program of nursing.

(7)[~~(8)~~] If the [~~information in the form of a~~] letter of intent is approved by the board, the chief nurse administrator[~~governing institution~~] shall be notified in writing that the program of nursing[~~it~~] may move to the proposal phase. The proposal shall be submitted within one (1) year of the date of the approval of the letter of intent[~~information~~] or it shall expire.

(8)[~~(9)~~](a) A completed[~~program~~] proposal shall be submitted to the board by the governing institution for approval[~~at least one (1) year prior to the first intended admission of students~~].

(b) The[~~program~~] proposal shall include:

1. An organizational chart of the governing institution and a written plan which describes the organization of the program of nursing or track and its relationship to the governing institution;

2. A designation of the current or desired national nursing accrediting body to be used for the accreditation of the program;

3.a. A copy of the curriculum vitae of the APRN identified as the APRN program coordinator or track coordinator;

b. The program coordinator ***who*** may serve as a track coordinator if the requirements of Section 1(3) ***of this administrative regulation*** are met;

4. A timeline for the admission and enrollment of students, projected graduation of the first class, and any plans for expansion;

5. The philosophy of the APRN program or track and[~~program~~] outcomes for graduates;

6. Curriculum design for each identified population focus[~~track~~] to include:

a. Proposed course sequence;

b. Description of courses;

c. Credit hours delineating those credits assigned to theory and practice;[~~and~~]

d. The total number of clinical hours designated for each[~~track or~~] population focus[~~foci~~]**;** and***[;]***

e. Information regarding Kentucky nursing laws pertaining to APRNs, including scope of practice, licensure requirements, and the role of the board of nursing. ***The[~~This~~]*** provision ***in this clause*** shall be implemented by January 1, 2020***;[;]***

7. A five (5) year plan for securing clinical sites and preceptors sufficient to accommodate the number of students;

8. A five (5) year plan for recruiting and retaining qualified nurse faculty; and

9. Recruitment plan and five (5) year projection for student enrollment and policies and procedures for student selection and progression.

(9)[~~(10)~~] The program shall not be announced or advertised, nor students admitted or enrolled until the proposal has been approved and developmental status has been granted by the board.

(10)[~~(11)~~] Developmental status shall be the

approval[~~designation~~] granted by the board to an APRN program of nursing or track that has met all the requirements of this administrative regulation including evidence that it has applied for accreditation from a national nursing accrediting body.[~~Developmental status shall be for no more than a two (2) year period of time pending review and accreditation by a national nursing accrediting body.~~]

(11)[~~(12)~~] When developmental status has been granted by the board, implementation of the program or track may proceed[~~with implementation~~]***, which includes[~~including~~]*** the admission of students.[~~It shall be the responsibility of the chief nursing academic officer to notify the board of the admission and graduation of the first class.~~]

(12)[~~(13)~~] Developmental status of an APRN program shall expire if a class of students is not admitted within two (2) years of receiving developmental status.

(13) It shall be the ***program of nursing's*** responsibility***[~~of the program of nursing~~]*** to notify the board of the admission of the first class. The status of the program shall move automatically from developmental status to initial status upon admission of the first class and notification to the board.

(14) All[~~formal~~] communication between the APRN program of nursing and the national nursing accrediting body shall be forwarded to the board by the chief nurse administrator or the APRN program coordinator at the time of receipt from or submission to the accrediting body, but no later than[~~within~~] thirty (30) days of receipt by the program.

(15) The chief nurse administrator or the APRN program coordinator shall notify the board within thirty (30) days of any change in accreditation status.

(16) The chief nurse administrator or the APRN program coordinator shall notify the board of pending site visits by the national nursing accrediting body and shall provide to the board copies of any formal communication submitted to the national nursing accrediting body at the time[~~within thirty (30) days~~] of submission.

(17) The decision to grant program approval by the board shall be based on review of the following:

(a) Achievement and continued approval by a national nursing accrediting body; and

(b) Reports of site visits conducted by a board representative to evaluate program compliance with administrative regulations.

(18) The board may grant program approval for a period of time not to exceed the approval period of the national nursing accrediting body.

Section 4[~~3~~]. Compliance with National Nursing Accrediting Body Standards. An APRN program shall comply with the standards of its national nursing accrediting body.

Section 5[4]. Preceptor Standards.

(1) In addition to the standards of the national nursing accrediting body, the APRN program shall comply with the preceptor standards established in this section.

(2)[~~(1)~~] The APRN program shall secure all necessary preceptors to students enrolled in the program. A student shall not be required to obtain ***his or her[~~their~~]*** own preceptor, but may have input into the process.[~~(2) During the student's enrollment in the program, the student shall have some clinical experience with a preceptor who is an APRN with the same role and population focus for which the student is preparing.~~

~~(3) The preceptor who is an APRN shall have at least one (1) year of clinical experience in the role and population focus for which the student is preparing.~~

~~(4)(a) A physician or a physician assistant (PA) may serve as a preceptor.~~

~~(b) The physician or PA who serves as a preceptor shall have at least one (1) year of clinical experience and shall practice in the same or similar population focus for which the student is preparing.~~

~~(5) A preceptor shall not precept more than two (2) students at a time.~~

~~(6) The APRN program shall have a written plan for orienting and evaluating a preceptor.~~

~~(7) This section shall become effective on January 1, 2016.~~]

Section 6[~~5~~]. Ongoing Approval.

(1)(a) The board shall be notified in writing of a change, vacancy, or pending vacancy in the position of the APRN program coordinator or the APRN track coordinator within thirty (30) days of the program of nursing's awareness of the change, vacancy, or pending vacancy.

1. The governing institution shall submit to the board in writing the name of the advanced practice registered nurse who has been designated to assume the administrative duties for the program or track, the date that person will assume the duties, and a copy of his or her curriculum vitae.

2. If there is to be a lapse between the date of the vacancy and the date the newly-appointed program administrator or APRN track coordinator assumes ***the*** duties, ***then*** the head of the governing institution shall submit a plan of transition to ensure the continuity of the program.

3.a***.*** The length of the appointment of an interim program administrator shall not exceed six (6) months Additional six (6) month periods may be granted upon request to the board based on a documented inability to fill the position.

b. Progress reports shall be submitted if requested by the board.[~~The chief nursing academic officer shall notify the board within thirty (30) days of any change in the APRN program coordinator.~~]

(b) Approved APRN programs of nursing accredited by a national nursing accrediting body may be subject to a site visit at intervals associated with their national nursing accreditation.

(c) The APRN program of nursing shall submit to the board the annual report it submits to the national nursing accrediting body.

(2) The board requires continuous accreditation by a national nursing accrediting body.

(3) The board may perform a site visit of a program on an announced or unannounced basis.

(4) Factors that may indicate the need for a site visit and that jeopardize program approval status shall include:

(a) Identified[~~Reported~~] deficiencies in compliance with this administrative regulation;

(b) Noncompliance with the governing institution or program of nursing's stated philosophy, mission, program design, objectives, outcomes, or policies;

(c) Ongoing failure to submit records or reports to the board within the designated time frame;

(d) Failure to provide sufficient clinical learning opportunities including securing preceptors for students to achieve stated outcomes;

(e) Failure to comply with requirements of the board or to respond to recommendations of the board within the specified time;

(f) Failure to submit communication from the accrediting agencies within the time frames identified in Section 2 of this administrative regulation;

(g) Withdrawal of accreditation of either the program of nursing, college, or university by a national or regional accrediting body, or if accredited for less than the maximum accreditation period;

(h) Failure to obtain[~~approval of a change that requires~~] board approval at least six (6) months prior to implementation of:

1. The addition of a new APRN program of nursing or track***;[;]*** or

2. A change that affects the APRN program of nursing's compliance with the accreditation standards;

(i) Providing false or misleading information to students or the public concerning the program of nursing; or

(j) A change in the ownership or organizational restructuring of the governing institution.

(5) If the APRN program of nursing achieves reaccreditation, it shall submit documentation from the national nursing accrediting body to the board for action. If the board finds that all requirements have been met, the program shall continue to be eligible for approval.

(6) Action following a site visit:

(a) The board shall evaluate a program of nursing in terms of

its compliance with this administrative regulation.

(b) Following a site visit and prior to board consideration, a draft of the site visit report shall be made available to the chief nurse administrator[~~nursing academic officer~~] and to the APRN program coordinator for review and correction of factual data.

(c) The APRN program coordinator or designee shall be available during the discussion of the report at the board committee meeting to provide clarification.

(d) Following the board's review and decision, a letter shall be sent to the chief nurse administrator[~~nursing academic officer~~], the APRN program coordinator, and the head of the governing institution regarding any requirements to be met along with required timelines.

Section 7[~~6~~]. Withdrawal of Approval of an APRN Program.

(1) Approval of an APRN program may be withdrawn if:

(a) It loses its national nursing accreditation; or

(b) It is unable to or does not meet the requirements of this administrative regulation.

(2) The board shall send notice to the chief nurse administrator [~~nursing academic officer~~], the APRN program coordinator, and the head of the governing institution of its intent to withdraw approval.

(3) Within thirty (30) days of receipt of this notice, the chief nurse administrator[~~nursing academic officer~~] may request an administrative hearing pursuant to KRS Chapter 13B. If an administrative hearing is not requested, approval shall be withdrawn and the program shall be closed. A closed program shall comply with 201 KAR 20:360, Section ***7[~~5(2)~~]***.

(4) (a) If a program requests an administrative hearing, that hearing shall be held within sixty (60) days of the request.

(b) The board shall decide whether the hearing shall be held before a hearing officer or before the full board.

Section 8. Licensure Requirement.

(1) The chief nurse administrator and the APRN program coordinator shall hold an unencumbered active RN license in this state or a privilege to practice pursuant to KRS ***314.475[~~314.470~~]***. The APRN program coordinator shall also hold an unencumbered active APRN license in this state.

(2) Nurse faculty who teach via distance learning shall hold an unencumbered active APRN license and an unencumbered active RN license in the nurse faculty's primary state of residence.

KELLY JENKINS, President

APPROVED BY AGENCY: October 18, 2018

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GENERAL GOVERNMENT CABINET
Board of Nursing
(As Amended at ARRS, February 11, 2019)

201 KAR 20:161. Investigation and disposition of complaints.

RELATES TO: KRS Chapter 13B, 218A.205, 314.011, 314.031, 314.071(4), 314.091, 314.107, ***314.475[~~314.470~~]***, 314.991(3)

STATUTORY AUTHORITY: KRS 218A.205, 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1) authorizes the Board of Nursing to promulgate administrative regulations to effect the provisions of KRS Chapter 314. This administrative regulation establishes the procedures for the investigation and disposition of complaints received by the board.

Section 1. Receipt of Complaints.

(1) The board shall receive and process each complaint made against a licensee, holder of a multistate licensure privilege pursuant to KRS ***314.475[~~314.470~~]***, or applicant or unlicensed individual if the complaint alleges acts that may be in violation of the provisions of KRS Chapter 314.

(2)(a) A complaint shall be in writing and shall be dated and fully identify the individual by name.

(b) The president of the board or the executive director or designee shall file a complaint based upon information received by oral, telephone, or written communications if the facts of the complaint are found to be accurate and indicate acts that may be in violation of the provisions of KRS Chapter 314.

(3) A certified copy of a court record for a misdemeanor or felony conviction or a certified copy of disciplinary action in another jurisdiction shall be considered a valid complaint.

(4) A complaint shall be investigated.

(a) If the complaint establishes a potential violation or the conduct falls within the statutory instances which shall be investigated, the board shall send a copy of the complaint to the licensee, holder of a multistate privilege, or applicant to the address of record by ***United States Postal Service[~~U.S.P.S.~~]*** regular mail.

1. For licensees, the address of record is the last known address in accordance with KRS 314.107.

2. For applicants, the address of record is the last known address in accordance with 201 KAR 20:370, Section 1(10).

3. For holders of a multistate privilege, the address of record is the last known mailing address of record reported by the primary state of residence board of nursing to the NURSYS database.

4. All further mailings to the respondent subsequent to the complaint shall be mailed by ***U.S. Postal Service[~~U.S.P.S.~~]*** regular mail to the address of record, except a notice of hearing pursuant to KRS 13B.050 and a final order pursuant to KRS 13B.120, both of which shall be mailed by ***U.S. Postal Service[~~U.S.P.S.~~]*** certified mail to the address of record.

(b) A written, legible, verified response shall be filed with the board within thirty (30) days of receipt by the individual against whom the complaint has been made.

(c) The staff may request an informal conference with the individual against whom the complaint has been made.

(5) (a) A complaint shall be evaluated to find if a violation of the provisions of KRS Chapter 314 has been alleged.

(b) The credentials review panel or the executive director or designee shall make the determination as to the disposition of the complaint pursuant to Section 2 of this administrative regulation.

(6)(a) All preliminary information shall be treated as confidential during the investigation and shall not be disclosed to board members or to the public, except as provided by KRS ***314.475[~~314.470~~]***. The board shall make available to the public the fact that an investigation is pending.

(b) If a board member has participated in the investigation or has substantial knowledge of facts prior to a hearing on the complaint that may influence an impartial decision by the member, that member shall not participate in the adjudication of the complaint.

(7) (a) When the board receives a report of improper, inappropriate, or illegal prescribing or dispensing of a controlled substance by an advanced practice registered nurse (APRN), it shall notify, within three (3) business days:

1. The Department of Kentucky State Police;

2. The Office of the Attorney General; and

3. The Cabinet for Health and Family Services, Office of the Inspector General.

(b) An investigation concerning a complaint filed against an APRN pertaining to the improper, inappropriate, or illegal prescribing or dispensing of controlled substances shall be commenced within seven (7) days of the filing of the complaint.

(c) The investigation shall be completed and a determination as to the disposition of the complaint shall be made within 120 days of the receipt of the complaint, unless an extension of time is requested by a law enforcement agency due to an ongoing criminal investigation.

Section 2. Disposition of Complaints.

(1) Disposition of complaints shall be as follows:

(a) If there is a determination by the executive director or designee that there is insufficient evidence of a violation or that a violation has not occurred, there shall not be further action unless warranted by future evidence;

(b)1. The complaint may be referred to the credentials review panel of the board by the executive director or designee for disposition pursuant to this section or for issuance of a letter of concern; or

2. It may be found that there is probable cause that a violation of KRS 314.091 has occurred.

(c) In cases involving practice as a nurse on the privilege pursuant to KRS ***314.475[~~314.470~~]***, the case may be referred to the home state.

(2) Upon determination that there is probable cause that a violation of KRS 314.091 has occurred, the complaint shall be handled as follows:

(a) An administrative hearing may be scheduled pursuant to subsection (3) of this section;

(b) An agreed order may be offered pursuant to subsection (4) of this section; or

(c) A consent decree may be offered, pursuant to subsection (5) of this section.

(3) Administrative hearings.

(a) Hearings shall be held pursuant to KRS 314.091, Chapter 13B, and 201 KAR 20:162.

(b)[~~Notice of the hearing and charges shall be mailed by certified mail to the address of the licensee or applicant on file with the board pursuant to KRS 314.107.~~

~~(c)~~] Notice of the hearing and charges shall be signed by the executive director or designee.

(4) Agreed order.

(a) The board may enter into an agreement with an individual for denial, revocation, voluntary surrender, suspension, probation, reinstatement, limitation of license or reprimand, and to impose a civil penalty, if the individual agrees to waive the right to a hearing. The terms of the agreement may include other conditions or requirements to be met by the individual, including those listed in Section 4 of this administrative regulation.

(b) The agreed order may contain terms that ensure protection of public health and safety or that serve to educate or rehabilitate the individual.

(c) The agreed order, if approved by the board, shall terminate the investigation of a specific complaint.

(d) If the agreed order is not approved by the board, charges may be brought pursuant to KRS 314.091, and the matter shall be resolved as directed therein.

(5) Consent decree.

(a) If an individual agrees to waive the right to a hearing, the board may issue a consent decree in accordance with the provisions of KRS 314.991 to impose a civil penalty and other terms and conditions as listed in Section 4 of this administrative regulation against an individual who has:

1. Practiced as a nurse in the Commonwealth of Kentucky without a temporary work permit, multistate licensure privilege pursuant to KRS ***314.475[~~314.470~~]***, or a current license or provisional license issued by the board;

2. Practiced as an advanced practice registered nurse in the Commonwealth of Kentucky without current licensure issued by the board prior to filing an application for licensure;

3. Practiced as an advanced practice registered nurse after expiration of the current certification granted by the appropriate national organization or agency;

4. ***Rectified[~~Cured~~]*** noncompliance with continuing education requirements, as established in 201 KAR 20:215, Section 3;

5.[~~Executed an affidavit of reasonable cause concerning the AIDS education requirement and obtained the required education after the expiration of the six (6) months;~~

~~6.~~] Tested positive on a drug screen for a nonprescribed drug or illicit substance and obtained a substance use disorder[~~chemical dependency~~] evaluation that does not indicate a diagnosis of substance use disorder[~~chemical dependency~~];

6.[~~7.~~] Failed to report a criminal conviction or disciplinary action against any professional li-cense or credential in Kentucky or in another jurisdiction on an application;

7.[~~8.~~] Committed a substandard nursing act where:

a. The continuing practice by the nurse does not pose a risk of harm to the client or another;

b. The potential risk of physical, emotional, or financial harm to the client due to the incident is minimal;

c. The nurse subsequently exhibits a conscientious approach to and accountability for his or her practice; and

d. The nurse subsequently has demonstrated the knowledge and skill to practice safely; or

8.[~~9.~~] As an advanced practice registered nurse (APRN) with a Collaborative Agreement for Prescriptive Authority for Controlled Substances (CAPA-CS):

a. Failed to register with KASPER;

b. Failed to report a DEA registration number to the board; or

c. Failed to notify the board of the CAPA-CS.

(b) The issuance of a consent decree shall be restricted to only those individuals described in paragraph (a) of this subsection who have not previously been issued a consent decree for the same or substantially similar violation and who have not violated any other provision of KRS Chapter 314 or any other laws of the Commonwealth of Kentucky or of the United States.

(c) The license may be issued by board staff after the individual meets all requirements for licensure upon ratification of the consent decree by the board.

(d) Upon ratification by the board of the consent decree, the investigation of the specific complaint shall be terminated.

(e) If the consent decree is not ratified by the board, charges may be brought pursuant to KRS 314.091, and the matter shall be resolved as directed therein.

(f) Consent decrees that have been ratified by the board shall not be reported to other state boards of nursing, the national council of state boards of nursing, or other organizations, unless required by law.

(6) Special standards for an Advanced Practice Registered Nurse (APRN) with a Collaborative Agreement for Prescriptive Authority for Controlled Substances (CAPA-CS).

(a) An APRN licensed in Kentucky or an applicant for licensure in Kentucky who has been convicted of any felony offense after July 20, 2012 relating to controlled substances in any state shall be permanently banned from prescribing controlled substances.

(b) An APRN licensed in Kentucky or an applicant for licensure in Kentucky who has been convicted of any misdemeanor offense after July 20, 2012 relating to prescribing or dispensing controlled substances in any state shall have their authority to prescribe controlled substances suspended for at least three (3) months and further restricted as established by the board.

(c) The board shall mirror in time and scope any disciplinary limitation placed on an APRN licensed in Kentucky by a licensing board of another state if the disciplinary action resulted from improper, inappropriate, or illegal prescribing or dispensing of controlled substances.

(d) An applicant for licensure in Kentucky as an APRN who has disciplinary action by a licensing board of another state which resulted from improper, inappropriate, or illegal prescribing or dispensing of controlled substances shall have his or her application denied.

(e) Cases that come under KRS 314.011(21)(c) shall not be considered convictions for the purpose of this subsection.

Section 3. The executive director or designee shall notify the complainant and the person against whom the complaint was made of the final disposition of the case.

Section 4. The restrictions or conditions imposed by the board on a temporary work permit, holder of a multistate licensure privilege, or license or provisional license may include the following:

(1) Prohibiting the performance of specific nursing acts including access to, responsibility for, or the administration of controlled substances; administration of medication; supervisory functions; or any act that the individual is unable to safely perform;

(2) Requiring the individual have continuous, direct, on-site

supervision by a licensed nurse, physician, or dentist;

(3) Specifying the individual's practice setting;

(4) Specifying the types of patients to whom the individual may give nursing care;

(5) Requiring the individual to notify the board in writing of a change in name, address, or employment;

(6) Requiring the individual to have his or her employer submit to the board written reports of performance or compliance with the requirements established by the board;

(7) Requiring the individual to submit to the board evidence of physical[~~or chemical dependency~~], mental health, neuropsychological, psychosocial, psychosexual, or substance use disorder evaluations, counseling, therapy, or drug screens;

(8) Meeting with representatives of the board;

(9) Issuing the license or temporary work permit for a specified period of time;

(10) Requiring the individual to notify the board in writing of criminal arrests, charges, or convictions;

(11) Requiring the individual to be employed as a nurse for a specified period of time; or

(12) Requiring the individual to complete continuing education in a specific subject.

Section 5. Anonymous Complaints. Section 1(2)(a) of this administrative regulation notwithstanding, the board shall accept an anonymous complaint if the complaint is accompanied by sufficient corroborating evidence as would allow the board to believe, based upon a totality of the circumstances, that a reasonable probability exists that the complaint is meritorious.

Section 6. In accordance with federal law, the board shall submit all disciplinary actions to the National Practitioner Data Bank of the United States Department of Health and Human Services either directly or through a reporting agent.

KELLY JENKINS, President

APPROVED BY AGENCY: October 18, 2018.

FILED WITH LRC: October 23, 2018 at 1 p.m.

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GENERAL GOVERNMENT CABINET
Board of Nursing
(As Amended at ARRS, February 11, 2019)

201 KAR 20:162. Disciplinary proceedings[~~Procedures for disciplinary hearings pursuant to KRS 314.091~~].

RELATES TO: KRS Chapter 13B, 314.011, 314.031, 314.071(4), 314.091, 314.161, 314.991

STATUTORY AUTHORITY: KRS ***314.091(8),*** 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: ***KRS 314.131(1) authorizes the board to promulgate administrative regulations to implement KRS Chapter 314.*** KRS 314.091(2) requires that an administrative hearing for the denial, limitation, probation, suspension, or revocation of the license of a registered or practical nurse be conducted in accordance with KRS Chapter 13B. ***KRS 314.091(8) authorizes the board, by administrative regulation, to provide for the recovery of costs of an administrative hearing.*** This administrative regulation establishes procedures for conducting an administrative hearing.

Section 1. An administrative hearing shall be conducted in accordance with KRS Chapter 13B.

Section 2. Composition of the Hearing Panel.

(1)(a) Except as provided in ***paragraph[~~subsection~~]*** (b) of this ***subsection[~~section~~]***, a disciplinary action shall be heard by a hearing panel consisting of two (2) members of the board, one (1) of which shall be a registered nurse, and a hearing officer, who shall be:

1. An assistant attorney general; or

2. Other attorney designated by the board.

(b) A hearing officer and one (1) member of the board may conduct a hearing for consideration of:

1. Reinstatement of a revoked or suspended license; or

2. Removal of a license from probationary status.

(2) A board member shall not sit on a panel or participate in the adjudication of a matter in which the member has:

(a) Discussed the merits of the action with agency staff;

(b) Personal knowledge of the facts giving rise to the disciplinary action; or

(c) Participated in the investigation of a disciplinary action.

(3) The hearing shall be transcribed by a court stenographer.

Section 3. Response to Charges. The licensee or applicant shall file with the board a written answer to the specific allegations contained in the notice of charges within twenty (20) days of receipt of the charges. An allegation not properly answered shall be deemed admitted. Failure to file an answer may result in the issuance of a default order pursuant to KRS 13B.080(6). The hearing officer shall for good cause permit the late filing of an answer.

Section 4. Rulings by a Hearing Officer. (1) The hearing officer shall rule upon each objection or motion, including an objection to evidence.

(2) A decision of the hearing officer may be overridden by a unanimous vote of the board members of the hearing panel.

Section 5. Recommendation by the Hearing Panel.

(1) Upon the conclusion of the hearing, the panel shall retire into closed session for purpose of deliberations. Each board member of the panel shall have one (1) vote. In case of a tie vote, the tie shall be broken by the hearing officer.

(2) At the conclusion of the panel's deliberations, it shall propose an order based upon the evidence presented. The hearing officer shall draft a recommended order, as required by KRS 13B.110(1), that shall be:

(a) Consistent with the panel's deliberations; and

(b) Submitted to the full board.

Section 6. Continuances; Proceedings in Absentia. The board shall not postpone a case which has been scheduled for a hearing absent good cause. A request by a licensee or applicant for a continuance shall be considered if communicated to the board reasonably in advance of the scheduled hearing date and based upon good cause. The decision whether to grant a continuance shall be made by the hearing officer. The burden shall be upon the licensee or applicant to be present at a scheduled hearing. Failure to appear at a scheduled hearing for which a continuance has not been granted in advance shall be deemed a waiver of the right to appear and the hearing shall be held as scheduled.

Section 7. Hearing Costs[~~Fee~~].

(1) If the order of the board is adverse to a licensee or applicant, or if the hearing is scheduled at the request of a licensee or applicant for relief from sanctions previously imposed by the board pursuant to the provisions of KRS Chapter 314, the board may impose the following costs:

(a)[~~a hearing fee in an amount equal to~~] The cost of stenographic services;

(b) The cost of the hearing officer as determined by subsection ***(2)*** of this section; and

(c) Other costs listed in subsection ***(3)*** of this section as applicable.[~~and the cost of the hearing officer shall be assessed against the licensee or applicant.~~]

(2) The cost of the hearing officer shall be determined as follows:

(a) A disciplinary hearing shall be $400 per day;

(b) A reinstatement hearing shall be $350; and

(c) A default shall be $300.

(3) Other costs may include:

(a) Expert witness costs, including travel;
(b) Travel for other witnesses;
(c) Document reproduction costs; and
(d) The cost of a certified copy of laboratory testing records.
(4) In a case of financial hardship, the board may waive all or part of the costs[~~fee~~].

Section 8. Reconsideration of Default Orders. (1) A default order issued by the board may be reconsidered.
(2) The party in default shall submit a written motion to the hearing officer requesting reconsideration.
(3) The hearing officer shall schedule a hearing on the motion for reconsideration. The hearing officer may order that the default order be set aside if the party in default presents good cause.
(4) If a default order is set aside, the provisions of 201 KAR 20:161 shall apply.

Section 9. Prescribing or Dispensing Controlled Substance Cases.
(1) An investigation pertaining to prescribing or dispensing of a controlled substance shall produce a charging decision by the board within 120 days of the receipt of the complaint unless the circumstances of a particular complaint make it impossible to timely produce the charging decision.
(2) The board may hold an investigation pertaining to prescribing or dispensing of a controlled substance in abeyance for a reasonable period of time in order to permit a law enforcement agency to perform or complete essential investigative tasks, following a request by the requesting law enforcement agency.
(3) If an investigation pertaining to prescribing or dispensing of a controlled substance does not produce a charging decision within 120 days of the receipt of the complaint, the investigative report shall plainly state the circumstances of that particular investigation or complaint that made timely production of a charging decision impossible.

KELLY JENKINS, President
APPROVED BY AGENCY: October 18, 2018
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GENERAL GOVERNMENT CABINET
Board of Nursing
(As Amended at ARRS, February 11, 2019)

201 KAR 20:215. Continuing competency requirements.

RELATES TO: KRS 218A.205(3)***(i)***[~~(h)~~], 314.011(12), 314.073, 314.991(1)-(3)
STATUTORY AUTHORITY: KRS 218A.205(3)***(i)***[~~(h)~~], 314.073, 314.131(1), (2)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1), (2), and 314.073 require the Board of Nursing to promulgate administrative regulations to establish continuing competency requirements for nurses. This administrative regulation establishes the fees, procedures, and requirements for continuing competency for nurses.

Section 1. Definitions.
(1) "Contact hour" means fifty (50) minutes of an approved, organized learning experience.
(2) "Earning period" means November 1 through October 31 of a current licensure period.
(3) "Preceptor" means a nurse with demonstrated competence in a specific clinical area who serves as a role model and mentor to assist in the development and validation of the competencies of a nursing student or new employee.

Section 2. (1) A licensee shall choose a method from Section 3 of this administrative regulation to validate his or her continued competency in nursing for each earning period.
(2) A licensee shall maintain the documentation of the method chosen.
(3) A licensee shall provide the documentation if directed by the board.

Section 3. Methods for continued competency validation shall be as follows:
(1) Fourteen (14) contact hours of continuing education, which shall:
(a) Be from a provider approved by the board pursuant to 201 KAR 20:220;
(b) Be completed during the earning period; and
(c) Include the continuing education required by Section 5 of this administrative regulation;
(2) Current national certification or recertification and the continuing education required by Section 5 of this administrative regulation. The certification shall be related to the nurse's practice role and shall:
(a) Have been initially attained during the earning period;
(b) If issued for a period of time as evidenced by an expiration date, have been in effect during the entire earning period; or
(c) Have been recertified during the earning period;
(3) The continuing education required by Section 5 of this administrative regulation and at least one (1) of the following during the earning period:
(a) Completion of a research project that is nursing-related:
1. As principal investigator, coinvestigator, or project director;
2. That is qualitative or quantitative in nature;
3. That utilizes a research methodology;
4. That increases knowledge, causes an improved outcome, or changes behavior; and
5. That is evidenced by an abstract of the project, which includes a summary of the findings;
(b) Publication of an article in a peer-reviewed health-related journal;
(c)[~~A nursing continuing education presentation that is:~~
~~1. Designed and developed by the presenter;~~
~~2. Presented to nurses or other health professionals;~~
~~3. Evidenced by a program brochure, course syllabi, or a letter from the offering provider identifying the licensee's participation as the presenter of the offering; and~~
~~4. Offered by a provider approved pursuant to 201 KAR 20:220; or~~
~~(d)~~] Participation as a preceptor for at least one (1) nursing student or new employee.
1. The preceptorship shall be for at least 120 hours.
2. There shall be a one (1) to one (1) relationship between the preceptor and the student or employee.
3. The preceptor may train more than one (1) student or employee and may combine the hours to total 120 hours.
4. The preceptorship shall be evidenced by written documentation from the educational institution or preceptor's supervisor; or
(4)(a) Seven (7) hours of continuing education from a provider approved by the board pursuant to 201 KAR 20:220 and earned during the licensure period, which shall include the continuing education required by Section 5 of this administrative regulation if applicable; and
(b) A nursing employment evaluation that is satisfactory for continued employment. The nurse shall submit:
1. The evaluation, which shall:
a. Cover a period of at least six (6) months during the earning period;
b. Be signed by the nurse's supervisor; and
c. Include the name, address, and telephone number of the employer; and
2. The Nursing Employment Evaluation Form.
(5) Contact hours of continuing education earned for subsection (1) or (4) of this section may earned by:
(a)***1.*** A nursing continuing education presentation that is:
a.[~~1.~~] Designed and developed by the presenter;

b.[~~2.~~] Presented to nurses or other health professionals;

c.[~~3.~~] Evidenced by a program brochure, course syllabi, or a letter from the offering provider identifying the licensee's participation as the presenter of the offering; and

d.[~~4.~~] Offered by a provider approved pursuant to 201 KAR 20:220.

2.[~~5.~~] The number of contact hours that may be earned shall be twice the number of contact hours offered to an attendee of the presentation; or

(b) Successful completion of a postlicensure academic course at a college, university, or postsecondary vocational institution if relevant to nursing practice as determined by this subsection.

1. Contact hours shall be calculated as follows:

a. One (1) semester or trimester hour of academic credit shall equal fifteen (15) contact hours; or

b. One (1) quarter hour of academic credit shall equal twelve (12) contact hours.

2. The following courses shall be relevant to nursing practice:

a. A nursing course, designated by a nursing course number, and beyond the prelicensure curriculum of the individual licensee; or

b. An academic course that is applicable to the nurse's role and beyond the prelicensure curriculum of the individual licensee.

3. A licensee may request course review for approval of applicable nursing content pursuant to Section 7 of this administrative regulation.

4. If it is an academic course in which grades are given, the licensee shall achieve a grade of "C" or better, or a pass on a pass-fail grading system.

Section 4. (1) A licensee shall provide documentation of the method used to validate continued competency if the licensee is the subject of a disciplinary complaint.

(2) A licensee shall provide documentation of the method used to validate continued competency if requested by the board pursuant to a random audit of licensees.

Section 5. (1)(a) Advanced practice registered nurses shall earn a minimum of five (5) contact hours in pharmacology.

(b) Advanced practice registered nurses with a Collaborative Agreement for Advanced Practice Registered Nurse's Prescriptive Authority for Controlled Substances (CAPA-CS) pursuant to KRS 314.042(10) shall earn, as a part of the requirement of paragraph (a) of this subsection, at least one and one-half (1.5) contact hours related to the use of the KASPER system, pain management, or addiction disorders.

(c) To qualify as pharmacology ***pursuant to KRS 314.073***, content shall include drug specific information, safe prescribing practices, safe medication administration, prescribing methodologies***,***[~~;~~] new ***administrative*** regulations, or similar topics.

(d) Objectives for the contact hours related to pharmacology shall be identified. Casual mention of medications or medical treatments shall not qualify.

(2) Sexual assault nurse examiners shall earn the continuing education required by 201 KAR 20:411, Section 8.

(3) Registered nurses and licensed practical nurses licensed after July 15, 2010 shall earn a minimum of one and one-half (1.5) contact hours in pediatric abusive head trauma as required by KRS 314.073(6) within three (3) years of licensure.

Section 6. (1)(a) A licensee shall maintain records to substantiate methods used to validate competency.

(b) All records shall be retained for at least five (5) years following the current licensure period.

(2)(a) A licensee shall, upon request, furnish to the board or its staff, legible copies of the records required to be maintained by subsection (1) of this section.

(b) Copies shall be furnished within twenty (20) days of the date a written request is mailed by first class to the last known address of the licensee or applicant.

(c) Failure to furnish records as required by this administrative regulation shall be cause for the issuance of a complaint pursuant to 201 KAR 20:161 for failure to comply with KRS 314.073(2).

(3)(a) Except as provided by paragraph (b) of this subsection, if a licensee has failed to comply with the continuing competency requirements, the licensee shall be allowed to ***rectify***[~~cure~~] the noncompliance if he or she:

1. Meets the continuing competency requirements within thirty (30) days of notification of noncompliance; and

2. Enters a consent decree with the board pursuant to 201 KAR 20:161, Section 2(5), within ten (10) days of notification by the board.

(b) The board shall issue a complaint pursuant to 201 KAR 20:161 if:

1. A licensee fails to furnish records as requested pursuant to subsection (2) of this section; or

2. There is evidence of fraud or deceit in procuring or attempting to procure a license to practice nursing.

(4) A licensee who attends continuing education activities, whether as a presenter, participant, or student, shall attend the entire offering to be eligible to receive the number of contact hours for which the activity has been approved.

(5) It shall be the responsibility of each licensee to select and participate in those continuing education activities that will meet the criteria for acceptable continuing education.

(6) A licensee shall not repeat the same continuing education offering within a licensure period. The board shall determine whether a continued education offering is the same offering based upon the certificate of attendance from the offering that includes items such as the activity number, date, topic, and presenter.

Section 7.[~~(1) Successful completion of a postlicensure academic course at a college, university, or postsecondary vocational institution shall qualify as a continuing education activity obtained from an approved provider if relevant to nursing practice under subsection (3) of this section.~~

~~(2) Contact hours shall be calculated as follows:~~

~~(a) One (1) semester or trimester hour of academic credit shall equal fifteen (15) contact hours; or~~

~~(b) One (1) quarter hour of academic credit shall equal twelve (12) contact hours.~~

~~(3) The following courses shall be relevant to nursing practice:~~

~~(a) A nursing course, designated by a nursing course number, and beyond the prelicensure curriculum of the individual licensee; or~~

~~(b) An academic course that is applicable to the nurse's role and beyond the prelicensure curriculum of the individual licensee.~~

~~(4) A licensee may request course review for approval of applicable nursing content pursuant to Section 8 of this administrative regulation.~~

~~(5) If it is an academic course in which grades are given, the licensee shall achieve a grade of "C" or better, or a pass on a pass-fail grading system.~~

~~Section 8.~~] (1) A licensee may request an individual review of a nonapproved continuing education activity completed during the earning period if, within thirty (30) days after the expiration of the immediate past licensure period, the licensee has:

(a) Requested the review by submitting an Application for Individual Review; and

(b) Paid a fee of ten (10) dollars.

(2) The review shall be based on generally accepted standards of adult education and shall be applicable to the nurse's role.

(3) Approval of a nonapproved continuing education activity shall:

(a) Qualify it as having been obtained from an approved provider for the licensee requesting the review; and

(b) Be limited to the particular offering upon which the request for individual review is based.

(4) The board may offer continuing education hours for programs sponsored by the board. These continuing education hours shall be deemed to have been obtained from an approved provider. The board shall comply with all applicable provider standards.

Section 8[~~9~~]. Incorporation by Reference.
(1) The following material is incorporated by reference:
(a) "Application for Individual Review", 9/2005; and
(b) "Nursing Employment Evaluation Form", 6/2016.
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222-5172, Monday through Friday, 8 a.m. to 4:30 p.m.

KELLY JENKINS, President
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GENERAL GOVERNMENT CABINET
Board of Nursing
(As Amended at ARRS, February 11, 2019)

201 KAR 20:226. Repeal of 201 KAR 20:235, 201 KAR 20:420, 201 KAR 20:430, 201 KAR 20:440, and 201 KAR 20:460.

RELATES TO: KRS 314.105, KRS 314.181
STATUTORY AUTHORITY: KRS 314.131(1)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131***(1)*** authorizes the Board of Nursing to promulgate administrative regulations ***to implement KRS Chapter 314***. 201 KAR 20:235 is being repealed because it is out of date. 201 KAR 20:420, 430, and 440 are being repealed because the authorizing statute, KRS 314.181, was amended. 201 KAR 20:460 is being repealed because the authorizing statute, KRS 314.105, was repealed.

Section 1. The following administrative regulations are hereby repealed:
(1) 201 KAR 20:235***, The prevention of transmission of HIV and HBV by nurses***;
(2) 201 KAR 20:420***, Determination of death by a registered nurse employed by an ambulance service***;
(3) 201 KAR 20:430***, Discontinuance of resuscitation by a registered nurse employed by an ambulance service***;
(4) 201 KAR 20:440***, Training of registered nurses employed by an ambulance service in determination of death and discontinuance of resuscitation***; and
(5) 201 KAR 20:460***, Declaratory rulings***.

KELLY JENKINS, President
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GENERAL GOVERNMENT CABINET
Board of Nursing
(As Amended at ARRS, February 11, 2019)

201 KAR 20:240. Fees for applications and for services.

RELATES TO: KRS 61.874(3), 314.027(2), 314.041(8), (10)(c), 314.042(3), (6), 314.051(2), (10)(c), 314.071(1), (2), 314.073***(7)***[~~(8)~~], 314.075(1), 314.101(4), 314.142(1)(b), 314.161, 314.171(4)
STATUTORY AUTHORITY: KRS 314.041(8), (10)(c), 314.042(3), (6), 314.051(2), (10)(c), 314.071(1), (2), 314.073***(7)***[~~(8)~~], 314.131(1), 314.142(1)(b), 314.161
NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131 authorizes the board to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 314. KRS 314.142(1)(b) requires the board to establish an application fee for a registered nurse who applies to the board to be credentialed as a "sexual assault nurse examiner". KRS 314.161 authorizes the board to establish fees necessary to implement KRS Chapter 314. KRS 314.041(8), (10)(c), 314.042(3), (6), 314.051(2), (10)(c), 314.071(1), (2), and 314.073***(7)***[~~(8)~~] require the board to establish fees for licensure, examination, renewal, reinstatement, and continuing education. This administrative regulation establishes those fees.

Section 1. Fees for Licensure Applications.
(1) The board shall collect a fee for:
(a) An application for licensure; and
(b) Licensure renewal or reinstatement.
(2) The fee for an application shall be:
(a) Licensure by endorsement as a registered nurse - $165;
(b) Licensure by endorsement as a licensed practical nurse - $165;
(c) Licensure by examination as a registered nurse - $125;
(d) Licensure by examination as a licensed practical nurse - $125;
(e) Renewal of license - fifty-five (55) dollars;
(f) Retired status - twenty-five (25) dollars;(g) Reinstatement of license - $135;
(h) Paper copy of an application - forty (40) dollars;
(i) Full verification of licensure, credential or registration history - fifty (50) dollars;
(j) Licensure as an advanced practice registered nurse - $165;(k) Renewal of licensure as an advanced practice registered nurse - fifty-five (55) dollars;
(l) Reinstatement of licensure as an advanced practice registered nurse - $135;
(m) Name change - twenty-five (25) dollars;
(n) Application to establish a registered nurse or licensed practical nurse prelicensure program of nursing pursuant to 201 KAR 20:280 - $2,000;[~~or~~]
(o) Information submitted to establish an advanced practice registered nurse program pursuant to 201 KAR 20:062 - $2,000; or
(p) Information submitted to establish an additional track pursuant to 201 KAR 20:062 - $500.
(3) An application or information submitted under this section shall not be evaluated by the board unless the current fee is submitted.

Section 2. Fees for Applications for Continuing Education Approvals. The fee for an application for approval of a provider of continuing education or for a renewal or reinstatement of the approval shall be:
(1) Initial provider approval - $400;
(2) Reinstatement of provider approval - $400;
(3) Renewal of approval - $100; or
(4) Individual review of continuing education offerings - ten (10) dollars.

Section 3. Fees for Services.
(1) The fee for a service shall be:
(a) Validation of the current status of a temporary work permit, provisional license, license, or credential:
1. If requested in writing in individual nurse format - fifty (50) dollars; or
2. If requested in writing in list format - fifty (50) dollars for the first name and twenty (20) dollars for each additional name;
(b) Copy of an examination result or transcript - twenty-five (25) dollars;
(c) Nursing certificate - thirty (30) dollars; or
(d) Release of NCLEX results to another state board of nursing - seventy-five (75) dollars.
(2) An applicant for licensure who takes or retakes the licensure examination shall pay:
(a) The current examination fee required by the national council of state boards of nursing; and
(b) Application for licensure fee pursuant to Section 1 of this

administrative regulation.

(3) A graduate of a foreign school of nursing shall be responsible for:

(a) Costs incurred to submit credentials translated into English;

(b) Immigration documents; and

(c) Other documents needed to verify that the graduate has met Kentucky licensure requirements.

(4) A program of nursing that requires a site visit pursuant to 201 KAR 20:360, Section 5, shall pay the cost of the site visit to the board.

Section 4. An application shall lapse and the fee shall be forfeited if the application is not completed as follows:

(1) For an application for licensure by endorsement, within six (6) months from the date the application form is filed with the board office;

(2) For an application for licensure by examination, within one (1) year from the date the application form is filed with the board office; or

(3) For all other applications, except for renewal of license applications, within one (1) year from the date the application form is filed with the board office.

Section 5. An applicant who meets all requirements for approval, licensure, or credential shall be issued the appropriate approval, license, or credential without additional fee.

Section 6. Fees for Sexual Assault Nurse Examiners.

(1) The application fee shall be $120.

(2) The credential renewal fee shall be fifty (50) dollars.

(3) The credential reinstatement fee shall be $120.

Section 7. A payment for an application fee that is in an incorrect amount shall be returned and the application shall not be posted until the correct fee is received.

Section 8. Bad Transaction Fee. Any transaction, including paper or electronic, submitted to the board for payment of a fee which is returned for nonpayment shall be assessed a bad transaction fee of thirty-five (35) dollars.

KELLY JENKINS, President

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GENERAL GOVERNMENT CABINET
Board of Nursing
(As Amended at ARRS, February 11, 2019)

201 KAR 20:260. Organization and administration standards for prelicensure registered nurse or practical nurse programs of nursing.

RELATES TO: KRS 314.041(1), 314.111(1), 314.131

STATUTORY AUTHORITY: KRS 314.111(1), 314.131(1), (2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.111(1) and 314.131(2) require the board to approve schools of nursing and courses preparing persons for licensure and to monitor standards for nurse competency under KRS Chapter 314. KRS 314.131(1) authorizes the board to promulgate administrative regulations to implement KRS Chapter 314. This administrative regulation establishes the organization and administration standards for prelicensure registered nurse or practical nurse programs.

Section 1. Definitions.

(1) "Campus" means a division of a college or university that has its own grounds, buildings, and students, but is administratively joined to the rest of the college or university.

(2) "Clerical assistance" means the provision of administrative, secretarial, or clerical help by qualified individuals that assists the program of nursing.

(3) "Clinical instructor" means a nurse who is employed by a program of nursing solely to provide students with traditional clinical or simulated experiences.

(4) "Nurse faculty" means a nurse who is employed by a program of nursing, either full-time, part-time, or adjunct, to provide didactic instruction, and may also provide clinical instruction or simulated experiences.

(5) "Preceptor" means a nurse with demonstrated competence in a specific clinical area who serves as a role model and mentor to assist in the development and validation of the competencies of a student.

(6) "Program of nursing" means the educational unit that prepares a person for licensure as a registered or licensed practical nurse.

(7) "Nursing track" means a path within a program of nursing that leads to licensure as a nurse.[~~"Suspension of enrollment" means temporarily halting the admission of students into an approved program of nursing tract.~~]

Section 2. Organization or Administration Standards for Prelicensure Registered Nurse and Practical Nurse Programs. To be eligible for approval by the board, a program shall have:

(1) A governing institution.

(a) The governing institution that establishes and conducts the program of nursing shall hold accreditation as a postsecondary institution, college, or university by an accrediting body recognized by the U.S. Department of Education.

(b) The governing institution shall assume full legal responsibility for the overall conduct of the program of nursing. The program of nursing shall have comparable status with the other programs in the governing institution and the relationship shall be clearly delineated.

(c) The governing institution shall:

1. Designate a program administrator for the prelicensure program of nursing who is qualified pursuant to 201 KAR 20:310 and is responsible for fulfilling the duties specified in subsection (3) of this section on a twelve (12) month basis;

2. Assure that at least fifty (50) percent[~~and up to 100 percent~~] of the program administrator's time shall be dedicated to complete the duties specified in this administrative regulation at each program of nursing***[, up to 100 percent]***. A governing institution that is unable to comply with this standard may request an exemption from the board in writing.

a. The request shall state the reasons for noncompliance and the efforts the institution has taken and will take to comply with the standard.

b. If the exemption is granted, it shall be for twelve (12) months from ***the date of*** board approval[~~one (1) academic year~~]. During this time, the governing institution shall not open a new program of nursing and shall not increase enrollment at an existing program of nursing;

3.[~~Establish administrative policies;~~

4.~~.~~] Provide evidence that the fiscal, human, physical, clinical, and technical learning resources shall be adequate to support program mission, processes, security, and outcomes;

4.[~~5.~~] Provide student support programs, services, and activities consistent with the mission of the governing institution that promote student learning and enhance the development of the student;

5.[~~6.~~] Make financial resources available to the program of nursing consistent with equivalent programs at the governing institution;

6.[~~7.~~] Employ nurse faculty pursuant to 201 KAR 20:310 in sufficient number and
expertise to accomplish program outcomes and quality improvement;

7.[~~8.~~] Provide written policies for faculty related to qualifications for the position, rights and responsibilities of the position, criteria for evaluation of performance, workload, and retention;

8.[~~9.~~] Involve the nurse faculty in determining academic

policies and practices for the program of nursing; and

9.[~~10.~~] Provide for the security, confidentiality, and integrity of faculty employment and student records.

(d) The governing institution shall provide an organizational chart that describes the organization of the program of nursing and its relationship to the governing institution;

(2) Administrative policies.

(a) There shall be written administrative policies for the program of nursing that shall be:

1. In accord with those of the governing institution; and

2. Available to the board for review.

(b) The board shall be notified in writing of a change, vacancy, or pending vacancy, in the position of the program administrator within thirty (30)[~~fifteen (15)~~] days of the program of nursing's awareness of the change, vacancy, or pending vacancy.

1. The[~~If the program administrator vacates the position, the~~] head of the governing institution shall submit to the board in writing[~~:~~

~~a. The effective date of the vacancy; and~~

~~b. The~~] the name of the registered nurse who has been designated to assume the administrative duties for the program, the date the person will assume the duties of program administrator, and a copy of his or her curriculum vitae.

2. a. If there is to be a lapse between the date of the change or vacancy and the date the newly-appointed program administrator assumes duties, the head of the governing institution shall submit a plan of transition to ensure the continuity of the program.

b. Progress reports shall be submitted if requested by the board.

3. a The length of the appointment of an interim program administrator shall not exceed six (6) months.

b. Additional six (6) month periods may be granted upon request to the board based on a documented inability to fill the position.[~~4.a. If the individual to be appointed as the interim program administrator is not qualified pursuant to 201 KAR 20:310, the head of the governing institution shall petition the board for a waiver prior to the appointment.~~

~~b. A waiver shall be granted if the individual to be appointed meets at least the minimum requirements established in 201 KAR 20:310 for nurse faculty.~~]

(c) A written plan for the orientation of the nurse faculty to the governing institution and to the program shall be implemented.

(d) There shall be a written contract between the governing institution and each agency or institution that provides a learning experience for a student. A contract shall not be required for an observational experience.

1. The contract shall clearly identify the responsibilities and privileges of both parties.

2. The contract shall bear the signature of the administrative authorities of each organization.

3. The contract shall vest in the nurse faculty control of the student learning
experiences subject to policies of the contractual parties.

4. The contract shall be current and may include an annual automatic renewal clause.

5. The contract shall contain a termination clause by either party;

(3) A program or an interim program administrator who shall have authority and responsibility in the following areas:

(a) Development and maintenance of collaborative relationships with the administration of the institution, other divisions or departments within the institution, related facilities, and the community;

(b) Participation in the preparation and management of the program of nursing budget;

(c) Screening and recommendation of candidates for nurse faculty appointment, retention, and promotion;

(d) Submission of the qualifications of all nurse faculty and clinical instructors as set forth in 201 KAR 20:310, Section 4;

(e) To provide leadership within the nurse faculty for the development, implementation, and evaluation of the program of nursing and program outcomes;

(f) To facilitate the implementation of written program policies for the following:

1. Student admission;

2. Student readmission and advance standing;

3. Student progression, which shall include:

a. The level of achievement a student shall maintain in order to remain in the program or to progress from one (1) level to another; and

b. Requirements for satisfactory completion of each course in the nursing curriculum.

4. Requirements for completion of the program;

5. Delineation of responsibility for student safety in health related incidents both on [~~and off~~] campus and at any clinical activity required by the program of nursing;

6. Availability of student guidance and counseling services;

7. The process for the filing of grievances and appeals by students;

8. Periodic evaluation by the nurse faculty of each nursing student's progress in each course and in the program;

9. Student conduct that incorporates the standards of safe nursing care; and

10. Publication and access to current academic calendars and class schedules;

(g) To facilitate the continuing academic and professional development for the nurse faculty;

(h) 1. To initiate and coordinate the development[~~and negotiation~~] of contracts with clinical facilities, the number and variety of which shall be adequate to meet curricular outcomes;[~~and~~]

2. To develop[~~coordinate the development of~~] written criteria for the selection and evaluation of clinical facilities and ensure that the criteria shall be utilized by the program of nursing; and

3. To assure that clinical facilities show evidence of approval by the appropriate accreditation, evaluation, or licensure bodies, if applicable;

(i) The establishment of student-nurse faculty ratio in the clinical practice experience.

1. The maximum ratio of nurse faculty to students in the clinical area of patients-clients shall be defensible in light of safety, learning objectives, student level, and patient acuity.

2. The student-nurse faculty ratio shall not exceed ten (10) to one (1) in the clinical practice experience, including observational or other supervised learning experiences.

3. This ratio shall not apply to on campus skill lab experiences;

(j) The submission of the Certified List of Kentucky Program of Nursing Graduates, as incorporated by reference in 201 KAR 20:070, upon student completion of all requirements for a degree, diploma, or certificate, regardless of the state in which the graduate intends to seek licensure;

(k) The development and maintenance of an environment conducive to the teaching and learning process;

(l) To facilitate the development of long-range goals and objectives for the nursing program;

(m) To ensure that equipment, furnishings, and supplies [~~shall~~] be current and replaced in a timely manner;

(n) To ensure that the nurse faculty has sufficient time to accomplish those activities related to the teaching-learning process and program outcomes;

(o) To coordinate an orientation to the roles and responsibilities of full-time, part-time, adjunct nurse faculty, and clinical instructors to the program of nursing and, as appropriate, to clinical facilities so that the mission, goals, and expected outcomes of the program shall be achieved;

(p) To facilitate regular communication with the full and part time nurse faculty and clinical instructors in the planning, implementation, and evaluation of the program of nursing;

(q) To ensure that recruitment materials provide accurate and complete information to prospective students about the program including the:

1. Admission criteria;

2.[~~Nature of the~~] Program description, including course sequence, prerequisites, and corequisites[~~, and academic standards~~];

3. Length of the program;

4. Current cost of the program, including tuition and all associated fees and expenses; and

5. Transferability of credits to other public and private institutions in Kentucky;

(r) To conduct or participate in the written evaluation of each nurse faculty member, clinical instructor, and program of nursing support staff according to published criteria, regardless of contractual or tenured status;

(s) To ensure the adherence to the written criteria for the selection and evaluation of clinical facilities utilized by the program of nursing;

(t) To maintain current knowledge of requirements pertaining to the program of nursing and licensure as established in 201 KAR Chapter 20;

(u) To attend the next available[~~a~~] board orientation for program administrators but not later than within six (6) months[~~one (1) year~~] of appointment;

(v) To develop a structure to allow nurse faculty to assist in the governance of the program;[~~and~~]

(w) To ensure that the curriculum is developed and implemented pursuant to 201 KAR 20:320; and

(x) To ensure that the program of nursing posts a link provided by the board to the information published by the board pursuant to 201 KAR 20:360, Section 5(4) on its Web site and refers all individuals seeking information about the program to this link.

(4) A system of official records and reports essential to the operation of the program of nursing maintained according to institutional policy. Provisions shall be made for the security and protection of records against loss and unauthorized distribution or use. The system shall include records of:

(a) Currently enrolled students to include admission materials, courses taken, grades received, scores for standardized tests, and clinical performance records;

(b) Minutes of faculty and committee meetings, which shall be maintained a minimum of five (5) years, irrespective of institutional policy;

(c) Faculty records including:

1. Validation of current licensure or privilege to practice as a Registered Nurse in Kentucky;

2. Evidence of fulfilling the faculty orientation requirements established in 201 KAR 20:310, Section 3(5); and

3. Performance evaluation for faculty employed more than one (1) year;

(d) Systematic plan of evaluation;

(e) Graduates of the program of nursing; and

(f) Administrative records and reports from accrediting agencies; and

(5) Official publications of the governing institution including:

(a) A description of the governing institution and program of nursing;

(b) Policies on admission, progression, dismissal, graduation, and student grievance procedures; ***and***

(c) A description of student services;

(6) Clerical assistance and support staff.

(a) There shall be clerical assistance and support staff sufficient to meet the needs of the nursing program for the administrator, faculty, and students[~~at the main campus~~].

(b) ***Each campus shall have at least one (1) dedicated clerical staff.***

(c)[~~A non-main campus shall have additional clerical assistance and support staff sufficient to meet its needs.~~] If the program of nursing does not have at least one (1) dedicated clerical staff, the program administrator shall provide written justification to the board. The board shall evaluate the justification ***to determine whether the program may operate effectively without dedicated staff sufficient to meet the needs of the nursing program***. If the board rejects the justification, the program of nursing shall***[~~take the necessary steps to~~]*** comply ***with the board's determination on clerical staffing***.

(7) Nurse faculty, full-time, and part-time, with the authority and responsibility to:

(a) Plan, implement, evaluate, and update the program;

(b) Assist in the design, implementation, evaluation, and updating of the curriculum using a written plan;

(c) Participate in the development, implementation, evaluation, and updating of policies for student admission, progression, and graduation in keeping with the policies of the governing institution;

(d) Participate in academic advisement and guidance of students;

(e) Provide theoretical instruction and clinical learning experiences;

(f) Evaluate student achievement of curricular outcomes related to nursing knowledge and practice;

(g) Develop and implement student evaluation methods and tools for each course that measure the progression of the student's cognitive, affective, and psychomotor achievement of course and clinical outcomes based on published rubrics and sound rationale;

(h) Participate in academic and professional level activities that maintain the faculty member's competency and professional expertise in the area of teaching responsibility;

(i) Communicate clinical outcomes to the student, clinical instructor, preceptor, and staff at the clinical site;

(j) Assume responsibility for utilizing the criteria in the selection of clinical sites and in the evaluation of clinical experiences on a regular basis;

(k) Evaluate the student's experience, achievement, and progress in relation to course and clinical outcomes, with input from the clinical instructor and preceptor, if applicable; and

(l) Delegate to a nurse employed by a clinical agency the supervision of a student performing a procedure; and

(8) Clinical instructors with the authority and responsibility to:

(a) Design, at the direction of the nurse faculty member, the student's clinical experience to achieve the stated outcomes of the nursing course in which the student is enrolled;

(b) Clarify with the nurse faculty member:

1. The role of the preceptor, if applicable;

2. The course responsibilities;

3. The course or clinical outcomes;

4. A course evaluation tool; and

5. Situations in which collaboration and consultation shall be needed;

(c) Participate in the evaluation of the student's performance by providing information to the nurse faculty member and the student regarding the student's achievement of established outcomes; and

(d) Delegate to a nurse employed by a clinical agency the supervision of a student performing a procedure.

Section 3. Notification of Change in Enrollment.

(1)[~~(a) Within sixty (60) days of the effective date of this administrative regulation,~~] All[~~existing~~] programs of nursing shall have on record with[~~submit to~~] the board the maximum number of new students that the program is able to enroll in one (1) academic year. This number shall be referred to as the program's enrollment baseline.[~~(b) A program of nursing that begins operation after the effective date of this administrative regulation shall submit its enrollment baseline in the initial application.~~]

(2)(a) A program of nursing that desires to increase its enrollment beyond its enrollment baseline shall submit a request to the board[~~shall submit a request for an increase in enrollment by twenty (20) percent or more of the enrollment baseline or ten (10) students, whichever is greater~~]. The request shall be sent in writing at least two (2) months prior to the date for which the requested increase is being sought. Exceptions to this time frame shall only be made for exigent circumstances. The request is only necessary if the increase ***is[it]*** greater than the following:

1. If the enrollment baseline is fifty (50) or less, an increase of ten (10) students;

2. If the enrollment baseline is fifty-one (51)-100, an increase of twenty (20) students; or

3. If the enrollment baseline is greater than 100, an increase of twenty-five (25) students.

(b) The request shall demonstrate that the program has sufficient resources to fulfill the standards established by this administrative regulation for the anticipated increase in enrollment. These sufficient resources shall include adequate:

1. Number of qualified faculty;
2. Classroom space;
3. Clinical sites;
4. Clerical support; and
5. Financial support.

(c) The program shall investigate the projected impact of the increase on the operation of programs of nursing within a fifty (50) mile radius and shall submit a report to the board.

(d) The program of nursing shall submit evidence that it has met the benchmarks set out in 201 KAR 20:360, Section 5(2)(f).

(3)(a) The request shall be reviewed by board staff. Board staff may approve the request if it is determined that the criteria listed in ***[~~this~~]*** subsection ***(2) of this section*** have been met.

(b) If board staff determines that the criteria ***listed in subsection (2) of this section*** have not been met, the request shall be referred to the board ***for further consideration and a decision***[~~The board shall evaluate if the program has sufficient resources prior to making the decision of whether to grant or deny the request~~].

Section 4. Multiple Campuses. (1)(a) A governing institution may have programs of nursing located on different campuses.

(b) Each campus shall be considered a separate program of nursing.

(2)(a) The governing institution shall designate a main campus headed by a program administrator.

(b) The program administrator shall have final responsibility and authority for the non-main campuses, but shall designate an assistant program administrator to assist in the governance of each non-main location. The assistant program administrator shall meet the qualification for a nurse faculty as set out in 201 KAR 20:310. The program administrator may designate the amount of release time for the assistant program administrator for administrative duties, but it shall not be less than twenty-five (25) percent.

(3) For purposes of calculating benchmarks set out in 201 KAR 20:360, Section 5(2)(f), each campus shall individually report its data annually to the board. The board shall evaluate the benchmarks for each campus individually.

Section 5. Suspension of Enrollment. (1) A governing institution that decides to suspend enrollment in the program of nursing shall notify the board in writing within thirty (30) days following the decision. No longer enrolling in one ***(1)*** of several nursing tracks within a program of nursing shall not constitute suspension of enrollment for purposes of this administrative regulation.

(2) The notification shall identify the reasons leading to the decision and how long it is anticipated that the suspension will be in effect.

(3) The governing institution shall report to the board annually on the status of the suspension.

(4) (a) If the decision to reinstate enrollment is made within three (3) years of the decision to suspend enrollment, the governing institution shall notify the board in writing of the decision within thirty (30) days.

(b) The notification shall state the date classes will begin. It shall also list the faculty and clinical sites that will be utilized.

(5) If the decision to reinstate enrollment is made three (3) years or more from the decision to suspend enrollment, the governing institution shall comply with the procedures outlined in 201 KAR 20:280.

Section 6. Change in Accreditation.

(1) A governing institution that seeks to change the U.S. Department of Education recognized accrediting body from which it receives accreditation shall notify the board when it has filed an application for accreditation.

(2) ***A governing institution with an application in process before the accrediting body shall be considered in compliance with Section 2(1)(a) of this administrative regulation[~~The board shall deem that the governing institution is in compliance with Section 2(1)(a) of this administrative regulation as long as the application is in process before the accrediting body~~].***

(3)(a) ***A governing institution whose application has been denied by its accrediting body shall not be considered to be in compliance with Section 2(1)(a) of this administrative regulation[~~If the application is denied, the governing institution shall no longer be deemed to be in compliance~~].***

(b) The board shall begin the process established in 201 KAR 20:360, Section 7 for withdrawal of approval.

KELLY JENKINS, President

APPROVED BY AGENCY: October 18, 2018

FILED WITH LRC: October 23, 2018 at 1 p.m.

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GENERAL GOVERNMENT CABINET
Board of Nursing
(As Amended at ARRS, February 11, 2019)

201 KAR 20:280. Standards for developmental status, initial status, and approval of prelicensure registered nurse and practical nurse programs.

RELATES TO: KRS 314.011(5), (9), 314.111(1), (2), (3), 314.131(2)

STATUTORY AUTHORITY: KRS 314.111, 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.111 requires the board to review schools, approve qualified schools, and, if appropriate, withdraw approval for schools of nursing. KRS 314.131(1) authorizes the board to promulgate administrative regulations necessary to implement KRS Chapter 314.This administrative regulation establishes the standards for the development and approval of programs that prepare graduates for admission to the licensure examination and to facilitate endorsement of licensure status to other states.

Section 1. ***Definition[~~Definitions~~]***.

(1) "Program of nursing" means the educational unit that prepares a person for licensure as a registered or licensed practical nurse.[~~"Developmental status" means approval of the proposal.~~

~~(2) "Initial status" means admission of the first class.~~

~~(3) "Program approval" means permission by the board to operate a program of nursing.~~]

Section 2. Establishment of a Program of Nursing.

(1) The governing institution may receive consultation from the board prior to establishing a program of nursing.

(2) The governing institution that desires to establish and conduct the program of nursing shall be accredited as established in 201 KAR 20:260, Section 2.

(3) The governing institution shall consider each campus as a separate program of nursing.

Section 3. Letter of Intent.

(1) The governing institution shall submit to the board a letter of intent to establish a prelicensure program of nursing and the fee required by 201 KAR 20:240.

(2) The letter of intent shall be completed under the direction or consultation of a registered nurse who meets the qualifications of a program administrator as established in 201 KAR 20:310.

(3) The letter of intent shall include:

(a) Approval from the governing body of the institution proposing the program of nursing or other empowered approval bodies as applicable;

(b) The results of a feasibility study that includes the following information related to the need for the program of nursing:

1. Nursing workforce supply and demand data from the past year for the area within a fifty (50) mile radius and projected supply and demand; and

2. A description of the applicant pool that is being targeted and

how this population will be reached;

(c) Evidence that an introductory letter has been sent to all program[~~s~~] of nursing administrators within a fifty (50) mile radius;

(d) Documentation from cooperating healthcare agencies within a fifty (50) mile radius[~~in the community~~] that they will provide support for the creation of the program of nursing. This documentation shall include evidence of the agencies' intention to contribute to the achievement of the clinical objectives of the program;

(e) General information about the governing institution including the mission, ownership, method of financing, accreditation, enrollment, area served, and institutional faculty qualifications and resources;

(f) A timeline for the hiring of a full time program administrator, admission of students, and projected graduation of the first class;

(g) Evidence of a sound financial base and demonstrated financial stability available for planning, implementing, and maintaining the proposed program of nursing;

(h) A copy of the curriculum vitae of the registered nurse involved in the planning; and

(i) Description and rationale for the proposed type of program of nursing, including the establishment of an enrollment baseline as required by ***201 KAR 20:260, Section 3(1)[~~201 KAR 20:360, Section 3(1)(b)~~]***.

(4)(a) If concerns are raised about the need for the program or about the ability of the program to obtain appropriate clinical sites, a hearing shall be held before the board's education committee to act upon the letter of intent.

(b) At the conclusion of the hearing, the committee shall recommend to the board whether or not to approve the letter of intent.

(c) If the letter of intent is approved by the board, the governing institution shall be notified in writing that it may move to the proposal phase. The governing institution shall appoint a qualified program administrator and provide appropriate resources, consultants, and faculty to develop the proposed program plan. The proposal shall be submitted within one (1) year of the date of the approval of the letter of intent or the letter of intent shall expire.

Section 4. Proposal Phase.

(1)[~~(a)~~] A completed program proposal shall be submitted to the board by the governing institution for approval.[~~(b) If the governing institution has not completed the program proposal within one (1) year of the date of the approval of the letter of intent, the program proposal shall be void and the governing institution shall comply with Section 3 of this administrative regulation.~~]

(2) The program shall not be announced, advertised, or students admitted to the program of nursing until the proposal has been approved and developmental status has been granted by the board.

(3) The program proposal shall include:

(a) Philosophy, mission, and learning outcomes of the governing institution;

(b) An organizational chart of the governing institution and written plan, which describes the organization of the program of nursing and its relationship to the institution;

(c) Proposed philosophy, mission, and learning outcomes for the proposed program;

(d) Curriculum design including proposed courses, description, sequence and credit hours delineating those credits assigned to theory and clinical;

(e) Student recruitment plan and the enrollment baseline as set out in 201 KAR 20:260, Section 3(1)***[~~(b)~~]***;

(f) A five (5) year plan for recruiting and retaining qualified nurse faculty;

(g) A proposed job description for the program administrator reflecting authority and responsibility;

(h) A description of faculty offices, classrooms, clinical skills laboratory, library facilities, conference rooms, and learning resources;

(i) A description of support services for students, to include provision of health services or evidence of an emergency plan for care, academic advisement, student services, mechanism for obtaining learning resources, and financial aid;

(j) Availability and willingness of accredited agencies to provide clinical experiences across the curriculum. This information shall include the:

1. A list of clinical agencies and hours available for clinical experience[~~Shifts and days students will work~~];

2. Number of students each agency can accept;

3. Clinical experience that will be available from each agency;

4. Other nursing programs that utilize this agency; and

5. Plan to avoid displacement of students from existing programs;

(k) Policies and procedures for student admission to the program of nursing[~~selection~~] and progression, including the plan to retain students so as to maintain a low attrition rate;

(l) Availability of[~~A plan for~~] clerical assistance and support staff as set out in 201 KAR 20:260, Section 2(6);

(m) A general plan for an on-going, research based planning and evaluation process that incorporates a systematic review of the program that results in continuing improvement; and

(n) A description of financial resources to support the program including a budget for the first three (3) years with projected revenues and expenditures and the amount of resources going to institutions or organizations for contractual or support services.

(4) The program of nursing may[~~shall~~] meet with the board staff to clarify, verify, and amplify materials included in the program proposal.

(5) The governing institution shall be notified in writing of action taken by the board on the proposal.

(a) If the board determines that all requirements have been met, the program shall be granted developmental status.

(b) The board, in collaboration with the program, shall determine an opening date.[~~(6) Developmental status shall be withdrawn if program requirements are not met or if a class is not enrolled within eighteen (18) months after the board granted developmental status.~~

~~(a) If a proposed program does not comply with 201 KAR 20:260 through 360, developmental status may be withdrawn.~~

~~(b) The governing institution shall be notified in writing of the withdrawal of developmental status.~~

~~(7) Students shall not be admitted to the program of nursing until developmental status has been granted by the board.~~

~~(8) Failure to submit board required reports within the designated time period may result in the withdrawal of developmental status.~~

~~(9) Employment of program administrator and faculty.~~

~~(a) The program administrator shall be the first faculty member employed, and shall have assumed full time responsibilities for the program prior to submission of the proposal to the board.~~

~~(b) The faculty as established in 201 KAR 20:310 shall be employed in sufficient numbers to prepare for the development of the curriculum component of the program.~~

~~(10) Any deviation from the initial curriculum plan approved within the proposal shall be approved by the board before the first class begins course requirements.~~

~~(11) Written contracts for use of clinical facilities shall be executed prior to admission to the first nursing course.~~

~~(12) The program of nursing shall submit semi-annual progress and evaluation reports to demonstrate implementation of the approved proposal until the first class graduates.~~

~~(13) Site visits shall be conducted by the board as necessary.~~]

Section 5. Developmental Status.

(1) Students may be admitted after developmental status is granted.

(2) Employment of program administrator and faculty.

(a) The program administrator shall be the first faculty member employed, and shall have assumed full time responsibilities for the program prior to opening.

(b) The faculty as established in 201 KAR 20:310 shall be employed in sufficient numbers to prepare for the development of the curriculum component of the program.

(3) Any deviation from the initial curriculum plan approved within the proposal shall be approved by the board before the first

class begins course requirements.

(4) Written contracts for use of clinical facilities shall be executed prior to admission to the first nursing course.

(5) The program of nursing shall submit semi-annual progress and evaluation reports or other reports as requested by the board to demonstrate implementation of the approved proposal until the first class graduates.

(6) Site visits shall be conducted by the board as necessary.

(7) Developmental status may be withdrawn if:

(a) A proposed program does not comply with 201 KAR 20:260 through 360;

(b) A class is not enrolled within eighteen (18) months of the date the board granted developmental status; or

(c) The governing institution fails to submit board required reports within the designated time period.

(8) The governing institution shall be notified in writing of the intent to withdraw developmental status. The governing institution may request reconsideration by the board. The request shall be in writing and sent no more than thirty (30) days from the date of the notification.

Section 6[~~5~~]. Initial Status and Program Approval.

(1) The status of the program shall move automatically from developmental status to initial status upon admission of the first class.

(2) It shall be the responsibility of the program of nursing to notify the board of the admission of the first class.

(3)[~~(2)~~] The program shall notify the board in writing thirty (30) days prior to the graduation of the first class.

(4)[~~(3)~~] Eligibility for program approval occurs after the graduation of the first class. Within sixty (60) days after graduation of the first class, the faculty shall submit a written report that:

(a) Evaluates the implementation of the program of nursing compared to the approved proposal; and

(b) Addresses compliance with the standards set by 201 KAR 20:260 through 360.

(5)[~~(4)~~] The decision to grant or deny program approval shall be based on review of the report submitted by the program of nursing and a site visit report by a representative of the board.

(6)[~~(5)~~] If program approval is denied, the applicant may request a hearing pursuant to KRS Chapter 13B.

KELLY JENKINS, President

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GENERAL GOVERNMENT CABINET
Board of Nursing
(As Amended at ARRS, February 11, 2019)

201 KAR 20:310. Faculty for prelicensure registered nurse and practical nurse programs.

RELATES TO: KRS 314.111, ***314.475[~~314.470~~]***

STATUTORY AUTHORITY: KRS 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1) authorizes the Board of Nursing to promulgate administrative regulations necessary to enable it to carry into effect the provisions of KRS Chapter 314. This administrative regulation establishes standards for faculty of programs of nursing that prepare graduates for licensure as registered nurses or practical nurses.

Section 1. Definitions.

(1) "Clinical instructor" means a registered nurse who is employed by a program of nursing to provide students with traditional clinical or simulated experiences.

(2) ***"Nurse faculty" means a registered nurse who is employed by a program of nursing, either full-time, part-time, or adjunct, to provide didactic instruction, and may also provide clinical instruction or simulated experiences.***

(3) Nursing experience" means employment in a position that requires the individual to hold an active nursing license, such as nursing clinical practice, nursing administration, nursing education, or nursing research.["~~Nursing experience" means employment in a position that requires the individual to hold an active nursing license, such as nursing clinical practice, nursing administration, nursing education, or nursing research.(3) "Nurse faculty" means a registered nurse who is employed by a program of nursing, either full-time, part-time, or adjunct, to provide didactic instruction, and may also provide clinical instruction or simulated experiences.~~]

(4) "Preceptor" means a nurse with demonstrated competence in a specific clinical area who serves as a role model and mentor to assist in the development and validation of the competencies of a student.

(5)[~~(2)~~] ***"Skills laboratory instructor" means a non-faculty instructor primarily assigned to a clinical skills or simulation laboratory who manages the daily operations of the skills laboratory or assists nursing faculty to implement student learning activities for the development of psychomotor nursing skills.***

(6) "Unencumbered" means a license without current disciplinary conditions or restrictions. Enrollment in an alternative to discipline program is not an encumbrance.

Section 2. Faculty for Prelicensure Registered Nurse and Practical Nurse Programs.

(1)(a) The faculty shall include a program administrator and shall include at least one (1) other nurse faculty.

(b)[~~1. The faculty may include clinical instructors in the major areas of nursing practice.~~

~~2.~~] The faculty shall be adequate in number to implement the curriculum as determined by program outcomes, course objectives, the level of the students, the number of students and classes admitted annually, and the educational technology utilized.

(c)[~~(b)~~] The program administrator and all nurse faculty and clinical instructors shall be appointed by and be responsible to the governing institution of the program of nursing.

(d)[~~(c)~~] A program shall develop and implement a plan of organization and administration that clearly establishes the lines of authority, accountability, and responsibility for each program location.

(2) Program administrator qualifications. The program administrator for a registered nurse or a practical nurse program shall have:

(a) A minimum of a master's or higher degree in nursing from an accredited college or university. In lieu of a master's degree, the program administrator shall have completed that portion of a doctoral degree that would be equivalent to a master's in nursing degree while enrolled in an accredited college or university with a timeline in place for degree attainment. The program administrator shall provide documentation that shows active and steady progression towards the doctoral degree;

(b) A minimum of five (5) years of nursing experience within the immediate past seven (7)[~~ten (10)~~] years[~~and demonstrated leadership experience~~];

(c) A minimum of two (2) years of full time teaching experience at or above the academic level of the program of nursing;[~~and~~]

(d) An unencumbered current license, privilege, or temporary work permit to
practice as a registered nurse in the Commonwealth of Kentucky;

(e) A current knowledge of nursing practice at the level of the program; and

(f) Demonstrated experience or preparation in education that includes teaching adults, adult learning theory teaching methods, curriculum development, and curriculum evaluation.***[(g)]*** A program administrator without previous program administrator experience shall have a mentor assigned by the governing institution and an educational development plan implemented. The mentor shall have documented experience in program administration.

(3)[~~(a) Except as provided by paragraph (b) of this subsection, the program administrator for a practical nurse program shall have:~~

~~1. A master's or higher degree in nursing from an accredited college or university;~~

~~2. A minimum of five (5) years of nursing experience within the past ten (10) years with demonstrated leadership experience;~~

~~3. Current unencumbered license, privilege, or temporary work permit to practice as a registered nurse in the Commonwealth of Kentucky;~~

~~4. A minimum of two (2) years full time teaching experience at or above the academic level of the program of nursing; and~~

~~5. A current knowledge of nursing practice at the practical or vocational level.~~

~~(b)~~] A program administrator who is currently employed at a practical nurse program and who does not meet the requirements of ***subsection 2(a) of this Section[~~paragraph (a) of this subsection~~]***[~~on the effective date of this administrative regulation because of the lack of a master's degree~~] may continue to be employed at the program of nursing where the program administrator is presently, but shall earn the master's degree or higher in nursing on or before July 1, 2021[~~within five (5) years of the effective date of this administrative regulation~~].

(4) Didactic faculty qualifications.

(a)***1.*** Nurse faculty in a[~~baccalaureate degree~~] prelicensure registered nurse program shall hold a degree from an accredited college or university, which shall include:

a.~~***(1.)***~~***]*** A master's degree within the discipline of nursing or have completed that portion that would be equivalent to a master's in nursing degree; or

b.~~***[2.]***~~ A baccalaureate degree with a major in nursing and a master's degree in a related field, which includes a minimum of eighteen (18) graduate hours in nursing. The eighteen (18) graduate hours in nursing may also be earned independently of the related master's degree.

2.~~***[3.]***~~ Nurse faculty in an associate degree nursing program may be employed with a baccalaureate degree in nursing, but shall complete, within five (5) years of the date of employment, a master's degree commensurate with either ***clause a. or b. under*** subparagraph 1~~***[or 2]***~~ of this paragraph.

(b)[~~Nurse faculty in an associate degree prelicensure registered nurse program shall hold a degree from an accredited college or university, which shall include:~~

~~1. A master's degree within the discipline of nursing or have completed that portion of a nursing program that would be equivalent to a master's in nursing degree;~~

~~2. A baccalaureate degree with a major in nursing and a master's degree in a related field, which includes a minimum of eighteen (18) graduate hours in nursing. The eighteen (18) graduate hours in nursing may also be earned independently of the related master's degree; or~~

~~3. A baccalaureate degree with a major in nursing or have completed that portion of a state approved program of nursing that would be equivalent to a baccalaureate degree, and the nurse faculty member shall complete within five (5) years of hire a master's degree commensurate with either subparagraph 1. or 2. of this paragraph.~~

~~(c)~~] Nurse faculty in a practical nurse program shall have a minimum of a baccalaureate degree with a major in nursing from an accredited college or university.

(c)[~~(d)~~] The nurse faculty shall hold a temporary work permit or a current unencumbered license or privilege to practice as a registered nurse in the Commonwealth of Kentucky[~~, except as set out in paragraph (i) of this subsection~~].

(d)[~~(e)~~] The nurse faculty shall document a minimum of two (2) years full time or equivalent experience as a registered nurse within the immediate past five (5) years and shall have and maintain expertise in the clinical or functional area of responsibility[~~appropriate to teaching responsibilities~~].

(e)[~~(f)~~] The nurse faculty shall document preparation in educational activities in the area of teaching and learning principles for adult education, including curriculum development and implementation. The preparation shall be acquired through planned faculty in-service learning activities, continuing education offerings, or academic courses.[~~(g) Nurse faculty shall have and maintain expertise in the clinical or functional area of responsibility.~~]

(f)[~~(h)~~] Nurse faculty hired without prior teaching experience shall have a mentor assigned and an educational development plan implemented.

(g)[~~(i)~~]1. Non-nurse faculty members who teach nursing courses required within the curriculum shall have appropriate academic and experiential qualifications for the program areas in which they participate.

2. Non-nurse faculty shall be required to collaborate with a nurse faculty member in order to meet the nursing course outcomes.

(h)[~~(j)~~] Nurse faculty who teach via distance or on-line[~~and will not physically practice within the state~~] shall hold an unencumbered active nursing license to practice as a registered nurse in the nurse faculty's primary state of residence.

(5) Skills laboratory and clinical instructor qualifications.

(a) A clinical instructor shall function under the guidance of the nurse faculty responsible for a given course.

(b) A clinical instructor for either a registered nurse or practical nurse program shall hold a current unencumbered license, privilege, or temporary work permit to practice as a registered nurse in the state of the student's clinical site.

(c) A clinical instructor shall have a minimum of two (2) years full time or equivalent experience[~~within the functional area~~] as a registered nurse within the immediate past five (5) years and evidence of clinical competence appropriate to teaching responsibilities.

(d) For a registered nurse program,[~~the educational preparation of~~] the clinical instructor shall have the following qualifications:

1. For an associate degree nursing program, a registered nurse; ***or***

2. For a baccalaureate degree nursing program, a registered nurse with a baccalaureate degree in nursing or higher[~~at least equal the level of the appointing program~~].

(e) For a practical nurse program, the clinical instructor shall be a registered nurse.

(f) A skills laboratory instructor shall have the same qualifications as a clinical instructor.

Section 3. Preceptors.

(1) A preceptor may be used to enhance clinical learning experiences. If a preceptor is used, it shall be done after a student has received clinical and didactic instruction from the program faculty in all basic areas for the course or specific learning experience.

(2) A preceptor shall hold a current unencumbered license, privilege, or temporary work permit to practice as a registered nurse in the state of the student's clinical site. In a practical nursing program, a preceptor may hold a current unencumbered license, privilege, or temporary work permit to practice as a licensed practical nurse in the state of the student's clinical site.

(3) A preceptor shall have evidence of clinical competencies related to the area of assigned clinical teaching responsibilities.

(4) A preceptor shall not be used to replace clinical instructors. The ratio of student to preceptor shall not exceed two (2) to one (1). Clinical instructors or nurse faculty retain responsibility for student learning and confer with the preceptor and student for the purpose of monitoring and evaluating learning experiences.

(5) There shall be documentation of orientation to the course, program outcomes, student learning objectives, evaluation methods to be utilized by the faculty, and documented role expectations of faculty, preceptor, and student.

Section 4. Reporting of Registered Nurse Program and Practical Nurse Program Faculty Qualifications and Appointments.

(1) Evaluation of faculty records. The program administrator shall submit to the board the qualifications of nurse faculty and clinical instructors within thirty (30) days of appointment.

(a) Official academic transcripts or copies verified by the nurse administrator or designee shall be available to the board upon request.

(b) A complete and official record of qualifications and workload for each faculty member shall be on file and available to the board upon request.

(c) Faculty appointments shall be reported to the board in writing.

(d) The program administrator shall report a change in faculty composition within thirty (30) days of appointment or vacancy.

(2)[~~Reevaluation of faculty records.~~] The board shall review annually the qualifications of the faculty employed in the program of nursing.

KELLY JENKINS, President

APPROVED BY AGENCY: October 18, 2018

FILED WITH LRC: October 23, 2018 at 1 p.m.

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GENERAL GOVERNMENT CABINET
Board of Nursing
(As Amended at ARRS, February 11, 2019)

201 KAR 20:320. Standards for curriculum of prelicensure registered nurse and practical nurse[~~nursing~~] programs.

RELATES TO: KRS 314.011(5), 314.021, 314.041(1)(a), 314.111(1), 314.131(1), (2)

STATUTORY AUTHORITY: KRS 314.041(1)(a), 314.051(1)(a), 314.111(1), 314.131(1), (2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.041(1)(a) and 314.051(1)(a) require that an applicant for licensure as a registered or licensed practical nurse complete the basic nursing curriculum in an approved school of nursing. KRS 314.111(1) requires that schools of nursing regardless of delivery models shall meet minimum standards and be approved by the Board of Nursing. KRS 314.131(1) and (2) authorizes the board to promulgate administrative regulations necessary to approve programs of nursing. This administrative regulation establishes the curriculum requirements for prelicensure registered nurse and practical nursing programs.

Section 1. Definitions.

(1) "Debriefing" means an activity that follows a simulation experience, is led by a nurse faculty as established in 201 KAR 20:310, Section 2, encourages participant's reflective thinking, and provides feedback regarding the participant's performance.

(2) "Distance learning" means didactic instruction offered by any means where the student and faculty are in separate physical locations.

(3) "Practical nursing program" means a program of nursing organized and administered by a vocational, technical, or adult education system or an independent school at a postsecondary level that awards the graduate a diploma in practical nursing upon meeting requirements of the program.

(4) "Program of nursing" means the educational unit that prepares a person for licensure as a registered or licensed practical nurse[~~an educational entity that offers the courses and learning experiences that prepare graduates who are competent to practice nursing safely and who are eligible to take the NCLEX-RN or NCLEX-PN examinations~~].

(5) "Registered nursing program" means a program of nursing organized and administered by an institution of higher learning that awards a degree in nursing upon meeting requirements of the program.

(6) "Simulation" means an activity or a technique that replicates actual or potential situations in clinical practice that allows the participant to develop or enhance critical thinking.

Section 2. General.

(1) An applicant for licensure shall complete a prelicensure program of nursing that meets the requirements of this administrative regulation.

(2) Length.

(a) A registered nursing program shall be a minimum of two (2) academic years, which may include prior articulated academic credits.

(b) A practical nursing program shall be a minimum of one (1) academic year.

(3) Philosophy, mission, and outcomes.

(a) The philosophy, mission, and outcomes of the program of nursing shall be clearly defined in writing by the nursing faculty and be consistent with those of the governing institution.

(b) The program outcomes shall describe the expected competencies of the graduate.

(c) The program shall conduct an evaluation to validate that identified program outcomes have been achieved and provide evidence of improvement based on an analysis of those results.

(4) Approval.

(a) A curriculum plan shall be approved by the board in accordance with this administrative regulation.

(b) The curriculum plan shall enable the student to develop the nursing knowledge, skills, and competencies for the expected entry level and scope of practice.

(c) Theory and clinical experiences shall provide the student with opportunities to acquire and demonstrate the knowledge, skills, and competencies necessary for safe practice.

(5) Curriculum plan.

(a) The development, implementation, evaluation, and revision of the curriculum shall be the responsibility of the nursing faculty including the program administrator with input from students.

(b) The curriculum of the program of nursing shall assure the development of evidence based practice for the level and scope of nursing practice. This shall include the skills to identify and apply best practices in nursing care by providing client-centered, culturally competent care and respecting client differences, values, preferences, and expressed needs.

(c) A registered nursing program may determine that a portion of the curriculum fulfills the scope of practice for licensed practical nursing and allow students to exit the program and be made eligible for the NCLEX-PN examination. The registered nursing program shall submit its plan to the board for approval.

(6) Organization of the curriculum.

(a) There shall be a written plan, including supporting rationale, which describes the organization and development of the curriculum.

(b) The curriculum plan shall reflect the philosophy, mission, and outcomes of the program.

(c) There shall be a rationale for the amount of time or credits allocated to course and clinical practice experience.

(d) A course syllabus shall be developed for each nursing course to include outcomes-planned instruction, learning activities, and method of evaluation.

1. Each course shall be implemented in accordance with the established course syllabus.

2. A copy of each course syllabus shall be on file in the program of nursing office and shall be available to the board upon request.

(e) The curriculum plan shall be logical and sequential, and shall demonstrate an increase in difficulty and complexity as the student progresses through the program.

(f) A course may be offered as a distance learning course. A distance learning course shall meet the same standards as established in 201 KAR 20:260 through 201 KAR 20:360 for any other course.

(7) Curriculum components.

(a) The curriculum of a registered nursing program or a practical nursing program shall prepare the graduate for licensure and full scope of practice as defined by current standards for nursing practice and expected competencies of graduates at the appropriate educational level.

(b) The curriculum shall include:

1. Theory and selected clinical practice experiences designed to enable students to provide nursing care to individuals throughout the life span; and

2. Information regarding Kentucky nursing laws, including

scope of practice, licensure requirements, and the role of the board of nursing. This ***subparagraph[~~provision~~]*** shall be implemented by January 1, 2020.

(c) Clinical practice settings shall be appropriate for the type of nursing program and the program outcomes and enable the student to observe and practice safe nursing care of persons at each stage of the life span. Experiences shall include opportunities to learn and provide care to diverse ethnic and cultural populations.

(d) Clinical practice experience shall be supervised by board approved nursing faculty in accordance with 201 KAR 20:310.

(e) The curriculum shall have written measurable program outcomes[~~competencies~~] that reflect the role of the graduate.

(f) Students shall have sufficient opportunities in simulated or clinical settings to develop psychomotor skills essential for safe, effective practice.

(8) Curriculum change.

(a) A program of nursing that is not accredited by a national nursing accrediting body shall submit a written plan for major curriculum revisions to the board a minimum of four (4) months prior to the planned implementation.

1. A request for curriculum revision shall include the present plan and the proposed change with rationale and expected outcomes.

2. The board shall be available to assist if curriculum revisions are being considered.

3. Major curriculum revisions shall include:

a. A change in the philosophy, mission, or outcomes that results in a reorganization or re-conceptualization of the entire curriculum; or

b. The addition of tracks or alternative programs of study that provide educational mobility.

(b) A program of nursing that implements a curriculum change shall provide an evaluation of the outcomes of those changes through the first graduating class following full implementation of the curriculum change. The program of nursing shall also submit the evaluation with its annual report.

(9) Integrated practicum.

(a) The curriculum shall include an integrated practicum. The integrated practicum shall consist of a minimum of 120 clock hours of concentrated clinical experience of direct patient care in a health care facility or health care organization.

(b) The integrated practicum shall be completed within a period not to exceed seven (7) consecutive weeks while the governing institution is in session and within seven (7) months of graduation [~~during the last semester or quarter of a nursing program~~].

Section 3. Simulation Standards.

(1)(a) A program of nursing that uses simulation shall adhere to the standards set in this section.

(b) A program of nursing shall not use simulation for more than fifty (50) percent of its total clinical hours required for graduation.

(2)[~~Upon request by the board, a program of nursing shall provide evidence that the standards set in this section have been met.~~

~~(3)~~](a) The program of nursing shall provide[~~adequate fiscal, human, and material~~] resources sufficient to support the simulation activities, including training of the faculty, and programmatic outcomes.

(b) Simulation activities shall be managed by a nurse[~~faculty member as established in 201 KAR 20:310, Section 2,~~] who is academically and experientially qualified in the use of simulation, both in its pedagogical and technical aspects. The managing nurse[~~faculty member~~] shall demonstrate his or her qualifications by:

1. Attendance at simulation conferences;

2. Completion of educational activities related to simulation; or

3. Holding a credential issued by the Society for Simulation in Healthcare or a simulation preparation program recognized by the International Nursing Association for Clinical Simulation.

(c)[~~There shall be a budget that will sustain the simulation activities and training of the faculty.~~

~~(d)~~] The program of nursing shall have written rationale for the use and purpose of simulation within the curriculum.

(d)[~~(e)~~] The program of nursing shall have an orientation plan for faculty concerning simulation.

(e)[~~(f)~~] The program of nursing shall have a written procedure on the method of prebriefing and debriefing each simulated activity.

(3)[~~(4)~~] The program of nursing shall have appropriate facilities for conducting simulation. This shall include educational and technological resources and equipment to meet the intended objectives of the simulation.

(4)[~~(5)~~] Faculty, both didactic and clinical, that utilize simulation shall:

(a) Have training in the use of simulation; and

(b) Engage in on-going professional development in the use of simulation.

(5)[~~(6)~~] The simulation activities shall be linked to the program of nursing's course objectives and the programmatic outcomes.[~~(7)(a) The program of nursing shall develop written criteria to evaluate the simulation activities.~~

~~(b) Students and faculty shall evaluate the simulation experience on an ongoing basis.~~]

(6)[~~(8)~~] Beginning July 1, 2019, a program of nursing shall submit evidence of compliance with these standards in the annual report required by 201 KAR 20:360, Section 3(1) ***of this administrative regulation***[~~The program of nursing shall include information about its use of simulation in its annual report to the board~~].

Section 4. Use of External Examinations.

(1) An external examination is a standardized examination not produced by the program of nursing.

(2) A program of nursing shall not require the completion of an external examination as a determinant for a student's progression or graduation.

(3) An external examination may be used to assist in the remediation of a student or as part of a final course grade. If used as part of a final course grade, it shall not count for more than ten (10) percent of the grade.

Section 5. Statutory Additions.

(1) ***Each[~~Every~~]*** program of nursing shall include information in its curriculum that meets the requirements of KRS 194A.540 related to domestic violence and elder abuse, neglect, and exploitation.

(2) ***Each[~~Every~~]*** program of nursing shall include information about pediatric abusive head trauma as it is defined in KRS 620.020.

KELLY JENKINS, President

APPROVED BY AGENCY: October 18, 2018

FILED WITH LRC: October 23, 2018 at 1 p.m.

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GENERAL GOVERNMENT CABINET
Board of Nursing
(As Amended at ARRS, February 11, 2019)

201 KAR 20:360. Continuing approval and periodic evaluation of prelicensure registered nursing and licensed practical nursing programs.

RELATES TO: KRS 314.111

STATUTORY AUTHORITY: KRS 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1) authorizes the Board of Nursing to promulgate administrative regulations to implement KRS Chapter 314. KRS 314.111 requires nursing programs to be approved by the board. This administrative regulation establishes evaluative standards to assure that the programs of nursing provide the necessary instruction and services to prepare graduates for licensure eligibility as registered nurses or as practical nurses.

Section 1. Program of Nursing Accredited by a National Nursing Accrediting Body.

(1)(a) A prelicensure registered nursing or licensed practical nursing program that is accredited by a national nursing accrediting body recognized by the United States Department of Education shall be deemed to be in compliance with the standards of 201 KAR 20:260 through 201 KAR 20:360 and shall not have to demonstrate compliance every eight (8) years as required by Section 2 of this administrative regulation. The accredited program shall comply with Sections 3 through 10 of this administrative regulation.

(b) The board shall retain jurisdiction over accredited programs and may conduct site visits or other investigations into any allegation that may constitute a violation of 201 KAR 20:260 through 201 KAR 20:360. The board may also conduct site visits in accordance with Section 5 of this administrative regulation or ***when a national nursing accreditation board visits the program[at intervals associated with their national nursing accrediting body]***.

(2) A prelicensure program of nursing that is accredited by a national nursing accrediting body recognized by the United States Department of Education shall submit all correspondence and reports to and from the accrediting body to the board within thirty (30) days of submission or receipt.

Section 2. Programs of Nursing Not Accredited by a National Nursing Accrediting Body.

(1) A prelicensure registered nursing or licensed practical nursing program that is not accredited by a national nursing accrediting body recognized by the United States Department of Education shall be required to demonstrate compliance with 201 KAR 20:260 through 201 KAR 20:360 at least every eight (8) years for continued approval.

(2)(a) A site visit shall be conducted at least every eight (8) years.

(b) A specific list of information required for review shall be sent by the board to the program of nursing prior to the site visit.

(3) Prior to the site visit, the program of nursing shall submit:

(a) A self-evaluation report that provides evidence of compliance with 201 KAR 20:260 through 201 KAR 20:360; and

(b) Other related information as requested by the board.

Section 3. Reports and Evaluation.

(1) A program of nursing shall submit the Annual Report of the Program of Nursing to the board regarding its compliance with 201 KAR 20:260 through 201 KAR 20:360. It shall also submit the benchmarks set out in Section 5(2)(f) of this administrative regulation.

(2) To verify continued compliance with 201 KAR 20:260 through 201 KAR 20:360, the program of nursing shall submit progress reports or periodic supplemental reports, completed questionnaires, surveys, and other related documents as requested by the board.

(3) Pursuant to 201 KAR 20:260, Section 2(7)(a), the faculty[~~shall establish an evaluation plan and~~] shall engage in an evidence based planning and evaluation process that incorporates a systematic review of the program of nursing that results in continuing improvement. This process shall result in an evaluation report that is submitted to the board.[~~Revisions to the evaluation plan or report shall be submitted with the annual report.~~]

(4) Data collection for the evaluation report shall be on-going and shall reflect aggregate analysis and trending.[~~The evaluation plan shall include evidence that data collection is evidence-based, on-going, and reflects the collection, aggregate analysis, and trending of data.~~]

(5) The evaluation report[~~plan~~] shall include specific responsibilities for data collection methods, individuals or groups responsible, frequency of data collection, indicators of achievement, findings, and outcomes for evaluating the following aspects of the program:

(a) Organization and administration of the program of nursing;

(b) Curriculum;

(c) Resources, facilities, and services;

(d) Teaching and learning methods including distance education;

(e) Faculty evaluation;

(f) Student achievement of program outcomes;

(g) Graduation rates;

(h) Licensure examination pass rates;

(i) Employment rates of graduates; and

(j) Clinical resources, including laboratory and simulation.

(6) If a program of nursing utilizes distance education for didactic instruction, it shall evaluate and assess the educational effectiveness of its distance education program to ensure that the distance education program is substantially comparable to a campus based program.

(7) The evaluation report shall provide evidence that the outcomes of the evaluation process are used to improve the quality and strength of the program.

Section 4. Benchmarks[~~Calculation of Pass Rate. (1)~~] The board shall utilize the following benchmarks to evaluate a program of nursing. Except for the pass rate, the benchmarks shall be calculated annually from July 1 to June 30. The board shall calculate the pass rate for a program of nursing on an annual basis from January 1 to December 31 for all first time takers of the NCLEX.

(1) The pass rate for first time takers of the NCLEX who tested within twelve (12) months of the program completion date as reported on the Certified List of Kentucky Program of Nursing Graduates or the Certified List of Out-of-state Program of Nursing Graduates incorporated by reference in 201 KAR 20:070;

(2) The faculty turnover rate. A faculty member whose employment ends on or before June 30 of any year shall be counted in that year's calculation;

(3) The program administrator turnover rate;

(4) The graduation rate;

(5) The faculty grievance rate; and

(6) The student grievance rate.[~~(2) Individuals included in the annual calculation shall have tested within six (6) months of the program completion date as reported on the Certified List of Kentucky Program of Nursing Graduates or the Certified List of Out-of-state Program of Nursing Graduates incorporated by reference in 201 KAR 20:070.~~]

Section 5. Site Visits.

(1) The board may conduct site visits at any time.

(2) The following situations may be cause for a site visit to determine if the standards of 201 KAR 20:260 through 201 KAR 20:360 are being met:

(a) Denial, withdrawal, or change of status by a national nursing accrediting agency;

(b) Providing false or misleading information to students or the public concerning the program;

(c) A written complaint received from faculty, students, or the general public relating to a violation of 201 KAR 20:260 through 201 KAR 20:360;

(d) A change in physical facilities;

(e) Information received by the board that may indicate a violation of 201 KAR 20:260 through 201 KAR 20:360;

(f) A change in any of the[~~these~~] benchmarks listed in Section 4 of this administrative regulation as follows:

1. A pass rate as calculated by Section 4 of this administrative regulation that:

a. Is less than an average of eighty (80)[~~eighty-five (85)~~] percent for three (3) consecutive years; or

b. Varies above and below eighty (80)[~~eighty-five (85)~~] percent from year to year over the previous five (5) years;

2. A faculty turnover rate greater than thirty (30) percent for two (2) consecutive years;

3. A program administrator turnover rate of more than three (3) individuals in five (5) years;

4. A graduation rate of less than sixty (60) percent of the original admitted cohort of newly-enrolled students within the maximum time frame allowed for completion. The maximum time frame shall be determined by multiplying the standard program length for normally progressing students by 1.5. Calculation of the

graduation rate shall include students who are enrolled for the first time in the first nursing course of the nursing program curriculum. All students admitted within the original cohort shall be included in the calculation regardless of whether a student may be excluded from the calculation utilized by a national nursing accrediting body;

5. Twenty-five (25) percent or more of the total number of nursing faculty who file grievances or appeals that are substantiated; or

6. Substantiated student grievances and appeals of more than ten (10) percent of the[~~nursing~~] student population enrolled in the nursing program each year; or

(g) Failure to submit reports as required by 201 KAR 20:260 through 201 KAR 20:360.

(3) A program of nursing that fails to meet one ***(1)*** or more benchmarks for a year shall submit a report that examines the factors that contributed to the failure to meet and shall provide a description of the corrective measures to be implemented.

(4)(a) The board shall annually compile information on how the programs of nursing met the benchmarks. This information shall be published on the board's Web site.

(b) A program of nursing shall post a link to the information compiled pursuant to paragraph (a) of this subsection on the program of nursing's Web site. The link shall be easy to locate on the program's home page.

Section 6. Action Following Site Visit.

(1)(a) Following a site visit and prior to board consideration, a draft of the site visit report shall be made available to the program administrator for review and correction of factual data.

(b) The program administrator shall be available during the discussion of the report at the board committee to provide clarification.

(c) If the site visit results in a finding of non-compliance with 201 KAR 20:260 through 201 KAR 20:360 by the program of nursing, a letter shall be sent to the program administrator regarding any requirements to be met.

(d) The board shall notify the program of nursing of the time frame within which it shall meet the requirements. The board shall verify that the requirements have been met.

(2)(a) If the program of nursing is unable to meet the requirements in the time set by the board, it may request additional time. The board, in its discretion, may grant or deny this request based on the rationale for the request.

(b) If the board denies the request for additional time, it shall begin the process established in Section 7 of this administrative regulation.

Section 7. Withdrawal of Approval.

(1) If, in the opinion of the board, the standards established by 201 KAR 20:260 through 201 KAR 20:360 are not being met, the board shall send notice to the program administrator of the affected program of nursing of its intent to withdraw approval. The notice shall be sent return receipt requested.

(2) When making this determination, the board shall consider the following factors:

(a) The number and severity of the deficiencies;

(b) The length of time in which the deficiencies have existed; and

(c) Any exigent circumstances.

(3) Within thirty (30) days of receipt of the notice, the program administrator of the affected program may request an administrative hearing pursuant to KRS Chapter 13B. If an administrative hearing is not requested, program approval shall be withdrawn and the program shall be closed. A closed program shall comply with subsection (5) of this section.

(4)(a) If a program of nursing requests an administrative hearing, that hearing shall be held within sixty (60) days of the request.

(b) The hearing shall be held before a hearing officer or before the full board.

(5)(a) A program of nursing whose approval has been withdrawn by the board shall be removed from the official approved status listing upon the effective date of the decision. Students currently enrolled in the last semester or quarter of the program may complete the program. If the student graduates, he or she may apply for licensure and make take the licensure examination. Any other student shall not be allowed to apply for licensure or take the licensure examination, unless the student graduates from another approved program of nursing.

(b) The program of nursing that has been closed shall assist a currently enrolled student to transfer to an approved program of nursing.

Section 8. Voluntary Closure of a Program.

(1) A governing institution seeking to close a program of nursing shall submit written notification to the board at least six (6) months prior to the planned closing date.

(2) A governing institution may choose one (1) of the following procedures for closing a program of nursing as established in paragraph (a) or (b) of this subsection.

(a) The governing institution shall continue the program of nursing until the last class enrolled has graduated.

1. The program shall continue to meet the standards until all students enrolled in nursing courses have graduated or transferred.

2. The official closing of the program shall be the date on the degree, certificate, or diploma of the last graduate.

3. The governing institution shall notify the board in writing of the official closing date.

(b) The governing institution shall close the program following the transfer of students to other approved programs.

1. The program shall continue to meet the standards until all students have transferred.

2. The names of students who have transferred to approved programs and the date of the last student transfer shall be submitted to the board by the governing institution.

3. The date of the last student transfer shall be the official closing date of the program.

(3) Custody of records.

(a) The governing institution that continues to operate shall retain responsibility for the records of the students and graduates. The board shall be advised of the arrangement made to safeguard the records.

(b) The governing institution that ceases to exist shall transfer the academic transcript of each student and graduate to a third party vendor approved by the Council for Postsecondary Education[~~the board~~] for safekeeping.[~~1. The transcript of the student or graduate shall identify the date on which the program closed.~~

~~2. The board shall be consulted about the disposition of all other program records.~~]

Section 9. Change in Ownership or Organization of the Governing institution.

(1) The governing institution shall notify the board in writing of any intent to transfer administrative authority or ownership. The new administrative authority or owner shall inform the board of its plans for immediate and future operation.

(2) The board shall conduct a site visit to ensure adherence by the program of nursing to 201 KAR 20:260 through 201 KAR 20:360.

(3) Following this site visit, approval of the program of nursing shall continue under the new ownership or administrative authority if the approval standards continue to be met.

Section 10. Incorporation by Reference.

(1) "Annual Report of the Program of Nursing", 10/18[~~12/15~~], Kentucky Board of Nursing, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. to 4:30 p.m.

KELLY JENKINS, President

APPROVED: October 18, 2018

FILED WITH LRC: October 23, 2018 at 1 p.m.

CONTACT PERSON: Megan LaFollette, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-7192, fax (502) 429-1248, email Megan.LaFollette@ky.gov.

GENERAL GOVERNMENT CABINET
Board of Nursing
(As Amended at ARRS, February 11, 2019)

201 KAR 20:362. Fines for *schools[~~programs~~]* of nursing.

RELATES TO: KRS 314.111(4)
STATUTORY AUTHORITY: KRS 314.111(4), 314.131(1)
NECESSITY, FUNCTION, AND CONFORMITY: ***KRS 314.131 authorizes the board to promulgate administrative regulations to implement KRS Chapter 314.*** KRS 314.111(4) authorizes the Board to fine a ***school[~~program~~]*** of nursing that fails to comply with the requirements of the administrative regulations governing programs of nursing. ***This administrative regulation implements KRS 314.111(4).***

Section 1. Definitions.
(1) ***"Compliance issue" means a failure to comply with a requirement of 201 KAR 20:260 through 20:360.***
(2) "Deficiency" means a failure to meet a standard set by 201 KAR 20:260 through 20:360.[~~"Deficiency" means a failure to meet a standard set by 201 KAR 20:260 through 360.~~
~~(2) "Compliance issue" means a failure to comply with a requirement of 201 KAR 20:260 through 360.~~]

Section 2.(1) A ***school[~~program~~]*** of nursing is in violation of KRS 314.111(4) when it:
(a) Receives notice of a deficiency or a compliance issue;
(b) Is given the expectation of the board for correction;
(c) Is given a date by which the correction is expected; and
(d) Fails to make the correction by that date.
(2) A ***school[~~program~~]*** of nursing shall comply with all deadlines set by 201 KAR 20:260 through 20:360. Failure to do so shall constitute a compliance issue.

Section 3. (1) The fine for a violation of KRS 314.111(4) shall be $500 per day or ***a*** portion thereof.
(2) The board shall send notice of the amount due to the ***school[~~program~~]*** of nursing.
(3) The ***school[~~program~~]*** shall either:
(a) Remit the amount due within thirty (30) days; or
(b) Request an administrative hearing in accordance with KRS Chapter 13B to contest the fine.
(4) Failure to take either step shall subject the ***school[~~program~~]*** of nursing to:
(a) A collection action in the court of competent jurisdiction; or
(b) An administrative hearing in accordance with KRS Chapter 13B to determine whether the ***school[~~program~~]*** of nursing shall be closed.

KELLY JENKINS, President
APPROVED BY AGENCY: October 18, 2018
FILED WITH LRC: October 23, 2018 at 1 p.m.
CONTACT PERSON: Megan LaFollette, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-7192, fax (502) 429-1248, email Megan.LaFollette@ky.gov.

GENERAL GOVERNMENT CABINET
Board of Nursing
(As Amended at ARRS, February 11, 2019)

201 KAR 20:411. Sexual Assault Nurse Examiner Program standards and credential requirements.

RELATES TO: KRS 216B.400(2), (4), 314.011(14), 314.103, 314.142, 314.475, 403.707, 421.500-421.575***, 431.600-431.660***
STATUTORY AUTHORITY: KRS 314.131(1), 314.142(1)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1) authorizes the Board of Nursing to promulgate administrative regulations as may be necessary to enable it to carry into effect the provisions of KRS Chapter 314. KRS 314.142(1) requires the board to promulgate administrative regulations to create a Sexual Assault Nurse Examiner Program. This administrative regulation establishes the requirements relating to a sexual assault nurse examiner course and the credentials of a sexual assault nurse examiner.

Section 1. Definitions.
(1) "Adolescent" means a child who has reached the onset of physiologically normal puberty;
(2) "Pediatric" means a child who has not reached the age of eighteen (18);
(3) "SANE-A/A course" means a formal, organized course of instruction that is designed to prepare a registered nurse to perform forensic evaluation of an adult or adolescent[~~a~~] sexual assault victim[~~fourteen (14) years of age or older~~] and to promote and preserve the victim's biological, psychological, and social health.
(4) ***"SANE course" means the SANE-A/A course and the SANE-P/A course.***
(5) "SANE-P/A course" means a formal, organized course of instruction that is designed to prepare a registered nurse to perform forensic evaluation of a pediatric or adolescent sexual assault victim and to promote and preserve the victim's biological, psychological, and social health[~~"SANE-P/A course" means a formal, organized course of instruction that is designed to prepare a registered nurse to perform forensic evaluation of a pediatric or adolescent sexual assault victim and to promote and preserve the victim's biological, psychological, and social health.~~
~~(5) "SANE course" includes the SANE-A/A course and the SANE-P/A course~~].

Section 2. SANE Course Approval Application.
(1) On the form Application for Initial or Continued SANE Course Approval, the applicant for approval of a SANE-A/A course or a SANE-P/A ***course*** shall submit evidence to the board of completion of the requirements for course approval that consists of the following documentation:
(a) Position description and qualifications of the nurse administrator of the SANE course;
(b) Qualifications and description of the faculty;
(c) Course syllabus;
(d) Course completion requirements;
(e) Tentative course presentation dates;
(f) Records maintenance policy; and
(g) Copy of certificate of course completion form.
(2) Nurse administrator of SANE course. A registered nurse, with current, active Kentucky licensure or a multistate licensure privilege pursuant to KRS 314.475, a baccalaureate or higher degree in nursing, and experience in adult and nursing education shall be administratively responsible for assessment, planning, development, implementation, and evaluation of the SANE course.
(3) Faculty qualifications. Faculty qualifications shall be consistent with the instructor qualifications set out in Sexual Assault Nurse Examiner (SANE) Education Guidelines.[~~The course shall be taught by multidisciplinary faculty with documented expertise in the subject matter.~~] The name, title, and credentials identifying the educational and professional qualifications for each instructor shall be provided as part of the application.
(4) Course syllabus. The syllabus shall include:
(a) Course prerequisites, requirements, and fees;
(b) Course outcomes, which shall provide statements of observable competencies, which if taken as a whole, present a clear description of the entry level behaviors to be achieved by the learner;
(c) Unit objectives for an individual, which shall be stated in operational or behavioral terms with supportive content identified;
(d) Content as specified in subsection (6) of this section, which shall be described in detailed outline format with corresponding lesson plans and time frame, and which shall be related to, and consistent with, the unit objectives, and support achievement of expected course outcomes;[~~1. The SANE course shall include:~~
~~a. A minimum of forty (40) hours of didactic instruction pursuant to subparagraph 3. of this paragraph; and~~
~~b. The clinical practice experience required by subparagraph 2.~~

~~of this paragraph.~~

~~2. Clinical practice. The clinical portion of the course shall include:~~

~~a. Detailed genital and anal inspection, including speculum insertion, visualization techniques, and use of equipment supervised by a physician, a physician assistant, an advanced practice registered nurse, or a sexual assault nurse examiner until the student is deemed competent by the supervisor;~~

~~b. Sexual assault history taking and examination techniques with evaluation supervised by a physician, a physician assistant, an advanced practice registered nurse, or a sexual assault nurse examiner;~~

~~c. Observing live or previously recorded criminal trials and meeting with the Commonwealth Attorney or a representative from the Commonwealth Attorney's office in order to gain an understanding of the trial process including testifying;~~

~~d. Meeting with the local rape crisis center and a rape crisis center victim advocate in order to gain an understanding of the services provided to victims by rape crisis centers and the role of an advocate; and~~

~~e. Meeting with local law enforcement officers or investigators responsible for investigating reports of rape or sexual assault in order to gain an understanding of the investigative process.~~

~~3. The didactic portion of the course shall include instruction consistent with the Sexual Assault Nurse Examiner (SANE) Education Guidelines. It shall also include:~~

~~a. Application of the Kentucky statewide medical protocol relating to the forensic and medical examination of an individual reporting sexual assault pursuant to KRS 216B.400(2) and (4); and~~

~~b. The victim's bill of rights, KRS 421.500 through 421.575.~~]

(e) Teaching methods with the activities of both instructor and learner specified in relation to the content outline, and which shall be congruent with stated course objectives and content, and reflect the application of adult learning principles;

(f) Evaluation methods, which shall be clearly defined for evaluating the learner's achievement of course outcomes, and which shall include a process for annual course evaluation by students, providers, faculty, and administration; and

(g) Instructional or reference materials required, which shall be identified.

(5) Completion requirements. Requirements for successful completion of the SANE course shall be clearly specified and shall include demonstration of clinical competency. A statement of policy regarding a candidate who fails to successfully complete the course shall be included.

(6) The SANE-A/A course and the SANE-P/A course content shall be consistent with Sexual Assault Nurse Examiner (SANE) Education Guidelines.

(a) In addition to that content, the SANE-A/A course and the SANE-P/A course shall include:

1. Observing live or previously recorded criminal trials and meeting with the Commonwealth Attorney or a representative from the Commonwealth Attorney's office in order to gain an understanding of the trial process including testifying;

2. Meeting with the local rape crisis center and a rape crisis center victim advocate in order to gain an understanding of the services provided to victims by rape crisis centers and the role of an advocate;

3. Meeting with local law enforcement officers or investigators responsible for investigating reports of rape or sexual assault in order to gain an understanding of the investigative process;

4. Application of the Kentucky statewide medical protocol relating to the forensic and medical examination of an individual reporting sexual assault pursuant to KRS 216B.400(2) and (4); and

5. The victim's bill of rights, KRS 421.500 through 421.575.

(b) In addition to the requirements of paragraph (a) of this subsection, the SANE-P/A course shall include:

1. Principles of child development;

2. Techniques for acute evaluations;

3. An overview of Kentucky Child Advocacy Centers; and

4. An overview of KRS 431.600 through 431.660 which shall include information about multidisciplinary teams and their functions, model protocols approved by the Kentucky Multidisciplinary Commission on Child Sexual Abuse, and the role of peer review in child sexual abuse cases.

Section 3. (1) Contact hour credit for continuing education. The SANE course shall be approved for contact hour credit which may be applied to licensure requirements.

(2) Approval period. Board approval for a SANE course shall be granted for a four (4) year period.

(3) Records shall be maintained for a period of five (5) years, including the following:

(a) Provider name, date, and site of the course; and

(b) Participant roster, containing at a minimum the name, Social Security number, and license number for each participant.

(4) A participant shall receive a certificate of completion that documents the following:

(a) Name of participant;

(b) Title of course, date, and location;

(c) Provider's name; and

(d) Name and signature of authorized provider representative.

Section 4. Continued Board Approval of a SANE Course.

(1) An application for continued approval of a SANE course shall be submitted on the Application for Initial or Continued SANE Course Approval at least three (3) months prior to the end of the current approval period.

(2) A SANE course syllabus shall be submitted with the Application for Initial or Continued SANE Course Approval.

(3) Continued approval shall be based on the past approval period performance and compliance with the board standards described in this administrative regulation.

Section 5. The board may deny, revoke, or suspend the approval status of a SANE course for violation of this administrative regulation.

Section 6. Appeal. If a SANE course administrator is dissatisfied with a board decision concerning approval and wishes a review of the decision, the procedure established in this section shall be followed.

(1) A written request for the review shall be filed with the board within thirty (30) days after the date of notification of the board action which the SANE course administrator contests.

(2) The board, or its designee, shall conduct a review in which the SANE course administrator may appear in person and with counsel to present reasons why the board's decision should be set aside or modified.

Section 7. Requirements for Sexual Assault Nurse Examiner (SANE) Credential.

(1) The applicant for the SANE-A/A or SANE-P/A credential shall:

(a) Hold a current, active registered nurse license in Kentucky or a multistate licensure privilege pursuant to KRS 314.475;

(b) Have completed a board approved SANE educational course or a comparable course;

1. The board or its designee shall evaluate the applicant's course to determine its course comparability; and

2. The board or its designee shall advise an applicant if the course is not comparable and specify what additional components shall be completed to allow the applicant to be credentialed;

(c) Complete the Sexual Assault Nurse Examiner Application for Credential;

(d) Pay the fee established in 201 KAR 20:240;

(e) Provide a criminal record check by the Department of Kentucky State Police (KSP) and the Federal Bureau of Investigation (FBI);

(f) Use the FBI Applicant Fingerprint Card;

(g) Pay any required fee to the KSP and the FBI;

(h) Complete the criminal record check within six (6) months of the date of the application;

(i) Provide a certified or attested copy of the court record of any misdemeanor or felony conviction as required by 201 KAR 20:370, Section 1(3); and

(j) Provide a letter of explanation that addresses each conviction, if applicable.

(2) Upon completion of the application process, the board shall issue the appropriate SANE credential for a period ending October 31.

(3) An applicant shall not be credentialed until a report is received from the FBI pursuant to the request submitted under subsection (1)(e) of this section and any conviction is addressed by the board.

Section 8. Renewal.

(1) To renew the SANE-P/A or the SANE-A/A credential for the next period, each sexual assault nurse examiner shall complete at least five (5) contact hours of continuing education related to the role of the sexual assault nurse examiner or forensic nursing within each continuing education earning period. A provider of a board approved SANE course may offer continuing education related to the role of the sexual assault nurse examiner.

(2) Upon completion of the required continuing education, completion of the Annual Credential Renewal Application: SANE Credential with RN in Kentucky or Annual Credential Renewal Application: SANE with RN Compact License (Not Kentucky), as applicable, and payment of the fee established in 201 KAR 20:240, the appropriate SANE credential shall be renewed at the same time the registered nurse license is renewed.

(3) The five (5) contact hours may count toward the required contact hours of continuing education for renewal of the registered nurse license.

(4) Failure to meet the five (5) contact hour continuing education requirement shall cause the SANE credential to lapse.

Section 9. Reinstatement.

(1) If the SANE credential has lapsed for a period of less than four (4) consecutive registered nurse licensure periods, and the individual wants the credential reinstated, the individual shall apply to reinstate the credential by:

(a) Submitting the Sexual Assault Nurse Examiner Application for Credential;

(b) Paying the fee established in 201 KAR 20:240;

(c) Submitting evidence of earning the continuing education requirement referenced in Section 8(1) of this administrative regulation for the number of registered nurse licensure periods since the SANE credential lapsed;

(d) Providing a criminal record check by the KSP and FBI;

(e) Using the FBI Applicant Fingerprint Card;

(f) Paying any required fee to the KSP and the FBI;

(g) Completing the criminal record check within six (6) months of the date of the application;

(h) Providing a certified or attested copy of the court record of any misdemeanor or felony conviction as required by 201 KAR 20:370, Section 1(3); and

(i) Providing a letter of explanation that addresses each conviction, if applicable.

(2) An applicant shall not be credentialed until a report is received from the FBI pursuant to the request submitted under subsection (1)(d) of this section and any conviction is addressed by the board.

(3) If the SANE credential has lapsed for more than four (4) consecutive licensure periods, the nurse shall complete a SANE course prior to reinstatement.

Section 10. The board shall obtain input from the Sexual Assault Response Team Advisory Committee concerning any proposed amendment to this administrative regulation as follows:

(1) The board shall send a draft copy of any proposed amendment to the co-chairs of the Sexual Assault Response Team Advisory Committee prior to approval by the board;

(2) The board shall request that comments on the proposed amendment be forwarded to the board's designated staff person within ninety (90) days; and

(3) At the conclusion of that time period or upon receipt of comments, whichever is sooner, the board, at its next regularly[-] scheduled meeting, shall consider the comments.

Section 11. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Application for Initial or Continued SANE Course Approval", 10/2018[~~6/2014~~], Kentucky Board of Nursing;

(b) "Sexual Assault Nurse Examiner Application for Credential", 10/2018[~~8/2016~~], Kentucky Board of Nursing;

(c) "Annual Credential Renewal Application: SANE Credential with RN in Kentucky", 10/2018[~~5/2018~~], Kentucky Board of Nursing;

(d) "Annual Credential Renewal Application: SANE with RN Compact License (Not Kentucky)", 10/2018[~~5/2018~~], Kentucky Board of Nursing; and

(e) "Sexual Assault Nurse Examiner (SANE) Education Guidelines", 2015, International Association of Forensic Nurses.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222-5172, Monday through Friday, 8:00 a.m. to 4:30 p.m.

KELLY JENKINS, President

APPROVED BY AGENCY: October 18, 2018

FILED WITH LRC: October 23, 2018 at 1 p.m.

CONTACT PERSON: Megan LaFollette, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-7192, fax (502) 429-1248, email Megan.LaFollette@ky.gov.

ENERGY AND ENVIRONMENT CABINET
Office of Kentucky Nature Preserves
(As Amended at ARRS, February 11, 2019)

400 KAR 2:060. Definitions.

RELATES TO: KRS ***146.410 - 146.530***[146.425]***[~~, 146.460, 146.490~~]***

STATUTORY AUTHORITY: KRS 146.485

NECESSITY, FUNCTION, AND CONFORMITY: KRS 146.485 requires the Office of Kentucky Nature Preserves[~~Commission~~] to develop administrative regulations for the selection, acquisition, management, protection and use of natural areas and nature preserves, and for the conduct of office[~~commission~~] affairs. This administrative regulation provides for the defining of certain essential terms used in 400 KAR 2:060 through 400 KAR 2:100.

Section 1. (1) ***"Act" means the enabling legislation of the Office of Kentucky Nature Preserves, KRS 146.410 through 146.530.***

(2)[~~(2)~~] "Advisor" means any individual selected by the office[~~commission~~] to serve in an advisory capacity to the office[~~commission~~] pursuant to KRS 146.435***.***

(3)[~~(2)~~] "Articles of dedication" means the writing by which any estate, interest, or right in a natural area and[~~/or~~] buffer area is formally dedicated as provided in KRS 146.410 to 146.530;***[~~(3) "Act" means the enabling legislation of the Office of Kentucky Nature Preserves~~]***[~~Commission~~]***[~~KRS 146.410 to 146.530;~~]***

(4) "Board" means the Kentucky Heritage Land Conservation Fund Board.[~~"Commission" means the Kentucky Nature Preserves Commission~~]***[~~;~~]***

(5) "Cabinet" means the Energy and Environment [~~Environmental and Public Protection~~] Cabinet***.***

(6) "Custodian" means a person, organization, agency, or institution selected by the office to serve as the managing agent for a nature preserve.

(7)[~~(6)~~] "Director" means the executive director of the Office of Kentucky Nature Preserves***.***

(8) "Inventory of natural types, flora and fauna" means a database of flora and fauna occurring in Kentucky, and of natural types and ecological communities identified by the office to be monitored for the purpose of comply with the provisions of the Act.

(9) "Natural area" means an area of land, water, or both land and water, in public or private ownership, which either

retains or has reestablished to some degree, its natural character (though not necessarily completely) or that has natural flora, fauna, biological, ecological, geological, scenic, or archaeological features of scientific, aesthetic, cultural, or educational interest.

(10) "Nature preserve" means a natural area and land necessary for the natural area's protection, including an estate, interest, or right that has been formerly dedicated pursuant to KRS 146.410 through 146.530 to be maintained as nearly as possible in its natural condition and to be used in a manner and under limitations consistent with its continued preservation, without impairment, disturbance, or artificial development, for the public purposes of present and future scientific research, education, aesthetic enjoyment, and habitat for plant and animal species and other natural objects.

(11) "Register of natural areas" means the list of those natural areas worthy of preservation in accordance with KRS 146.460, but not available or desirable for dedication. Terrestrial natural areas are only registered with the consent of the landowner. Stream segments are registered upon determination by the office.

(12)[(7)] "Secretary" means the Secretary of the Energy and Environment[~~Environmental and Public Protection~~] Cabinet***.[;***

~~(8)~~][(7)] ["Custodian" means any person, organization, agency, or institution selected by the office][commission] [to serve as the managing agent for a nature preserve;

~~(9)~~][(8)] ["Natural area" means any area of land or water, or of both land and water, in public or private ownership, which either retains or has reestablished to some degree, in the judgment of the office[commission], its natural character, though it need not be completely natural and undisturbed, or which has natural flora, fauna, biological, ecological, geological, scenic or archaeological features of scientific, aesthetic, cultural or educational interest;

~~(10)~~][(9)] ["Nature preserve" means a natural area, and land necessary for its protection, any estate, interest or right which has been formerly dedicated under the provisions of KRS 146.410 to 146.530 to be maintained as nearly as possible in its natural condition and to be used in a manner and under limitations consistent with its continued preservation, without impairment, disturbance, or artificial development, for the public purposes of present and future scientific research, education, aesthetic enjoyment, and habitat for plant and animal species and other natural objects;

~~(11)~~][(10)] ["Inventory of natural types, flora and fauna" is a database][list] [of flora and fauna occurring in Kentucky, and of natural types and ecological communities identified by the office][commission] [to be monitored for the purpose of complying with the provisions of the Act;

~~(12)~~][(11)] ["Register of natural areas" means the list of those natural areas worthy of preservation but not available or desirable for dedication. Terrestrial natural areas may only be registered with the consent of the landowner; stream segments may be registered upon such a determination by the office][commission][.]

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: November 6, 2018

FILED WITH LRC: November 6, 2018 at noon

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

ENERGY AND ENVIRONMENT CABINET
Office of Kentucky Nature Preserves
(As Amended at ARRS, February 11, 2019)

400 KAR 2:070. The Office of Kentucky Nature Preserves [~~Commission~~].

RELATES TO: KRS 146.410,[~~146.425,~~] 146.430

STATUTORY AUTHORITY: KRS 146.425(2), 146.485

NECESSITY, FUNCTION, AND CONFORMITY: KRS 146.485 requires the Office of Kentucky Nature Preserves[~~Commission~~] to make and publish administrative regulations for the conduct of office[~~commission~~] affairs. This administrative regulation ***establishes[~~sets forth~~]*** the [~~administrative structure of the commission and~~] ***requirements[~~rules~~]*** for transacting the business of the office[~~commission~~].

Section 1.[~~Officers. (1) The officers of the commission shall be a chairman and a secretary.~~

~~(2) The chairman and secretary shall be elected annually by the commission at its first regular meeting in the calendar year.~~

~~(3) Duties of officers.~~

~~(a) The chairman shall preside at meetings of the commission. In the name of the commission, and subject to its approval, he shall sign the minutes of each meeting, certifying that the minutes have been approved by the commission to be recorded as the minutes of that meeting. On behalf of the commission, and with its consent, he shall approve and sign contracts, memoranda of agreement, Articles of Dedication, natural areas registration certificates, out-of-state travel vouchers, and such other agreements as may be entered into, and approved by, the commission, unless such authority is delegated to the secretary or director of the commission.~~

~~(b) The secretary of the commission shall perform the duties of the chairman when the chairman is unable to execute his duties due to absence or other disability. The secretary shall record the minutes of the meetings of the commission in the manner set forth in this regulation. The secretary shall sign the minutes of each meeting, to certify that they are an accurate record of the meeting and are to be recorded as the minutes of the meeting.~~

~~Section 2.~~] Director. The secretary[~~commission~~] may hire a full-time director who shall be qualified by training and experience to administer the duties of the office[~~commission~~], ***including[~~that~~]***[which]***[~~shall include the following~~]***:

(1) Employing personnel, including interim and ***grant-funded, time-limited[~~grant funded time limited~~]*** staff[~~upon the advice and consent of the commission~~];

(2) ***Approving[~~Approval, as indicated by his signature thereto, of~~]*** documents necessary to perform the administrative function of the office[~~commission~~], including***[~~, but not limited to,~~]*** time sheets, leave and compensatory time request forms, in-state travel approval, and request for purchase and payment forms;

(3) Signing***[~~of~~]*** documents requiring the signature and approval of the office[~~chairman of the commission~~] to certify that the documents have been reviewed by the office[~~commission~~] staff;

(4) Managing the day to day affairs of the office[~~commission~~]***[~~,~~]*** and its staff;

(5) Preparing a report on the condition of each nature preserve and each[~~registered~~] natural area to be submitted to the Legislative Research Commission by October 1st[~~commission at its final quarterly meeting~~] in each even numbered year; and[~~.~~]

(6)[~~Such~~] Other duties as***[~~may be~~]*** directed by the secretary.[~~commission and recorded in the minutes of its meetings~~].

~~Section 3. Meetings. (1) There shall be four (4) quarterly meetings of the commission each year. A schedule of meetings including times and places for the coming year shall be set by the commission at its last meeting of the calendar year. This schedule may be altered upon motion approved by a quorum of the commission.~~

~~(2) Special meetings of the commission may be called at such time and place as designated by the chairman or four (4) members of the commission.~~

~~(3) Notice of regular quarterly meetings of the commission shall be given to each member of the commission and advisors, in writing by mailing not less than seven (7) nor more than twenty-one (21) days prior to the meeting. The notice shall contain a date, time, and place of the meeting, and set forth the agenda of the meeting. Special meetings shall require three (3) days notice.~~

~~(4) Minutes of meetings. Minutes shall be kept of all meetings of the commission and recorded in volumes kept for that purpose~~

~~in the office of the commission.~~

~~(5) Conduct of meetings.~~

~~(a) "Robert's Rules of Order, Revised" shall govern the conduct of all meetings of the commission.~~

~~(b) The order of business at all meetings of the commission shall be as follows:~~

~~1. Roll call and establishment of a quorum, which shall consist of three (3) members of the commission;~~

~~2. Reading and disposition of the minutes of the previous meetings;~~

~~3. Report of the director;~~

~~4. Old business;~~

~~5. New business.~~]

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: November 6, 2018

FILED WITH LRC: November 6, 2018 at noon

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

ENERGY AND ENVIRONMENT CABINET
Office of Kentucky Nature Preserves
(As Amended at ARRS, February 11, 2019)

400 KAR 2:080. Dedication of nature preserves and registration of natural areas.

RELATES TO: KRS 146.410, 146.420, 146.440, 146.470, 146.490, 146.505

STATUTORY AUTHORITY: KRS 146.460, 146.465, 146.475, 146.485, 146.495

NECESSITY, FUNCTION, AND CONFORMITY: KRS 146.485 requires the office[~~commission~~] to establish ***requirements[~~rules~~]*** for the selection, acquisition, management, protection, and use of natural areas and nature preserves, and to maintain a state registry of natural areas, an inventory of natural types, flora and fauna, and other records of natural areas and nature preserves. This administrative regulation ***establishes[~~sets forth~~]*** procedures for the dedication and maintenance of nature preserves***[~~,~~]*** and the registration and maintenance of inventories relating to natural areas and nature preserves.

Section 1. Dedication of Nature Preserves. (1) Upon the determination by the director[~~of the commission~~]***, in accordance with KRS 146.485(6), (9), and (12),*** that an area constitutes a natural area worthy of protection through dedication as a nature preserve, and that the owner is willing to have the[~~his~~] land or a portion thereof dedicated as a nature preserve, the office may dedicate[~~director may recommend to the commission that~~] the natural area[~~be dedicated~~] as a nature preserve.

(2)(a) A natural area shall become a nature preserve upon signature of the director upon the[~~acceptance of~~] articles of dedication[~~by the commission~~].

(b) Articles of dedication shall be recorded in the county in which the natural area is located, the office of the secretary of state, and the office[~~of the commission~~].

Section 2. Articles of Dedication. (1) The articles of dedication shall be used***[~~as the guidelines~~]*** for the management of each nature preserve. Management, use, development***,*** and public access of each nature preserve shall be in accordance with the provisions set forth in the articles of dedication.

(2) The articles of dedication may contain restrictions relating to management, use, development, transfer, and public access, as well as[~~such~~] other provisions as***[~~may be~~]*** necessary to further the purposes of the Act.

(3) Articles of dedication may vary in provisions from one (1) nature preserve to another in accordance with differences in the characteristics and conditions of the area involved, or for other reasons found necessary by the ***office[~~commission~~]*** and the landowner, grantor, devisor, or donor.[~~(4) Before the Commonwealth of Kentucky, through the commission, acquires a nature preserve, it shall be the responsibility of the director to propose to the commission provisions for incorporation into the articles of dedication.~~]

Section 3. Amendment of Articles of Dedication. (1) Articles of dedication may be amended by the office[~~commission~~] upon a finding[~~by the commission~~] that the[~~such~~] amendment ***shall[~~will~~]*** not permit an impairment, disturbance, use***,*** or development of the nature preserve inconsistent with the purposes for which the area was dedicated or inconsistent with the Act. ***An[~~No~~]*** amendment to articles of dedication shall ***not*** be made without the written approval of the Kentucky Heritage Land Conservation Fund Board ***in accordance with KRS 146.570(3)***.

(2) If fee simple ownership is not held by the Commonwealth of Kentucky, ***an[~~no~~]*** amendment to the articles of dedication shall ***not*** be made without the written consent of the owner of other interests therein.

(3) Findings and determinations of the office[~~commission~~] to amend articles of dedication ***shall[~~may~~]*** be set forth in the minutes of the board [~~commission~~].

Section 4. Buffer Areas. (1) For the purpose of protecting a nature preserve, adjoining land that is not otherwise suitable for dedication as part of the nature preserve may be dedicated as a buffer area in the same manner as a nature preserve.

(2) The articles of dedication may contain provisions for the management, use, development, and public access of the buffer area that differ from those for the adjacent nature preserve.

Section 5. Registration of Natural Areas. (1) Upon the determination by the director[~~of the commission~~]***, in accordance with KRS 146.485(6), (9), and (12),*** that an area constitutes a natural area worthy of preservation, which is not otherwise available for dedication,[~~the director may recommend to the commission that~~] the area shall be entered into the register of natural areas.

(2) An[~~No~~] area shall not be registered without the consent of the landowner or managing public agency.

(a) The[~~Such~~] consent may include an agreement by the landowner to give notice to the office[~~commission~~] of any change in ownership, allow limited public access, or include voluntary management agreements designed to protect the natural features of the area.

(b) Upon request of the landowner or managing public agency the location of registered areas shall be kept confidential and not released as a public record of the office[~~commission~~]. Specific information as to the location of the registered natural area also may, upon determination by the office[~~commission~~], be restricted so as to assure protection of the natural features and limit uncontrolled visitation.

(3) Registration[~~by the commission~~] of certain natural areas, where no landowner or managing public agency can give consent, involving stream segments deemed waters of the Commonwealth, ***as defined by KRS 224.1-010(32),*** shall be by determination of the office[~~commission~~].

(4) Natural areas owned in fee simple by the office, but not dedicated as a nature preserve, shall be managed under a management plan in accordance with 418 KAR 1:060 and this chapter.

Section 6. Identification of Natural Areas.[~~(1)~~] For the purposes of identifying natural areas for potential conservation[~~protection as nature preserves areas~~], the office shall[~~commission may~~] develop, maintain, and periodically update an inventory database of natural types, ecological communities, flora and fauna. The office[~~commission~~] shall use the inventory database, and the best available scientific information, to identify species and ecological communities[~~of animals and plants~~] to be monitored by the office[~~commission~~]. This inventory database and all relevant scientific data collected by the office or other from research, studies, inventories, management plans, permits, or other means shall be incorporated into a central clearinghouse database

pursuant to KRS 146.485.[~~(2) The commission may develop, maintain, and update a list of natural areas which warrant protection through dedication as a nature preserve or registration as a natural area.~~]

Section 7. Selection of Custodian. (1) ***If[When]*** the ***office[commission]*** has acquired an interest less than fee simple in a nature preserve, the selection of a custodian may be made by the owner of the other interest therein***, in accordance with 400 KAR Chapters 2 through 4[subject to the rules and administrative regulations of the office][commission]*** and the articles of dedication for the nature preserve. Otherwise the ***office[commission]*** shall determine the custodian, if any ***in accordance with KRS 146.485(6), (9), and (12)***.

(a) The custodian shall demonstrate to the ***office[commission]*** the ability to administer the nature preserve in accordance with the articles of dedication and ***400 KAR Chapters 2 through 4[these administrative regulations]***.

(b) The ***office[commission]*** shall act as custodian of a nature preserve until such time as a custodian is approved, or if the custodian fails to administer a nature preserve in accordance with the articles of dedication and ***400 KAR Chapters 2 through 4[these administrative regulations]***.

(2) ***If[When]*** the ***office[commission]*** has acquired a fee simple interest in a nature preserve, the ***office[commission]*** may select a custodian.

(a) The ***office[commission]*** shall publish notice of its intent to select a custodian in the county***[,]*** or counties, in which the preserve is located, and for the state at large.

(b) The notice shall state:

1. The location of the nature preserve;[.]

2. Where the articles of dedication are recorded;[.]

3. That a written proposal ***shall[is to]*** be submitted to the ***office[commission]***;[.]

4. The date by which the proposal shall be submitted; and[.]

5. The address to which the proposal shall be submitted.

(c) The date by which the written proposal ***shall[is to]*** be submitted to the ***office[commission]*** shall be not less than sixty (60) days after the date of publication of the notice.

(d) A hearing shall be conducted for the purpose of selecting a custodian pursuant to the provisions of 400 KAR 2:100.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: November 6, 2018

FILED WITH LRC: November 6, 2018 at noon

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

ENERGY AND ENVIRONMENT CABINET
Office of Kentucky Nature Preserves
(As Amended at ARRS, February 11, 2019)

400 KAR 2:090. Management, use, and protection of nature preserves and natural areas.

RELATES TO: KRS 146.410, 146.440***, 149.175***

STATUTORY AUTHORITY: KRS 146.465, 146.475, 146.485

NECESSITY, FUNCTION, AND CONFORMITY: KRS 146.485(2) authorizes the commission to promulgate administrative regulations for the management, use, and protection of nature preserves. KRS 146.465 authorizes the commission to acquire natural areas for the purpose of dedicating the areas as nature preserves. KRS 146.475 requires that a nature preserve shall be subject to administrative regulations promulgated by the commission. This administrative regulation establishes the requirements for the management and use of all nature preserves and to fulfill the purposes of KRS 146.440.

Section 1. Applicability. This administrative regulation shall apply to a nature preserve unless a specific exception is set forth in the articles of dedication. The reasons for any exception shall be set forth in the records of the office[~~commission~~]. This administrative regulation shall also apply to undedicated natural areas protected by the office unless a specific exception is set forth in the management plan or ***an administrative[a specific exception is set forth in]*** regulation.

Section 2. Boundary Markers.

(1)[~~Nature preserve~~] Boundaries shall be made evident by posting boundary markers in a conspicuous manner.

(2) If a boundary fence or barrier is installed, it shall not be in a form that will create a detrimental effect on the movement of wildlife or other natural objects.

Section 3. Encroachments. There shall not be encroachments of structures, easements, rights-of-way, or land uses that do not conform to this administrative regulation and with the purposes and definition of a nature preserve or natural area as ***established[specified]*** in KRS 146.410 to 146.530, except as allowed by the nature preserves articles of dedication or natural area management plan.

Section 4. Emergency Situations.

(1) An emergency situation shall be reported immediately to the office[~~director of the commission~~].

(2) An emergency situation that requires immediate action to prevent injury to persons or damage to property shall be handled in a manner that minimizes damage to natural conditions.

Section 5. Internal Access Lanes. (1) An internal vehicular access lane shall be installed and maintained[~~within a nature preserve~~] only where essential for patrol, fire control, management, or research activities and shall be in accordance with the[~~preserve~~] management plan.

(2) An internal vehicular access lane shall:

(a) Be limited to service vehicles or, in an emergency situation, rescue vehicles; and

(b) Provide a single track not to exceed ten (10) feet in width.

Section 6. Fire Control. (1) If a[~~boundary~~] firebreak is needed, it shall be constructed in a buffer area[~~outside the nature preserve~~] if possible.

(a) A firebreak[~~within a nature preserve~~] shall be kept to a minimum and shall be constructed only in accordance with the[~~preserve fire~~] management plan and prescribed fire plan.

(b) A temporary firebreak made by mowing, raking, blowing, wetting, or black lining may be used in conjunction with a prescribed[~~managed~~] burn.

(2)(a) A wildfire shall be brought under control as quickly as possible if there is imminent danger to lives or adjacent property.

(b) Fire lines on nature preserves shall be constructed with hand tools or mowing equipment rather than heavy equipment, to minimize damage to the preserve.

(c) If there is no danger to lives or adjacent property and the fire can be contained at the [~~preserve~~] boundary, the office[~~commission~~] may assess the benefit of allowing a wildfire to burn and shall inform the entity having fire suppression responsibility of its decision to suppress a wildfire or to allow it to burn.

(d) There shall not be any cleanup, fire hazard reduction, or replanting after a fire within a nature preserve, except with the written approval of the office[~~commission~~]. Approval shall be based upon health and safety considerations or the need for habitat restoration.

(3) If undertaken, prescribed burning shall be conducted in accordance with a prescribed fire plan prepared for each burn unit, approved by the executive director, and in accordance with the[~~preserve~~] management plan. Prescribed burn plans shall be to current Kentucky Prescribed Fire Council Standards pursuant to KRS 149.175. Prescribed burn lines may be constructed with heavy equipment only if required for habitat restoration implementation under the management plan.

(4) During a prescribed burn:

(a) Fire shall be kept away from fences and other structures

that ***could[~~may~~]*** be damaged;

(b) Burning shall not be done under conditions more hazardous than specified in the prescribed burn plan;

(c) Firefighting chemicals that are known to cause damage to or alter a natural condition shall not be used; and

(d) The use of a vehicle or equipment shall:

1. Be specified in the prescribed burn plan; and

2. Not cause permanent damage or alteration to the natural features of a[~~the~~] nature preserve.

Section 7. Trails. (1) A trail system shall conform to the objectives of the nature preserve or natural area. A trail shall:

(a) Be designed to affect only part of the property[~~nature preserve~~] and to have minimal impact on natural features; and

(b) Not have a significant impact on animals or plants monitored by the office[~~commission~~] or on archaeological resources located within the property[~~preserve~~].

(2) Location and form of a trail other than a natural wildlife path shall be approved or denied by the office[~~commission~~], in accordance with the[~~preserve~~] management plan.

(3) A trail shall be kept to a single file width sufficient to allow one (1) person to pass another but not wide enough to allow two ***(2)*** or more people to walk abreast of one another and shall be adequate to provide for permitted use of a nature preserve and to prevent erosion, trampling of vegetation, and other deterioration***.[;]***[~~.~~"]A wider trail may be constructed ***if[~~when~~]*** the surrounding vegetation type, such as grasslands would require excessive maintenance to keep the trail open, or a wider preexisting path was established prior to designation as a nature preserve or natural area. These wider trails[~~and~~] shall be specified in the nature preserve management plan.["]

(4) Trail construction.

(a) Use of paving materials, footbridges, or elevated walks ***shall be[~~is~~]*** permissible if provided for in the trail plan section of the[~~preserve~~] management plan, but shall be kept to a minimum in order to limit damage[~~to the preserve~~].

(b) Synthetic materials, painted or chemically treated wood, or stone or earth materials from outside the property[~~nature preserve~~] shall not be used in trail construction unless specified in the [~~preserve~~] management plan.

(5) Animals or plants monitored by the office[~~commission~~] shall not be removed, damaged, or altered in trail construction or maintenance.

Section 8. Other Structures and Improvements.

(1) Necessary signs, information kiosks, trash receptacles, and minor structures required to house research instruments or hand tools shall be permitted within a nature preserve or natural area if specifically required in the[~~preserve~~] management plan or permitted by the office[~~commission~~] for[~~research~~] activities consistent with KRS 146.200 ***through[~~to~~]*** 146.619.

(2) Any other structure in a dedicated nature preserve shall be located in a service area.

(3) Any sign or structure shall be approved or denied by the office[~~commission~~], in accordance with the[~~preserve~~] management plan.

Section 9. Service Areas. Service areas may be established within a nature preserve to provide access and parking, management facilities, and visitor facilities. Provision for a necessary service area may be included in the articles of dedication or after a finding by the office[~~commission~~] that the designation is warranted and in accordance with the articles of dedication.

Section 10. Scenic and Landscape Management.

(1) Measures shall not be taken to alter natural growth or features for the purpose of enhancing the beauty, neatness, or amenities of a nature preserve, except as established in this section and Sections 2, 5, and 7 through 9 of this administrative regulation. Cutting of grass, brush, or other vegetation, thinning of trees, removal of dead wood, opening of scenic vistas, or planting shall not be performed except after a finding by the office [~~commission~~] that the action does not irreparably harm the preserve and is in accordance with the[~~preserve~~] management plan.

(2) Installation of guard rails, fences, steps, and other devices necessary for visitor safety shall conform to the[~~preserve~~] management plan. Dead trees or branches that constitute a safety hazard to persons on trails or in other authorized use areas may be felled or cleared.

(3) Except as provided in[~~the~~] articles of dedication or as approved by the office[~~commission~~], there shall not be any removal, introduction or consumptive use of any material, product, or object from a nature preserve, except as established in this administrative regulation. The following activities shall be prohibited on dedicated nature preserves:

(a) Grazing by domestic animals;

(b) Farming;

(c) Gathering of firewood;

(d) Gathering of plant or mushroom products;

(e) Mining, quarrying or mineral extraction, ***or*** fossil or rock collection;

(f) Dumping, burying***,*** or spreading of garbage, trash***,*** or other materials;

(g) Logging; and

(h) Any other human activity that results in damage to or loss of natural features of the preserve.

(4) An artifact on a nature preserve shall only be removed or demolished as follows:

(a) An old interior fence may be removed. Prior to removal, its location shall be mapped, leaving posts to mark boundaries between former land uses; and

(b) Rubbish may be removed.

(5) Structures lacking utilitarian, historical, scientific, or habitat value may be demolished or removed.

Section 11. Water Level Control. Natural water levels shall not be altered on nature preserves. Natural water levels on natural areas may be altered only if the office determines it is needed for habitat restoration to benefit monitored species or ecological communities and is part of the management plan. Water levels that have been altered by humans may be changed if identified as being essential for the maintenance or restoration of natural conditions.

Section 12. Erosion Control. Erosion and soil deposition due to past or present disturbance by humans or natural conditions within or outside of a nature preserve may be controlled as needed for the maintenance or restoration of natural conditions.

Section 13. Management of Animals and Plants.

(1) Control of plant succession.

(a) Control of plant succession by deliberate manipulation may be undertaken if preservation or restoration of a particular vegetation type or preservation of animals or plants monitored by the office[~~commission~~] is designated an objective of the nature preserve or natural area by the office[~~commission~~].

(b) If undertaken, plant succession control measures shall be undertaken as ***established[~~outlined~~]*** in the[~~preserve~~] management plan to ***comply with[~~meet~~]*** objectives referenced in ***paragraph (a) of this subsection[~~Section 13(a) of this administrative regulation~~]***.

(c) Vegetation may be managed. If managed, the***[~~following~~]*** limitations ***established in subparagraphs 1. through 3. of this paragraph*** shall apply***.[;]***

1. Plant species not native to the site or vicinity may be eliminated by cutting, girdling, grubbing, cut stump, or basal or foliar application of specified herbicide***.[;]***

2. The time of burning during the year, the frequency of burning, and the fractional amount of the area that may be burned each year shall be specified***.[~~; and~~]***

3. Invading native woody species may be eliminated or controlled by cutting, girdling, grubbing, cut stump, or basal or foliar application of specified herbicide.

(d) The use of herbicides shall be specified in the management plan for each nature preserve natural area.

(2) Control of noxious species.

(a) Plants or animals that are determined by the office***, in accordance with KRS 146.485(6), (9), and (12),*** to be noxious in fact shall be controlled only if they are documented as jeopardizing populations of plants and animals or the natural integrity[~~of the nature preserve~~].

(b) Except for removal from a trail, access lane, or firebreak as authorized by this administrative regulation, there shall not be any control of a native plant that is not noxious but ***could[~~may~~]*** otherwise appear undesirable.

(c) There shall not be any control of native predators, rodents, insects, snakes, or other animals, even though they ***could[~~may~~]*** appear harmful or undesirable, unless they are documented as jeopardizing populations of native plants or animals, or the natural integrity[~~of the nature preserve~~].

(d) There shall not be any use of a pesticide except as authorized in the[~~preserve~~] management plan.

(3) Control of exotic species.

(a) Control of exotic plants or animals may be undertaken. If control of exotic plants is undertaken, it shall be done in accordance with ***subsection (1)(c) of this section[~~Section 13(1)(c) of this administrative regulation~~]***.

(b) If control of exotic animals is undertaken it shall be done in accordance with ***subsection (2) of this section[~~Section 13(2) of this administrative regulation~~]***.

(4) Any measure for population control of any species shall be established in the preserve management plan.

(5) Management of plants or animals monitored by the office[~~commission~~] and species of management concern.

(a) Habitat manipulations and protective measures in favor of particular species shall be undertaken only as approved by the office [~~commission~~]. Approval shall be based upon a finding by the office [~~commission~~] that describes the proposed activities and addresses species life history, habitat requirements of the species, characteristics and objectives of the preserve**,** and other relevant information.

(b) Control of plant succession in favor of particular species shall be as ***established[~~provided~~]*** in this administrative regulation.

(6) Introduction of plants and animals. Plants, animals, or their reproductive bodies shall not be brought into a nature preserve or moved from one (1) place to another within a preserve except with approval of the office[~~commission~~]. Approval shall be based upon scientific evidence documenting the species' historical occurrence in the ecosystem[~~on the preserve~~]. Restoration shall be performed with caution and based on a finding that the actions shall not adversely affect natural conditions on the nature preserve. Habitat or species restoration on undedicated natural areas shall conform to the management plan.

Section 14. Use Tolerance.

(1) Human use of a nature preserve or natural area shall be allowed only to the extent and in a manner that shall not impair natural conditions.

(2) The articles of dedication or management plan may specify the controls and restrictions to be placed on access and use.

(3) The office[~~commission~~] as owner, or the landowner and the office[~~commission~~] upon agreement, may further restrict access and use as necessary to protect the nature preserve or natural area.

Section 15. Character of Visitor Activity.

(1) Visitor activity shall be regulated to prevent disturbance of a nature preserve or natural area beyond what it can tolerate without permanent deterioration. A visitor without a permit for research or educational activities shall be restricted to trails and areas open to off-trail use and may be otherwise restricted in movement. A person wishing to traverse a nature preserve or natural area elsewhere than on a trail or other area open to visitation shall obtain permission from the office[~~commission~~].

(2) Public use shall be in accordance with the articles of dedication of a nature[~~the~~] preserve or management plan of a natural area.

(3) Hunting, fishing, and trapping on a nature preserve shall not be allowed unless provided for in the articles of dedication for the nature preserve and shall be subject to 400 KAR Chapter 2. The office[~~commission~~] may approve hunting, fishing, trapping**,** or other control methods if necessary to ensure that the preserve is protected from a documented imbalance of species or impending animal disease. Hunting, fishing, and trapping on a natural area shall not be allowed unless provided for in the management plan and shall be subject to ***401 KAR Chapter 2[~~the administrative regulations in this chapter~~].***

(4) ***Except for a service animal,*** a visitor shall not bring an animal into a nature preserve***[~~, except for a service animal~~]***. A visitor shall not bring an animal into a natural area, except for a service animal, unless approved in the management plan.

(5) A visitor carrying a deadly weapon on a nature preserve or natural area shall not discharge the weapon unless it is necessary for either self-defense or[~~hunting if the visitor has previously obtained permission from the commission to hunt on the nature preserve or~~] hunting is provided for in the management plan, articles of dedication**,** if any, and in accordance with this ***administrative*** regulation.

(6) A nature preserve or natural area that is open to visitors shall be open sunrise to sunset.

(7) Trails shall be open to foot traffic only. Travel on horse, bicycle, or motorized vehicle shall be prohibited at all times.

(8) Rock climbing and rappelling shall be prohibited at all times.

(9) Possessing or using non-prescription drugs or alcohol shall be prohibited at all times.

(10) Camping, picnicking, building fires, using audio equipment (except if part of research approved by the office[~~commission~~]) ***in accordance with KRS 146.570(3)*** shall be prohibited at all times on nature preserves and prohibited on natural areas unless approved in the management plan.

(11) Collecting plants, fungi, animals, minerals, rocks, wood**,** or artifacts shall be prohibited at all times except for approved scientific studies in accordance with Section 19 of this administrative regulation.

Section 16. Access Control.

(1) Ingress and egress shall be allowed only at locations and under conditions as may be specified by the office[~~commission~~] in the[~~preserve~~] management plan.

(2) The owner, custodian, and office[~~commission~~] have the authority to further limit access as may be necessary for protection and proper management[~~of the nature preserve~~].

Section 17. Orientation and Guidance of Visitors. Orientation and guidance of visitors shall be in accordance with the articles of dedication or management plan, and as approved by the office[~~commission~~]. Interpretive signs, structures or labels shall be of uniform appearance.

Section 18. Permission for Research, Group, or Educational Activities. (1) A person wishing to engage in research, group, or educational activities on a nature preserve or natural area shall secure prior permission of the office[~~commission~~]. If the activities are to be carried on by a group, permission may be issued to the group leader who shall be responsible for the actions of the group. Permission or denial shall be based upon information provided in the application for permission, the purpose stated for the research, and an assessment of any damage that ***could[~~may~~]*** result from the activity.

(2) A permit[~~Permission~~] shall be required for educational, research, or group use of a nature preserve or natural area[~~only~~] if activities include collecting or activities other than walking and observation or if the preserve is not open to the public or if the group is larger than ten (10) individuals.

(3)(a) The application for a permit[~~permission~~] shall be on Natural Areas/Nature Preserves User Permit Application, KNP01 or Research Permit Application, KNP02[~~a form prescribed by the commission~~] and shall include the:

1. Name of the applicant;

2. Mailing address and electronic mailing address of the applicant;

3. Occupation of the applicant;

4. Professional qualifications of the applicant;
5. General field of interest of the applicant; and
6. Description of the applicant's proposed activities, including the:
a. Objectives, methods, and procedures to be followed;
b. Records to be kept;
c. Location and duration of the project areas to be visited;
d. Frequency and length of visits; and
e. Detailed description of disturbances to be made [~~to the preserve~~].
(b) Information shall be provided on the:
1. Species or objects to be taken;
2. Number of specimens;
3. Method of taking; and
4. Disposition of specimens.
(c) The office[~~commission~~] shall provide permit[~~permission~~] application forms to persons requesting them.
(4)(a) The approved permit[~~permission~~] may contain specific provisions and restrictions.
(b) The permit[~~permission~~] may be modified, suspended, or revoked by the office[~~commission~~] for violations of the conditions of the permit[~~permission~~], this section, or based upon a determination of the office[~~commission~~] that the activity jeopardizes the nature preserve or natural area.
(c) Each holder of a permit[~~permission~~] shall submit to the office[~~commission~~] an annual report or progress report as directed in the permit.
(d) A permit[~~permission~~] for an activity of no more than the calendar year expires on December 31 of that year. A permit[~~permission~~] for an activity of longer than one (1) year may be extended annually upon submission of an annual report and request for an extension.
(e) A final report with results, including data collected in a format supplied by the office, shall be submitted at the conclusion of the research. This data may be incorporated by the office into a research clearinghouse and inventory database in accordance with KRS 146.485 and 400 KAR 2:080 Section 6.

Section 19. Collecting on Nature Preserves or Natural Area.
(1) A person wishing to collect a scientific specimen for deposition in a permanent institutional collection available to the public or for purposes of an approved research project shall do so pursuant to terms of permission as ***established[~~specified~~]*** in this administrative regulation.
(2) Permission may restrict the collecting of certain species or specimens. Material for classroom laboratory observation or study shall not be collected. Exceptions may be provided in the articles of dedication of the nature preserve, or as set forth in the [~~preserve~~] management plan.

Section 20. Record.
(1) A record shall be kept for each nature preserve and natural area.
(2) One (1) copy of the record required by subsection (1) of this section shall be held by the office[~~commission~~] at its Frankfort location[~~office~~].
(3) The record shall include[~~annual~~] reports from[~~of~~] the custodian and all other pertinent documentary material, studies, reports, and descriptions of significant events.
(4) Responsibility for assembling the record shall be with the office[~~commission director~~], in conjunction with any[~~the~~] custodian of a[~~the~~] nature preserve.

Section 21. Management Plan. Each nature preserve and natural area shall be managed in strict accordance with the most recent[~~approved~~] management plan in compliance with the requirements of KRS 146.200 ***through[~~to~~]*** 146.619, articles of dedication if any, and this chapter that sets forth the allowable activities to take place on the nature preserve or natural area as related to:
(1) Natural community and rare species protection;
(2) Resource restoration and enhancement;
(3) Archeological and historical resource protection;
(4) Staffing;
(5) Security;
(6) Safety;
(7) Public access and interpretation;
(8) Maintenance of the nature preserve or natural area;
(9) Coordination of management activities with adjacent landowners and other federal and state resource protection agencies; and
(10) Research and education.

Section 22. Incorporation by Reference.
(1) The following material is incorporated by reference:
(a) Natural Areas/Nature Preserves User Permit Application, KNP01, July 2018["~~Collecting/Access Permit Application for Kentucky State Nature Preserves," October 2011~~]; and
(b) Research Permit Application, KNP02, July 2018["~~Research Permit Application for Kentucky State Nature Preserves," October 2011~~].
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Kentucky[~~State~~] Nature Preserves 300 Sower Boulevard[~~Commission, 801 Schenkel Lane~~], Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m.

CHARLES G. SNAVELY, Secretary
APPROVED BY AGENCY: November 6, 2018
FILED WITH LRC: November 6, 2018 at noon
CONTACT PERSON: Michael Mullins, Regulation Coordinator, 300 Sower Blvd, Frankfort, Kentucky 40601, phone (502) 782-6720, fax (502) 564-4245, email michael.mullins@ky.gov.

ENERGY AND ENVIRONMENT CABINET
Office of Kentucky Nature Preserves
(As Amended at ARRS, February 11, 2019)

400 KAR 2:100. Hearings and appeals.

RELATES TO: KRS 146.465, 146.480, 146.495, Chapter 424
STATUTORY AUTHORITY: KRS 146.475, 146.485, 146.530
NECESSITY, FUNCTION, AND CONFORMITY: KRS 146.475 and 146.485 require the office[~~commission~~] to establish ***administrative regulations[~~rules~~]*** for the protection of nature preserves. KRS 146.530 requires the office[~~commission~~] to establish a procedure ***for[~~whereby~~]*** orders and final determinations of the office[~~commission~~] ***to[~~may~~]*** be appealed administratively. This administrative regulation ***establishes[~~sets forth~~]*** the procedure to be followed by the office[~~commission~~] in conducting hearings on issues related to nature preserves.

Section 1. Applicability. The office may conduct a public hearing for any reason, including ***determining[~~the following purposes~~]***[~~This administrative regulation shall apply to hearings conducted by the commission including the following purposes~~]:
(1) ***If[~~Determining whether~~]*** there exists an imperative and unavoidable public necessity that justifies the taking of a nature preserve or natural area, or any part thereof, by another public body, or disposition of a nature preserve or natural area or any part thereof by the office[~~commission~~]***;[~~.~~]***
(2) ***If[~~Determining whether~~]*** proposed amendments to the articles of dedication of a nature preserve will not permit an impairment, disturbance, use, or development of the nature preserve that is inconsistent with the articles of dedication or the Act***;[~~.~~]***
(3) ***If[~~Determining whether~~]*** differences exist in the characteristics and conditions of a proposed nature preserve, or other reasons, that justify making an exception in the articles of dedication to the requirements of these administrative regulations***; and[~~.~~]***
(4) ***[~~Determining~~]*** The custodian of a nature preserve or natural area ***if[~~when~~]*** the property[~~nature preserve~~] is owned by the office[~~commission~~] in fee simple.

Section 2. Notice of Public Hearings. Notice of public hearing shall be given by the office in accordance with KRS Chapter 424.

(1) The notice shall:

(a) State the time, place, and purpose of the public hearing; ***and***

(b) Be published***:***

1. Not less than seven (7) nor more than twenty-one (21) days prior to the public hearing; or

2.[(c) Be published] In the county***[,]*** or counties, in which the nature preserve or natural area is located, and for the state at large.

(2) The notice may:

(a) Be published more than once[~~as directed by the commission~~];

(b) ***State[Set forth]*** the address to which written comments on the purpose of the public hearing may be submitted***[,]*** and the date by which those written comments shall be submitted.

Section 3. Public Hearings.

(1) The public hearing shall be conducted in accordance with paragraphs (a) through (e) of this subsection.[~~the following manner:~~]

(a) The public hearing shall be held at a time and place to be set by the office[~~commission and may be held in conjunction with a regular meeting of the commission~~].

(b) Any interested person may appear at the public hearing and make an oral or written presentation regarding the purpose of the public hearing. The office[~~commission~~] may regulate the length, order, and excessive repetition of oral presentations.

(c) The director may make a presentation and recommendation for action to the office[~~commission~~] at the hearing.

(d) The office[~~commission~~] shall consider all written and oral presentations in making its determination.

(e) The office[~~commission, through the chairman~~]***[,]*** shall issue a final determination within sixty (60) days of the public hearing. The determination shall set forth the findings of the office [~~commission~~] in reaching its determination.

(2)[~~(a) The final determination of the commission shall be submitted to the secretary of the cabinet for the secretary's approval within five (5) days of its issuance.~~

~~(b)~~] Copies of the final determination shall be sent to any person who made a written or oral presentation at the public hearing[~~to the commission~~] and any other person who makes a request in writing to the office[~~commission~~] for a copy.

Section 4. Appeals. (1) Any person who participated in the public hearing and considers himself aggrieved by the determination made by the office may file, in accordance with 400 KAR Chapter 1, a petition alleging that the determination is contrary to law or fact and is injurious to him or her, the grounds and reasons therefor, and demand a hearing. Unless the ***petition is[cabinet considers the petition to be]*** frivolous, it shall serve written notice of the petition on each person named therein and shall schedule a hearing before the cabinet not less than twenty-one (21) days after the date of the notice unless the person complained against waives in writing the twenty-one (21) day period. The right to demand a hearing pursuant to this section shall be limited to a period of thirty (30) days after the petitioner has had actual notice of the determination complained of, or could reasonably have had notice.

(2)(a) All hearings, other than conferences, under this chapter shall be held before a hearing officer, duly qualified to practice law in the Commonwealth of Kentucky, who may be:

1. A full-time employee of the cabinet;

2. Serve by contract; or

3. ***[Be]*** Paid on a per diem basis***[in the discretion of the cabinet]***.

(b) After the conclusion of the hearing, the hearing officer shall within thirty (30) days make to the secretary a report and recommended order that shall contain a finding of fact and a conclusion of law. If the secretary finds upon written request of the hearing officer that additional time is needed, the secretary may grant an extension. The hearing officer shall serve a copy of ***the[his]*** report and recommended order upon all parties of record and their attorney of record to the proceeding, and ***the parties[they]*** shall be granted the right to file exceptions thereto within fourteen (14) days of service.

(c) Any party may submit a written response to exceptions within twenty-one (21) days of service of the report and recommended order. Exceptions and responses not timely filed shall be noted and made a part of the record but shall not be considered by the secretary in making a final order.

(d) The secretary shall consider the report, exceptions, and recommended order and decide the case. The secretary may designate a deputy to sign any or all final orders of the cabinet, whether ***or not*** the orders are the result of hearing or agreement. The decision shall be served by mail upon all parties and their attorney of record, as well as all parties under ***Section [subsection]*** 3(2) of this ***administrative regulation[section]***, and shall be a final order of the cabinet.

(3) Any party to a hearing under this subsection may:

1. Be represented by counsel;

2. Make oral or written argument;

3. Offer testimony;

4. Cross-examine witnesses; or

5. Take any combination of these actions.

(4) The record of the hearing shall be open to public inspection, and copies thereof shall be made available to any person upon payment of the actual cost of reproducing the original.[~~Any final determination of the commission may be appealed to the secretary of the cabinet.~~

~~(2) The appeal shall be taken by filing with the secretary of the cabinet exceptions to the final determination of the commission within fifteen (15) days of its issuance. The exceptions shall state specifically the grounds relied upon by the appellant.~~

~~(3)~~]

(4) The hearing office shall recommend that the secretary[~~shall~~] approve the final determination of the office[~~commission~~] unless, based upon the findings set forth in the final determination or any exceptions thereto, the secretary finds:

(a) There is no imperative and unavoidable public necessity due to the existence of a viable alternative to the proposed granting or disposition of a nature preserve, or natural area, or any part thereof;

(b) The determination of the office[~~commission~~] is inconsistent with the articles of dedication or the Act; or

(c) The office[~~commission~~] acted without or in excess of its power.[~~(4) The secretary shall, within forty-five (45) days, approve the final determination of the commission, or notify the commission in writing of the secretary's refusal to approve the final determination and set forth the reasons therefor. Failure of the secretary to so act shall constitute approval of the commission's action.~~

~~(5) Notice of the secretary's approval or disapproval shall be sent to all persons as provided for in Section 3(2) of this administrative regulation.~~]

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: November 6, 2018

FILED WITH LRC: November 6, 2018 at noon

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

ENERGY AND ENVIRONMENT CABINET
Office of Kentucky Nature Preserves
(As Amended at ARRS, February 11, 2019)

400 KAR 3:020. Criteria for identifying and designating endangered or threatened species of plants.

RELATES TO: KRS 146.485, 146.610, 50 C.F.R. 17.12, 23.23

STATUTORY AUTHORITY: KRS 146.485, 146.610

NECESSITY, FUNCTION, AND CONFORMITY: KRS 146.610(2)(a) and (b) authorizes the Office of Kentucky Nature Preserves[~~Kentucky State Nature Preserves Commission~~] to promulgate administrative regulations for the identification and designation of state threatened or endangered plant species. This

administrative regulation establishes the requirements for identifying and designating threatened or endangered plants.

Section 1.***[In addition to the factors established in KRS 146.610(2)(a),]*** The office[commission] shall utilize the[following] criteria in subsections (1) through (3) of this section in its identification and designation of additional species ***pursuant to KRS 146.610(2)(b)***:

(1) Only species that have been described and named in a refereed professional scientific journal and determined by the office to be widely accepted among professional botanists shall be considered;

(2) Hybrids shall not be listed unless they are known to be naturally reproducing; and

(3) Only plant species native to Kentucky shall be considered.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: November 6, 2018

FILED WITH LRC: November 6, 2018 at noon

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

ENERGY AND ENVIRONMENT CABINET
Office of Kentucky Nature Preserves
(As Amended at ARRS, February 11, 2019)

400 KAR 3:030. Procedures for inclusion, removal, or change of status of plant species on the state endangered or threatened list.

RELATES TO: KRS 146.485, 146.610

STATUTORY AUTHORITY: KRS 146.485, 146.610

NECESSITY, FUNCTION, AND CONFORMITY: KRS 146.610 authorizes the Office of Kentucky Nature Preserves[Kentucky State Nature Preserves Commission] to promulgate administrative regulations for the identification and designation of state threatened and endangered plant species. This administrative regulation establishes procedures for nomination and inclusion of plant species to these lists.

Section 1. Candidate Nomination.

(1) Any person may nominate a candidate for inclusion, removal, or change of status on the state endangered or threatened list.

(2) The nomination shall be in writing and[shall be] submitted to the Director of the office, 300 Sower Boulevard[Kentucky State Nature Preserves Commission, 801 Schenkel Lane], Frankfort, Kentucky 40601.

(3) Prior to consideration for inclusion on a list, a candidate shall be established as occurring in the state by a voucher specimen deposited in a public herbarium or photographic documentation that has been confirmed by the office[a botanical authority on this plant], and accompanied by:

(a) Written documentation as to the specific location of the collection site;[,]

(b) Date of collection;[,] ***and***

(c) Description of the habitat and population size.

(4) The office[commission] may consult with the Kentucky Academy of Science and other experts regarding the status of listed and candidate plant species.

Section 2. Consideration of Candidate.

(1) If the requirements of Section 1 of this administrative regulation have been satisfied, the office[commission] shall, utilizing the factors ***established[set forth]*** in KRS 146.610(2)(a) and the criteria ***established[set forth]*** in 400 KAR 3:020, Section 1[3], consider the candidate for inclusion, removal, or change of status on the state endangered or threatened list.

(2) The office[commission] may conduct its own investigation as to the status of the candidate.

(3) The office***:***

(a) Shall[commission may] place a candidate into a category***:***

1. For which it is nominated***; or***

2.[, a category] Other than the one (1) for which it has been nominated***;*** or

(b) May decline to place the candidate on any list.

(4) The office[commission] shall notify the person who nominated the candidate of the office's[commission's] decision on the listing of the species.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: November 6, 2018

FILED WITH LRC: November 6, 2018 at noon

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

ENERGY AND ENVIRONMENT CABINET
Office of Kentucky Nature Preserves
(As Amended at ARRS, February 11, 2019)

400 KAR 3:040. Endangered or threatened plant lists.

RELATES TO: KRS 146.485, 146.610

STATUTORY AUTHORITY: KRS 146.485, 146.610

NECESSITY, FUNCTION, AND CONFORMITY: KRS 146.610(2)(a) and (b) ***authorize[authorizes]*** the Office of Kentucky Nature Preserves[Kentucky State Nature Preserves Commission] to promulgate administrative regulations for the identification and designation of state threatened or endangered plant species. This administrative regulation establishes the lists of threatened or endangered plant species.

Section 1. Endangered Lists. The***[following]*** plant species ***established in the Table in this section,*** based on the factors in KRS 146.610(2)(a) and 400 KAR 3:020, Section 1, shall be considered endangered In the Commonwealth of Kentucky***.[:]***

Scientific Name	Common Name
Vascular Plants	
Acer spicatum	Mountain maple
Adlumia fungosa	Climbing fumitory
Agalinis auriculata	Earleaf False Foxglove[agalinis]
Agalinis obtusifolia	Ten-lobe False Foxglove[agalinis]
[Agalinis skinneriana]	[Pale false foxglove]
[Amsonia tabernaemontana var. gattingeri]	[Eastern blue-star]
Angelica atropurpurea	Great angelica
Angelica triquinata	Filmy angelica
Apios priceana	Price's potato-bean
Aralia nudicaulis	Wild Sarsaparilla
Berberis Canadensis	American barberry
Bolboschoenus fluviatilis	River bulrush
Botrychium matricariifolium	Matricary grapefern
Calamagrostis porteri ssp. insperata	Reed bent grass
Calamovilfa arcuata	Cumberland sandgrass
Calopogon tuberosus	Grasspink
Carex aestivalis	Summer sedge
Carex atlantica ssp. Capillacea	Prickly bog sedge
Carex joorii	Cypress-swamp sedge
Carex juniperorum	Cedar sedge
Carex leptonervia	Finely-nerved sedge
Carex reniformis	Reniform sedge
Carex roanensis	Roan mountain sedge
Carex tetanica	Rigid sedge
Castanea dentate	American chestnut
Castilleja coccinea	Scarlet indian paintbrush
Cheilanthes feei	Fee's lip fern
Chelone obliqua var. obliqua	Red turtlehead
Chrysogonum virginianum	Green-and-gold
Collinsonia verticillata	Whorled horse-balm

Comptonia peregrina	Sweet-fern
Conradina verticillata	Cumberland-rosemary
Convallaria montana	American lily-of-the-valley
Corallorrhiza maculata	Spotted coralroot
Cymophyllus fraserianus	Fraser's sedge
Cypripedium candidum	Small white lady's-slipper
Cypripedium kentuckiense	Kentucky lady's-slipper
Deschampsia cespitosa	Tufted hair grass
Draba cuneifolia	Wedge-leaf whitlow-grass
Drosera brevifolia	Dwarf sundew
Drosera intermedia	Spoon-leaved sundew
Echinodorus parvulus	Dwarf burhead
Eriophorum virginicum	Tawny cotton-grass
Eryngium integrifolium	Blue-flower coyote-thistle
Eupatorium semiserratum	Small-flowered thoroughwort
Eurybia hemisphericus	Southern prairie aster
Eurybia radula	Low rough aster
Gentiana flavida	Yellow gentian
Gentiana puberulenta	Prairie gentian
Glyceria acutiflora	Sharp-scaled manna-grass
Goodyera repens	Lesser rattlesnake-plantain
Gymnopogon brevifolius	Shortleaf skeleton grass
Halesia tetraptera	Common silverbell
Helianthemum bicknellii	Plains frostweed
Helianthemum canadense	Canada frostweed
Helianthus silphioides	Silphium sunflower
Hexastylis contracta	Southern heartleaf
Houstonia serpyllifolia	Michaux's bluets
Hydrocotyle americana	American water-pennywort
Hydrocotyle ranunculoides	Floating pennywort
Hydrolea ovata	Ovate fiddleleaf
Iris fulva	Copper iris
Isoetes butleri	Butler's quillwort
Isoetes melanopoda	Blackfoot quillwort
Koeleria macrantha	June grass
Krigia occidentalis	Western dwarf dandelion
Leavenworthia exigua var. laciniata	Kentucky gladecress
Lesquerella globosa	Globe bladderpod
Leucothoe recurva	Fetterbush
Lobelia gattingeri	Gattinger's lobelia
Lonicera dioica var. orientalis	Wild honeysuckle
Lonicera prolifera	Grape honeysuckle
Ludwigia hirtella	Hairy ludwigia
Lycopodiella appressa	Southern bog club-moss
Lycopodiella inundatum	Northern bog club-moss
Lycopodium clavatum	Running-pine
Lysimachia terrestris	Swamp-candles
Maianthemum stellatum	Starflower false solomon's-seal
Marshallia grandiflora	Large-flowered barbara's-buttons
Matelea carolinensis	Carolina anglepod
Melampyrum lineare var. pectinatum	American cowwheat
Melanthium virginicum	Virginia bunchflower
Minuartia cumberlandensis	Cumberland sandwort
Muhlenbergia bushii	Bush's muhly
Nestronia umbellula	Conjurer's-nut
Oenothera linifolia	Thread-leaf sundrops
Oenothera perennis	Small sundrops
Oldenlandia uniflora	Clustered bluets
Onosmodium hispidissimum	Hairy false gromwell
Onosmodium occidentale	Western false gromwell
Parnassia asarifolia	Kidney-leaf grass-of-parnassus
Parnassia grandifolia	Largeleaf grass-of-parnassus
Paronychia argyrocoma	Silverling
Philadelphus pubescens	Hoary mockorange
Phlox bifida ssp. stellaria	Starry-cleft phlox
Platanthera integrilabia	White fringeless orchid
Platanthera psycodes	Small purple-fringed orchid
Poa saltuensis	Drooping blue grass
Pogonia ophioglossoides	Rose pogonia
Polygala cruciata	Cross-leaf milkwort
Polygala paucifolia	Gaywings
Polymnia laevigata	Tennessee leafcup
Potamogeton amplifolius	Bigleaf pondweed
Prenanthes alba	White rattlesnake-root
Prenanthes aspera	Rough rattlesnake-root
Prenanthes barbata	Barbed rattlesnake-root
Ptilimnium nuttallii	Nuttall's mock bishop's-weed
Pycnanthemum albescens	White-leaved mountain-mint
Rhododendron canescens	Hoary azalea
Rhynchosia tomentosa	Hairy snout-bean
Rhynchospora macrostachya	Tall beakrush
Rubus canadensis	Smooth blackberry
Rudbeckia subtomentosa	Sweet coneflower
Sabatia campanulata	Slender marsh-pink
Sagittaria rigida	Sessile-fruit arrowhead
Salvia urticifolia	Nettle-leaf sage
Sambucus racemosa ssp. pubens	Red elderberry
Sanguisorba canadensis	Canada burnet
Saxifraga micranthidifolia	Lettuce-leaf saxifrage
Schisandra glabra	Bay starvine
Schoenoplectis hallii	Hall's bulrush
Scirpus expansus	Woodland bulrush
Scleria ciliata	Fringed nut-rush
Scutellaria arguta	Hairy skullcap
Silene ovata	Ovate catchfly
Silene regia	Royal catchfly
Solidago shortii	Short's goldenrod
Sparganium eurycarpum	Large bur-reed
Spiraea alba	Narrow-leaved meadowsweet
Spiranthes odorata	Sweetscent ladies'-tresses
Sporobolus heterolepis	Northern dropseed
Symphoricarpos albus	Snowberry
Talinum calcaricum	Limestone fameflower
Talinum teretifolium	Roundleaf fameflower
Tephrosia spicata	Spiked hoary-pea
Thermopsis mollis	Soft-haired thermopsis
Toxicodendron vernix	Poison sumac
Tragia urticifolia	Nettle-leaf noseburn
Trichophorum planifolium	Bashful bulrush
Trichostema setaceum	Narrow-leaved bluecurls
Trientalis borealis	Northern starflower
Trifolium reflexum	Buffalo clover
Trillium nivale	Snow trillium
Trillium pusillum	Least trillium
Utricularia macrorhiza	Greater bladderwort
Vaccineum erythrocarpum	Highbush cranberry
Veratrum parviflorum	Small-flowered false hellebore
Viburnum latanoides	Alderleaf viburnum
Viburnum nudum	Possum haw viburnum
Xyris difformis	Carolina yellow-eye-grass
Mosses	
Brachythecium populeum	Matted feather moss
Bryum cyclophyllum	A moss
Bryum miniatum	A moss
Dicranodontium asperulum	A moss
Entodon brevisetus	A moss
Herzogiella turfacea	A moss
Oncophorus raui	A moss
Orthotrichum diaphanum	A moss
Polytrichum strictum	A haircap moss
Sphagnum quinquefarium	A sphagnum moss
Tortula norvegica	Tortula

Section 2. Threatened Lists. The***[following]*** plant species ***established in the Table in this section,***, based on the factors in

KRS 146.610(2)(a) and the criteria ***established[~~listed~~]*** in 400 KAR 3:020, Section 1, shall be considered threatened in the Commonwealth of Kentucky***.[~~:~~]***

Scientific Name	Common Name
Aconitum uncinatum	Blue monkshood
Adiantum capillus-veneris	Southern maidenhair-fern
Aesculus pavia	Red buckeye
Agrimonia gryposepala	Tall hairy groovebur
Amianthium muscitoxicum	Fly-poison
Arabis hirsuta	Hairy rockcress
Arabis perstellata	Braun's rockcress
Armoracia lacustris	Lake cress
Baptisia tinctoria	Yellow wild indigo
Bartonia virginica	Yellow screwstem
Berchemia scandens	Supplejack
Boykinia aconitifolia	Brook saxifrage
Cabomba caroliniana	Carolina fanwort
Calamagrostis porteri ssp. porteri	Porter's reed grass
Calycanthus floridus var. glaucus	Sweetshrub
Carex alata	Broadwing sedge
Carex appalachica	Appalachian sedge
Carex crebriflora	Coastal plain sedge
Carex decomposita	Epiphytic sedge
Carex gigantea	Large sedge
Carex rugosperma	Umbel-like sedge
Carex straminea	Straw sedge
Carya aquatica	Water hickory
Carya carolinae-septentrionalis	Southern shagbark hickory
Castanea pumila	Allegheny chinkapin
Ceanothus herbaceus	Prairie redroot
Chrysosplenium americanum	American golden-saxifrage
Cimicifuga rubifolia	Appalachian bugbane
Clematis crispa	Blue jasmine leather-flower
Cypripedium parviflorum var. parviflorum	Small yellow lady's-slipper
Delphinium carolinianum	Carolina larkspur
Deschampsia flexuosa	Crinkled hair grass
Echinodorus berteroi	Burhead
Elodea nuttallii	Waterweed
Eupatorium steelei	Steele's joe-pye-weed
Euphorbia mercurialina	Mercury spurge
Eurybia saxicastellii	Rockcastle aster
Fimbristylis puberula	Hairy fimbristylis
Forestiera ligustrina	Upland privet
Gratiola pilosa	Shaggy hedge-hyssop
Hedeoma hispidum	Rough pennyroyal
Helianthus eggertii	Eggert's sunflower
Heterotheca subaxillaris var. latifolia	Broad-leaf golden-aster
Hieracium longipilum	Hairy hawkweed
Hydrophyllum virginianum	Eastern waterleaf
Hypericum crux-andreae	St. Peter's-wort
Juncus filipendulus	Long-styled rush
Juniperus communis var. depressa	Ground juniper
Lathyrus palustris	Vetchling peavine
Leavenworthia torulosa	Necklace glade cress
Liatris cylindracea	Slender blazingstar
Lilium philadelphicum	Wood lily
Lilium superbum	Turk's cap lily
Limnobium spongia	American frog's-bit
Liparis loeselii	Loesel's twayblade
Listera smallii	Kidney-leaf twayblade
Lobelia nuttallii	Nuttall's lobelia
Maianthemum canadense	Wild lily-of-the-valley
Malvastrum hispidum	Hispid false mallow
Melampyrum lineare var. pectinatum	American cowwheat
Minuartia glabra	Appalachian sandwort
Monotropsis odorata	Sweet pinesap
Muhlenbergia cuspidata	Plains muhly
Nemophila aphylla	Small-flower baby-blue-eyes
Oclemena acuminata	Whorled aster
Oenothera triloba	Stemless evening-primrose
Orontium aquaticum	Goldenclub
Paxistima canbyi	Canby's mountain-lover
Perideridia americana	Eastern eulophus
Philadelphus inodorus	Mock orange
Phlox bifida ssp. bifida	Cleft phlox
Platanthera cristata	Yellow-crested orchid
Polygala polygama	Racemed milkwort
Pontederia cordata	Pickerel-weed
Potamogeton pulcher	Spotted pondweed
Prenanthes crepidinea	Nodding rattlesnake-root
Ptilimnium capillaceum	Mock bishop's-weed
Quercus nigra	Water oak
Quercus texana	Nuttall's oak
Sagina fontinalis	Water stitchwort
Sagittaria graminea	Grass-leaf arrowhead
Sagittaria platphylla	Delta arrowhead
Saxifraga michauxii	Michaux's saxifrage
Schizachne purpurascens	Purple-oat
Scutellaria saxatilis	Rock skullcap
Sedum telephioides	Allegheny stonecrop
Silphium laciniatum	Compassplant
Solidago albopilosa	White-haired goldenrod
Solidago curtisii	Curtis' goldenrod
Solidago roanensis	Roan mountain goldenrod
Spiraea virginiana	Virginia spiraea
Spiranthes lucida	Shining ladies'-tresses
Spiranthes magnicamporum	Great plains ladies'-tresses
Spiranthes ochroleuca	Yellow nodding ladies'-tresses
Sporobolus clandestinus	Rough dropseed
Stenanthium gramineum	Eastern featherbells
Symphyotrichum concolor	Eastern silvery aster
Symphyotrichum priceae	White heath aster
Taxus canadensis	Canadian yew
Thaspium pinnatifidum	Cutleaf meadow-parsnip
Thuja occidentalis	Northern white-cedar
Trifolium stoloniferum	Running buffalo clover
Trillium undulatum	Painted trillium
Veratrum woodii	Wood's bunchflower
Viburnum molle	Missouri arrow-wood
Viburnum rafinesquianum var. rafinesquianum	Downey arrow-wood
Viola walteri	Walter's violet
Vitis rupestris	Sand grape
Zizaniopsis miliacea	Southern wild rice
Mosses	
Abietinella abietina	Wire fern moss
Anomodon rugelii	A moss
Cirriphyllum piliferum	A moss
Neckera pennata	A moss

CHARLES G. SNAVELY, Secretary

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ENERGY AND ENVIRONMENT CABINET
Office of Kentucky Nature Preserves
(As Amended at ARRS, February 11, 2019)

400 KAR 4:110. Definitions for 400 KAR Chapter *4[1]*[~~4:120 to 4:140~~].

RELATES TO: KRS 146.220, 146.241, 146.250, 146.260, 146.270, 146.290, 146.310, 146.350, 146.360

STATUTORY AUTHORITY: KRS 146.270, 224.01-110, 224.10-100

NECESSITY, FUNCTION, AND CONFORMITY: KRS 146.270 authorizes the secretary to ***promulgate[~~adopt rules and~~]*** administrative regulations necessary for the preservation and enhancement of wild rivers as ***established[~~set forth~~]*** in KRS 146.250, and for control of recreational, educational, scientific***,*** and other uses of these areas in a manner that shall not impair them. Emphasis shall be given to protecting aesthetic, scenic, ecological, historic, archaeological***,*** and scientific features of the areas. This administrative regulation ***establishes definitions for[~~defines~~]*** certain essential terms used in the wild rivers administrative regulations, 400 KAR Chapter 1[~~401 KAR 4:120 to 4:140~~], which are not clearly defined by their context.[~~Terms not defined below have the meaning given to them in relevant statutes or, if not defined in statutes, the meaning attributed by common use.~~]

Section 1. (1) "Access road" means that access constructed or improved to connect a permitted use within a wild river corridor to a public road system.

(2) "Acid-forming substance" means an earth substance that contains sulfide minerals or other materials ***that[~~which~~]***, if exposed to air, water, or weathering processes, forms acids that ***could[~~may~~]*** create acid water.

(3) "Acid water" means drainage with a pH of less than six ***and zero-tenths*** (6.0) in which total acidity exceeds total alkalinity.

(4) "Adverse impact" means having a damaging, degrading***,*** or destructive effect on a resource.

(5) "Agricultural use"***:***

(a) Means the use of land for agricultural purposes ***such as[~~including, but not limited to~~]*** farming, dairying, pasturage, apiaries, horticulture, floriculture, viticulture, and animal and poultry husbandry; ***and***

(b) Does not mean[~~provided that~~] fruit, vegetable, and flower production for personal use***[~~is not deemed agricultural use~~]***.

(6) "Applicant" means the landowner who applies for a change of use permit to allow a change of land use within a wild river corridor.

(7) "Best management practices" means methods, measures***,*** or practices to prevent or reduce water pollution, ***such as[~~including, but not limited to,~~]*** structural and nonstructural controls***[~~,~~]*** and operation and maintenance procedures ***that are[~~which may be~~]*** applied before, during***,*** or after pollution-producing activities to reduce or eliminate the introduction of pollutants into waterbodies.

(8) "Buffer zone" means an area of natural vegetation having a minimum width of not less than 100 feet, which is retained along each bank of a wild river to maintain aesthetics, bank stability, appropriate water temperatures, fish and wildlife habitat, and stream hydraulics, and to filter debris and waterborne pollutants from surface run-off.

(9) "Cabinet" means the Energy and Environment[~~Environmental and Public Protection~~] Cabinet.

(10) "Change of use permit" means a permit issued to a landowner by the office[~~secretary~~] to authorize a change of land use within a wild river corridor.

(11) "Commercial service" means the use of a wild river corridor for monetary profit, ***such as for[~~including, but not limited to,~~]*** concessions, boat rentals, shuttle services, guided trips or tours, commercial boat docks, wharves***,*** and other recreational facilities.

(12) "Conforming land use" means a land or resource use ***that[~~which~~]*** conforms to the provisions and intent of the Kentucky Wild ***Rivers[~~River~~]*** Act and the management plan developed pursuant to KRS 146.270 for a given wild river corridor.

(13) "Cultural character" means the condition, composition, ***or[~~and/or~~]*** appearance of an archaeological or historical feature ***that[~~which~~]*** contributes to its outstanding, unique***,*** or otherwise significant value.

(14) "Disturbed area" means an area having a manmade surface disturbance.

(15)[~~"Division" means the Division of Water.~~

~~(16)~~] "Existing use" means a land use ***that[~~which~~]*** is in existence at the time a wild river is designated by the Kentucky General Assembly.

(16)[~~(17)~~] "Flood plain" means the area in a watershed that is subject to flooding at least one (1) time in every 100 years.

(17)[(18)] "Kentucky Wild Rivers Act" means KRS 146.200 ***through[~~to~~]*** 146.360***[~~, as amended~~]***.

(18)[(19)] "Landowner" means the owner of a property or an interest in a property conveyed by lease or other legal conveyance.

(19)[(20)] "Land use plan" means a plan of action submitted to the office[~~cabinet~~] as part of a change of use permit application.

(20)[~~(21)~~] "Log landing" means a collecting point for holding cut timber.

(21)[(22)] "Management plan" means the individual plan adopted by the office[~~cabinet~~] pursuant to KRS 146.270 as the official document guiding the management and protection of a given wild river corridor.

(22)[~~(23)~~] "Natural character" means the condition or appearance of an area or resources ***that are[~~which may be~~]*** expected to exist in nature undisturbed by human actions.

(23)[~~(24)~~] "Natural vegetation" means the species, or combinations of species, of plants ***that exist, or are[~~which exist, or may be~~]*** expected to exist, in nature undisturbed by human actions.

(24)[~~(25)~~] "New land use" means a land use within a wild river corridor ***that[~~which~~]*** is not in existence at the time a given wild river corridor is designated by the Kentucky General Assembly.

(25) "Office" is defined by KRS 146.210(8).

(26) "Operator" means the person, partnership, contractor, subcontractor, company***,*** or corporation responsible for the construction, maintenance, operation***,*** and reclamation of a permitted use.

(27) "Permitted use" means a nonconforming land use within a wild river corridor ***that[~~which~~]*** has been authorized by the office[~~secretary~~] through the issuance of a change of use permit.

(28) "Permittee" means a landowner who has obtained a change of use permit from the office[~~cabinet~~].

(29) "Produced water" means water and pollutants and combination thereof resulting, obtained***,*** or produced from the exploration, drilling***,*** or production of oil or gas.

(30) "Professional forester" means a person holding a degree in forestry from a school with an accredited forestry program.

(31) "Research plan" means a plan of action submitted to the office[~~cabinet~~] for approval prior to initiating a scientific study within a given wild river corridor.

(32) "Resource removal" means exploration for, extraction***,*** or removal of a natural resource ***such as[~~including, but not limited to,~~]*** coal, oil and gas, minerals, rock, gravel, sand***,*** and soil.

(33) "Secretary" means the Secretary of the Energy and Environment[~~Environmental and Public Protection~~] Cabinet.

(34) "Selective cutting (of timber)" means the selective removal during one (1) entry of single trees from an area ***so[~~such~~]*** that a specified minimum residual stocking level is retained and evenly distributed over the harvest area. The purpose of the cut is to create or maintain an uneven-aged stand of timber.

(35) "Significant feature" means an outstanding, unique, rare***,*** or otherwise significant aesthetic, scenic, botanical, zoological, geological, historical, archaeological, scientific***,*** or recreational feature ***[~~which is~~]*** identified in the management plan or by the management agency as occurring within a given wild river corridor.

(36) "Skid" means to transport logs by sliding or dragging along the ground.

(37) "Skid trail" means a trail developed for the purpose of skidding logs from the stump to a log landing area.

(38) "Slash" means the residue left after the economically

usable portion of cut trees is removed from a harvest area.

(39) "Structure"***:***

(a) Means an aboveground object constructed, built***,*** or installed for a change of use***; and***

(b) Does not mean[, and shall exclude] sediment ponds, roads***, or[and]*** signs.

(40) "Surface disturbance" means any disturbance of the ground surface ***that[which]*** involves the clearing of vegetation or excavation of soil, rock***,*** or other materials occurring on or near the ground surface.

(41) "Surface mining"***:***

(a) Means the breaking of the surface soil in order to facilitate or accomplish the extraction or removal of minerals, ores, or other solid matter ***or[;]*** any activity or process constituting all or part of a process for the extraction or removal of minerals, ores, or other solid matter so as to make them suitable for commercial, industrial, construction, or other use; ***and***

(b) Does not mean[but shall not include] those aspects of deep mining not having significant effect on the surface, and ***does not mean[shall not include]*** excavation or grading***[when]*** conducted solely in aid of on-site farming or construction.

(42) "Toxin-forming substance" means earth materials or wastes ***that[which]***, if exposed to air, water, weathering, or microbiological processes, are likely to produce conditions that are detrimental to biota or uses of water.

(43) "Underground mining" means those aspects of deep mining, including surface effects, involving any open pit or any underground workings from which minerals, ores***,*** or other solid matter is removed for sale, exchange, commercial, or other use, and all shafts, drifts, or inclines leading thereto, including all buildings and equipment, above or below the surface of the ground, used in connection with ***these[such]*** workings.

(44) "Visual intrusion" means resulting in the disruption, degradation***,*** or impairment of the natural or primitive appearance of an area in a wild river corridor, as viewed from the river or other designated public use area, and includes any land use that does not remain visually subordinate to the characteristic landscape.

(45) "Watershed" means that area enclosed by a topographic divide from which direct surface run-off from precipitation normally drains by gravity into the stream above a specified point.

(46) "Wild river" or "wild river corridor" means a stream segment and adjacent shoreland within boundaries ***established[set forth]*** in 400[~~401~~] KAR 4:100 ***that[which]*** are designated in accordance with KRS 146.241.

(47) "Wild rivers system" means the collective wild rivers as designated in KRS 146.241***[and amendments]***.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: November 6, 2018

FILED WITH LRC: November 6, 2018 at noon

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ENERGY AND ENVIRONMENT CABINET
Office of Kentucky Nature Preserves
(As Amended at ARRS, February 11, 2019)

400 KAR 4:125. Wild rivers administration.

RELATES TO: KRS 146.220, 146.270, 146.290, 146.310, 146.350, 224.01-110, 224.10-240, 224.10-440, 224.10-470

STATUTORY AUTHORITY: KRS 146.270, 224.01-110, 224.10-100

NECESSITY, FUNCTION, AND CONFORMITY: KRS 146.270 authorizes the secretary to ***promulgate[adopt rules and]*** administrative regulations necessary for the preservation and enhancement of wild rivers as ***established[set forth]*** in KRS 146.250***[;]*** and for control of recreational, educational, scientific***,*** and other uses of these areas in a manner that shall not impair them. KRS 146.220 places emphasis on protecting the aesthetic, scenic, historical, archaeological, ecological***,*** and scientific features of these areas. This administrative regulation ***establishes provisions[sets forth guidelines]*** for the administration, management and public use of wild river corridors, including criteria for delineating existing, conforming, permitted***,*** and prohibited land uses and conditions of authorization for utility right-of-way construction. This administrative regulation shall apply to all lands and waters under state jurisdiction ***that[which]*** are located within designated wild river boundaries as ***established[set forth]*** in 400[~~401~~] KAR 4:100. Nothing herein shall be construed as superseding any requirements of other cabinet programs or of other state or federal agencies.[~~This administrative regulation contains the substance of and repeals 401 KAR 4:120.~~]

Section 1.[~~Definitions. As used in this chapter, unless context otherwise requires:~~

~~(1) "Agricultural use" means the use of land for agricultural purposes including, but not limited to farming, dairying, pasturage, apiaries, horticulture, floriculture, viticulture, and animal and poultry husbandry; provided that fruit, vegetable and flower production for personal consumption shall not be deemed an agricultural use.~~

~~(2) "Buffer zone" means an area of woodland having a minimum width of not less than 100 feet which is retained along each bank of a wild river to maintain aesthetics, bank stability, appropriate water temperatures, fish and wildlife habitat, and stream hydraulics, and to filter debris and waterborne pollutants from surface run-off.~~

~~(3) "Cabinet" means the Environmental and Public Protection Cabinet.~~

~~(4) "Change of use permit" means a permit issued to a landowner by the secretary to authorize a change of land use within a wild river corridor.~~

~~(5) "Commercial service" means the use of a wild river corridor for monetary profit, including, but not limited to, concessions, boat rentals, shuttle services, guided trips or tours, commercial boat docks, wharves and other recreational facilities.~~

~~(6) "Conforming use" means a land or resource use which conforms to the provisions and intent of the Kentucky Wild Rivers Act and the management plan developed pursuant to KRS 146.270 for a given wild river corridor.~~

~~(7) "Existing use" means a land use which is in existence at the time a wild river is designated by the Kentucky General Assembly.~~

~~(8) "Floodplain" means the area in a watershed that is subject to flooding at least one (1) time in every 100 years.~~

~~(9) "Management plan" means the individual plan adopted by the cabinet pursuant to KRS 146.270 as the official document guiding the management and protection of a given wild river corridor.~~

~~(10) "Permitted use" means a nonconforming land use within a wild river corridor which has been authorized by the secretary through the issuance of a change of use permit.~~

~~(11) "Research plan" means a plan of action submitted to the cabinet for approval prior to initiating a scientific study within a given wild river corridor.~~

~~(12) "Resource removal" means exploration for, extraction or removal of a natural resource including, but not limited to, coal, oil and gas, minerals, rock, gravel, sand and soil.~~

~~(13) "Secretary" means the Secretary of the Environmental and Public Protection Cabinet.~~

~~(14) "Selective cutting (of timber)" means the selective removal during one entry of trees from an area such that a specified minimum residual stocking level is retained and evenly distributed over the harvest area. A selective cut creates or maintains an uneven-aged stand of timber.~~

~~(15) "Structure" means an aboveground object constructed, built or installed for a change of use, and shall exclude sediment ponds, roads and signs.~~

~~(16) "Visual intrusion" means resulting in the disruption, degradation or impairment of the natural or primitive appearance of an area in a wild river corridor, as viewed from the river or other designated public use area, and includes any land use that does not remain visually subordinate to the characteristic landscape.~~

~~(17) "Wild river" or "wild river corridor" means a stream segment and adjacent shoreland within boundaries set forth in 401~~

~~KAR 4:100 which are designated in accordance with KRS 146.241.~~

~~Section 2.~~] General Policy.

(1) Wild rivers shall be managed to preserve their free-flowing condition and to protect the outstanding and unique aesthetic, scenic, recreational, fish and wildlife, botanical, historical, archaeological**,** and other natural and cultural features ***that[~~which~~]*** qualified the streams for designation as wild rivers.

(2) Additional management objectives shall be to afford opportunities to enjoy natural streams and to preserve for future generations the beauty of certain areas untrammeled by man. The office[~~cabinet~~] ***shall[~~will~~]*** not encourage public use of areas where it has been determined that the carrying capacity for one (1) or more uses has been reached or exceeded.

Section 2[~~3~~]. Management Plans.

(1) The management of a given wild river corridor shall be according to a management plan developed by the office[~~cabinet~~].

(2) The office[~~cabinet~~] shall consult with landowners in the affected wild river corridor, citizen groups, industries**,** and appropriate local, state**,** and federal agencies in the preparation of each management plan.

(3) Public participation in the development of a management plan shall be provisioned by at last one (1) public hearing on the draft management plan followed by a thirty (30) day comment period prior to finalizing the plan.

(4)(a) The hearing***[,]*** or hearings, shall be conducted in one (1) of the counties through which the designated portion of the river flows.[;]

(b) Notice of hearing shall be given in accordance with the provisions of KRS Chapter 424. The notice shall:

1. State the time, place**,** and purpose of the hearing;

2. State the name and address of the person from whom a copy of the proposed management plan may be attained;

3. Be published not less than seven (7) nor more than twenty-one (21) days prior to the hearing;

4. Be published in the county***[,]*** or counties, through which the designated portion of the river flows, and in at least one (1) major newspaper; and

5. ***Include[~~Set forth~~]*** the address to which written comments on the draft management plan may be submitted, and the date by which those written comments shall be submitted.

(c) The hearing shall be conducted by a designated representative of the office[~~cabinet~~] who shall control the order of presentation.[;]

(d) Any interested person may appear at the hearing and make an oral or written presentation concerning the draft management plan. All oral presentations shall be recorded.[~~; and~~]

(e) All written and oral comments shall be considered in the development of the management plan.

(5) Responsibility for the administration and management of a wild river shall be clearly delineated in the management plan for that river, and any management agreements between the office[~~cabinet~~] and local, state**,** or federal agencies having overlapping jurisdiction over lands or waters within the wild river corridor shall be incorporated into the plan.

Section 3[4]. Existing or Conforming Land Uses.

(1) Under the provisions of KRS 146.290, land uses that[~~which~~] are lawfully existing at the time the boundaries of a wild river are designated may continue even though the use does not conform to the purpose and intent of the Kentucky Wild Rivers Act or the management plan for a given wild river.

(2) Other than existing uses, land uses within wild river corridors ***that[~~which~~]*** conform to the purposes and intent of the Kentucky Wild Rivers Act and the duly adopted management plan for each wild river shall not require a change of use permit.

(3) Conforming uses shall include wilderness type recreation such as nonmechanized boating, hiking, hunting, fishing, camping, and sightseeing[~~and horseback riding~~], as well as scientific research, environmental education**,** and related activities ***that[~~which~~]*** preserve the primitive character and natural and cultural resources of the area.

(4) Other land uses shall qualify as conforming uses if they do not involve the clearing of more than one-half (1/2) acre of timber, nor constitute a significant visual intrusion within 100 feet of the river. Conforming uses may include***[~~the following~~]***:

(a) The routine maintenance, repair, renovation or replacement of existing roads, buildings**,** or other structures or improvements to an existing use;

(b) The selective cutting of firewood or individual trees by a landowner for personal or family use;

(c) Landscaping and gardening, including flower, fruit**,** and vegetable production;

(d) Fencing;

(e) The removal of noxious weeds from an area using direct application**,** but not aerial spraying, ***of[~~and~~]*** herbicides that are short-term ***and[~~,~~]*** nontoxic to fish and wildlife and ***that shall[~~will~~]*** not leach into surface waters or groundwater; and

(f) The clearing of diseased or insect- infested trees from an area greater than one-half (1/2) acre upon written authorization from the office[~~cabinet~~] based on the recommendation of a professional forester.

Section 4[~~5~~]. Permitted Land Uses.

(1) Land use changes authorized by the office[~~cabinet~~] through a change of use permit as required ***by[~~under~~]*** KRS 146.290, shall comply with all applicable standards ***established[~~set forth~~]*** in 400[~~401~~] KAR 4:140.[;]

(2) Land use changes ***that[~~which~~]*** require a change of use permit shall include:

(a) A resource removal, by methods other than surface mining;

(b) The selective cutting of timber as defined ***by[~~in~~]*** 400 KAR 1:110 [~~Section 1 of this administrative regulation~~]; and

(c) A new agricultural use that requires clearing of timber from an area greater than one-half (1/2) acre or more in extent.

Section 5[~~6~~]. Prohibited Land Uses. Land uses established in subsections (1) through (3) of this section shall be prohibited.

(1) Pursuant to KRS 146.290, surface mining, timber harvest by methods other than selective cutting**,** and in-stream disturbances ***shall be[~~are~~]*** prohibited within a wild river corridor.[;]

(2) Prohibited in-stream disturbances shall include ***[~~but not be limited to,~~]*** dam construction, dredging, spoil or fill deposition, channel diversion, channelization**,** and mining of streambed materials.[~~; and~~]

(3) The construction of roads, buildings**,** or other structures to effect any use other than an existing or permitted land use, as ***established in this section or[~~set forth in~~]*** Section 4***[~~or 5~~]*** of this administrative regulation, ***shall be[~~is~~]*** prohibited.

Section 6[~~7~~]. Public Use.

(1) Public use of wild river corridors shall be limited to the public waters and public lands or interests in lands acquired through lease, easement**,** or other agreement entered into by the landowner. Public use of private property shall require permission from the landowner. Trespassing ***shall be[~~is~~]*** subject to penalty as ***established[~~set forth~~]*** in KRS 146.990. This section applies to the public use of state-owned lands and public waters within wild river corridors.

(2) The office shall[~~cabinet will~~] make every effort to inform the public that the wild river designation does not authorize public use of ***privately owned lands and shall[~~privately-owned lands, and will~~]*** prepare maps delineating the boundaries of public lands within wild river corridors to reduce unintentional trespassing.

(3) In accordance with KRS 146.290, transportation shall be by foot, canoe, kayak, boat, with or without electric motor,[~~horseback~~] or other nonmechanized means except on existing public roads, as required for administrative and resource protection purposes, or as necessary to effect an existing or permitted land use.

(4) The office[~~cabinet~~] may condition or deny public access to a wild river if***[~~such~~]*** use is causing substantial adverse impact on the scenic, aesthetic, natural, cultural, scientific**,** or recreational resources, if private property is being damaged, or if user safety is being jeopardized.

(5) Cultural artifacts, relics, fossils**,** and souvenirs shall not be

removed from their site of discovery in a wild river corridor. Deliberate damage to plants, animals, artifacts**,** or other special features ***shall be[is]*** prohibited. A written request shall be submitted to and approved by the office[division]***, in accordance with the Research Permit Application, KNP02, incorporated by reference in 400 KAR 2:090,*** prior to the collection of any natural or cultural materials.

(6) Burying, dumping**,** or depositing litter, soil, garbage, waste, scrap**,** or other unsightly or offensive materials other than in receptacles provided for this purpose ***shall be[is]*** prohibited.

(7) Horseback riding shall be allowed only on trails specifically designated for this use.

(8) Overnight camping and campfires shall be prohibited within thirty (30) feet of a wild river. ***An[No]*** open fire shall ***not*** be left unattended, and all fires shall be completely extinguished after use. Live vegetation shall not be cut for firewood.

(9) Camping within a state park shall be in accordance with 304 KAR 1:040.

(10) Hunting, fishing**,** and trapping shall be subject to state and federal fish and wildlife laws and regulations, and shall comply with the ***[following]*** conditions ***established in paragraphs (a) and (b) of this subsection.[:]***

(a) The construction of permanent shelters, lean-tos**,** or other buildings ***shall be[is]*** prohibited. Temporary blinds, stands**,** or other structures shall be erected in a manner that ***shall[will]*** prevent injury to trees***.[; and]***

(b) Trapping ***shall be[is]*** prohibited within fifty (50) feet of designated boat access sites, boat portage trails**,** and other designated public hiking trails, picnic areas**,** and campgrounds.

(11) Carrying or discharging a firearm, bow and arrow**,** or explosive substances shall be prohibited for any purpose other than hunting in accordance with state wildlife laws and the other provisions of this administrative regulation.

(12) Swimming and other in-stream recreational uses of a wild river shall be in accordance with Office[Division] of Water Patrol safety standards (402 KAR 4:080 and 4:130). Entering a wild river from the shores of a state park for swimming, bathing**,** or other in-stream recreational use shall be allowed only in areas designated as swimming areas by the Department of Parks.

(13) Conduct ***that[which]*** disturbs the peace or causes property damage within a corridor ***shall be[is]*** prohibited.

(14) Public users of wild rivers ***shall be[are]*** encouraged to leave in passing no mark upon the land that might diminish its value to another, and to make every effort to protect and enhance the unspoiled beauty of these areas as components of Kentucky's unique heritage.

Section 7[8]. Enhancement of Recreational Opportunities.

(1) The development of public access to a wild river ***shall[will]*** be compatible with the purposes and intent of KRS 146.200 ***through[to]*** 146.360 and the duly adopted management plan for a given river, and shall conform to the natural character of the area.

(2) Development of public access may be used to enhance dispersed, nonmechanized recreational opportunities and provide information on safety, orientation, rules and administrative regulations**,** and interpretation of special features in the area.

(3) Trails constructed within a wild river corridor ***shall[will]*** will be designed and maintained to provide for nonmechanized recreational uses and to prevent soil erosion and compaction, trampling of vegetation, and other damage to the natural beauty and resources of the area.

(4) There shall be no cutting or removal of natural vegetation, living or dead, to create scenic vistas, except as expressly provided by law.

Section 8[9]. Commercial Uses.

(1) The operator of a new commercial service within a wild river corridor shall submit written notification to the office[cabinet] not less than thirty (30) days prior to commencing ***the[such]*** use.

(2) The construction of access roads, ramps, wharves or boat docks, buildings**,** or other facilities required to effect a commercial use shall be located outside of a wild river corridor unless authorized by a change of use permit.

(3) The operator of a commercial service on a wild river shall comply with all applicable provisions of this administrative regulation***[,]*** and shall be responsible for ensuring that the commercial use does not impair or contribute to an adverse impact on the aesthetic, scenic, ecological, scientific, recreational**,** or other significant features in the corridor as identified in the management plan or by the office[cabinet], or cause substantial damage to soils, vegetation, fish and wildlife**,** or water quality.

(4) The office[cabinet] may condition or deny commercial use of a wild river, as ***established[provided]*** in Section 7(4) of this administrative regulation.

(5) In accordance with 304 KAR 1:030, operation of a commercial activity within a state park ***shall require[requires]*** prior written consent from the Department of Parks.

(6) Commercial harvest of mussels by any method ***shall be[is]*** prohibited in areas where mussel species considered endangered or threatened by the office[Kentucky Academy of Science] are known to occur.

Section 9[10]. Scientific Study.

(1) A research permit application[plan] shall be submitted to the office[cabinet] for approval prior to the commencement of any scientific study that may affect a wild river corridor conforming to 400 KAR 2:090**,** Section 18(3)(a).

(2) A final report with results, including data collected in a format supplied by the office, shall be submitted at the conclusion of the research. This data may be incorporated by the office into a research clearinghouse and inventory database***, which shall be*** in accordance with KRS 146.485 and 400 KAR 2:080**,** Section 6.[A research plan submitted to the cabinet on a form supplied by the cabinet shall contain the following information:

(a) The name, address, telephone number, professional affiliations and qualifications of the principal investigator;

(b) A U.S. geological survey 7.5 minute topographic map delineating the location and extent of the study area;

(c) The estimated dates of initiation and completion of the study;

(d) The objectives, methods and significance of the study and a statement as to the necessity or advantages of conducting the study within the wild river corridor;

(e) Plant or animal species or any special features which may be affected by the study, and the type and extent of any such effects; and

(f) A list of any plants, animals or other resources or materials to be collected, the estimated quantity to be collected, and the permit numbers of collection permits obtained from state and federal agencies.]

Section 10[11]. Utility Right-of-way Construction.

(1) As ***established[set forth]*** in KRS 146.290, the construction of a transmission line or pipeline right-of-way within any portion of a wild river corridor shall require written approval from the office[secretary] prior to the initiation of any construction activities within the wild river boundaries.

(2) Authorization to construct a right-of-way shall require ***request[application]*** by the owner of the utility or pipeline company or their engineering representatives, on ***a written request. The written request[an application form supplied by the office***[cabinet]***[. The application]*** shall include a land use plan containing***[the following information]***:

(a) A U.S. geological survey topographic map to scale not greater than one (1) inch equal to 500 feet, showing the precise route and dimensions of the right-of-way;

(b) The estimated dates for initiation and completion of construction and the name, address and telephone number of the person or persons in charge of the construction;

(c) A detailed description of the methods of construction and specifications, including profile sheets bearing the seal and signature of a registered professional engineer;

(d) A statement of possible alternate routes for the right-of-way and why the proposed route was selected;

(e) A detailed reclamation plan designed to return the disturbed area as nearly as possible to its former appearance and condition,

including the use of native species to revegetate disturbed areas; and

(f) A detailed description of proposed methods for maintaining the right-of-way, including the brand names and methods of application of any herbicides to be used.

(3) Upon receipt of ***a written request[~~an application~~]***, an inspection of the proposed construction site ***shall[~~will~~]*** be made by office[~~cabinet~~] personnel with the property owner and applicant or their representatives, and personnel from appropriate state and federal agencies.

(4) The office[~~secretary~~] shall notify the applicant as to whether ***or not the written request[~~the application~~]*** is approved or denied within sixty (60) days following receipt of the ***written request, and shall[~~application, and will~~]*** state the reasons for the decision.

(5) If an application is denied, the applicant may submit a revised application to adequately address the reasons for denial stated in the office's[~~secretary's~~] written decision.

(6) ***A written request shall[~~An application will~~]*** be approved only if there is no possible alternative route for the right-of-way that would bypass or cause less impact to the wild river corridor, and the applicant agrees to restore all disturbed area within the wild river corridor as nearly as possible to its former appearance and condition, as required ***by[~~under~~]*** KRS 146.290.

(7) ***Construction of a right-of-way shall comply with paragraphs (a) through (l) of this subsection.***

(a) If[~~Authorization to construct a right-of-way shall contain, but not be limited to, the following conditions:~~

(a) Wherever] feasible, the right-of-way shall be routed to avoid steep slopes, erodible soils, surface waters and areas with high water tables, public recreation areas, and other significant natural ***or[~~and~~]*** cultural areas identified by the office[~~cabinet~~], and shall be the minimum width necessary for construction and maintenance***.[~~;~~]***

(b) Adequate measures shall be taken to control sediment and any hazardous substances, and to minimize the visual impact of the right-of-way when viewed from the wild river or other designated public use areas***.[~~;~~]***

(c) Any timber cutting required shall be according to the provisions of 400[~~401~~] KAR 4:140, Sections 4 through 7,***[~~and~~]*** 9 through 14**,** and Section 17(10) through (21)***.[~~;~~]***

(d) Every effort shall be made to minimize disturbance to the streambed, stream banks and fish and wildlife habitat during construction activities, and to keep timber slash and other debris out of surface waters and the immediate floodplain***.[~~;~~]***

(e) Stream crossings by equipment or vehicles in a wild river corridor shall require the use of a temporary bridge or other methods approved by the office[~~cabinet~~] ***if evidence is provided that a method is designed[~~and be designed~~]*** so as not to impede stream flow. Construction across surface waters shall occur when local fish and wildlife are not spawning or nesting***.[~~;~~]***

(f) Vehicles and equipment shall be stored outside of the wild river corridor when not in use***.[~~;~~]***

(g) Aerial spraying of herbicides shall not be permitted within the boundaries of a wild river. Direct application of herbicides at ground level shall be limited to brands that are nontoxic to fish and wildlife***.[~~;~~]***

(h) Pipeline relief valves shall be located outside of the wild river corridors***.[~~;~~]***

(i) Primary consideration shall be given to underground placement of transmission lines and pipelines. Overhead transmission lines and towers shall be in accordance with environmental guidelines required by the ***U.S. Department of Agriculture's Rural Utilities Service[~~Rural Electrification Authority~~]***, and shall be designed so as to prevent electrocution or other injury to wildlife***.[~~;~~]***

(j) Reclamation shall consist of establishing a permanent vegetative cover on all disturbed surfaces, planting native trees or shrubs where necessary to establish a buffer zone along the banks of the wild river, implementing measures to prevent access by off-road vehicles, and removing all evidence of construction activities***.[~~;~~]***

(k) A performance bond, in an amount to be determined by the office[~~cabinet~~] ***in accordance with KRS 146.290 and 45A.190***, shall be required for reclamation if the office[~~cabinet~~] determines that the proposed construction ***could[~~may~~]*** potentially damage, degrade**,** or otherwise have an adverse impact on any significant feature known to occur within the wild river corridor.

(l) The applicant shall provide written notice to the office[~~cabinet~~] upon completion of reclamation, and office[~~cabinet~~] personnel ***shall[~~will~~]*** inspect the construction site to verify compliance with all permit conditions before the bond is released.

Section 11[~~12~~]. Road Construction.

(1) In accordance with KRS 146.290, new permanent roads shall not be constructed within a wild river corridor except as authorized by the office[~~secretary~~] to enhance recreational opportunities or to protect soil, water**,** or other natural resources.

(2) Temporary roads shall be constructed within a wild river corridor only as necessary to effect a use authorized by a change of use permit, and shall be closed and reclaimed immediately after the permitted land use is concluded.

(3) Any construction required to improve, repair**,** or replace existing state or county-maintained roads or bridges shall require full environmental review by the office[~~division~~] and other appropriate state natural resource agencies prior to any construction activity.

(4) During authorized construction activities,***[~~no~~]*** heavy equipment shall ***not*** be driven through or into a wild river unless every feasible precaution has been taken by the operator to prevent damage to stream-bank vegetation, protect fish and wildlife habitat, control soil erosion**,** and prevent stream sedimentation.

(5) ***If[~~When~~]*** recommended by the office[~~secretary~~], design plans for improving or replacing a bridge across a wild river shall consider provisions for enhancing public access to the river for recreational uses consistent with the provisions of KRS 146.200 ***through[~~to~~]*** 146.360.

Section 12[~~13~~]. Agency Notification.

(1) State or local government agencies ***that[~~which~~]*** engage in or regulate any activity within the watershed of a wild river shall notify the office[~~cabinet~~] prior to the initiation of any activity ***that could[~~which may~~]*** adversely affect the river, and shall provide the office[~~cabinet~~] an opportunity to review proposals and plans for the new activity.

(2) A change of land use on state-owned lands within a wild river corridor that does not conform with the purpose and intent of KRS 146.200 ***through[~~to~~]*** 146.360 shall require that the state agency that owns the affected land obtain a change of use permit from the office[~~cabinet~~].

Section 13[~~14~~]. Fire Control.

(1) State fire control provisions of KRS Chapter 149***[~~,~~]*** and any ***that[~~which~~]*** may be established by cooperative agreement, shall be strictly enforced.

(2) Fire shall be controlled by methods that require the least disturbance to soils and vegetation, and use of heavy equipment shall be limited to situations where an imminent[~~eminent~~] threat to life or personal property exists. Any fire hazard reduction or replanting after fire shall be coordinated with the office[~~division~~].

Section 14[~~15~~]. Signs.

(1) The posting of commercial signs, advertisements, announcements, campaign slogans**,** or other written messages other than those related to permitted uses shall be prohibited.

(2) As otherwise allowed by law, signs may be installed by the management agency, local government, landowner**,** or public utility for the purpose of public safety, posting of property boundaries**,** or property protection, identification of river corridor boundaries and public access points or as otherwise deemed necessary for resource protection, interpretation**,** or regulatory purposes.

(3) Signs shall be of a design and construction conforming to the natural setting in which they are located***[~~,~~]*** and shall not exceed sixteen (16) square feet in size.

(4) Any person with the permission of the landowner may post informational and directional signs within a corridor as***[~~are~~]*** necessary to the continuance of an existing use.

Section 15[~~16~~]. Enforcement and Hearings.

(1) ***If[Whenever]*** the office[~~cabinet~~] has reason to believe a violation of 400[~~401~~] KAR Chapter 4 has occurred, a notice of violation shall be issued.

(2) The provisions of KRS 224.10-420 shall apply to any office[~~cabinet~~] order or determination made pursuant to the provisions of 400[~~401~~] KAR Chapter 4.

(3) Hearings required to be conducted due to the issuance of a notice of violation issued pursuant to subsection (1) or the filing of a petition pursuant to subsection (2) of this section shall be conducted pursuant to KRS 224.10-440.

(4) Appeals may be taken from any final order of the cabinet pursuant to KRS 224.10-470.

(5) Violations of the provisions of 400[~~401~~] KAR Chapter 4 shall be liable to the civil penalty ***established[~~set forth~~]*** in KRS 146.990(1).

(6) Orders for remedial action and recovery of penalties ***shall[~~will~~]*** be sought pursuant to KRS 146.350.***[~~Section 16[17]. Severability. In the event that any provision of KRS 146.200 to 146.360 or any administrative regulation promulgated pursuant hereto is found to be invalid by a court of competent jurisdiction, the remaining wild rivers regulations shall not be affected or diminished thereby.~~]***

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: November 6, 2018

FILED WITH LRC: November 6, 2018 at noon

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

ENERGY AND ENVIRONMENT CABINET
Office of Kentucky Nature Preserves
(As Amended at ARRS, February 11, 2019)

400 KAR 4:130. Wild rivers change of use permit procedures.

RELATES TO: KRS 146.220, 146.270, 146.290, 146.990

STATUTORY AUTHORITY: KRS 146.270, 224.01-110, 224.10-100

NECESSITY, FUNCTION, AND CONFORMITY: KRS 146.270 authorizes the secretary to ***promulgate[~~adopt rules and~~]*** administrative regulations necessary for the preservation and enhancement of wild rivers as ***established[~~set forth~~]*** in KRS 146.250***[~~,~~]*** and for control of recreational, educational, scientific***,*** and other uses of these areas in a manner that shall not impair them.***[~~In such administration, primary emphasis shall be given to protecting aesthetic, ecological, scenic, historic, archaeological and scientific features of the area.~~]*** Under the provisions of KRS 146.290, the select cutting of timber, a resource removal***,*** or an agricultural use may be allowed pursuant to administrative regulations promulgated by the secretary upon the granting of a permit under the other provisions of KRS 146.200 ***through[~~to~~]*** 146.360***. Uses that[~~; uses which~~]*** exist at the time the boundaries of a wild river are designated are exempt from this provision. KRS 146.290 requires that any permit granted to conduct a change of use shall contain***[~~such~~]*** restrictions, terms***,*** and conditions as***[~~are~~]*** appropriate to protect to the fullest extent possible the stream area and the public trust therein, within the intent of KRS 146.220. This administrative regulation establishes the procedure by which a landowner, as defined ***by[~~in~~]*** 401 KAR 4:110, may apply to the secretary for a change of use permit to conduct a new land use within a wild river corridor.

Section 1. Applicability. In accordance with KRS 146.290, a new land use activity on state-owned or private lands shall not be undertaken within a wild river corridor until the landowner has obtained a change of use permit from the office[~~cabinet~~]. This administrative regulation applies to any landowner applying for a permit to change a land use within a wild river corridor. Nothing herein shall be construed as superseding any requirements of other office[~~cabinet~~] programs or of other state or federal agencies.

Section 2. Permit Application.

(1) A landowner desiring to commence the select cutting of timber, a resource removal***,*** or a new agricultural use on his or her property located within a wild river corridor shall apply to the office[~~secretary~~] for a change of use permit on ***The Wild Rivers Change of Use Permit, KNP03[~~an application form supplied by the office~~]***[~~cabinet~~].

(2) The application shall include the name, address***,*** and telephone number of the landowner and the operator of the new land use.

(3) The application for removal of a subterranean resource shall include the names and addresses of all applicable surface owners. The applicant shall notify all applicable surface owners at the time application is made for a change of use.

(4) The application shall include a land use plan to consist of:

(a) A U.S. geological survey 7.5 minute topographic map ***that[~~which~~]*** delineates the exact location and extent of the new use and any access roads being constructed or improved to effect the new use, in relation to all surface waters within the wild river corridor***;[~~.~~]***

(b) The estimated dates of initiation and completion of the new use, ***if[~~where~~]*** applicable***;[~~.~~]***

(c) An estimate of the total acreage of the new use***;[~~.~~]***

(d) A description of the methods for conducting the new land use including, ***for example[~~but not limited to~~]***, any construction, excavation, blasting or tree cutting activities***;[~~.~~]***

(e) A description of best management practices for controlling soil erosion and stream sedimentation***;[~~,~~]*** maintaining existing water quality***;[~~,~~]*** handling of wastes, hazardous substances***,*** and excess rock and earth***;[~~, and~~]*** preventing and controlling spills and accidents***;[~~.~~]***

(f) A list of herbicides, pesticides, and other chemical products to be used and the planned methods of application and control***;[~~.~~]***

(g) A description of reasonable alternate locations or routes for the land use and why the proposed site was chosen***; and[~~.~~]***

(h) A reclamation plan and time schedule ***that[~~which~~]*** describes procedures for revegetating the affected land, types and locations of plant species to be used, and other measures required ***pursuant to[~~under~~]*** 400[~~401~~] KAR 4:140, Section 14.

(5) The land use plan for underground mining shall include the following additional information:

(a) A second topographic map to scale not greater than one (1) inch equal to 500 feet, prepared, certified***,*** and registered by a professional engineer in accordance with the provisions of KRS Chapter 322, which shall delineate control of all surface and groundwater drainage on the site***;[~~.~~]***

(b) Specific provisions for preventing water from entering the mine and for preventing discharges from the mine during and after the mining activity***;[~~.~~]***

(c) A preblasting report, signed by a professional engineer, of the potential for damage from blasting to stream hydrology, including groundwater and subsurface drainage effects, historic structures, significant geologic formations***,*** or other significant features located within a wild river corridor***;[~~.~~]***

(d) A dust control plan for the mining area***;[~~.~~]***

(e) Evidence that the operation ***shall[~~will~~]*** not produce or discharge acid water or acid-forming materials***; and[~~.~~]***

(f) A copy of the subsidence control plan.

(6) The land use plan for oil and gas production shall include a spill prevention and control countermeasure plan to prevent and control accidental discharges of hazardous substances into surface and groundwaters.

(7) The land use plan for select cutting of timber shall contain the following additional information:

(a) A logging plan or other description of the planned cutting method and procedures for transporting logs and disposing of slash***;[~~.~~]***

(b) The precise location and size of the log landing ***area or areas[~~area(s)~~]*** and the routing of haul roads***;[~~.~~]***

(c) A timber marking report conducted and signed by a professional forester, indicating species composition, number of

trees of each species, total volume**,** and average volume per tree for each species, number of cull trees, and a description of the method used to mark the trees***; and[.]***

(d) A forest management plan developed by a professional forester may be submitted as part of the land use plan to waive the requirement of 400[~~401~~] KAR 4:140, Section 17(5), if it employs the selective method of cutting trees and is otherwise compatible with the purpose and intent of KRS 146.200 ***through[~~to~~]*** 146.360.

(8) The land use plan for an agricultural use involving livestock or poultry production shall describe a system for storing and disposing of animal wastes and for excluding livestock from buffer zones.

(9) The land use plan for the construction and operation of a public access facility, boat dock, ramp**,** or other recreational facility shall include the following additional information:

(a) Design plans, signed by a registered engineer, showing the layout of all planned facilities, including roads, parking areas, trails**,** and buildings***;[.]***

(b) Evidence that any structures ***that[~~which~~]*** would extend into the water will not substantially impede natural stream flow***;[.]***

(c) A list of all permits applied for to conduct the new land use ***as required pursuant to[~~, a required under~~]*** KRS Chapter 151 and other applicable state and federal laws***; and[.]***

(d) A waste control and disposal plan, if applicable.

Section 3. Inspection. Within thirty (30) days following receipt of a completed permit application, office[~~cabinet~~] personnel ***shall[~~will~~]*** conduct an inspection of the site of the proposed land use change to identify and map the occurrences of significant features and other sensitive areas ***that could[~~which may~~]*** require special protective measures.

Section 4. Public Hearing.

(1) Within sixty (60) days following receipt of a completed permit application, the office[~~secretary~~], in accordance with KRS 146.290, ***shall[~~will~~]*** hold a public hearing on the application and ***shall[~~will~~]*** notify the applicant of same by certified mail, return receipt requested.

(2) Public notice of the hearing ***shall[~~will~~]*** be given according to the provisions of KRS Chapter 424 and ***shall[~~will~~]*** state the nature and location of the proposed change of use.

(3) At the hearing, any interested party may attend and be represented by counsel and shall be allowed to present evidence as to whether ***or not*** the proposed change of use is consistent with the wild river management plan, the purpose and intent of the Kentucky Wild Rivers Act**,** and other applicable law. The hearing need not conform to the strict rules of evidence as practiced in the courts of the Commonwealth and shall be conducted so as to permit the full development of all relevant issues and to insure that all persons have a fair and reasonable opportunity to be heard.

(4) The hearing shall be recorded, and the application, comments received from the public, and recommendations from government agencies shall be entered into the record. The cost of transcription of the record shall be borne by any party requesting a transcript.

Section 5. Permit Application Review.

(1) The office[~~secretary~~] shall evaluate all matters on record in light of the provisions of KRS 146.290, and shall further consider:

(a) The possible effects of the proposed new use on water quality, adjacent lands, aesthetics, fish and wildlife, vegetation, geologic features, historical and archaeological sites, recreational values, and endangered and threatened species***;[.]***

(b) Alternate uses to which the land could be put ***that[~~which~~]*** would be more consistent with the purposes and intent of KRS 146.200 ***through[~~to~~]*** KRS 146.360***;[.]***

(c) Alternate locations, including any outside of the wild river corridor that may be more appropriate for the proposed land use***;[.]***

(d) The extent to which the proposed change of use or an alternate use conforms to the river management plan developed pursuant to KRS 146.270***;[.]***

(e) ***If[~~Whether~~]*** the denial or the issuance of a permit is consistent with the office's[~~cabinet's~~] mandate to protect the waters of the Commonwealth for the use, welfare**,** and enjoyment of all of its citizens, and with the rights of landowners to the beneficial use of their property***;[.]***

(f) Any existing laws or administrative regulations ***that[~~which~~]*** apply generally to the proposed change of use***;[.]***

(g) ***If[~~Whether~~]*** the proposed change of use constitutes a threat, directly or indirectly, to public health or safety***; and[.]***

(h) Secondary effects likely to be caused or encouraged by the proposed change of use, such as off-road vehicle use, excessive noise, soil erosion, air or water pollution**,** and economic factors relating to costs of additional facilities or resource protection measures ***that could[~~which may~~]*** be required in the general area in the future as a result, directly or indirectly, of the proposed change of use.

(2) In accordance with KRS 146.290, a written order shall be issued by the office[~~secretary~~] within sixty (60) days following the public hearing.

(a) The order shall consist of a permit with appropriate standards attached in accordance with 400[~~401~~] KAR 4:140 if the application is approved, specify objections to the application and procedures for appeal if the permit is denied, or recommend an alternate use consistent with the Kentucky Wild Rivers Act.

(b) The order shall set forth the finding of fact and conclusion supporting the ruling.

(c) The order shall be forwarded to the applicant by certified mail, return receipt requested.

Section 6. Permit Conditions. (1) A permit to conduct a change of use ***shall[~~will~~]*** contain site-specific restrictions, terms**,** and conditions as***[~~are~~]*** appropriate to protect to the fullest extent possible the wild river area and the public trust therein, within the intent of KRS 146.220.

(2) A permit ***shall[~~will~~]*** become effective on the date of issuance and ***shall[~~will~~]*** remain in effect for one (1) year, at which time the permittee shall notify the office[~~cabinet~~] in writing as to the status of the new land use. The permit may be renewed annually upon request by the permittee if the new use has remained consistent with the land use plan submitted and has complied with all permit conditions, the provisions of 400[~~401~~] KAR ***Chapter 4,[~~4:110 to 4:140~~]*** and other applicable laws and administrative regulations.

(3) The landowner to whom a change of use permit is issued shall be held fully accountable for compliance with 400[~~401~~] KAR ***Chapter 4[~~4:110 to 4:140~~]*** and any additional terms and conditions imposed by the permit.

(4) The permit application and land use plan submitted shall be an instrument for adjudging compliance with the permit. Any changes in the application or land use plan shall require amendment of the permit before***[~~such~~]*** changes are implemented. A permit may be revoked or restricted in the event that the application submitted is found to contain falsified or erroneous information or if conditions of the permit or any of the provisions of 400[~~401~~] KAR ***Chapter 4[~~4:110 to 4:140~~]*** are violated. Violations shall be subject to penalty as ***established[~~set forth~~]*** in KRS 146.990.

(5) A change of use permit shall apply to the property for which it was granted and ***shall be[~~is~~]*** transferable to any future owner of the property or interest in the property. While the permit is in effect, the permittee shall notify the office[~~cabinet~~] of any sale, lease**,** or other transfer of interest in the property to which the change of use applies***[,]*** and shall make acknowledgment of the permit a condition of the sale, lease**,** or other transfer of interest in the property.

Section 7. Appeal of Office's Determination[~~Secretary's Order~~].

(1) The landowner may file a written objection to the final determination[~~ruling~~] on or before thirty (30) days of the date of its issuance. The written objection shall set forth the basis of the objection and be filed with the Docket Coordinator of the Cabinet's Office of Administrative Hearings[~~Division of Hearings~~].

(2) After filing of the written objection, an authorized agent of the office [~~secretary~~] shall meet with the landowner and attempt to reach an agreement with respect to a modification of the ruling.

(3) If no agreement is reached within sixty (60) days of filing of the written objection, the office[~~secretary~~] shall proceed pursuant to KRS 146.290.

Section 8. Incorporation by Reference. (1) "The Wild Rivers Change of Use Permit, KNP03, July 2018, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Kentucky Nature Preserves, 300 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: November 6, 2018

FILED WITH LRC: November 6, 2018 at noon

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

ENERGY AND ENVIRONMENT CABINET
Office of Kentucky Nature Preserves
(As Amended at ARRS, February 11, 2019)

400 KAR 4:140. Wild rivers change of use permit standards.

RELATES TO: KRS 146.220, 146.270, 146.280, 146.290, 146.350, 146.990, 151.140

STATUTORY AUTHORITY: KRS 146.270, 151.125, 224.01-110, 224.10-100

NECESSITY, FUNCTION, AND CONFORMITY: KRS 146.270 authorizes the secretary to ***promulgate[~~adopt rules~~]*** and administrative regulations as necessary for the preservation and enhancement of wild rivers as ***established[~~set forth~~]*** in KRS 146.250***[~~,~~]*** and for control of recreational, educational, scientific***,*** and other uses of these areas in a manner that shall not impair them.***[~~In such administration primary emphasis shall be given to protecting aesthetic, scenic, historic, archaeologic, and scientific features of the area.~~]*** Under the provisions of KRS 146.290, the select cutting of timber, other resource removal***,*** or an agricultural use may be allowed pursuant to administrative regulations promulgated by the secretary upon the granting of a permit under the other provisions of KRS 146.200 ***through[~~to~~]*** 146.360. KRS 146.290 requires that any permit granted to conduct a change of use shall contain***[~~such~~]*** restrictions, terms***,*** and conditions as***[~~are~~]*** appropriate to protect to the fullest extent possible the stream area and the public trust therein within the intent of KRS 146.220. This administrative regulation ***establishes[~~sets forth~~]*** minimum performance standards for conducting a land use change in a wild river corridor as necessary to protect the scenic beauty and environmental quality.

Section 1. Applicability. This administrative regulation applies to new land uses, as defined ***by[~~in~~]*** 400[~~401~~] KAR 4:110, within designated boundaries of a wild river corridor ***that[~~which~~]*** require a change of use permit from the office[~~cabinet~~]. Nothing herein shall be construed as superseding any requirements of other office[~~cabinet~~] programs or of other state or federal agencies.

Section 2. Buffer Zones. (1) Other than as necessary to provide river access sites authorized by the office[~~cabinet~~], a change of land use shall be located outside of buffer zones.

(2) ***If[~~Where~~]*** the adjacent slope is less than forty (40) percent the minimum width of a buffer zone bordering streams and other surface waters shall be 100 feet as measured laterally from the bank of the stream or other surface water. ***If[~~Where~~]*** the adjacent slope is forty (40) degrees or greater, the buffer zone width shall vary as ***established in the Table in this subsection.[~~follows:~~]***

Slope of Land (percent)	Minimum Width of Buffer Zone (feet)
40 to 49	115
50 to 59	125
60 to 69	145
70 to 79	165

(3) The boundaries of a buffer zone shall be flagged by the permittee with durable, brightly-colored material prior to the commencement of a permitted change of use.

Section 3. Extent of Disturbance. A new land use shall occupy the minimum area necessary to accomplish the intended use as specified in an approved land use plan.

Section 4. Water Quality. (1) In accordance with the nondegradation provision for outstanding resource waters ***established[~~contained~~]*** in 400[~~401~~] KAR 5:029(2)(4), background water quality of surface waters within a wild river corridor shall be maintained or enhanced.

(2) Any new discharge of a substance or combination of substances into a surface water within a wild river corridor shall maintain or enhance background water quality in the receiving stream.

(3) Water quality data ***to include assessment of the presence of aquatic species and habitat quality,*** shall be collected as necessary to document maintenance of background water quality.

(4) The natural flow of water in wild rivers shall be maintained. Water withdrawals shall require a permit as ***established[~~provided~~]*** in 400[~~401~~] KAR 4:010 and KRS 151.140, and shall not be allowed to impair existing recreational or fish and wildlife uses of the river, nor adversely impact endangered or threatened species.

Section 5. Erosion Control. (1) Best management practices shall be implemented as necessary to control soil erosion and sediment ***if[~~wherever~~]*** there is ground surface disturbance***.[~~;~~]*** Sediment shall not be allowed to accumulate in surface waters.

(2) Temporary erosion control measures shall be immediately implemented on all disturbed areas not needed for ongoing operation until permanent control measures can be established, and shall minimally include use of one (1) or more of the ***erosion control measures established in paragraphs (a) through (c) of this subsection.[~~following:~~]***

(a) All disturbed surfaces shall be graded, seeded, fertilized***,*** and mulched to establish complete vegetative ground cover. Native species of grasses and legumes shall be used ***if[~~wherever~~]*** conditions allow.

(b) Sediment ponds and filters, such as baled vegetation, shall be used as necessary to trap sediment within disturbed areas. Filter fences may be used in situations ***in which[~~where~~]*** other methods ***might[~~may~~]*** not provide adequate control.

(c) On slopes of ten (10) percent or more, diversion structures shall be installed uphill of disturbed areas as needed to divert surface run-off into vegetated areas.

(3) Vehicular traffic shall be restricted to the access roads and skid trails approved in the land use plan.

(4) Activities involving the use of heavy equipment shall be suspended during wet soil conditions, and heavy equipment shall be stored outside the corridor when not in use.

(5) During construction activities, storage and disposal of unconsolidated materials shall occur only at locations approved in the land use plan, and topsoil removed from the operation site shall be stockpiled and stabilized for use during reclamation.

(6) Intermittent streams ***that[~~which~~]*** are tributaries of a wild river may be temporarily impounded or otherwise altered to effect a permitted use. Streambed materials shall not be moved or removed from the streambed of a permanent or intermittent stream for any purpose.

Section 6. Stream Crossings. (1) Vehicular stream crossings shall be prohibited where stream bank slopes exceed ten (10) percent, or where the crossing might otherwise have an adverse impact on the stream environment.

(2) Natural drainages***[~~which are~~]*** not composed substantially of rock shall be accommodated with an appropriately sized drainage relief structure, such as a culvert or temporary bridge, at

the point of intersection with a road.

(a) Stream crossings shall occur only at right angles where the stream channel is most narrow and has firm, rocky banks.

(b) Relief structures for crossing a permanent stream shall minimally consist of a closed culvert designed to handle a ten (10) year, twenty-four (24) hour precipitation event, and shall be embedded in clean rock fill and covered by compacted fill to a minimum depth of one (1) foot. The bottom of culverts shall be flush with stream substrates.

(3) As required ***pursuant to***[~~under~~] KRS 151.250, a ***Division of Water*** permit to authorize construction in a flood plain ***shall***[~~must~~] be obtained from the office[~~cabinet~~] prior to bridge construction if the area of the watershed is one (1) square mile or greater.

Section 7. Access Roads. (1) Existing roads shall be used ***if***[~~whenever~~] possible to minimize surface disturbance.

(2) Best management practices for road construction, ***incorporated***[~~adopted~~] by reference in ***the U.S. Army Corps of Engineers Nationwide Permit for Linear Transportation*** [401][~~KAR 5:200~~], shall be employed to the greatest extent possible during road construction and maintenance.

(3) Roads shall be routed to follow the existing land contour as closely as possible and to avoid surface waters, flood plains***,*** and any areas vital to the preservation of significant features. Except for necessary stream crossings or provision of public access to the river, no portion of any road shall be located in a buffer zone or streambed.

(4) Roads shall not exceed a maximum grade of ten (10) percent for distances of more than 150 feet. Portions of roads on grades steeper than ten (10) percent shall be graded and surfaced with stable materials such as limestone rock, crushed gravel***,*** or other material approved in the land use plan, and shall be sufficiently durable for the anticipated volume of traffic and the size, weight, and speed of vehicles to be used. Acid or toxin-forming substances shall not be used for road surfacing.

(5) The width of a road shall be appropriate for the anticipated volume of traffic and the size, weight, and speed of vehicles to be used and shall not exceed sixteen (16) feet for single-lane traffic***[unless special exemption is made on the application]***.

(6) Vegetation shall not be cleared from an area greater than the width necessary for road and associated ditch construction. Road shoulders shall be seeded in grass cover immediately after construction is completed, and ditches shall be lined with gravel.

(7) Roads constructed to effect a permitted use shall be closed by means of a locked gate located at or near the corridor boundary ***when***[~~whenever~~] adverse weather or other conditions cause operation and maintenance of the permitted use to be suspended for an extended period of time.

Section 8. Structures. (1) Structures permitted by the management agency shall be located either:

(a) Beyond the limit of the 100-year flood plain as determined by the office[~~division~~]; or

(b) No closer than 250 feet from the nearer bank of the wild river.

(2) Structures shall be screened by vegetation or topographic features so as not to be visible from the nearer bank of the wild river.

(3) Any new dock, boat ramp***,*** or other river access facility shall be constructed so as to minimize its intrusion into the river, if any, and shall not substantially impede natural stream flow.

(4) Best management practices for construction shall be used as necessary to control erosion and prevent sedimentation of surface waters.

Section 9. Control of Hazardous Substances.

(1) To the extent not inconsistent with any other applicable law, any hazardous substance used for or resulting from a new land use shall be confined to the smallest practicable area, shall be stored so as to prevent escape as a result of rain, percolation, high water***,*** or other cause, and shall be properly and legally disposed of outside of the wild river corridor.

(2) The operator shall immediately notify the office[~~cabinet~~] of any accident involving fire, personal injury, discharge***,*** or accidental bypass of any hazardous substance within a wild river corridor, and shall submit ***to the office a written report containing details of the accident to include a map of the area impacted and a description of the people, property, and substances involved***[~~a written report to the office~~][~~cabinet~~] within forty-eight (48) hours of an accident event.

Section 10. Solid Waste Disposal. Scrap and waste materials used to effect a new land use shall be removed and properly disposed of***, in accordance with local solid waste ordinances and 401 KAR Chapters 47 through 49,*** outside of the corridor immediately after their use is concluded.

Section 11. Visibility. Buildings, facilities***,*** and other structures shall be made as inconspicuous as possible by painting or staining in muted tones or[~~and, or,~~] by screening with native vegetation. Electric lines shall not be strung across a wild river unless no other option is available, and shall be hidden to the extent possible.

Section 12. Cutting of Vegetation. (1) Any tree cutting required for a new land use, other than the permitted select cutting of timber or a new agricultural use, shall be limited to trees ***that***[~~which~~] interfere with the construction or operation of the permitted use, as approved in the land use plan.

(2) Burning of forest vegetation shall be prohibited unless authorized by the Division of Forestry, or the U.S. Forest Service on federal lands, for purposes of disease control or as part of a prescribed burn and shall conform with other applicable provisions of law.

(3) Every effort shall be made to avoid unnecessary removal or trampling of vegetation within a corridor.

Section 13. Operation and Maintenance. All operation and erosion control structures and facilities shall be routinely inspected and maintained by the operator to ensure proper functioning and to prevent the accumulation or accidental discharge of hazardous substances or waste materials.

Section 14. Reclamation.

(1) The permittee shall provide written notification to the office[~~cabinet~~] immediately upon the conclusion of a new land use and shall begin implementing reclamation measures within thirty (30) days following***[such]*** notifications.

(2) Reclamation shall involve restoration of all disturbed area to its predisturbance appearance and condition or an improved condition that ***shall***[~~will~~] enhance natural and aesthetic values.

(3) Reclamation shall be completed within ninety (90) days following conclusion of the new use unless an exception is approved by the office[~~cabinet~~]***, including a written request based on conditions beyond the applicant's control*** before the ninety (90) day period ends.

(4) All facilities and structures installed for the new use, including temporary erosion control and drainage structures, shall be removed from the corridor, and the natural contours and drainage patterns shall be restored. Culverts and other relief structures may remain if approved by the office[~~cabinet~~] to protect the natural and aesthetic values of an area.

(5) Unless otherwise approved in the land use plan, roads constructed for the permitted use shall be reclaimed by effectively blocking the road entrance to vehicular use, removing water control devices, restoring the ground surface to its natural contours, and seeding, fertilizing***,*** and mulching the roadbed. Native species of plants approved in the land use plan shall be used ***if***[~~wherever~~] conditions allow, and those having wildlife value ***shall***[~~will~~] be preferred.

(6) Tree species ***that***[~~which~~] existed on the site prior to the land use change shall be planted on all areas cleared of trees during the land use change.

(7) Reclamation shall be considered complete ***if***[~~when~~] an inspection by office[~~division~~] personnel determines that the affected site resembles, as closely as possible, the condition and

appearance of the land and vegetation that existed prior to the land use change.

(8) Failure of the operator to comply with these standards shall be cause for the denial of any future permit to conduct a change of use on land within a wild river corridor involving the operator.

Section 15. Additional Standards Specific to Exploration For and Extraction Of Oil and Gas.

(1) A spill prevention and control countermeasure (SPCC) plan shall be prepared in accordance with 40 C.F.R. Part 112 and implemented before drilling begins. The SPCC plan shall contain a contingency plan for reporting and controlling accidental discharges according to 400[~~401~~] KAR 5:015.

(2) The area of disturbance at each well shall not exceed sixty (60) feet by 100 feet unless otherwise approved in the land use plan.

(3) Prior to drilling, an area forty (40) feet in diameter centered around each well shall be isolated by an earthen dike twelve (12) inches or more in height, and the enclosed ground surface shall be lined with three (3) inches or more of sorbent material.

(4) Acids and other well drilling and cleaning fluids shall be handled in accordance with Section 9 of this administrative regulation.

(5) Blowout prevention equipment shall be installed on wells during drilling.

(6) The permittee shall provide written notification to the office[~~division~~] of the planned dates for drilling to provide an opportunity for office[~~division~~] personnel to be present on-site during drilling activities.

(7) For air rotary or other dry methods of drilling, dust and other particulate matter blown from the well shall be directed away from surface waters and stockpiled in a manner that ***shall[will]*** prevent its entry into surface waters as a result of rain, percolation, wind**,** or other cause. Dust may be controlled by injecting water into the air stream at a rate of approximately three (3) gallons per minute. Water and other fluids used in the drilling process shall not be discharged into surface waters.

(8) ***If[Whenever]*** drilling or production is suspended for twenty-four (24) hours or longer, all valves and blowout prevention equipment shall be closed.

(9) Storage or loadout tanks shall be equipped with an oil brine separator and a safety valve to prevent accidental overflow of oil, and all valves and other fluid controls shall be kept locked or be removed when the operator is off-site to prevent accidents due to vandalism.

(10)***[No]*** Produced water shall ***not*** be discharged into surface or groundwaters within a wild river corridor.

(11) Storage of produced water within a wild river corridor shall be in a closed tank having a minimum thirty (30) day storage capacity to prevent accidental discharge. Fluids shall be safely removed from the tank when the tank becomes filled to no more than two-thirds (2/3) capacity and be properly disposed of ***in accordance with 401 KAR 5:090***.

(12) Pits constructed to temporarily hold brine or other fluids produced during drilling shall be located beyond flood plains and other areas prone to flooding, and be constructed according to ***401[400]***[~~401~~] KAR 5:090, Section 9(5)(a).

(13) Disposal of produced water shall be by reinjection into a disposal well in accordance with ***401[400]***[~~401~~] KAR 5:090, Section 11, and require an underground injection control permit as provided for in 40 C.F.R. 146, or shall be transported outside of the corridor and reinjected into an approved disposal well.

(14) Any pipelines leading from pumps to storage or loadout tanks shall be fitted within a second pipe or within an open culvert lined with nonpermeable material that shall act as a catch basin for any accidental discharge of oil or brine.

(15) Pipelines shall be placed as far away as possible from streams and other surface waters, shall follow an access road ***if[wherever]*** possible, and shall not be routed across a wild river.

(16) Facilities, roads, collecting lines**,** and other structures shall be inspected daily by the operator when wells are producing to ensure erosion control and prevent accumulations or leaks of oil, produced water**,** or other hazardous substances.

(17) Spills or leaks of oil, produced water, or drilling or cleaning fluids shall be contained by the operator immediately upon discovery, be disposed of outside of the corridor in an approved manner within twenty-four (24) hours of discovery, and be reported to the office[~~cabinet~~] in accordance with ***401[400]***[~~401~~] KAR 5:015 and 40 C.F.R. Part 110.

(18) The operator shall keep sorbent material, fire extinguishers**,** and other firefighting tools readily accessible on the site to control fire or an accidental discharge of oil or produced water.

(19) Trailers, mobile homes**,** or other temporary or permanent structures used to house operation personnel shall not be installed within a wild river corridor.

(20) Reclamation shall include the plugging of all wells in accordance with ***805 KAR 1:060[oil and gas regulations]***, and the plugging affidavit shall be submitted to the office[~~division~~].

Section 16. Additional Standards Specific to Underground Mining.

(1)***[No]*** Surface disturbance resulting from underground mining shall ***not*** occur within the buffer zones of streams and other surface waters within a wild river corridor.

(2) Drainage from any surface disturbance resulting from underground mining shall be controlled pursuant to 405 KAR 18:060 and 18:070[~~following the guidelines contained in "Best Management Practices for Surface Coal Mining," published in 1984 and adopted by reference herein. Copies of this document can be obtained from the Nature Preserves Commission, 300 Sower Boulevard, Frankfort, Kentucky 40601~~].

(3) Mine surface entrances shall be located outside a wild river corridor ***if[wherever]*** possible.

(4) Underground mining shall not be permitted ***if[where]*** subsidence or landslide cannot be adequately controlled. if subsidence or surface displacement of soil, rock**,** or other ground material due to mining activities causes an adverse impact to the river or other surface waters within a wild river corridor, the mining operation shall be suspended until***[such time as]*** the operator has corrected the damage and provided evidence that further subsidence or landslide shall not occur.

(5) A subsidence event shall be reported to the office[~~cabinet~~] within twenty-four (24) hours of discovery, the surface impacts of subsidence shall be corrected**,** and the area restored to its previous condition before mining commences. The disturbed area shall be revegetated, using native grasses and legumes ***if[wherever]*** conditions allow, and be thoroughly mulched with straw or other suitable material until a vegetative cover becomes established.

(6) In addition to the standards ***established[set forth]*** in this administrative regulation, any roads constructed or improved to effect a mining use shall be in accordance with 405 KAR 18:230, and shall be constructed and maintained using best management practices for mining haul roads. Other transportation systems such as tramways, railroad loops**,** or spurs shall not be allowed within a wild river corridor unless***[such]*** access would cause less impact on the river environment than any alternative system.

(7) Underground development waste, spoil, coal**,** or other hazardous substances shall be transported to proper storage and disposal areas outside of the wild river corridor***[,]*** and shall otherwise be handled according to 405 KAR 18:130 and 405 KAR 18:190.***[No]*** Tipples, processing**,** or refuse areas shall ***not*** be located within a wild river corridor.

(8) Mine shafts shall not be routed beneath streams and other surface waters in order to avoid subsidence and physical damage to natural surface drainage patterns.

Section 17. Additional Standards Specific to the Selective Cutting of Timber. (1) Timber cutting shall follow best management practices required ***pursuant to[under]*** the Kentucky Forest Conservation Act, KRS 149.342-.344**,** and the Kentucky Agriculture Water Quality Act, KRS. 224.71-100 through 224.71-140, and related practices found in the most current revision of the Kentucky Agriculture Water Quality Plan available from the Kentucky Division of Conservation[~~to the fullest extent possible the guidelines~~

~~contained in "Forest Practices Guidelines for Water Quality Management," published July 1980 and adopted by reference herein. Copies of this document can be obtained from the Nature Preserves Commission,~~] 300 Sower Boulevard, Frankfort, Kentucky 40601.

(2) A professional forester shall survey and mark all trees to be cut. A minimum residual basal area of not less than sixty (60) square feet per acre shall be left standing and evenly distributed over the harvested area.

(3) The boundaries of the area to be cut shall be clearly marked using paint.

(4) Prior to cutting, all active den trees and at least three (3) mast-producing trees per acre consisting of trees in the largest size class in the stand, shall be marked and left standing.

(5) Tree cutting shall not be repeated in the permitted area at intervals of less than twenty (20) years from the date that reclamation is completed as ***established[specified]*** in Section 14(7) of this administrative regulation, unless the landowner has submitted a timber management plan as part of the land use plan, approved by a professional forester, which recommends a shorter interval.

(6) The selective cutting of trees shall be prohibited within buffer zones except to remove diseased or insect-infested trees or those becoming uprooted due to natural causes.

(7) Construction of roads and skid trails shall occur outside of buffer zones, unless less impact would result from using an existing road in a buffer zone and be routed to follow the contours of the land.

(8) Trees used for fastening or attaching cables, guys**,** or other equipment shall be adequately protected from possibly injury.

(9) In hilly terrain, logs shall be skidded uphill ***if[where]*** possible, on trails designed and maintained for this purpose using best management practices, and shall not be skidded through surface waters.

(10) The amount of surface disturbance required for construction of roads, skid trails**,** and log landings shall be kept to the minimum required for ***these[such]*** purposes, and the area of a landing shall not exceed 6,000 feet unless and exception is approved in the land use plan.

(11) Log landings shall be located so as to minimize erosion and ***if[wherever]*** possible be located on well-drained sites on slopes of less than ten (10) percent. ***If[Where]*** necessary, a landing shall be protected from overland flow of water by construction of a diversion ditch on the uphill side to divert water into well-vegetated areas.

(12) Timber shall be cut as close to the ground as is reasonably practicable, with the height of the stumps not to exceed twelve (12) inches above ground on the uphill side of the tree.

(13) Trees shall be cut so as to fall away from streams and other surface waters, rock houses, historic structures**,** and other sensitive areas identified by the office[~~division~~].

(14) Tree tops and other nonmarketable timber slash shall be lopped to within two (2) feet of the ground surface, or chipped and spread on disturbed areas to control erosion. Slash shall be randomly placed within a corridor.

(15) Pesticides and herbicides shall be used in accordance with the land use plan submitted as part of the permit application ***incorporated by reference in 400 KAR 4:130***.

(16) Facilities for processing logs shall be located outside wild river corridor boundaries.

(17) Logging operations shall cease during wet soil conditions.

(18) At the conclusion of the land use change, log landings, skid trails**,** and haul roads shall be reclaimed according to Section 14 of this administrative regulation.

(19) A permit to conduct select cutting of timber shall not be extended more than 180 days beyond the original permit expiration date.

Section 18. Additional Standards Specific to Agriculture.

(1) A new agricultural use within a wild river corridor shall follow the Kentucky Agriculture Water Quality Act, KRS. 224.71-100 through 224.71-140, and related practices found in the most current revision of the Kentucky Agriculture Water Quality Plan available from the Kentucky Division of Conservation[~~to the fullest extent possible the guidelines contained in "Best Management Practices for Agriculture," published July 1985 and adopted by reference herein. Copies of this document can be obtained from the Nature Preserves Commission,~~] 300 Sower Boulevard, Frankfort, Kentucky 40601.

(2) The removal of trees to effect a new agricultural use shall be subject to all applicable provisions of Section 17 of this administrative regulation.

(3) Where little or no vegetative ground cover exists between the proposed agricultural use and a stream or wetland, native trees and ground cover shall be planted along the banks of the surface water to create buffer zones prior to the commencement of the agricultural use. Plant species ***shall[will]*** be recommended by the office[~~division~~].

(4) Severely eroded, sediment-producing areas shall be properly stabilized using best management practices for critical areas prior to the commencement of a new agricultural use in an area.

(5) Conservation tillage methods shall be employed to the extent practicable on lands having slopes of ten (10) degrees or greater.

(6) A cover crop shall be planted in cultivated fields during winter and other periods when the cultivated crop does not provide adequate ground cover.

(7) Livestock shall be excluded from buffer zones by fencing or other methods.

(8) Watering areas for livestock shall be located outside of buffer zones.

(9) The number of livestock per area of pasture shall be estimated in the land use plan and shall be maintained at or below the level necessary to sustain complete ground cover.

(10) Animal wastes shall be***[properly]*** stored and disposed of in a manner that will prevent their introduction into streams. Spreading of waste over fields as a disposal method shall be avoided during periods of heavy rainfall or frozen soil conditions.

(11) Any pond constructed to hold animal waste shall be located as far away as possible from streams and other surface waters, and be designed to hold the run-off from a twenty-five (25) year, twenty-four (24) hour storm event plus six (6) months of precipitation.

(12) A perennial cover crop shall be planted between trees in orchards and nurseries immediately after the nursery stock is planted.

(13) The use of pesticides and herbicides shall be restricted to those approved in the land use plan, and the use of a persistent, toxic substance shall not be approved if an equally effective, less toxic and less persistent product is available.

(14) Aerial spraying of chemicals shall not be allowed within a wild river corridor.

(15) The office[~~cabinet~~] may attach additional standards to a permit authorizing an agricultural use on highly erodible lands.

Section 19. Additional Standards for Recreation Facilities Development. (1) Development of commercial or private recreational facilities within a wild river corridor shall be consistent with wild river management plans, and buildings and other structures shall be located outside of buffer zones ***if[wherever]*** possible.

(2) Recreation facilities shall be primitive in design and appearance and constructed of natural or natural-appearing materials that blend with the surroundings.

(3) Recreation facilities shall be designed so as to require minimal ground disturbance and removal of vegetation.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: November 6, 2018

FILED WITH LRC: November 6, 2018 at noon

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ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Waste Management
(As Amended at ARRS, February 11, 2019)

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 (0-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 and GB-containing lab wastes treated to destroy agent with caustic
N702	Lab Wastes associated with treated VX wastes and VX-containing lab wastes treated to destroy agent with caustic
N703	Lab Wastes associated with treated H wastes and H-containing lab wastes treated to destroy agent with caustic
N801	Off-gas Treatment (OTM) condensate associated with treated GB wastes
N802	Off-gas Treatment (OTM) condensate associated with treated VX wastes
N901	Spent Decontamination Solution associated with treated GB wastes
N902	Spent Decontamination Solution associated with treated VX wastes

(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 ***applicable[~~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 ***established[~~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 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 ***might[~~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 ***applicants[~~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 ***might[~~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, ***shall[~~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.

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.

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Waste Management
(As Amended at ARRS, February 11, 2019)

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)	3.0×10^{-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.

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-hexachlorocyclo-hexane	319-84-6	1.8E-03	5.6E-04
Beta-hexachlorocyclo-hexane	319-85-7	5.3E-04	1.9E-03
Gamma-hexachlorocy-clohexane	58-89-9	3.8E-04	2.6E-03
Hexachlorocyclohex-ane, Technical		5.1E-04	2.0E-03
Hexachlorodibenxo-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
Pentachloronitroben-zene	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-Tetrachlorodi-benzo-p-dioxin	1746-01-6	4.5E+01	2.2E-08
1,1,2,2-Tetrachloro-ethane	79-34-5	5.8E-05	1.7E-02
Tetrachloroethylene	127-18-4	4.8E-07	2.1E+00
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:

DRE % = (Win – Wout) /Winx 100%

Where:

W_{in} = Mass feed rate of waste into the process.

W_{out} = 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 ***401 KAR Chapter 39[~~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) of this section***.

(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 ***might[~~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, ***401*** 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), ***and*** 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

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ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Waste Management
(As Amended at ARRS, February 11, 2019)

401 KAR 42:005. Definitions for[~~related to~~] 401 KAR Chapter 42.

RELATES TO: KRS 224.1[~~224.01~~], 224.10, 224.60, 40 C.F.R. 280 Subpart A, 42 U.S.C. 6991 – 6991m[~~6991c~~], 9601-9675

STATUTORY AUTHORITY: KRS 224.10-100(5), 224.60-105, 42 U.S.C. 6991-6991m[~~6991k, 6991e~~]

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/ChemicalMethods, U.S. EPA Publication SW-846 as referenced in 40 C.F.R. 260.11(c)(3); or

2. Cabinet-approved techniques ***based on best management practices***, 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.~~

~~(11)~~] "Bodily injury and property damage" is defined by KRS

224.60-115(1).

(4)[(~~12~~)] "Cabinet" is defined by KRS 224.1-010(8)[~~224.01-010(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.~~

~~(21)~~] "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":

(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.~~

~~(91)~~] "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" **is defined by[~~means a geologist registered in the state of Kentucky in accordance with~~]**KRS **322A.010(4)[~~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) **40** 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 ***includes[~~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.~~

~~(100)~~] "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) "SFMO" 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

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ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Waste Management
(As Amended at ARRS, February 11, 2019)

401 KAR 42:020. UST system requirements, notification, registration, and annual fees[~~Systems: design, construction, installation, and registration~~].

RELATES TO: KRS 224.1[~~224.01~~], 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[~~6991c, 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 ***requires the cabinet to[~~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**, applicability and exclusions shall be as established in 40 C.F.R. 280.10, 280.11, and this administrative regulation**.

(2) Requirements for previously ***federally deferred[~~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) **In addition to the exclusions established in subsection *(1)[~~1~~]* of this section,** 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 **39[~~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); **and[~~(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~~]

(c)[~~(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 7112~~] for a[~~each~~] UST facility within thirty (30) days of bringing a UST system into use at the 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)[~~(1) 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)***(a)*** 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***

(b)1.[~~, 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);

2.[~~(b)~~] Payment shall be made according to instructions on the invoice from the cabinet stating the required payment;

3.[~~(c)~~] Payment shall be made ***within*** thirty (30) days from the date on the invoice from the cabinet specifying the required payment;

4.[~~(d)~~] Payment submitted by check shall be made payable to the Kentucky State Treasurer with a note stating ***that the*** payment applies to UST tank fees;

5.[~~(e)~~] Annual fees shall not be due for years prior to the one beginning July 1, 1990; and

6.[~~(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, ***the following[~~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 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[~~10~~]. 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[~~11~~]. 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)[~~100~~] 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 Section 4.0 of the UST System Compliance **Manual**[~~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.

(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 **immediately[~~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 **newly installed** 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 **existing** overfill prevention devices **not subject to the requirements in subsection *(7)[~~7~~]* of this section[~~installed prior to April 5, 2019~~]**, shall be **immediately[~~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 **immediately** 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[~~12~~]. 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 Manual[~~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 on or 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)***(a)*** 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***

(b)1.[~~, and:~~

[~~(a)~~] For electronic devices capable of printing sensor readings, a record ***shall be[~~is~~]*** obtained, at a minimum, every thirty (30) days; or

2.[~~(b)~~] For a device not capable of printing sensor readings, a monthly log ***shall be[~~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 42:050; 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 ***established*** 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 ***shall be[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), ***and (h); 280.44; and this section[~~(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) ***of this section***, 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) ***of this section***, 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, **and not subject to the requirements in subsection *(4)[4]* of this section[~~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 **newly installed, or newly acquired but not permanently closed,** 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, **or another form containing, at a minimum, the same information,** for:

(a) Existing UST facilities, **not subject to the requirements of paragraphs (b) and (c) of this subsection, immediately[~~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, **or another form containing, at a minimum, the same information,** for:

(a) Existing UST facilities, **not subject to the requirements of paragraphs (b) and (c) of this subsection, immediately[~~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 **issue a Notice of Violation to the UST system's owner or operator[~~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 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.

(3)[**(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 *(1)[(3)]* of this section, or to request an extension in accordance with Section 22 of this administrative regulation.

(4)[**(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.

(5)[**(6)**] Owners and operators shall ensure that a delivery prohibition tag shall not be removed, defaced, altered, or destroyed.

(6)[**(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.

(7)[**(8)**] Owners and operators shall notify the appropriate product deliverer if delivery prohibition has been invoked.

(8)[**(9)**] Except as established in subsection *(11)[(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.

(9)[**(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.

(10)[**(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).

(11)[**(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.

(12)[**(13)**] This **section**[**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[16]. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "UST Annual Walkthrough Inspection", DWM 4220, **January 2019**[**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, **January 2019**[**August 2018**];["Certificate of Registration and Reimbursement Eligibility", DEP 7113, April 2011; 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 2011];

(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, **January 2019**[**August 2018**];

(k) "UST Monthly Walkthrough Inspection", DWM 4230, **January 2019**[**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, **January 2019**[**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", **January 2019**[**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: January 10, 2019

FILED WITH LRC: January 14, 2019 at 11 a.m.

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.

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Waste Management
(As Amended at ARRS, February 11, 2019)

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)[~~224.01~~], 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[~~6991-6991c~~]

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 ***might[~~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. 280.66 and 280.67, the owner or operator shall complete and submit to the cabinet, ***if[~~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 ***with[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 ***paragraphs (a) through (c)[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 ***paragraphs (a) through (c) of*** 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 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 **October 6, 2011[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, ***February 2019[~~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, ***February 2019[~~August 2018~~]***[~~"Vapor Intrusion Assessment", DEP 0057, November 2016~~];

(f) "UST Interim Corrective Action Checklist", DWM 4265, ***February 2019[~~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, ***February 2019[~~August 2018~~]***[~~"Site Investigation Report Form", DEP 8049, November 2016~~];

(i) "UST Site Check Checklist", DWM 4268, ***February 2019[~~January 2019~~]***[**~~August 2018~~**][~~"Corrective Action Outline", November 2016~~];

(j) "UST Site Investigation Checklist", DWM 4269, ***February 2019[~~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", **January 2019[~~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: January 10, 2019

FILED WITH LRC: January 14, 2019 at 11 a.m.

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ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Waste Management
(As Amended at ARRS, February 11, 2019)

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[~~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 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)[~~(c) 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~~], ***stating[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 7112~~], 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[~~, DEP6063~~], 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;

(c)[~~(d)~~] Maintained corrosion protection for the petroleum storage tank system in accordance with 401 KAR 42:020[~~42:030~~

~~and 42:070~~];

(d)[~~(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;

(e)[~~(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 6091;~~]

(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 ***once[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 6091~~], 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 ***or not*** 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[.]***[~~; 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 ***shall be[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***, if necessary*** 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[~~if~~] 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)***1.*** The aggregate amount of payment of all third-party claims shall not exceed $1,000,000 per occurrence.

2.[~~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;~~

~~(c) 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)[~~(o) 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 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) ***Costs[~~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 PSTEAF 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

(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 ***shall[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(l)(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 ***as*** established in

paragraphs (a) through (d) of 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 ***paragraphs (a) through (d) of*** 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 ***paragraphs (a) through (d) of*** 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 ***paragraph (a)[~~subsection (2)(a)~~]*** of this ***subsection[~~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 ***paragraphs (a) through (d) of*** 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 0061,November 2016~~];

(c) "UST Application for Assistance for PSTEAF", DWM 4282, August 2018; [~~"Reimbursable Amount Re-Evaluation", DEP 0062, 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 Estimate", DEP 6090, November 2016~~];

(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;

(m) "UST Third-Party Claim", DWM 4292, August 2018; and

(n) "UST PSTEAF Reimbursement Rates", **January 2019[~~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: January 10, 2019

FILED WITH LRC: January 14, 2019 at 11 a.m.

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.

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Waste Management
(As Amended at ARRS, February 11, 2019)

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[~~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***:***

1. Be eligible for reimbursement of the cost of permanent closure***; and***

2.[~~, but shall~~] Not be eligible for ***reimbursement of the[~~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 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 5,101~~	~~5,101 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, 2011] 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)(a)[(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: January 10, 2019

FILED WITH LRC: January 14, 2019 at 11 a.m.

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ENERGY AND ENVIRONMENT CABINET
Office of Kentucky Nature Preserves
(As Amended at ARRS, February 11, 2019)

418 KAR 1:010. Definitions for 418 KAR Chapter 1.

RELATES TO: KRS 146.550-146.570, 446.010(18)

STATUTORY AUTHORITY: KRS 146.550-146.570

NECESSITY, FUNCTION, AND CONFORMITY: KRS 146.560(2) requires the board to promulgate administrative regulations necessary for application for funds from the agencies identified in KRS 146.570, review and approval of proposed projects, and review and approval of grants. KRS 146.560(2)***[also]*** requires the board to promulgate administrative regulations on land acquisition. This administrative regulation ***establishes definitions for[defines]*** terms used in 418 KAR Chapter 1.

Section 1. Definitions. (1) "Access land" means land necessary for reasonable and planned ingress and egress from the project site.

(2) "Acquisition" means the procurement of land and includes options, appraisals, maps, surveys, title opinions, title insurance and environmental audits, and inspections.

(3) "Administration" means activities conducted by the Office of Kentucky Nature Preserves to accomplish the purposes of KRS 146.550 through 146.570 and 418 KAR Chapter 1 and encompasses reasonable operating costs, consultant and contractor fees, and staff and equipment costs for approved activities including project development, application, conservation easement, deed restriction, and management plan assessment, implementation and enforcement, and biological inventories of fund projects.

(4) "Areas important to migratory birds" means those areas important to the reproduction and survival of migratory birds, including:

(a) Large tracts of contiguous forest;

(b) Wooded greenspace areas;

(c) Shallow open water habitats with expansive areas of shoreline;

(d) Wetlands or wetland complexes including marshes, deep water sloughs, and swamps;

(e) Natural or restored grasslands; and

(f) Riparian corridors.

(5)[(4)] "Board" means the Kentucky Heritage Land Conservation Fund Board.

(6)[(5)] "Buffer land" means land that will aid in protecting the project site from harm or will prevent degradation of the visitor experience at the project site.

(7)[(6)] "Chair" means the chairperson of the board.

(8)[(7)] "Dollar for dollar" means that for every Kentucky Heritage Land Conservation Fund dollar granted by the board, the applicant spends an equal amount[, and that the applicant places all matching funds in one (1) lump sum into escrow] at the board's direction.

(9)[(8)] "Fund" means the Kentucky Heritage Land Conservation Fund.

(10)[(9)] "Grant" means an award of money from the Kentucky Heritage Land Conservation Fund pursuant to KRS 146.570(4)(f).

(11)[(10)] "Greenspace" means undeveloped land in or around urban areas, including forests or other natural vegetation, stream-side corridors, natural areas, and abandoned rights-of-way.

(12)[(11)] "Local governments" means county governments, municipalities, school districts, and special districts, or a combination thereof.

(13) "LTO" means Private, nonprofit land trust organization as defined ***by[in]*** subsection (19) of this section.

(14)[(12)] "Management" means the stewardship necessary to fulfill the purposes of KRS 146.550 through 146.570 and 418 KAR Chapter 1 and encompasses site development costs and reasonable operating costs, consultant and contractor fees, facility development, supplies, materials, site-specific equipment, and staff costs.

(15)[(13)] "Natural area" means any area of land or water, or of both land and water, in public or private ownership, which either retains or has reestablished to some degree, in the judgment of the office, its natural character, though it need not be completely natural and undisturbed, or which has natural flora, fauna, biological, ecological, geological, scenic, or archaeological features of scientific, aesthetic, cultural, or educational interest. [an area of land or water, or of both land and water, which:

(a)Retains or has reestablished in the judgment of the board its natural character;

(b) Has natural flora or fauna; or

(c) Has biological, ecological, geological, scenic, or archaeological features of scientific, aesthetic, cultural, or educational interest to the public.

(14) "Natural functions" means the interrelationships among the living and nonliving components of ecosystems and includes:

(a) Energy fixation and conversions;

(b) Ecosystem productivity and biomass accumulation;

(c) Nutrient cycling;

~~(d) Storage, transport, release, and retention of water and other nutrients;~~

~~(e) Food web relationships and dynamics;~~

~~(f) Weathering, development, and stabilization of substrates; and~~

~~(g) Absorption and neutralization of pollutants.~~]

(16)[~~(15)~~] "Natural state" means the condition of an area that retains, has substantially reestablished, or is in the process of reestablishing, an indigenous ecosystem.

(17)[~~(16)~~] ***"Office is defined by KRS 146.415(4).***

(18) "Outdoor recreation" means activity on a subject property that does not cause harm to the property or its natural state, or hinder the heritage land conservation purposes of KRS 146.550 through 146.570.***[~~(18) "Office" is defined by KRS 146.415(4).~~]***

(19)[~~(17)~~] "Private, nonprofit land trust organization" [~~or "LTO"~~] means a group with Internal Revenue Code 501(c)(3) status qualified to hold land and easements for land conservation purposes.

(20) "Rare and endangered species" means those plants and animals identified as such by the Office of Kentucky Nature Preserves in accordance with 400 KAR 2:080 Section 6 and 400 KAR Chapter 3.

(21)[~~(18)~~] "RMP" means resource management plan.

(22)[~~(19)~~] "State agency" means any department, program, cabinet, institution, board, commission, office, or agency of the Commonwealth of Kentucky.

(23)[~~(20)~~] "State colleges and universities" means accredited colleges and universities located in the Commonwealth of Kentucky.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: November 6, 2018

FILED WITH LRC: November 6, 2018 at noon

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

ENERGY AND ENVIRONMENT CABINET
Office of Kentucky Nature Preserves
(As Amended at ARRS, February 11, 2019)

418 KAR 1:020. Administrative procedures of the board.

RELATES TO: KRS 61.805-61.850, 61.870-61.884, 146.550-146.570[~~,~~]

STATUTORY AUTHORITY: KRS 146.560(2), 146.565

NECESSITY, FUNCTION, AND CONFORMITY: KRS 146.560(2) requires the board to promulgate administrative regulations necessary for the application for funds from agencies identified in KRS 146.570, review and approval of projects and grants, and acquisition of land. This administrative regulation establishes***[~~those~~]*** procedures ***for the application for funds from agencies as established in KRS 146.570, for review and approval of projects and grants, and for acquisiton of land***.

Section 1. Meetings.

(1) Regular meetings. The board shall meet quarterly at times and places designated by the chair. The board shall provide for a yearly schedule of regular meetings pursuant to KRS 61.820.

(2) Special meetings.

(a) If a regular meeting is rescheduled, the board shall provide written notice of the rescheduled meeting pursuant to KRS 61.823(3) through (4).

(b) The chair or a majority of the members of the board may call a special meeting. The board shall provide written notice of a special meeting pursuant to KRS 61.823(3) through (4), unless the meeting is an emergency meeting, in which case the board shall comply with the notice requirements of KRS 61.823(5).

(3) Closed sessions. Deliberations on the future acquisition of land may be closed to the public ***if[~~when~~]*** publicity would be likely to affect the value of the land. Sessions may also be closed to the public for any other reason permitted by KRS 61.810. The board shall meet the requirements for closed sessions ***established[~~set forth~~]*** in KRS 61.815.

Section 2. Quorum.

(1) Five (5)[~~Seven (7)~~] members of the board shall be required to constitute a quorum of which:

(a) Two (2)[~~Three (3)~~] shall be members pursuant to KRS 146.560(1)(a) through (e); and

(b) Three (3)[~~Four (4)~~] shall be members pursuant to KRS 146.560(1)(f) through (k).

(2) The board shall act by a majority of those present at the meeting and constituting a quorum.

Section 3. Meeting Participation.

(1) A board member may participate in a meeting in person or by video teleconference pursuant to KRS 61.826.

(2) The designation of a board member pursuant to KRS 146.560(1)(a) through (e) shall be in writing and shall be submitted to the chair prior to the first meeting the designee attends. If the requirements of this subsection are not met, the designee shall not be permitted to vote.

Section 4. Meeting Minutes ***and[~~,~~]*** Annual Report. (1) Meeting minutes. Minutes of each meeting of the board shall be prepared and sent[~~mailed~~] to each member of the board. Except for a closed session meeting, the minutes shall be provided to an interested party upon written request to the board in accordance with the requirements of KRS 61.872(2).

(2) Annual report. An annual report of the activities of the board for the previous year shall be prepared.

(a) This report shall include a cumulative list of all approved projects and a brief status report of [~~all~~] areas acquired through the fund the previous fiscal year.

(b) The board shall submit the annual report to the Legislative Research Commission by October 1 of each year. Upon receipt of the annual report, the Legislative Research Commission may publish it in the Legislative Record or other appropriate publication.

Section 5. Officers. The board shall annually nominate and elect a vice-chair and a treasurer. The vice-chair shall preside over meetings in the absence of the chair. The treasurer, ***who[~~which~~]*** shall be a member appointed pursuant to KRS 146.560(1)(f) through (k), shall monitor and report disbursements and receipts.

Section 6. Committees.

(1) There shall be two (2) standing committees ***-[~~,~~]*** a projects review committee and a stewardship committee. The chair, with board approval, may also create other committees for specific purposes and a definite term.

(2) The projects review committee:

(a) Shall, through the administration of the office:

1. Review project applications submitted in accordance with 418 KAR 1:040;

2. Determine the compliance of an application with the four (4) priorities for acquisition ***established[~~set forth~~]*** in KRS 146.560(2)(a) through (d);

3. Determine completeness and accuracy of an application; and

4. Prepare and submit a report of its findings to:

a. Each individual board member at least fifteen (15) days prior to a meeting at which the application will be considered by the board; and

b. The applicant; ***and***

(b) May:

1. Assist an applicant in the preparation of an application; and

2. Contact an applicant before the due date of a report to correct a minor deficiency in the application.

(3) The stewardship committee shall, through the administration of the office:

(a) Review and make recommendations to the board regarding preliminary and final RMPs; and

(b) Ensure that the management of land purchased, in whole or in part, with fund money meets the requirements of:

1. KRS 146.550 through 146.570;

2. 418 KAR Chapter 1;

3. A written[~~memorandum of~~] agreement between the board and a recipient of fund money;

4. A conservation easement or deed restriction held by the Commonwealth through the board for the use and benefit of the citizens of the Commonwealth in a manner consistent with KRS 146.550 through KRS 146.570 and the purposes for which the property was acquired;[~~and~~]

5. The latest RMP approved by the board; and [~~.~~]

6. Any other written restrictions, easements, or articles of dedication approved by the board.

(4) A committee shall include at least three (3) members, two (2) of whom are board members, one ***(1)*** having been appointed to the board by the Governor of Kentucky or ***as established in[~~specified by~~]*** KRS 146.560(1)(f) ***through[-]*** (k).

(a) The chair shall appoint committee members and a committee chair, and shall be a voting ex officio member of each committee.

(b) The board member representing the office or proxy shall be an ex officio member of each committee due to the administration of the fund program by the office.

(5) A majority of the members of a committee shall constitute a quorum. A committee shall act by a majority of those present at a meeting at which a quorum is present.

(6) Committee membership shall be established at the first[~~last~~] meeting of each fiscal[~~calendar~~] year.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: November 6, 2018

FILED WITH LRC: November 6, 2018 at noon

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

ENERGY AND ENVIRONMENT CABINET
Office of Kentucky Nature Preserves
(As Amended at ARRS, February 11, 2019)

418 KAR 1:040. Grant applications.

RELATES TO: KRS 146.550-146.570, 382.800-382.860

STATUTORY AUTHORITY: KRS 146.560(2), 146.565

NECESSITY, FUNCTION, AND CONFORMITY: KRS 146.560(2) requires the board to promulgate administrative regulations necessary for the application for funds from agencies identified in KRS 146.570, review and approval of projects and grants, and acquisition of land. This administrative regulation establishes the procedures for review and approval of grants funded to state agencies, local governments, and state colleges and universities pursuant to KRS 146.570(4)(a)-(f).

Section 1. Application.

(1) A state agency, local government, state college or university, or LTO seeking a grant pursuant to KRS 146.570(4)(f) shall submit to the board a completed grant application package.

(2) The application package shall include:

(a) A cover letter;

(b) The Kentucky Heritage Land Conservation Fund Board Grant Application Form, HL-1A;

(c) Location map;

(d) Site or project description;

(e) Preliminary Resource Management Plan, HL-1C, using the Preliminary Resource Management Plan Instructions, HL-1B;

(f) Copy of the portion of a 1:24,000 topographical map showing the approximate project boundaries; and

(g) Project costs worksheet.

(3) Money expended by an applicant in connection with a denied application for funds, a grant, or project under this section shall not be reimbursed to the applicant.

(4) An applicant shall not supply false or misleading information to the board and shall provide to the board verification that all information in the grant application is true and accurate.

(5) Grant applicants may submit joint applications. The preliminary RMP for a joint application shall specify which entity will perform each aspect of management. Each joint applicant shall remain responsible for all aspects of management.

Section 2. Review of Application.

(1) After reviewing the report received from the Projects Review Committee pursuant to 418 KAR 1:020, Section 6(2)(a), each board member shall review the application package and evaluate it based on***[~~the following criteria~~]***:

(a) If the fund contains adequate money to fund the proposed project;

(b) If the proposed project meets one (1) or more of the priorities for acquisition listed in KRS 146.560(2)(a) through (d);

(c) If the proposed acquisition is one (1) of the areas referred to in KRS 146.565;

(d)The completeness and accuracy of the application package;

(e) If the preliminary RMP furthers the purposes of KRS 146.550 through 146.570;

(f) The applicant's ability to complete the acquisition and manage the land consistent with the preliminary RMP;

(g)The significance of the natural and educational resources on the project site;

(h) The prevalence of this type of project and project site in public systems; and

(i) The threat of loss or degradation of the project site if not protected.

(2) The board:

(a) Shall approve or deny a grant application by the vote of a majority of those present at a meeting at which there is a quorum; and

(b) May amend or attach conditions to the approval of a grant application.

(3) Consideration of a grant application may be carried over from meeting to meeting***,*** and the board may decline to approve a grant application at a given meeting.

(4) The board may, itself or through the office[~~an agent~~], verify the accuracy of the information in a grant application and make further investigation of the merits of a proposed acquisition.

(5) The board shall mail to the applicant, within fifteen (15) days of board action, written notice of the approval or denial of a grant application and, if denied, the reasons for denial.

Section 3. Agreements. Funds shall not be disbursed until the applicant has entered into a written[~~memorandum of~~] agreement with the board that requires the applicant to comply with:

(1) The requirements of KRS 146.550 through 146.570;

(2) 418 KAR Chapter 1;

(3) The application;

(4) A conservation easement or deed restriction that pertains to the project site; and

(5) The latest RMP approved by the board.

Section 4. Incorporation by Reference.

(1)The following material is incorporated by reference:

(a) "Kentucky Heritage Land Conservation Fund Board Grant Application Form", HL-1A, July 2018[~~June 2013~~];

(b) "Preliminary Resource Management Plan Instructions", HL-1B, July 2018[~~July 2012~~]; and

(c) "Preliminary Resource Management Plan Template", HL-1C, July 2012.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the office of the Kentucky Heritage Land Conservation Fund, 375 Versailles Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: November 6, 2018

FILED WITH LRC: November 6, 2018 at noon

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

ENERGY AND ENVIRONMENT CABINET
Office of Kentucky Nature Preserves
(As Amended at ARRS, February 11, 2019)

418 KAR 1:050. Procedures for acquisition of land.

RELATES TO: KRS 45.450, 146.550-146.570, 382.800-382.860
STATUTORY AUTHORITY: KRS 146.560(2), 146.565
NECESSITY, FUNCTION, AND CONFORMITY: KRS 146.560(2) requires the board to promulgate administrative regulations on acquisition of land. This administrative regulation governs the acquisition of land purchased, in whole or in part, with fund money.

Section 1. An applicant shall attempt to acquire:
(1) Land at or[~~a price~~] below its fair market value; and
(2) Available matching funds for the purchase of land and land management from a public or private entity.

Section 2. Transfer of Funds. An expenditure approved by the board shall be disbursed[~~promptly~~] after a written agreement[~~Memorandum of Agreement~~] has been signed by the grant applicant and the board, through its chair, and all procedures in 418 KAR 1:040 and in the application have been followed.

Section 3. Deadline for Acquisition. The project site shall be acquired within two (2) years of board approval of the acquisition. If the requirements of an agreed upon MOA required by 418 KAR 1:040, Section 3, have been met, then an extension ***shall[~~may~~]*** be granted by the board upon receipt of a written request for extension.

Section 4. Verification.
(1) Within ninety (90) days of purchase, a recipient of fund money shall provide to the board, a copy of the recorded deed of conveyance for land acquired.
(2) The deed shall indicate:
(a) That it has been filed of record in the courthouse of the county where the real estate is located; and
(b) The amount of consideration paid for the real estate, in accordance with KRS 45.450.

Section 5. Deed Restriction. A state agency that has been awarded grant funds pursuant to KRS 146.570(4) shall include in all deeds conveying ownership of property to that agency, as grantee, the following language: "Grantor and grantee hereby acknowledge that a source of funding for the purchase of the property is the Kentucky Heritage Land Conservation Fund, and that as consideration for receiving said funding, Grantee, including its successors and assigns, is required to maintain the property in perpetuity in accordance with the purpose, intent and requirements of the Kentucky Heritage Land Conservation Fund set forth at KRS 146.570 and 418 KAR Chapter 1. Grantee, including its successors and assigns, further acknowledges that it is prohibited from selling, exchanging, encumbering**,** or disposing of any interest in the property without the prior written consent of the Kentucky Heritage Land Conservation Fund, its successors and assigns, and the Kentucky Finance and Administration Cabinet, and that the Grantee, including its successors and assigns, shall ensure that any future owner of the property agrees in writing to be bound in perpetuity to the same restrictions and terms as stated herein."

Section 6. Conservation Easements.
(1) A local government, state college, state university, or LTO that has been awarded grant funds pursuant to KRS 146.570(4)(f) shall convey to the Commonwealth of Kentucky a conservation easement in perpetuity over all land acquired, in whole or in part, with fund proceeds.
(a) This conveyance shall occur simultaneously with the conveyance of the property to the applicant.
(b) The conservation easement shall meet the requirements of KRS 382.800 through 382.860 and ensure that lands acquired ***shall be[~~are~~]*** maintained in perpetuity for the purposes ***established[~~set out~~]*** in KRS 146.560.
(2) Matching funds.
(a) No later than ninety (90) days after board approval of an application from an LTO, the applicant shall deposit into a designated[~~non-lapsing escrow~~] account the matching funds required by KRS 146.560(2)(d). The board shall rescind [~~deny~~] a grant application submitted by an LTO if the LTO fails to deposit the matching funds required by KRS 146.560(2)(d) prior to acquiring the property.
(b) An LTO shall submit to the board for prior review and approval instructions for the disbursement of matching funds[~~from the escrow account~~], and shall ensure in writing that matching funds remain dedicated to the project[~~the escrow account remains open~~] until all disbursements have been made.
(c) A final report detailing each disbursement[~~from the account~~] shall be provided to the board within sixty (60) days of the final disbursement.

CHARLES G. SNAVELY, Secretary
APPROVED BY AGENCY: November 6, 2018
FILED WITH LRC: November 6, 2018 at noon
CONTACT PERSON: Michael Mullins, Regulation Coordinator, 300 Sower Blvd, Frankfort, Kentucky 40601, phone (502) 782-6720, fax (502) 564-4245, email michael.mullins@ky.gov.

ENERGY AND ENVIRONMENT CABINET
Office of Kentucky Nature Preserves
(As Amended at ARRS, February 11, 2019)

418 KAR 1:060. Management.

RELATES TO: KRS 146.550-146.570
STATUTORY AUTHORITY: KRS 146.560(2), 146.565
NECESSITY, FUNCTION, AND CONFORMITY: KRS 146.560(2) requires the board to promulgate administrative regulations necessary for the application for funds from agencies ***established[~~identified~~]*** in KRS 146.570, and review and approve of projects and grants. This administrative regulation establishes the procedures for management of land acquired with fund money.

Section 1. Purpose. Each recipient of fund money shall maintain in perpetuity for the purposes ***established[~~set forth~~]*** in KRS 146.560 land acquired with fund money. Management practices shall also meet the requirements of KRS 146.550 through 146.570, ***418 KAR Chapter 1[~~this chapter~~]***, any other applicable laws of the Commonwealth, the application, any memorandum of agreement between the board and the recipient of fund money, any conservation easement or land use restrictions pertaining to the project site, and the most recent RMP approved by the board.

Section 2. Preliminary RMP. An applicant for fund money shall submit to the board a preliminary RMP simultaneously with an application submitted pursuant to 418 KAR 1:040. The applicant shall follow the preliminary RMP instructions incorporated by reference in 418 KAR 1:040, Section 4 as HL-1B and HL-1C

Section 3. Final RMP.
(1) A recipient of fund money shall submit to the board, within two and one-half (2 1/2) years of receipt of funding, a final RMP ***that shall be[~~which is~~]*** consistent with the preliminary RMP and application, and ***that complies with[~~which meets the~~]*** requirements of KRS 146.550 through 146.570, ***418 KAR Chapter 1[~~this chapter~~]***, any memorandum of agreement between the board and the recipient, and any conservation easement, deed restriction, or articles of dedication ***pertaining[~~which pertains~~]*** to the project site. The applicant shall follow the final RMP instructions***,[~~incorporated by reference as~~]*** Forms HL-2A and HL-2B***[~~in Section 14 of this administrative regulation~~]***.
(2) The applicant shall develop the final RMP using the findings contained in biological and archeological inventories. The board may grant an exception to the inventory requirements if the applicant demonstrates that either inventory would be

nonproductive considering the conditions at the project site.***[~~The reports shall be done to the standards established by the board at the first meeting of each fiscal year.~~]***

(3) The board shall vote to accept or reject the final RMP. If it is rejected, the board shall identify the deficiencies and notify the applicant of those deficiencies. The applicant shall correct these deficiencies within sixty (60) days of notification from the board or other time deadline approved by the board.

Section 4. Land acquired, in whole or in part, with money from the fund shall be managed in accordance with the requirements of KRS 146.550 ***through[~~to~~]*** 146.570, the most recent RMP approved by the board, any conservation easement or deed restriction pertaining to the site, any articles of dedication pertaining to the project site, and ***418 KAR Chapter 1[~~this chapter~~]***.

Section 5. Amendment of RMPs. RMPs may be amended only upon prior written board approval. Until board approval of an amendment is obtained, the recipient of fund money shall adhere to the most recent RMP approved by the board.

Section 6. Management Agreements. A recipient of fund money may, with prior ***written board approval upon determination that the third party has the experience and resources to implement the RMP approved for the project site[~~approval of the board~~]***, enter into agreements with third parties for management of land. Despite the terms of any management agreement, the recipient of fund money ***shall retain[~~retains~~]*** full responsibility for management of the land in accordance with the requirements of KRS 146.550 through 146.570, ***418 KAR Chapter 1[~~this chapter~~]***, any memorandum of agreement between the board and the recipient, any conservation easement or deed restriction pertaining to the project site, any articles of dedication pertaining to the project site, and the most recent RMP approved by the board.

Section 7. Time Limits. Money initially approved by the board for management shall be expended within two and one-half (2 1/2) years of the board's approval of the Final RMP. An extension may***, upon determination that an extension request would facilitate implementation of the RMP approved for the project site,*** be granted by the board upon receipt of a written request for extension, including an explanation of and reason for the request.

Section 8. Application for Additional Management Funds.

(1) The board may***[~~, at its discretion,~~]*** grant written requests for additional management money.

(2) The board shall consider the following factors in its evaluation of requests for additional management money:

(a) The applicant's past management record;

(b) The applicant's need for additional management funds; and

(c) Funds available.

Section 9. Joint RMPs. Applicants may submit joint RMPs ***that[~~which~~]*** specify which entity ***shall[~~will~~]*** perform each aspect of management. Each applicant shall remain responsible for all aspects of management.

Section 10. Reports.

(1) Recipients of fund money shall submit to the board Annual Management Reports using Form HL-2C***[~~, which is incorporated by reference in Section 14 of this administrative regulation~~]*** detailing:

(a) The status of the project;

(b) The applicant's compliance with the most recent RMP approved by the board; and

(c) The status of any final RMP that has yet to be submitted to, or approved by, the board.

(2) Management reports shall be submitted annually[~~. State agency reports are due on or before the date of the first board meeting of the year. Local government and state college and university reports are due~~] on or before the date of the third board meeting of the year.

Section 11. Verification. Recipients of fund money shall provide to the board, along with their annual report, verification of money expended on land management upon the request of the board through the office.

Section 12. Transfer or Encumbrance of Land. Recipients of fund money shall not, without prior board approval, sell, give, devise, or otherwise convey or encumber land acquired, in whole or in part, with fund money. ***The board may approve land transfer to or encumbrance by any entity eligible for funding pursuant to KRS 146.570 or a federal land conservation agency. Transfer of encumbered land shall be managed in accordance with these administrative regulations, any articles of dedication pertaining to the project site, deed restrictions, any conservation easement, and the most recent RMP approved by the board.***

Section 13. Identification. The project site shall be identified by one (1) or more signs, and literature or advertising, where appropriate, shall also identify the site as having been purchased with money from the fund.

Section 14. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Final Resource Management Plan Instructions", HL-2A, July 2018[~~July 2012~~];

(b) "Final Resource Management Plan", HL-2B, July 2012; and

(c) "Annual Management Report", HL-2C, July 2018[~~July 2012~~].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the office of the Kentucky Heritage Land Conservation Fund, 300 Sower Blvd[~~375 Versailles Road~~], Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. through 4:30 p.m.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: November 6, 2018

FILED WITH LRC: November 6, 2018 at noon

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

ENERGY AND ENVIRONMENT CABINET
Office of Kentucky Nature Preserves
(As Amended at ARRS, February 11, 2019)

418 KAR 1:070. Remedies.

RELATES TO: KRS 146.550-146.570

STATUTORY AUTHORITY: KRS 146.560(2), 146.565

NECESSITY, FUNCTION, AND CONFORMITY: KRS 146.560(2) requires the board to promulgate administrative regulations necessary for the application for funds from agencies ***established[~~identified~~]*** in KRS 146.570, review and approval of projects and grants, and acquisition of land. This administrative regulation establishes the requirements for maintaining land acquired with fund money and enables the board to ensure that fund money is used for acquisition and management, in accordance with KRS 146.560.

Section 1. Forfeiture of Funds.

(1)(a) Except as ***established in[~~provided by~~]*** paragraph (b) of this subsection, funds approved by the board pursuant to KRS 146.570(4)(f) for land acquisition which, within two (2) years of board approval, are not expended on acquisition of approved land shall revert to the fund.

(b) The board may grant an extension upon receipt of a written request ***if all terms of the MOA or written agreement for the project site have been met by the applicant***.

(2)(a) Except as ***established in[~~provided by~~]*** paragraph (b) of this subsection, funds initially approved by the board for management pursuant to KRS 146.570(4)(f) which, within two and

one-half (2 1/2) years of receipt of funds from the board, are not expended on management of approved land shall revert to the fund unless otherwise approved by the board ***to implement continued management activities under the approved management plan for the project site***.

(b) The board may grant an extension upon receipt of a written request.

Section 2. Forfeiture of Land. (1) Land acquired with fund money shall be subject to forfeiture. The board may initiate legal proceedings for forfeiture ***for[if any of the following occurs]***:

(a) Failure to maintain and manage land acquired with fund proceeds for the purposes established in KRS 146.560(2)(a)-(d);

(b) Violation of a memorandum of agreement between the board and the recipient of fund money;

(c) Violation of the terms of a conservation easement pertaining to land purchased, in whole or in part, with fund proceeds;

(d) Falsification of information or inaccurate information in the grant application;

(e) Failure to provide, within ninety (90) days of acquisition, verification of land acquisition and money expended for acquisition;

(f) Falsification of information or inaccurate information in the preliminary or final RMP;

(g) Failure to adhere to, or implement, the most recent RMP ***that[which]*** has received board approval;

(h) Failure to submit a final RMP to the board within two and one-half (2 1/2) years of receipt of funds from the board;

(i) Expenditure of fund money on anything other than items ***that[which]*** have received prior board approval;

(j) Failure to provide verification of money expended on management of the land, unless the recipient has requested and received an extension of time. The board may***, upon evidence that funds have been allocated to implenent management activities under the approved management plan for the project site,*** grant an extension upon receipt of a written request;

(k) Failure to submit reports to the board pursuant to 418 KAR 1:060, Section 10;

(l) An attempt to transfer land in violation of 418 KAR 1:060, Section 12; or

(m) Dissolution of the recipient entity.

(2) Land forfeited pursuant to this administrative regulation shall be transferred to an appropriate land management entity, as designated by the board. Forfeited land shall continue to be managed in accordance with 418 KAR 1:060, Section 1.

Section 3. Remedies. The board may utilize all remedies available to it by law, including an injunction and restraining order to enforce the provisions of KRS 146.550 through 146.570, 418 KAR Chapter 1, and any other applicable laws of the Commonwealth of Kentucky; any application submitted to the board; any memorandum of agreement between the board and a recipient of fund money; any conservation easement or deed restriction, or articles of dedication ***pertaining[which pertains]*** to land purchased, in whole or in part, with fund money; and any RMP approved by the board.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: November 6, 2018

FILED WITH LRC: November 6, 2018 at noon

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

JUSTICE AND PUBLIC SAFETY CABINET
Department of Juvenile Justice
(As Amended at ARRS, February 11, 2019)

505 KAR 1:100. Department of Juvenile Justice Policies and Procedures: admissions.

RELATES TO: KRS 15A.065, 15A.0652, 15A.067, 200.080-200.120, Chapters 600-645

STATUTORY AUTHORITY: KRS 15A.065(1), 15A.0652, 15A.067, 15A.069, 15A.160, ***15A.210, 15A.305(5),*** 200.115, 605.150, 635.095, 635.100(7), 640.120, 645.250

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.065(1), 15A.0652, 15A.067, 15A.069, 15A.160, 15A.210, 15A.305(5), 605.150, 635.095, and 640.120 authorize the Justice and Public Safety Cabinet and the Department of Juvenile Justice to promulgate administrative regulations for the proper administration of the cabinet and its programs. This administrative regulation incorporates by reference into regulatory form materials used by the Department of Juvenile Justice in the implementation of a statewide juvenile services program.

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

(a) The "Department of Juvenile Justice Policy and Procedures[Manual]: Admissions", ***February 11, 2019[November 30, 2018]***[October 15, 2015], which includes the following:

200 Definitions (Amended ***2/11/19[11/30/18]***[10/15/15]);
201[200.1] Classification (Amended ***2/11/19[11/30/18]***[10/15/15]);
[201 Day Treatment Admissions (Added 10/15/15);]
202 Youth Placement Priority (Amended 11/30/18[7/01/15]);
203[204] Daily Census and Population (Amended 11/30/18[7/01/15]);
204[206] Administrative Transfers (Amended 11/30/18[10/15/15]);
205[208] Youth Rights (Amended ***2/11/19[11/30/18]***[7/01/15]);
206[209] Youth Access to Outside Investigative Agencies (Amended 11/30/18[7/01/15]); and
207 Out-of-State Placement (Amended 11/30/18);
[210 Interstate Referrals (Amended 7/01/15);
211 Interstate Runaways, Escapees and Absconders (Amended 7/01/15);
212 Interstate Purchase of Care (Amended 7/01/15);
213 Interstate Travel (Amended 7/01/15);
214 Interstate Revocations and Case Closure (Amended 7/01/15); and
217 Advanced Care Unit Admissions and Release (Amended 7/01/15)]; and

(b) The "Classification and Placement Manual", Amended ***2/11/19[11/30/18]***[10/15/15].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Juvenile Justice, Office of the Commissioner, 1025 Capital Center Drive, Third Floor, Frankfort, Kentucky 40601, or at any department field office, Monday through Friday, 8 a.m. to 4:30 p.m.

CAREY D. COCKERELL, Commissioner

APPROVED BY AGENCY: November 29, 2018

FILED WITH LRC: November 30, 2018 at 10 a.m.

CONTACT PERSON: William Codell, Assistant General Counsel, Department of Juvenile Justice, 1025 Capital Center Drive, Frankfort, Kentucky 40601, phone (502) 573-2738, fax (502) 573-0836, email William.Codell@ky.gov.

JUSTICE AND PUBLIC SAFETY CABINET
Department of Juvenile Justice
(As Amended at ARRS, February 11, 2019)

505 KAR 1:110. Department of Juvenile Justice Policy and Procedures Manual: program services.

RELATES TO: KRS 15A.065, 15A.0652, 15A.067, 200.080-200.120, Chapters 600-645

STATUTORY AUTHORITY: KRS 15A.065(1), 15A.0652, 15A.067, 15A.160, ***15A.210,*** 200.115, 605.150, 635.095, 635.100(7), 635.500,[635.505(7),] 640.120, 645.250

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.065(1), 15A.0652, 15A.067, 15A.160, 15A.210, [15A.305(5),] 605.150, 635.095, and 640.120 authorize the Justice and Public Safety Cabinet and the Department of Juvenile Justice to

promulgate administrative regulations for the proper administration of the cabinet and its programs. This administrative regulation incorporates by reference into regulatory form materials used by the Department of Juvenile Justice in the implementation of a statewide juvenile services program.

Section 1. Incorporation by Reference. (1) The "Department of Juvenile Justice Policy and Procedures Manual: Program Services", ***February 11, 2019,[~~November 8, 2018~~]***[~~October 15, 2015~~] is incorporated by reference and includes the following:

300 Definitions (Amended ***2/11/19[~~11/08/18~~]***[~~10/15/15~~]);
300.1 Programs and Services (Amended 11/08/18[~~07/01/15~~]);
300.2 Correspondence to the Court System (Amended 11/08/18[~~10/15/15~~]);
301 Intake and Orientation (Amended ***2/11/19[~~11/08/18~~]*** [~~10/15/15~~]);
301.1 Youth's Personal Property, Dress Code, and Facility Issued Property (Amended 11/08/18[~~07/01/15~~]);
301.2 Hair and Grooming (Amended11/08/18[~~07/01/15~~]);
302 Individual Treatment Plan and Aftercare Plan (Amended ***2/11/19[~~11/08/18~~]***[~~10/15/15~~]);
303 Treatment Team Composition, Function, and Responsibility (Amended 11/08/18[~~07/01/15~~]);
306 [~~Treatment~~] Track and Level System (Amended ***2/11/19[~~11/08/18~~]***[~~10/15/15~~]);
307 Counseling Services (Amended ***2/11/19[~~11/08/18~~]*** [~~10/15/15~~]); [~~308 Advanced Care Unit (Amended 07/01/15);~~]
309 Family Engagement (Amended 11/08/18[~~07/01/15~~]);
310 Family and Community Contacts: Mail, Telephone, and Visitation (Amended 11/08/18[~~07/01/15~~]);[~~311 Cadet Leadership and Education Program (C.L.E.P.) (Added 10/15/15);~~]
314 Youth Council (Amended 11/08/18[~~07/01/15~~]);
315 Use of Non-Governmental Funds and Youth Activity Funds Account (Amended 11/08/18[~~10/15/15~~]);
316 Youth Allowances and Work Details (Amended 11/08/18[~~07/01/15~~]);
317 Recreation (Amended 11/08/18[~~07/01/15~~]);
318 Behavior Management (Amended 11/08/18[~~07/01/15~~]);
318.1 Graduated Responses, Sanctions, and Incentives (Amended 11/08/18[~~10/15/15~~]);
318.2 Disciplinary Review (Amended 11/08/18[~~07/01/15~~]);
319 Staff Requirements for the Supervision of Youth (Amended 11/08/18[~~07/01/15~~]);
319.1 Facility Capacities (Amended 11/08/18[~~07/01/15~~]);
320 Transportation of Youth (Amended 11/08/18[~~07/01/15~~]);
321 Incident Reporting (Amended ***2/11/19[~~11/08/18~~]***[~~07/01/15~~]);
322 Drug Screening and Testing (Amended 11/08/18 [~~07/01/15~~]);
323 Isolation (Amended 11/08/18[~~10/15/15~~]);
324 Restraints (Amended ***2/11/19[~~11/08/18~~]***[~~07/01/15~~]);
325 Searches (Amended 11/08/18[~~07/01/15~~]);
326 Contraband, Seizure, and Chain of Custody (Amended ***2/11/19[~~11/08/18~~]***[~~07/01/15~~]);
327 Escape and Absent Without Leave (Amended11/08/18[~~07/01/15~~]);
328 Individual Client Records (Amended 11/08/18[~~07/01/15~~]);
329 Progress Notes (Amended 11/08/18[~~07/01/15~~]);
330 Log and Shift Reports (Amended 11/08/18[~~07/01/15~~]);
331 Grievance Procedure (Amended 11/08/18[~~07/01/15~~]);
332 Authorized Leave: Day Releases and Furloughs; Supervised Off-grounds Activities (Amended 11/08/18[~~10/15/15~~]);[~~333 Day Treatment Admissions (Amended 10/15/15);~~]
334 Youth Development Centers***:*** Educational and Vocational Programming, Assessment, and Transition (Amended 11/08/18[~~10/15/15~~]);[~~334.1 Day Treatments: Educational Programming, Assessment, and Transition (Amended 07/01/15);~~]
334.2 Group Homes: Educational Services (Amended 11/08/18[~~07/01/15~~]);
335 Youth Development Center Educational and Vocational Records[~~; Day Treatment Educational Records~~] (Amended 11/08/18[~~10/15/15~~]);
339 Youth Development Center[~~and Day Treatment~~] Instructional Staffing (Amended ***2/11/19[~~11/08/18~~]***[~~07/01/15~~]);
341 Youth Development Center[~~and Day Treatment~~] Evaluation of Integrated Educational and Vocational Plan (Amended 11/08/18[~~07/01/15~~]);
343 Technical Education Safety (Amended ***2/11/19[~~11/08/18~~]***[~~07/01/15~~]);
344 Library Services (Amended 11/08/18[~~07/01/15~~]);
345 Religious Programs (Amended 11/08/18[~~07/01/15~~]);
346.1 Youthful Offenders (Amended 11/08/18[~~07/01/15~~]);
347.1 Educational and Meritorious Good Time Credit for Youthful Offenders (Amended ***2/11/19[~~11/08/18~~]***[~~07/01/15~~]);
351 Youthful Offender Parole (Amended 11/08/18[~~07/01/15~~]);[~~and~~]
352 Youthful Offender Transfer (Amended 11/08/18[~~07/01/15~~])***;***
354 Sentence Expiration Date and Parole Release for Youthful Offenders (Added ***2/11/19[~~11/08/18~~]***);
360 Revocation Program Admissions (Added 11/08/18); and
361 Revocation Program Processes***[;]*** (Added 11/08/18).

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Juvenile Justice, Office of the Commissioner, 1025 Capital Center Drive, Third Floor, Frankfort, Kentucky 40601, or at any department field office, Monday through Friday, 8 a.m. to 4:30 p.m.

CAREY D. COCKERELL, Commissioner

APPROVED BY AGENCY: November 5, 2018

FILED WITH LRC: November 8, 2018 at 11 a.m.

CONTACT PERSON: William Codell, Assistant General Counsel, Department of Juvenile Justice, 1025 Capital Center Drive, Frankfort, Kentucky 40601, phone (502) 573-2738, fax (502) 573-0836, email William.Codell@ky.gov.

JUSTICE AND PUBLIC SAFETY CABINET
Department of Juvenile Justice
(As Amended at ARRS, February 11, 2019)

505 KAR 1:180. Department of Juvenile Justice Policy and Procedures Manual: day treatment services.

RELATES TO: KRS 15A.065, 15A.0652, 15A.067, 200.080-200.120, Chapters 600-645

STATUTORY AUTHORITY: KRS 15A.065(1), 15A.0652, 15A.067, 15A.160, ***15A.210,*** 200.115, 605.150, 635.095, 635.100(7), 635.500, 640.120, 645.250

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.065(1), 15A.0652, 15A.067, 15A.160, 15A.210, 605.150, 635.095***,*** and 640.120 authorize the Justice and Public Safety Cabinet and the Department of Juvenile Justice to promulgate administrative regulations for the proper administration of the cabinet and its programs. This administrative regulation incorporates by reference into regulatory form materials used by the Department of Juvenile Justice in the implementation of a statewide juvenile services program.

Section 1. Incorporation by Reference. (1) The "Department of Juvenile Justice Policy and Procedures Manual: Day Treatment Services", ***February 11, 2019[~~November 8, 2018~~]*** is incorporated by reference and includes the following:

1000 Definitions (Added ***2/11/19[~~11/08/18~~]***);
1001 Programs and Services (Added 11/08/18);
1002 Admissions (Added ***2/11/19[~~11/08/18~~]***);
1003 Intake and Orientation (Added ***2/11/19[~~11/08/18~~]***);
1004 Correspondence to the Court System (Added 11/08/18);
1005 Student's Dress Code and Personal Property (Added ***2/11/19[~~11/08/18~~]***);

1006 Family and Community Contacts: Telephone and Visitation (Added 11/08/18);
1007 Level System (Added 11/08/18);
1008 Individual Treatment Plan (Added ***2/11/19[~~11/08/18~~]***);
1009 Treatment Team Composition, Function, and Responsibility (Added ***2/11/19[~~11/08/18~~]***);
1010 Counseling Services (Added ***2/11/19[~~11/08/18~~]***);
1011 Family Engagement (Added 11/08/18);
1012 Individual Client Records (Added ***2/11/19[~~11/08/18~~]***);
1013 Progress Notes (Added 11/08/18);
1014 Behavior Management (Added ***2/11/19[~~11/08/18~~]***);
1015 Graduated Responses, Sanctions, and Incentives (Added ***2/11/19[~~11/08/18~~]***);
1016 Restraints (Added ***2/11/19[~~11/08/18~~]***);
1017 Searches (Added ***2/11/19[~~11/08/18~~]***);
1018 Contraband, Seizure, and Chain of Custody (Added ***2/11/19[~~11/08/18~~]***);
1019 Incident Reporting (Added ***2/11/19[~~11/08/18~~]***);
1020 Grievance Procedure (Added ***2/11/19[~~11/08/18~~]***);
1021 Staff Requirements for the Supervision of Students (Added ***2/11/19[~~11/08/18~~]***);
1022 Instructional Staffing (Added ***2/11/19[~~11/08/18~~]***);
1023 Educational Records (Added ***2/11/19[~~11/08/18~~]***);
1024 Educational Programming, Assessment, and Transition (Added ***2/11/19[~~11/08/18~~]***);
1025 Evaluation of Integrated Educational and Vocational Plan (Added 11/08/18);
1026 Technical Education Safety (Added ***2/11/19[~~11/08/18~~]***);
1027 Library Services (Added ***2/11/19[~~11/08/18~~]***);
1028 Recreation (Added ***2/11/19[~~11/08/18~~]***);
1029 Work Programs (Added ***2/11/19[~~11/08/18~~]***);
1030 Drug Screening and Testing (Added ***2/11/19[~~11/08/18~~]***);
1031 Transportation of Students (Added ***2/11/19[~~11/08/18~~]***);
1032 Use of Non-Governmental Funds and Youth Activity Funds Account (Added ***2/11/19[~~11/08/18~~]***); and
1033 Youth Council (Added 11/08/18).

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Juvenile Justice, Office of the Commissioner, 1025 Capital Center Drive, Third Floor, Frankfort, Kentucky 40601, or at any department field office, Monday through Friday, 8 a.m. to 4:30 p.m.

CAREY D. COCKERELL, Commissioner
APPROVED BY AGENCY: November 5, 2018
FILED WITH LRC: November 8, 2018at 11 a.m.
CONTACT PERSON: William Codell, Assistant General Counsel, Department of Juvenile Justice, 1025 Capital Center Drive, Frankfort, Kentucky 40601, phone (502) 573-2738, fax (502) 573-0836, email William.Codell@ky.gov.

JUSTICE AND PUBLIC SAFETY CABINET
Department of Juvenile Justice
(As Amended at ARRS, February 11, 2019)

505 KAR 1:190. Department of Juvenile Justice Policy and Procedures: Interstate Compact for Juveniles.

RELATES TO: KRS 15A.065, 15A.0652, 15A.067, 200.080-200.120, Chapters 600-645
STATUTORY AUTHORITY: KRS 15A.065(1), 15A.0652, 15A.067, 15A.160, ***15A.210,*** 200.115, 605.150, 635.095, 635.100(7), 635.500, 640.120, 645.250
NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.065(1), 15A.0652, 15A.067, 15A.160, 15A.210, 605.150, 635.095 and 640.120 authorize the Justice and Public Safety Cabinet and the Department of Juvenile Justice to promulgate administrative regulations for the proper administration of the cabinet and its programs. This administrative regulation incorporates by reference into regulatory form materials used by the Department of Juvenile Justice in the implementation of a statewide juvenile services program.

Section 1. Incorporation by Reference. (1) The "Department of Juvenile Justice Policy and Procedures Manual: Interstate Compact of Juveniles", ***February 11, 2019,[~~November 30, 2018~~]*** is incorporated by reference and includes the following:
1200 Definitions (Added ***2/11/19[~~11/08/18~~]***);
1201 Interstate Referrals (Added ***2/11/19[~~11/08/18~~]***);
1202 Interstate Runaways, Escapees, and Absconders (Added 11/30/18);
1203 Interstate Travel (Added 11/30/18);
1204 Interstate Revocations and Case Closure (Added 11/30/18);

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Juvenile Justice, Office of the Commissioner, 1025 Capital Center Drive, Third Floor, Frankfort, Kentucky 40601, or at any department field office, Monday through Friday, 8 a.m. to 4:30 p.m.

CAREY D. COCKERELL, Commissioner
APPROVED BY AGENCY: November 29, 2018
FILED WITH LRC: November 30, 2018 at 10 a.m.
CONTACT PERSON: William Codell, Assistant General Counsel, Department of Juvenile Justice, 1025 Capital Center Drive, Frankfort, Kentucky 40601, phone (502) 573-2738, fax (502) 573-0836, email William.Codell@ky.gov.

TRANSPORTATION CABINET
Department of Highways
Division of Contract Procurement
(As Amended at ARRS, February 11, 2019)

603 KAR 2:015. Prequalification for construction,[;] certificate of eligibility,[;] and contract claims dispute.

RELATES TO: KRS 13B, 45A.245, 61.878(1)(c), 176.090-176.110, 176.130-176.220
STATUTORY AUTHORITY: KRS 174.080, 176.140(2)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 176.140 requires the cabinet to establish administrative regulations in order[~~authorizes the Department of Highways~~] to determine the eligibility of bidders for construction contracts with the Department of Highways. This administrative regulation establishes the requirements for an applicant to obtain a certificate of eligibility with the cabinet[~~is promulgated to provide a method by which the determination shall be made~~]. This administrative regulation also establishes the hearing procedures for a contract claims dispute[~~and denial, revocation, or limitation of certification~~].

Section 1. Definitions.
(1) "Cabinet" means the Transportation Cabinet.
(2) "Contract" means a competitively bid contract between the contractor and the department pursuant to KRS Chapter 45A and 176.090 through 176.110.
(3) "Contractor" means the person, corporation, partnership, or joint venture that enters into a contract with the department for highway maintenance or construction.
(4) "Maximum eligibility amount" means the maximum amount of uncompleted prime contract work authorized at one (1) time.

Section 2. Certificate of Eligibility.
(1)(a) A contractor bidding on a construction or maintenance project, or accepting a subcontract on a construction or maintenance project of the department, shall be prequalified and possess a certificate of eligibility issued by the department to bid on construction projects.
(b) The certificate shall state the maximum eligibility amount and types of work for which the contractor shall be qualified.
1. The department may***, for reasons of practicality,*** waive the requirements established in subsection (1)(a) and (b) on a project not specifically involving the construction or maintenance of a public road in connection with the letting of a contract if the requirement is not mandated by KRS 176.130.
2. The waiver shall be included in the notice to contractors and

the bid proposal for the project.

(2) The Commissioner of Highways shall appoint a Construction Prequalification Committee composed of department employees to review each application and make a recommendation to the State Highway Engineer concerning the eligibility of a contractor to bid on a department construction or maintenance contract.

Section 3. Application for Certificate of Eligibility.

(1) A contractor desiring to procure a certificate shall submit a completed Application for Certificate of Eligibility, TC 14-1, ***notarized by a notary who is not an officer of the company,*** to the Division of Construction Procurement. The applicant shall provide:

(a) Information regarding the applicant's ability to perform the types of work for which eligibility is requested;

(b) Construction experience resumes of the applicant's principal officers and key personnel;

(c) A description of the applicant's plant and equipment;

(d) Financial statements prepared as of the close of the previous fiscal year for an established company, or to reflect the current financial status of a newly established contractor applicant; and

(e) A certificate of authority if required by KRS 176.150(4).

(2)(a) An applicant desiring eligibility in excess of $1,000,000 shall submit financial statements presented in accordance with generally accepted accounting principles and audited by a certified public accounting firm.

(b) The audit shall be performed in accordance with generally accepted auditing standards***[~~promulgated by the American Institute of Certified Public Accounts and include procedures specifically applicable to the construction industry~~]***.

(c) The applicant's financial statements shall include supplemental financial information if requested by the department.

(d) The financial statements for an applicant desiring eligibility of $1,000,000 or less shall be accompanied by a review report issued by a certified public accounting firm or a compilation report or balance sheet issued by a certified public accounting firm or an accountant.

(3)(a) Pursuant to KRS 61.878(1)(c), the department shall not make the application information required in this section available to the public.

(b) Pursuant to KRS 176.210, the department may make lists of qualified bidders public.

Section 4. Method of Computing Maximum Eligibility Amount.

(1)(a) The allowable current net assets as determined from the financial statements, plus the cash surrender value, less loans, of life insurance on which the applicant is the beneficiary, excluding policies with other beneficiaries, shall be multiplied by a factor of twelve (12) to establish the net current assets factor.

(b) The book value of owned equipment shall be multiplied by a factor of six (6) to establish the equipment factor.

(c) The equipment factor shall be added to the net current assets factor to determine the maximum capacity factor of the contractor.

(2) The contractor's percentage rating shall be established by the department by evaluating the contractor's organization and experience, plant and equipment, and prior construction performance in accordance with the maximum percentages established in paragraphs (a) through (c) of this subsection.

(a) Organization and experience shall be twenty (20) percent.

(b) Plant and equipment shall be thirty (30) percent.

(c) Performance shall be fifty (50) percent.

(3)(a) The maximum eligibility amount shall be determined by multiplying the contractor's percentage rating and the maximum capacity factor. The maximum capacity factor shall not exceed $1,000,000 if unaudited financials have been submitted.

(b) A contractor's current eligibility amount shall be the net difference between the contractor's maximum eligibility amount as shown on the certificate of eligibility issued by the department***[,]*** and the total value of uncompleted prime contract work charged to the contractor***,*** regardless of the location and with whom the contractor ***is[~~may be~~]*** contracted.

Section 5. Issuance of Certificate of Eligibility.

(1)(a) The Construction Prequalification Committee shall review each application for a certificate of eligibility and make a recommendation of eligibility to the State Highway Engineer.

(b) The State Highway Engineer shall issue a determination of eligibility***, based on KRS 176.130 through 176.220 and this administrative regulation,*** within thirty (30) calendar days after receipt of the application unless the application is deferred as established in Section 6(3) of this administrative regulation.

(c) Upon receiving a separate written request from a contractor not prequalified with the department indicating the contractor's intent to bid on a specific federal-aid project that has been advertised for a bid opening within the thirty (30) day period, the department shall review the application and make a determination of eligibility***, based on KRS 176.130 through 176.220 and this administrative regulation,*** within fifteen (15) calendar days.

(2) A certificate of eligibility shall terminate 120 calendar days after the end of the applicant's fiscal year unless the certificate is suspended or revoked prior to that time.

(a) An applicant shall file a new application pursuant to Section 3 of this administrative regulation within ninety (90) calendar days after the end of the applicant's fiscal year.

(b) The department shall review the application and approve or disapprove the issuance of a new certificate of eligibility within thirty (30) calendar days of the date of receipt by the department.

(3) The certificate of eligibility in effect as of the bid opening date shall constitute the basis for determining the eligibility of a bidder.

(4) An applicant may, in regard to the department's decision on its application:

(a) Request reconsideration of the department's decision pursuant to Section 6 of this administrative regulation; or

(b) Appeal the department's decision pursuant to Section 9 of this administrative regulation.

Section 6. Reconsideration of Decisions.

(1)(a)1. An applicant may request reconsideration of a decision of the Construction Prequalification Committee if the applicant is denied a certificate of eligibility or disagrees with the maximum eligibility amount or the types of work established in its certificate of eligibility.

2. An applicant may request reconsideration of a department decision to suspend or revoke the certificate of eligibility or to reduce the maximum eligibility amount.

(b) A request for reconsideration shall be submitted in writing to the department within ten (10) calendar days of the applicant's receipt of the notice of the department's action.

(c) A request for reconsideration shall state the basis of the request and be supported by information and evidence that indicates why a certificate of eligibility should be issued or why the certificate of eligibility should be amended.

(d) The Construction Prequalification Committee shall review the request and may contact the applicant for clarification or expansion of the submitted information. The committee shall make a recommendation to the State Highway Engineer.

(e) The Department of Highways shall notify the applicant of the determination within thirty (30) calendar days after receipt of the request for reconsideration.

(f) If the Department of Highways does not concur with the reconsideration request of the applicant, the applicant shall be notified of his or her right to an administrative hearing pursuant to Section 9 of this administrative regulation.

(2)(a) An applicant denied a certificate of eligibility may submit a new application for reconsideration.

(b) The department shall consider the new application and notify the applicant of the action taken within thirty (30) calendar days after receipt of the application.

(3)(a) An application that has been deferred by the department

until the applicant settles an outstanding debt to the Commonwealth, completes a project, or satisfies prior concerns about work performance on a project shall remain in the possession of the department until the reason for deferral is resolved.

(b)1. An applicant shall be notified of a deferral within ten (10) calendar days after action is taken by the department to defer the application.

2. The applicant shall be notified of his or her right to an administrative hearing regarding the deferral.

(4)(a) An interim application may be submitted if there has been a substantial increase in the net current assets of the applicant and the applicant wishes to apply for an increase in the maximum eligibility shown on the certificate of eligibility.

(b) The interim application shall contain a financial statement certified in the same manner as the statements submitted by the applicant at the close of the previous fiscal year.

(c) The department shall review the interim application and notify the applicant of the department's determination within thirty (30) calendar days after receipt of the application.

(5)(a) A certificate holder, upon receipt of a certified mail request from the department, shall submit an interim financial statement or current information relating to the applicant's organization, equipment, and work status.

(b) The information requested shall be submitted within thirty (30) calendar days after receipt of the request. Failure to provide the information requested shall constitute a basis for the suspension or revocation of a certificate of eligibility.

(6) An applicant may request an administrative hearing if the applicant is denied a certificate of eligibility, the application is deferred, or the applicant disagrees with the maximum eligibility amount or the types of work listed in the certificate of eligibility.

(7) To request an administrative hearing, an applicant shall notify the department in writing within ten (10) calendar days after receipt of the denial or certificate of eligibility.

Section 7. Revocation.

(1) ***A certificate of eligibility shall be subject to suspension, revocation, or a reduction in the maximum eligibility amount upon receipt of information or evidence that a holder of a certificate of eligibility has failed to perform satisfactorily by failure to comply with the laws, administrative regulations, or specifications applicable to a contract or subcontract[~~Upon receipt of information or evidence that a holder of a certificate of eligibility has failed to perform satisfactorily by failure to comply with the laws, administrative regulations, or specifications applicable to a contract or subcontract, the department shall take action to suspend or revoke the certificate of eligibility or to reduce the maximum eligibility amount~~]***.

(2) A notice to the certificate holder stating the grounds on which the action is proposed, shall be sent by certified mail.

(3) A request for reconsideration pursuant to Section 6 of this administrative regulation, or a request for an administrative hearing, shall be submitted by the certificate holder in writing within ten (10) calendar days of the receipt of notice of a decision by the cabinet. If a written request is not received within ten (10) calendar days, the proposed action shall become final.

Section 8. Administrative Claims Process.

(1) The cabinet shall not consider a claim for extra work as established in the edition of the Standard Specifications for Road and Bridge Construction applicable to the contract between the cabinet and the contractor unless the contractor has submitted a completed Notice of Potential Claim, TC 63-77, to the engineer before beginning the disputed work.

(2) A notice of claim against the cabinet for delay shall be submitted in writing to the engineer on a completed Notice of Potential Claim, TC 63-77 within ten (10) calendar days of the date the contractor knew or should have known of the existence of the claim as based on daily records, contractor records, or applicable correspondence. A notice of claim presented to the cabinet by the contractor after ten (10) calendar days shall not be considered for payment by the cabinet.

(3) After receipt of Notice of Potential Claim, TC 63-77, the cabinet shall respond to the contractor with Acknowledgement of Notice of Potential Claim, TC 63-78.

(4) For claims involving extra work, the contractor shall submit to the engineer a summary of the force account forms that identify each operation affected, and the specific locations where work is affected, no later than fourteen (14) calendar days after filing the Notice of Potential Claim TC 63-77, and on a weekly basis thereafter.

(5) If the contractor's records indicate costs that are greater than those on record with the cabinet, the engineer shall notify the contractor in writing.

(a) A contractor shall respond to the engineer within three (3) working days if he or she disagrees with the findings of the engineer.

(b) If the contractor fails to respond, the records of the cabinet shall control.

(6) For claims involving delay, the contractor shall submit the following in writing no later then fourteen (14) calendar days after filing the Notice of Potential Claim, TC 63-77, and on a weekly basis thereafter:

(a) Information regarding the potential effect to the schedule caused by the delay;

(b) Identification of the operations that have been, or will be delayed;

(c) The possible mitigating actions and the additional costs or time to implement the mitigating actions;

(d) An explanation of how the department's act or omission delayed the operation***[,]*** and an estimation of the amount of time necessary to complete the project; and

(e) An itemization of the extra costs incurred including:

1. How the extra costs relate to the delay***[,]*** and how they were calculated and measured;

2. An identification of the project employees for whom the costs are being compiled; and

3. An identification of the contractor's equipment by manufacturer and the numbers of the items of equipment for which costs have been compiled.

(7) A contractor may request additional time or a different submittal schedule, such as biweekly or monthly, by submitting a written request to the engineer. Approval or denial of the request shall be issued by the engineer within seven (7) calendar days of receipt of the request.

(8)(a) If the contractor submits the claim to the engineer, the engineer, in consultation with the district transportation engineering branch manager, shall attempt to resolve the dispute with the contractor within sixty (60) calendar days of the date of receipt of the submitted claim from the contractor

(b) If the claim is not resolved by the engineer, then the claim shall be submitted to the director, Division of Construction, who shall have ninety (90) calendar days from the date of submission to make the final determination.

(c) If the matter is not resolved by the engineer and the contractor and prior to making a final determination on the matter, the director, Division of Construction shall convene an informal settlement conference with the contractor for the purpose of either settling the dispute or identifying the issues that need resolution. If the settlement conference is unsuccessful, the director, Division of Construction, shall notify the contractor in writing of the cabinet's decision regarding the contractor's claim.

(d) If the engineer or the director, Division of Construction, fails to render a decision within the time limits established in this section, the inaction shall be deemed a denial of the claim by the cabinet, and the contractor may proceed with the administrative hearing process pursuant to Section 9 of this administrative regulation. If a decision is not rendered within the time limits established in ***paragraphs (a) and (b) of this subsection[~~subsection (7)(a) and (b) of this section~~]***, the cabinet shall bear all costs associated with the hearing officer.

(9) The contractor shall request an administrative hearing

pursuant to KRS Chapter 13B within thirty (30) calendar days of the date of the notification of the decision by the cabinet.

(10)***(a)*** Upon the agreement in writing of both parties, the parties may engage in formal nonbinding mediation of the dispute with a mediator agreeable to both parties.

(b) The parties participating in the mediation shall each pay one-half (1/2) of the costs associated with the mediator.

(11) If mediation is agreed upon by the parties, all time limits related to the continuing administrative process shall be stayed until either the cabinet or the contractor submits written notice to the other that they are terminating the mediation process. The time limits previously stayed shall commence to run upon the date of the written notice.

Section 9. Hearing Procedure.

(1) A request for an administrative hearing pursuant to the provisions of this administrative regulation shall be in writing and mailed to the Kentucky Transportation Cabinet, State Highway Engineer, Department of Highways, 200 Mero Street, Frankfort, Kentucky 40622.

(2) A written request for an administrative hearing shall be submitted to the State Highway Engineer within thirty (30) calendar days of the date of the decision by the director, Division of Construction.

(3) A request for an administrative hearing that is not submitted timely to the cabinet shall be denied, and the decision by the director, Division of Construction, shall stand.

(4) The secretary of the Transportation Cabinet, after receiving the report and recommendation of the hearing examiner, may accept the report and recommendation in its entirety, or reject or modify the findings and recommendations of the hearing examiner as established in a final order pursuant to KRS Chapter 13B.

(5) The contractor shall be notified by final order of the secretary's decision.

(6) The contractor shall have appeal rights pursuant to KRS Chapter 13B.

(7) The contractor shall reimburse the cabinet one-half (1/2) of the expenses of the hearing officer within thirty (30) calendar days after the date of the entry of the final order by the Secretary of Transportation. If a contractor fails to pay its portion of the hearing officer expenses, the cabinet shall withhold an amount due to the contractor from a current or future project.

(8) Pursuant to KRS 45A.245, a contractor may forego the KRS Chapter 13B hearing and file a lawsuit in Frankfort, Kentucky in the Franklin County Circuit Court.

Section 10. Material Incorporated by Reference.

(1) The following material is incorporated by reference:

(a) "Application for Certificate of Eligibility", TC 14-1, February, 2017;

(b) "Notice of Potential Claim", TC 63-77, November, 2018;

(c) "Acknowledgement of Notice of Potential Claim", TC 63-78, November, 2018;

(d) "Standard Specifications for Road and Bridge Construction", March 1, 2004;

(e) "Standard Specification for Road and Bridge Construction", December 14, 2008;

(f) "Standard Specification for Road and Bridge Construction", June 15, 2012;

(g) "Standard Specifications for Road and Bridge Construction, January 1, 2019.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Transportation Cabinet, Department of Highways, Division of Construction Procurement, 200 Mero Street, Frankfort, Kentucky 40622. The office hours are 8 a.m. to 4:30 p.m. on weekdays. The office telephone number is (502) 564-3500.

(3) This material may also be found on the cabinet's website at https://transportation.ky.gov/Construction/Pages/Kentucky-Standard-Specifications.aspx.[~~"Commissioner" means the Commissioner of Highways.~~

~~(2) "Cabinet" means the Transportation Cabinet.~~

~~(3) "Department" means the Department of Highways.~~

~~(4) "Division" means the Division of Construction.~~

~~(5) "Concurrence" means the agreement with the entire report and recommendation of the hearing examiner.~~

~~(6) "Dissent" means disagreement with a part or portions of the report and recommendation of the hearing examiner.~~

~~(7) "Contract" means a competitively bid contract between the contractor and the department pursuant to KRS Chapter 45A and 176.090 to 176.110.~~

~~(8) "Contractor" means the person, corporation, partnership or joint venture which enters into a contract with the department for highway maintenance or construction.~~

~~(9) "Maximum eligibility amount" means the maximum amount of uncompleted prime contract work permitted at any one (1) time.~~

~~Section 2. Certificate of Eligibility. (1)(a) A contractor bidding on a construction or maintenance project or accepting a subcontract on a construction or maintenance project of the Transportation Cabinet, Department of Highways, shall be prequalified and possess a certificate of eligibility issued by the department to bid on construction projects.~~

~~(b) The certificate shall state the maximum eligibility amount and types of work for which the contractor is qualified.~~

~~(c) The department may waive this requirement on a project not specifically involving the construction or maintenance of a public road in connection with the letting of a contract if the requirement is not mandated by KRS 176.130. The waiver shall be contained in the notice to contractors and the bid proposal for the project.~~

~~(2) The Commissioner of Highways shall appoint a construction prequalification committee composed of department employees to review each application and make a recommendation to the State Highway Engineer concerning the eligibility of a contractor to bid on a department construction or maintenance contract.~~

~~Section 3. Application for Certificate of Eligibility. A contractor desiring to procure a certificate shall submit, on the application and financial statement form TC 14-1, "Application for Certificate of Eligibility", December 1999 edition, provided by the department, information relating to the following:~~

~~(1) Ability to perform the types of work for which eligibility is requested.~~

~~(2) Construction experience resumes of the principal officers and key personnel of the contractor.~~

~~(3) Description of plant and equipment.~~

~~(4) Balance sheet and financial statement prepared as of the close of the last fiscal year or to reflect the current financial status of a newly established contractor.~~

~~(a) The financial statement of an applicant desiring eligibility in excess of $1,000,000 shall be audited and attested by an independent public accountant or certified public accountant who holds a valid registration card from the Kentucky State Board of Accountancy or a registration card in the state in which the principal office of the contractor is located. The audit shall be made in accordance with the generally accepted auditing standards adopted by the membership of the American Institute of Certified Public Accountants. Standard audit forms and procedures shall conform with the institute's recommendations for the audit program of contractors. The accountant shall also comply with the specific instructions relative to the presentation of supporting detail requested by the department to determine the amount of net current assets available.~~

~~(b) The financial statement of an applicant desiring eligibility of $1,000,000 or less shall be signed by the person preparing the statement and by a principal officer of the contractor.~~

~~(5) A "Certificate of Authority" if required by KRS 176.150(4).~~

~~Section 4. Confidentiality of Financial Information. In order to comply with KRS 61.878(1)(c) and KRS 176.210 the department shall not make available to the public the application information required in Section 3(3) and (4) of this administrative regulation.~~

~~Section 5. Method of Computing Maximum Eligibility Amount.~~

~~(1)(a) The allowable net current assets as determined from the financial statement plus the cash surrender value, less loans, of life insurance on which the applicant is the beneficiary (exclude all policies with other beneficiaries) shall be multiplied by a factor of twelve (12) to establish the net current assets factor.~~

~~(b) The book value of owned equipment shall be multiplied by a factor of six (6) to establish the equipment factor.~~

~~(c) The equipment factor shall be added to the net current assets factor to determine the maximum capacity factor of the contractor.~~

~~(2) The contractor's percentage rating shall be established by the department by evaluating the contractor's organization and experience, plant and equipment and performance in accordance with the following maximum percentages:~~

~~(a) Organization and experience - twenty (20) percent;~~

~~(b) Plant and equipment - thirty (30) percent;~~

~~(c) Performance - fifty (50) percent.~~

~~(3)(a) The maximum eligibility amount shall be determined by multiplying the contractor's percentage rating and the maximum capacity factor.~~

~~(b) A contractor's current eligibility amount shall be the net difference between the contractor's maximum eligibility amount as shown on the certificate of eligibility issued by the department and the total value of uncompleted prime contract work charged to the contractor regardless of its location and with whom it may be contracted.~~

~~Section 6. Issuance of Certificate of Eligibility. (1)(a) The Construction Prequalification Committee shall review each application for a certificate of eligibility and make a recommendation of eligibility to the State Highway Engineer.~~

~~(b) The State Highway Engineer shall issue a determination of eligibility within thirty (30) days after receipt of the application unless the application is deferred as provided in Section 7(3) of this administrative regulation.~~

~~(c) Upon receiving a separate written request from a contractor not prequalified with the department indicating its intent to bid on a specific federal-aid project which has been advertised for a bid opening within the thirty (30) day period, the department shall review the application and make a determination of eligibility within fifteen (15) calendar days.~~

~~(2) A certificate of eligibility shall terminate 120 days after the end of the applicant's fiscal year unless the certificate is suspended or revoked prior to that time. Ninety (90) days of this period is to permit the applicant to file a new application in accordance with Section 3 of this administrative regulation, thirty (30) days is for the department's review of the application and, if approved, the issuance of the new certificate of eligibility.~~

~~(3) The certificate of eligibility in effect as of the bid opening date shall constitute the basis for determining the eligibility of a bidder.~~

~~(4) An applicant may, in regard to the department's decision on its application:~~

~~(a) Request reconsideration of the department's decision in accordance with Section 7 of this administrative regulation; or~~

~~(b) Appeal the department's decision in accordance with Section 10 of this administrative regulation.~~

~~Section 7. Reconsideration of Decisions of Construction Prequalification Committee. (1)(a) An applicant may at any time request reconsideration of an application if the applicant is denied a certificate of eligibility or disagrees with the maximum eligibility amount or the types of work set forth in its certificate of eligibility by notifying the department in writing. An applicant may also request reconsideration of a department decision to suspend or revoke the certificate of eligibility or to reduce the maximum eligibility amount if the request is submitted in writing within ten (10) days after receipt of the notice of the department's action.~~

~~(b) A request for reconsideration shall clearly state the basis of the request and be supported by information and evidence which indicates why a certificate of eligibility should be issued or why the certificate of eligibility should be amended.~~

~~(c) The Construction Prequalification Committee shall review the request, may contact the applicant for clarification or expansion of the submitted information, and shall make recommendation to the State Highway Engineer.~~

~~(d) The Department of Highways shall notify the applicant of its determination within thirty (30) days after receipt of the request for reconsideration.~~

~~(e) If the Department of Highways does not concur with the reconsideration request of the applicant, the applicant shall be notified of his right to an administrative hearing pursuant to Section 10 of this administrative regulation.~~

~~(2) An applicant denied a certificate of eligibility may submit a new application if factors constituting the basis for the issuance of a certificate of eligibility warrant reconsideration. The department shall consider the new application and notify the applicant of the action taken within thirty (30) days after receipt of the application.~~

~~(3)(a) An application which is deferred by the department until the applicant settles outstanding debt to the Commonwealth, completes a project, or satisfies prior concerns about work performance on a project shall remain in the possession of the department until the time that the reason for deferral is resolved to the satisfaction of the department.~~

~~(b) The department shall then take action on the deferred application to issue or deny a certificate of eligibility.~~

~~(c) The applicant submitting an application, which is deferred, shall be notified of the deferral within ten (10) days after action is taken by the department to defer the application. The applicant shall be notified pursuant to Section 10 of this administrative regulation of his right to an administrative hearing regarding the deferral.~~

~~(4) An interim application may be submitted if there has been a substantial increase in the net current assets of the applicant and the applicant wishes to apply for an increase in the maximum eligibility shown on the certificate of eligibility. The interim application shall contain a financial statement certified in the same manner as statements prepared as of the close of the fiscal year. The department shall review the interim application and notify the applicant of its determination within thirty (30) days after receipt of the application.~~

~~(5) A certificate holder, upon receipt of a certified mail request from the department, shall submit an interim financial statement or current information relating to the applicant's organization, equipment and work status. The information requested shall be submitted within thirty (30) days after receipt of the request. Failure to provide the information requested shall constitute a basis for the suspension or revocation of a certificate of eligibility.~~

~~(6) An applicant may request an administrative hearing if the applicant is denied a certificate of eligibility, his application is deferred, or the applicant disagrees with the maximum eligibility amount or the types of work set forth in its certificate of eligibility by notifying the department in writing within ten (10) days after receipt of its denial or certificate of eligibility. The department shall hold an administrative hearing pursuant to the provisions of Section 10 of this administrative regulation.~~

~~Section 8. Revocation of Certificate of Eligibility or Reduction of Maximum Eligibility Amount. (1) Upon receipt of information or evidence that a holder of a certificate of eligibility has failed to perform satisfactorily or adhere to the laws, administrative regulations, or specifications applicable to a contract or subcontract, the department may take action to suspend or revoke the certificate of eligibility or to reduce the maximum eligibility amount.~~

~~(2) A notice to the certificate holder, setting forth the grounds on which the action is proposed, shall be sent by certified mail.~~

~~(3) The proposed action shall become final unless the certificate holder submits a written request for a reconsideration pursuant to Section 7 of this administrative regulation or an administrative hearing within ten (10) days after receipt of the notice.~~

~~(4) If the certificate holder requests an administrative hearing, the department shall hold this hearing in accordance with the provisions of Section 10 of this administrative regulation.~~

~~Section 9. Administrative Claims Process. (1) The cabinet shall not consider a claim for extra work as defined in the edition of the standard specifications for road and bridge construction applicable to the contract between the cabinet and the contractor unless the contractor has submitted form TC 63-32, "Notice of Changed Condition/Disagreement", December 1999 edition, to the resident engineer before beginning the disputed work.~~

~~(2) Any other claim not referenced in subsection (1) of this section that a contractor shall possess against the cabinet for compensation shall be submitted in writing on form TC 63-32, "Notice of Changed Condition/Disagreement", to the resident engineer within ten (10) days of the date of which the contractor knew or should have known of the existence of said claim. Any claim presented after said ten (10) days shall not be considered for payment by the cabinet. After receipt of TC 63-32, "Notice of Changed Condition/Disagreement", the cabinet shall respond to the contractor with form TC 63-33, "Acknowledgement of Notice of Changed Condition/Disagreement".~~

~~(3) If a contractor has a contract claim or requests relief from the cabinet, the contractor shall exhaust the administrative process within the cabinet as set forth below prior to requesting an administrative hearing.~~

~~(a)1. For claims involving extra work, the contractor shall submit his claim in writing, setting forth the amount in dispute, the basis of the claim and any supporting documentation of said claim to the resident engineer not later than thirty (30) days after receipt of the "Final Inspection and Formal Acceptance Report of Completed Construction", Form TC 63-44.~~

~~2. For claim disputes involving final quantities and payments, the contractor shall submit his claim in writing setting forth the amount in dispute, the basis of the claim and any supporting documentation of said claim to the resident engineer not later than sixty (60) days from the date of the "Final Release" (Form TC 63-34) sent by the cabinet.~~

~~(b) The resident engineer in consultation with the district transportation engineering branch manager for construction and the contractor shall attempt to resolve the dispute with the contractor. The resident engineer shall have sixty (60) days from the date of receipt of written notice of a formal claim to resolve the dispute.~~

~~(c) Should the claim not be resolved by the resident engineer, then the claim shall be submitted to the Director, Division of Construction, who shall have ninety (90) days to make the final determination.~~

~~(d) If the matter is not resolved by the resident engineer and the contractor and prior to making a final determination on the matter, the Director, Division of Construction, shall convene an informal settlement conference with the contractor for the purpose of either settling the dispute or identifying the issues which need resolution. If the settlement conference is unsuccessful, the Director, Division of Construction, shall notify the contractor in writing of the cabinet's decision regarding the contractor's claim. Said notification shall inform the contractor of his rights to an administrative hearing pursuant to Section 10 of this administrative regulation.~~

~~(e) Should the resident engineer or the Director, Division of Construction, fail to render a decision within the time limits set forth in this administrative regulation, said inaction shall be deemed a denial of the claim by the cabinet and the contractor may proceed with the administrative hearing process pursuant to Section 10 of this administrative regulation. Further, should the Director, Division of Construction, fail to render a decision in the time frame previously stated, the cabinet shall bear all costs associated with the hearing officer.~~

~~(f) The contractor shall request an administrative hearing pursuant to KRS Chapter 13B within thirty (30) days of the date of the notification of the decision by the cabinet.~~

~~(g) Upon the agreement in writing of both parties, the parties may engage in formal nonbinding mediation of the dispute with a mediator agreeable to both parties. The parties participating in the mediation shall each pay one-half (1/2) of the costs associated with the mediator.~~

~~(h) If mediation is agreed upon by the parties, the formal administrative process that culminates with a KRS Chapter 13B hearing and all time limits therein shall be stayed until the cabinet or the contractor submits written notice to the other that they are terminating the mediation process. The time limits previously stayed shall commence to run upon the date of the written notice.~~

~~Section 10. Hearing Procedure. (1) A request for an administrative hearing pursuant to the provisions of this administrative regulation shall be in writing and mailed to the State Highway Engineer, Department of Highways, 501 High Street, 10th Floor, State Office Building, Frankfort, Kentucky 40622.~~

~~(2) Upon receipt of a request for an administrative hearing, the State Highway Engineer shall forward the request to the Office of General Counsel and Legislative Affairs for proceedings in accordance with the provisions of KRS Chapter 13B. Failure to submit a written request for an administrative hearing to the State Highway Engineer within thirty (30) days of the date of the decision by the Director, Division of Construction, shall be ground to summarily deny the request for hearing and the decision by the Director, Division of Construction, shall stand.~~

~~(3) If a hearing is commenced, the hearing examiner shall prepare and submit his report with a recommendation to the Secretary of Transportation through the Office of General Counsel and Legislative Affairs.~~

~~(4) The secretary, after receiving the report and recommendation of the hearing examiner, may accept the report and recommendation in its entirety, or reject or modify any or all of the findings and recommendations of the hearing examiner as set out in a final order pursuant to KRS Chapter 13B.~~

~~(5) The contractor shall be notified by Final Order of the secretary's decision.~~

~~(6) The contractor shall have appeal rights pursuant to KRS Chapter 13B.~~

~~(7) The contractor shall reimburse the cabinet one-half (1/2) of the expenses of the hearing officer within thirty (30) days after the date of the entry of the final order by the Secretary of Transportation. The cabinet may withhold any sum owed a contractor on a current or future project that the cabinet is owed for the costs and/or expenses of the hearing officer.~~

~~Section 11. Material Incorporated by Reference. (1) The following material is incorporated by reference:~~

~~(a) Transportation Cabinet form TC 14-1, "Application for Certificate of Eligibility", December 1999 edition;~~

~~(b) Transportation Cabinet form TC 63-32, "Notice of Changed Condition/Disagreement", December 1999 edition;~~

~~(c) Transportation Cabinet form TC 63-33, "Acknowledgment of Notice of Change Condition/Disagreement", December 1999 edition;~~

~~(d) Transportation Cabinet form TC 63-34, "Final Release", March 1998 edition; and~~

~~(e) Transportation Cabinet form TC 63-44, "Final Inspection and Formal Acceptance Report of Completed Construction", November 1997 edition.~~

~~(2) All material incorporated by reference as a part of this administrative regulation may be viewed, copied, or obtained from the Transportation Cabinet, Department of Highways, Division of Contract Procurement, 501 High Street, Frankfort, Kentucky 40622. The office hours are 8 a.m. to 4:30 p.m. on weekdays. The office telephone number is (502) 564-3500.~~]

GREG THOMAS, Secretary
ANDY BARBER, State Highway Engineer
D. ANN DANGELO, Office of Legal Services

APPROVED BY AGENCY: December 11, 2018

FILED WITH LRC: December 13, 2018 at 3 p.m.

CONTACT PERSON: P. Kevin Moore, Executive Director, Office of Legal Services, 200 Mero Street, Frankfort, Kentucky 40622, phone (502) 564-7650, fax (502) 564-5238, email kevin.moore@ky.gov.

PUBLIC PROTECTION CABINET
Department of Alcoholic Beverage Control
(As Amended at ARRS, February 11, 2019)

804 KAR 1:030. Prohibited alcoholic beverage advertisements[statements].

RELATES TO: KRS 244.130
STATUTORY AUTHORITY: KRS 241.060(1), 244.130(1)[Chapter 13A]
NECESSITY, FUNCTION, AND CONFORMITY: KRS 244.060(1) authorizes[244.130 requires] the[Alcoholic Beverage Control] board to promulgate[prescribe] administrative regulations regarding matters over which the board has jurisdiction. KRS 244.130 authorizes the board to prohibit[dealing with advertising of] alcoholic beverage advertising practices by administrative regulations[beverages]. This administrative regulation prohibits certain[is to prevent false or misleading] advertising relating to alcoholic beverages[of distilled spirits and wine].

Section 1. Prohibited Advertising[Statements; Restrictions]. An advertisement for any alcoholic beverage shall not[of distilled spirits or wine shall not contain]:

(1) Be[Any statement that is] false or misleading;[in any material particular.]

(2) Disparage, slander, or libel[Any statement that is disparaging of] a competitor's product;[products.]

(3) Be[Any statement, design, device, or representation which is] obscene or indecent;[.]

(4)[Any statement concerning or illustrations of family scenes pertaining to the home.

(5) Any statement, design, device, or representation of or relating to analysis, standards or tests, irrespective of falsity, which the Alcoholic Beverage Control board finds to be likely to mislead the consumer.

(6) Any statement, design, device, or representation of or relating to any guaranty, irrespective of falsity, which the Alcoholic Beverage Control board finds to be likely to mislead the consumer. No guaranty cards or labels shall be used that would indicate the consumer would be entitled to a refund of the purchase price if dissatisfied with the distilled spirits or wine.

(7) Any statement that] Represent the alcoholic beverage is[distilled spirits or wine are] produced, brewed, distilled, blended, made, bottled, or sold under or in accordance with any municipal, state, or federal authorization, law, or regulation; and if a municipal, state, or federal permit number is stated, such permit number shall not be accompanied by any additional statement relating thereto;[.

(8) The words "bond," "bonded," "bottled in bond," "aged in bond," or phrases containing these or synonymous terms, unless such words or phrases appear, pursuant to federal regulations upon the labels of the distilled spirits advertised, and are stated in the advertisement in the manner and form in which they are required to appear upon the label.]

(9) Any statement of bonded wine cellar and bonded winery numbers unless stated in direct conjunction with the name and address of the person operating such winery or storeroom. Statement of bonded wine cellar and bonded winery numbers may be made in the following form: "Bonded Wine cellar No. _____," "Bonded Winery No. _____," "B.W.C. No. _____," "B.W. No. _____." No additional reference thereto shall be made, nor shall any use be made of such statement that may convey the impression that the wine has been made or matured under government supervision or in accordance with government specifications or standards.

(10) The word "pure" except as part of the bona fide name of a licensee or a retailer for whom the distilled spirits are bottled.

(11) The terms "double distilled," "triple distilled," or any similar term.]

(5) Contain representations about an alcoholic beverage brand or product which is inconsistent with any label statement;[(12) Statements inconsistent with labeling. The advertisement shall not contain any statement concerning a brand or lot of distilled spirits or wine that is inconsistent with any statement on the labeling thereof.

(13) Statements of age. The advertisement shall not contain any statement, design or device directly or by implication concerning age or maturity of any brand or lot of distilled spirits unless a statement of age appears on the label of the advertised product. When any such statement, design, or device concerning age or maturity is contained in any advertisement, it shall include (in direct conjunction therewith and with substantially equal conspicuousness) all parts of the statement, if any, concerning age and percentages required to be made on the label under the provisions of federal regulations. An advertisement for any whiskey or brandy (except immature brandies) which is not required to bear a statement of age on the label or an advertisement for any rum which has been aged for not less than four (4) years may, however, contain general inconspicuous age, maturity or other similar representations even though the optional age statement does not appear on the label of the advertised product and in the advertisement itself.

(14) Curative and therapeutic effects. The advertisement shall not contain any statement, design, or device representing]

(6) Represent that the use of any alcoholic beverage[distilled spirits or wine] has curative properties,[or] therapeutic effects, good health benefits, weight reducing effects, muscle growth effects, or any other like representation if ***the[such]*** representation [statement] is untrue in any particular***[,]*** or tends to create a misleading impression;[.

(15) Place of origin. The advertisement shall not represent that the distilled spirits or wine were manufactured in or imported from a place or country other than that of their actual origin, or were produced or processed by one who was not in fact the actual producer or processor.

(16) Confusion of brands. Two]

(7) Advertise two (2) or more different alcoholic beverage brands or products[lots of distilled spirits or wine shall not be advertised] in one (1) advertisement[(or in two (2) or more advertisements in one (1) issue of a periodical or newspaper, or in one (1) piece of other written, printed, or graphic matter)] if the advertisement tends to create the impression that a representation[representations] made as to one (1) brand or product applies[lot apply] to the other;[or others, and if as to such latter the representations contravene any provision of these administrative regulations or are in any respect untrue].[(17) Flags, seals, coats of arms, crests, and other insignia. No advertisement shall contain any statement, design, device, or pictorial representation of or relating]

(8) Relate to***[,]*** or be capable of being construed as relating to the armed forces;[nor shall any advertisement contain any statement, device, design, or pictorial representation of or concerning any flag, seal, coat of arms, crest, or other insignia, likely to mislead the consumer to believe that the product has been endorsed, made, or used by, or produced for, or under the supervision of, or in accordance with the specifications of the government, organization, family, or individual with whom such flag, seal coat of arms, crest, or insignia is associated.]

(9) Depict any flag, seal, coat of arms, crest, or other insignia, which is likely to mislead a consumer to believe that the product has been endorsed, made,***[or]*** used by,***[or]*** produced for, or under the supervision or approval of***[,]*** the government, organization, family, or individual with whom such flag, seal, coat of arms, crest, or insignia is associated;

(10) Use the terms "free" or "complimentary" alcoholic beverages, or any other terms, which imply or suggest giveaways of alcoholic beverages unless the statement references permissible manufacturer or wholesaler coupons or limited samples ***that[which]*** the licensee is authorized to serve under a license held;

(11) Use the phrase "all-you-can-drink", "unlimited drinks", or any other phrase or terms ***that[which]*** imply or suggest that a consumer will receive an unlimited number of alcoholic beverage drinks upon payment of a fee;

(12) Take any action, directly***[,]*** or indirectly, to target minors in the advertising, promotion, or marketing of alcoholic beverage products, or take any action the primary purpose of which is to initiate, maintain, or increase the incidence of minor consumption

of alcoholic beverages***;[.]***

(13) Offer or describe a product, service, or activity, that is prohibited by Kentucky law; or

(14) Be prohibited by Federal law.

CHRISTINE TROUT VAN TATENHOVE, Commissioner
K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: December 13, 2018

FILED WITH LRC: December 13, 2018 at 2 p.m.

CONTACT PERSON: Stephen Lee Walters, Legal Counsel, Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601, phone (502) 564-4850, fax (502) 564-7479, email lee.walters@ky.gov.

ENERGY AND ENVIRONMENT CABINET
Department for Natural Resources
Division of Mine Safety
(As Amended at ARRS, February 11, 2019)

805 KAR 7:080. Training, certification, and annual retraining of mine emergency technicians.

RELATES TO: KRS 351.010(1)***(n),*** (o), 351.127, 351.182, 352.390

STATUTORY AUTHORITY: KRS 351.070(13), 351.127(1), (5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 351.070(13) authorizes the secretary to promulgate administrative regulations necessary and suitable for the proper administration of this chapter. KRS 351.127(1) requires the department to promulgate administrative regulations establishing training requirements for mine emergency technicians. This administrative regulation establishes standards by which mine emergency technicians shall be trained, certified, and retrained.

Section 1. Definitions. (1) "Current" ***means***, as applied to training and its certification, ***[means]*** the present status of training, as certified by the agency that reviews or attests to it.

(2) "Emergency medical technician" or "EMT" means a person who is certified by the Kentucky Board of Emergency Medical Services.

(3) "Licensee" is defined by KRS 351.010(1)(n)[~~KRS 351.010(1)(o)~~].

(4) "Mine emergency technician" or "MET" means a person certified by the Division of Mine Safety[~~Office of Mine Safety and Licensing~~].[~~(5) "OMSL" means the Office of Mine Safety and Licensing.~~]

Section 2. MET Certification Requirements. (1) Each applicant for certification as a MET shall:

(a) Hold a surface or underground miner's certification in the Commonwealth of Kentucky;

(b) Successfully complete the standard program of training and education established by this administrative regulation and a series of written and practical skills examinations prescribed by the Division of Mine Safety[~~OMSL~~], in accordance with 805 KAR Chapter 7;

(c) Be eighteen (18) years of age or older; and

(d) Understand and be able to read, speak, and write in the English language.

(2) A Kentucky certified miner who is an emergency medical technician with a current ***cardio pulmonary resuscitation (CPR)[~~CPR~~]*** course completion card may apply for initial certification as a mine emergency technician.

Section 3. MET Training Course Requirements. (1) The training course curriculum for certification as a MET shall include:

(a) Instruction in ***CPR[~~cardio pulmonary resuscitation (CPR)~~]*** and adult one (1) and two (2) rescuer CPR, approved by at least one (1) of the following organizations:

1. The American Red Cross;
2. The American Safety and Health Institute;
3. The American Heart Association; or
4. The Nation Safety Council; and

(b) The following subjects from textbooks as prescribed by the Division of Mine Safety[~~Office of Mine Safety and Licensing~~];

1. Roles and responsibilities;
2. The human body;
3. Patient assessment;
4. Airway and Pulmonary Resuscitation;
5. Cardiac emergency;
6. Breathing aides and oxygen therapy;
7. Bleeding and shock;
8. Soft tissue and internal organs;
9. Upper and lower extremity muscular and skeletal injuries;
10. Skull and spine injuries;
11. Chest, abdominal, and genital injuries;
12. Medical emergency;
13. Hazardous materials;
14. Environmental and electrical emergencies;
15. Special patterns and behavioral problems;
16. Disaster management;
17. Lifting and moving;
18. Extrications;
19. Infection control; and
20. Burns.

(2) The training course shall also:

(a) Be not less than forty (40) hours in duration;

(b) Be taught by an instructor certified by the Division of Mine Safety[~~OMSL~~], in accordance with 805 KAR Chapter 7;

(c) Include equipment, texts, audiovisual***,*** and other materials approved by the Division of Mine Safety[~~OMSL~~], in accordance with 805 KAR Chapter 7 as adequate to train METs;

(d) Be limited to fifteen (15)[~~thirty (30)~~] students per instructor; and

(e) Be conducted in a training facility approved by the Division of Mine Safety[~~OMSL~~], in accordance with 805 KAR Chapter 7 as adequate to train METs.

Section 4. MET Certification Examination. (1) When the MET applicant takes the MET certification examination, ***the*** applicant shall provide verification on a ***Mine Safety and Health Administration*** Certificate of Training form, Federal Form 5000-23, that the applicant has successfully completed the standard program of MET training and education prescribed by the Division of Mine Safety[~~OMSL~~], in accordance with 805 KAR Chapter 7.

(2) The ***Mine Safety and Health Administration*** Certificate of Training form, Federal Form 5000-23, shall be signed by the MET applicant, be embossed with the MET instructor certification number, and ***be*** signed by the MET instructor who administered the MET course to the applicant.

(3) The initial MET certification exam shall be taken within sixty (60) days of completion of the MET training course required in Section 3 of this administrative regulation.

(4) The MET certification examination[~~,~~] shall be prescribed and administered by Division of Mine Safety[~~OMSL~~], in accordance with 805 KAR Chapter 7 and shall consist of the following two (2) parts:

(a) A written examination with an overall grade of eighty (80) percent shall be required to pass; and

(b) A practical examination, which shall consist of the following two (2) parts:

1.a. The first part***, which*** shall consist of mandatory stations in which the applicant shall be tested on one (1) or more required skills.

b. The applicant shall demonstrate proficiency in all mandatory stations***; and[.]***

2.a. The second***, which*** part shall consist of "wild card" stations in which one (1) or more skills shall be tested.

b. The applicant shall randomly draw the skills on which ***to[~~he shall~~]*** be tested when the examination is given.

(5)(a) If the applicant for certification fails to pass the written or practical portion of the examination, ***the applicant[~~he~~]*** shall be permitted one (1) opportunity to retake the portion or portions failed.

(b) The reexamination shall be conducted within sixty (60) days of the initial examination date.

(6) If the applicant for certification fails to pass the written or

practical portion after reexamination, ***the applicant[he]*** shall retake the entire MET training course before being eligible for subsequent examination.

Section 5. Certification Renewal Continuing Education Requirements. (1)(a) For ***an[a]*** MET to remain certified, the applicant shall receive continuing education or retraining in a period not to exceed one (1) year from the last day of the month in which the most current retraining was completed.

(b) ***An[A]*** MET shall earn at least eight (8) continuing education or retraining hours annually, with at least half being devoted to practical skills in a structured instructional setting.

(2) Continuing education and retraining courses for mine emergency technicians shall be taught by certified MET instructors.

(3)(a) ***An[A]*** MET shall maintain a current course completion card in adult foreign body airway obstruction and adult one (1) and two (2) rescuer CPR.

(b) The card shall be presented to the MET instructor at the time of the MET recertification.

(4) An applicant for recertification shall receive credit for completion of continuing education and retraining hours in subjects required by the Division of Mine Safety's[~~OMSL's~~] MET curriculum listed in Section 3 of this administrative regulation.

(5) Each subject or training course for which credit is claimed shall be countersigned by the MET instructor teaching the subject or course.

(6) The applicant for recertification shall submit evidence of successful completion of instruction in at least four (4) different subject areas of the approved MET curriculum, with a maximum of two (2) hours per subject area.

(7)(a) The MET shall submit to a [~~an~~] Division of Mine Safety[~~OMSL~~] district office a copy of the Mine Emergency Technician Recertification form, EF-16, within thirty (30) days of the MET retraining completion dates if the eight (8) hours training was received from multiple locations.

(b) The Mine Emergency Technician Recertification form, EF-16, shall be signed by the MET, be embossed with the MET instructor certification number, and ***be*** signed by the MET instructor who administered the continuing education claimed for purposes of recertification.

(c) A copy of the Mine Emergency Technician Recertification form, EF-16, shall be maintained at the mine site.

Section 6. Expiration of Certification. (1) ***An[A]*** MET certification shall expire one (1) year from the last day of the month in which the certification was issued, unless the person holding the MET certification satisfies the recertification and continuing education requirements ***established[detailed]*** in Section 5(1) of this administrative regulation.

(2) Upon the expiration of the MET certification, the holder shall not function in the capacity of a mine emergency technician.

Section 7. Reinstatement of Certification. A former MET may reinstate an expired certification***. An expired certification shall be reinstated as established in subsections (1) and (2) of this section.[as follows:]***

(1) If the certificate has expired within the past one (1) year, the applicant may apply for certification reinstatement***. Certification reinstatement shall be accomplished*** by:

(a) Successfully completing eight (8) hours of MET training and reeducation classes as established in Section 5(1) through (7) of this administrative regulation;

(b) Providing a copy of a current CPR certification as established in Section 3(1)(a) of this administrative regulation; and

(c) Submitting proof of prior MET certification.

(2) If the certificate has been expired for more than one (1) year but less than three (3) years, the applicant may apply for certification reinstatement***. Certification reinstatement shall be accomplished*** by:

(a) Successfully completely eight (8) hours of MET training and reeducation classes as established in Section 5(1) through (7) of this administrative regulation;

(b) Providing a copy of current CPR certification as established in Section 3***(1)(a)*** of this administrative regulation;

(c) Submitting proof, in accordance with KRS 351.182 that he or she is drug and alcohol free;

(d) Submitting proof of prior MET certification; and

(e) Completing the initial MET certification examination requirements established in Section 4(4) of this administrative regulation.

Section 8. Designation of ***an[a]*** MET. (1) A person designated by the licensee to function as ***an[a]*** MET in an underground coal mine shall:

(a) Hold an underground miner's certification in the Commonwealth of Kentucky;

(b) Hold a mine emergency technician certification from Division of Mine Safety[~~OMSL~~]; and

(c) Maintain verification of MET certification at the mine site.

(2) A person designated by the licensee to function as ***an[a]*** MET at a surface coal mine shall:

(a) Hold a surface miner's certification in the Commonwealth of Kentucky;

(b) Hold a mine emergency technician certification from the Division of Mine Safety[~~OMSL~~]; and

(c) Maintain verification of MET certification at the mine site.

(3) A certified MET instructor designated by the licensee to function as a mine emergency technician shall:

(a) Meet the requirements of subsections (1)(a) or (2)(a) of this section;

(b) Maintain verification of MET certification at the mine site; and

(c)1. Teach an eight (8) hour MET retraining class during the period of certification; or

2. Meet the recertification continuing education requirements established in Section 5 of this administrative regulation.

Section 9. MET Instructor Certification Requirements. MET instructors, in addition to being certified as ***an[a]*** MET, shall:

(1)(a) Hold a mine instructor certification issued by the Division of Mine Safety[~~OMSL~~]; and

(b) Hold a current instructor card to teach adult foreign body airway obstruction and adult one (1) and two (2) rescuer CPR issued by at least one of the organizations listed in Section 3(1)(a) of this administrative regulation; or

(2) Be an EMT instructor who is also qualified in accordance with subsection (1) of this section.

Section 10. Responsibilities of the MET Instructor. The MET instructor shall:

(1) Utilize equipment, texts, audio-visual***,*** and other materials ***approved by the Division of Mine Safety, in accordance with 805 KAR Chapter 7[deemed appropriate by the department]***;

(2) Notify the district office of the Division of Mine Safety[~~OMSL~~] ***at least*** fourteen working (14) days prior to***[his]*** commencement of any MET classes, including initial and retraining classes;

(3) Verify on a Mine Safety and Health Administration Certificate of Training form, Federal Form 5000-23, that the MET applicant has successfully completed the standard MET program of training and education prescribed by the Division of Mine Safety[~~OMSL~~], in accordance with 805 KAR Chapter 7;

(4) Verify on a Mine Emergency Technician Recertification form, EF-16 that the MET has successfully completed each subject or training course for which credit shall be approved;

(5) Immediately upon completion of initial training or continuing education courses, ***provide*** the completed form, Mine Emergency Technical Recertification form, EF-16,***[shall be provided]*** to the student; and

(6)(a)***[Shall]*** Submit copies of all Mine Emergency Technician Recertification form EF-16, forms within thirty (30) days of MET retraining completion dates, to the Division of Mine Safety[~~Office of Mine Safety and Licensing~~].

(b) The Mine Emergency Technician Recertification form, EF-16, shall be signed by the MET, ***be*** embossed with the MET instructor certification number, and ***be*** signed by the MET instructor who administered the continuing education claimed for

purposes of recertification.

Section 11. Denial, Revocation, and Suspension of MET Certification. (1) The Mine Safety Review Commission may revoke, suspend, or probate the MET certification or MET instructor certification of a person who the commission determines, based upon allegations substantiated by the Division of Mine Safety[~~OMSL~~], has responded or acted inappropriately in the capacity of a mine emergency technician or MET instructor by failing to:

(a) Follow appropriate standards of care in the management of a patient;

(b) Administer treatment in a responsible manner in accordance with the mine emergency technician's or MET instructor's level of certification;

(c) Maintain patient confidentiality; ***or***

(d) Respond timely to an emergency.

(2) All actions taken by the commission regarding the revocation, suspension, or probation of ***an[a]*** MET certification or MET instructor certification shall be so taken in accordance with KRS 352.390.

Section 12. Material Incorporated by Reference.(1) The following material is incorporated by reference:

(a) The Mine Safety and Health Administration Certificate of Training form 5000-23, January 1999; and

(b) Mine Emergency Technician Recertification Form EF-16, April 2006.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Kentucky Division of Mine Safety[~~Office of Mine Safety and Licensing~~], 300 Sower Boulevard, Frankfort, Kentucky 40601.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: December 14, 2018

FILED WITH LRC: December 14, 2018 at 11 a.m.

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.

PUBLIC PROTECTION CABINET
Kentucky Real Estate Authority
Kentucky Board of Home Inspectors
(As Amended at ARRS, February 11, 2019)

815 KAR 6:001. Definitions for 815 KAR Chapter 6.

RELATES TO: KRS 198B.700(2), 198B.706

STATUTORY AUTHORITY: KRS 198B.706(15)

NECESSITY, FUNCTION AND CONFORMITY: KRS 198B.706(15) requires the Kentucky Board of Home Inspectors, with the approval of the executive director of the Kentucky Real Estate Authority, to promulgate administrative regulations to carry out the effective administration and requirements[~~necessary to enforce the provisions~~] of KRS 198B.700 to 198B.738[~~and to establish requirements for continuing education~~]. This administrative regulation establishes the definitions for 815 KAR Chapter 6.

Section 1. Definitions. (1) "Approved" means recognized by the Kentucky Board of Home Inspectors.

(2)[~~"Board" is defined by KRS 198B.700(2).~~

~~(3)~~] "Complaint" means a written allegation of misconduct by a home inspector, or other allegation of a violation of KRS Chapter 198B, the requirements established in 815 KAR Chapter 6, or another state or federal statute or regulation applicable to home inspectors.[~~(4) "Complaint screening committee" means the committee appointed pursuant to 815 KAR 6:060, Section 1.~~]

(3)[~~(5)~~] "Continuing education hour" means fifty (50) clock minutes of instruction, exclusive of any breaks, recesses, testing, or other time not spent on[~~in~~] instruction.[~~(6) "Licensee" is defined by KRS 198B.700(7).~~]

(4) "Expired license" means a license that was not renewed by the last day of the licensee's birth month ***as required by KRS 198B.722(1) or (2)***.

(5)[~~(7)~~] "Prelicensing course provider" means the person or legal entity approved by the board to conduct prelicensing courses in home inspection.

(6)[~~(8)~~] "Probationee" means a licensee, prelicensing course provider, or continuing education provider placed on probation by the board.

(7)[~~(9)~~] "Provider" means the person or legal entity approved by the board to provide prelicense or continuing education in home inspections.

(8) "Terminated license" means a license that has not been renewed within 120 days of expiration ***as required by 815 KAR 6:010, Section 5(2)(d)***.

MITCHELL BUCHANAN, Chair

H.E. CORDER II, Executive Director

K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: September 12, 2018

FILED WITH LRC: September 13, 2018 at 11 a.m.

CONTACT PERSON: Heather L. Becker, General Counsel, Kentucky Real Estate Authority, 656 Chamberlin Ave., Suite B, Frankfort, Kentucky 40601, phone (502) 564-7760, fax (502) 564-1538, email Heather.Becker@ky.gov.

PUBLIC PROTECTION CABINET
Kentucky Real Estate Authority
Kentucky Board of Home Inspectors
(As Amended at ARRS, February 11, 2019)

815 KAR 6:010. Licensing requirements[~~Home inspector licensing requirements and maintenance of records~~].

RELATES TO: KRS 198B.700, 198B.706, 198B.712, 198B.714, 198B.716, 198B.722, 198B.724, 198B.738***, 335B.020, 335B.030***

STATUTORY AUTHORITY: KRS 198B.706***(1), (15),*** 198B.722***(7)***

NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.706(1) and (15) requires the Kentucky Board of Home Inspectors, with the approval of the executive director of the Kentucky Real Estate Authority, to promulgate administrative regulations to carry out the effective administration and requirements[~~necessary to enforce the provisions~~] of KRS 198B.700 to 198B.738 and to determine the[~~establish~~] requirements and prescribe forms and applications for licensing.[~~and certification as well as prescribing forms and applications. KRS 198B.706(7) requires the board to promulgate administrative regulations to provide for the inspection of the records of a licensee. KRS 198B.706(11) requires the board to establish continuing education requirements.~~] KRS 198B.722***(2) and*** (7) authorizes[~~requires~~] the board to establish requirements for licensure renewal[~~of licenses~~] and ***[authorizes the board]*** to establish an inactive license. This administrative regulation establishes[~~the~~] licensure[~~and record~~] requirements for home inspectors.

Section 1. Application Requirements. (1) An applicant for an initial[~~a~~] home inspector license shall submit:

(a) A completed Application for Licensure, form KBHI-1;

(b) A two (2) inch by two (2) inch passport photograph taken within the past six (6) months and affixed to the application form;

(c)***1.*** A certificate of***[board-approved prelicensing]*** course completion ***from a prelicensing course provider approved by the board in accordance with 815 KAR 6:040;*** and

2. The applicant's passing***[national]*** examination test score from ***a test provider approved by the board in accordance with 815 KAR 6:040[an examination administered by a board-approved test provider]***;

(d) A certificate of liability insurance pursuant to KRS 198B.712(3)(d), verifying continuous coverage;

(e) If applicable, other state or local licensure, certification, registration, or permit;

(f) Two ***(2)*** criminal[~~A recent~~] background checks, both completed no more than ninety (90) days prior to the date the board receives the application:

1. A state criminal background check performed by:

a. The Kentucky State Police for Kentucky residents; or

b. A comparable law enforcement agency for non-resident applicants; and

2. A nationwide criminal background investigation check ***in accordance with subsection (2) of this section; and***

(g) A nonrefundable fee of $250.

(2)(a) The nationwide criminal background investigation check shall be performed by the Federal Bureau of Investigation.

(b) If the Federal Bureau of Investigation[~~check performed by the Kentucky State Police and a nationwide criminal background investigation check performed by the Federal Bureau of Investigation. If an applicant submits an application for a nationwide criminal background investigation check performed by the Federal Bureau of Investigation (FBI) and the FBI~~] cannot complete the background investigation check within thirty (30) days of the request[~~. Then~~], the applicant may submit an Optional Affidavit for Licensure, form KBHI-6, and submit the performed nationwide criminal background investigation check within fourteen (14) days of its completion.

(c) If an applicant has a felony conviction during the applicant's lifetime, a misdemeanor conviction within the past five (5) years or a pending charge, the applicant shall not use the optional affidavit***[; and][(g) A nonrefundable fee of $250.]***[~~(2) An applicant for a home inspector license shall:~~

~~(a) Complete and pass a prelicensing training course approved by the board pursuant to subsection (8) of this section and that is administered by a provider who has been approved by the board in accordance with 815 KAR 6:040 and subsection (8) of this section; and~~

~~(b) Pass an examination conducted by a board-approved test provider.~~]

Section 2. Examination. (1)[~~(3)~~] A request to sit for the examination shall be made directly to the test provider.

(2)[~~(4) The examination fee shall be set by the testing company and shall be paid directly to the test provider.~~

~~(5)~~] A passing score on the examination shall be valid for a period of three (3) years.

(3) If an applicant fails to pass the examination two (2) times, the applicant shall wait at least fourteen (14) calendar days prior to retaking the examination.

(4) If an applicant fails to pass the examination three (3) times, the applicant shall not be eligible to retake the examination until the applicant has again completed and again passed the prelicensing training course required by ***Section 1(1)(c) of*** this administrative regulation before retaking the examination a fourth time[,] and[~~also for~~] each subsequent examination failure thereafter.[~~(6) Failing the examination.~~

~~(a) An applicant who fails to pass the examination two (2) times shall wait at least fourteen (14) calendar days from the date of the second failed examination prior to retaking the examination.~~

~~(b) An applicant who fails to pass the examination three (3) or more times shall wait at least thirty (30) calendar days from the date of the third or subsequent failed examination prior to retaking the examination.~~

~~(c) An applicant who fails to pass the examination three (3) times shall not be eligible to retake the examination until the applicant has again completed and again passed the prelicensing training course required by subsection (2)(a) of this section before retaking the examination a fourth time, and also for each subsequent examination failure thereafter.~~]

(5)[~~(6)~~][~~(7) Procedures and conduct.~~

~~(a)~~] The applicant shall follow all written and oral instructions, procedures, and appropriate standards of conduct established by the board or testing service administering the examination.[~~:~~

~~1. Procedures and appropriate conduct established by the board or testing service administering an examination if the procedures and conduct requirements are provided or made available to each applicant or orally announced before the start of the examination; and~~

~~2. Written instructions communicated prior to the examination date and instructions communicated at the testing site, either written or oral, on the date of the examination.~~]

(6)[~~(7)~~][~~(b)~~] Failure to comply with all instructions, procedures, and appropriate standards of conduct[~~procedures~~] established by the board or the testing service[~~with regard to conduct at the examination~~] shall be grounds for denial of the application.[~~(8) Course requirements. To be approved by the board, a prelicensing training course shall require a minimum of:~~

~~(a) Sixty-four (64) credit hours of training in the subject areas listed in subparagraphs 1 through 9 of this paragraph for at least the number of hours specified:~~

~~1. Manufactured housing: two (2) hours;~~

~~2. Standards of practice, KRS 198B.700 to 198B.738 and 815 KAR Chapter 6, contracts, report writing, and communications: twelve (12) hours;~~

~~3. Exterior, roofing, insulation, and ventilation: six (6) hours;~~

~~4. Structure and interior: nine (9) hours;~~

~~5. Electrical and plumbing: nine (9) hours;~~

~~6. Heating and air conditioning: six (6) hours;~~

~~7. Field training: sixteen (16) hours, including not more than eight (8) hours in a laboratory;~~

~~8. General residential construction: three (3) hours; and~~

~~9. Environmental hazards, mitigation, water quality, and indoor air quality: one (1) hour;~~

~~(b) The completion of three (3) unpaid home inspections under the supervision of a Kentucky licensed home inspector with satisfactory written reports submitted to the course provider in addition to the sixteen (16) hours of field training required by paragraph (a)7 of this subsection; and~~

~~(c) An exit examination with a passing score.~~

~~(9) An online prelicensing training course shall not be accepted by the board unless the applicant:~~

~~(a) Is enrolled in a prelicensing course on or before September 4, 2015;~~

~~(b) Maintains continuous enrollment; and~~

~~(c) Completes the prelicensing course no later than six (6) months from September 4, 2015.~~

~~(10) Criminal background checks and other disciplinary proceedings.~~

~~(a) Except as established in subsection (1)(f) of this section, each applicant shall submit a recent background check performed by the Kentucky State Police and a nationwide criminal background investigation check performed by the Federal Bureau of Investigation.~~

~~(b) If an applicant has resided in a state for less than five (5) years prior to application, the applicant shall also obtain and submit a state-wide criminal background check by a law enforcement agency capable of conducting a state-wide background check from the state where the applicant previously resided.~~]

Section 3[~~2~~]. Reciprocity. An applicant seeking licensure[~~a license~~] through reciprocity in accordance with KRS 198B.714 shall:

(1) Submit a completed Application for Licensure, form KBHI-1, and attachments established in Section 1(1)(b) through (f) of this administrative regulation; and

(2) Pay the fee established in Section 1(1)(g) of this administrative regulation.

Section 4[~~3~~]. Nonresident Licensees. A nonresident licensee shall:

(1) Submit a completed Application for Licensure, form KBHI-1, and attachments established in Section 1(1)(b) through (f) of this administrative regulation;

(2) Pay the fee established in Section 1(1)(g) of this administrative regulation; and

(3) Comply with the provisions established in KRS 198B.716, by submitting a complete Consent to Service of Jurisdiction, form KBHI-8, and this administrative regulation.

Section 5[4]. Renewal of Licenses. (1) To be eligible for

licensure renewal[of license], an applicant shall hold a valid and current license issued by the board and shall:

(a) Satisfy the continuing education requirements established by 815 KAR 6:040[of Section 5 of this administrative regulation];

(b) Pay a nonrefundable renewal fee of $200[$250] per year for each year of licensure;

(c) Submit a completed Application for Licensure Renewal, [and] Reinstatement or Reactivation, form KBHI-2 with the following attachments[and attachments, including]:

1. A certificate of completion for continuing education;

2. A certification of ***liability*** insurance showing continuous coverage [information];

3. If applicable, a letter of good standing from all other jurisdictions where the licensee is licensed[other state or local licensure, certification, registration, or permit]; and

4. A[state-wide] criminal background check performed by the Kentucky State Police completed within ninety (90) days of the date the board receives the renewal application; and

(d) Submit a copy of a completed inspection report that has been compiled within the previous twelve (12) months immediately preceding renewal.

(2)(a) The renewal application shall be postmarked by the last day of the month in which the licensee is to renew the license.

(b) If the renewal application is postmarked within sixty (60) days after the last day of the licensee's renewal month, the licensee shall:

1. Cease and desist from conducting home inspections***;[;]*** and

2. Pay the nonrefundable renewal fee of $200 ***per year for each year of licensure*** and the late renewal fee of $250.

(c) If the renewal application is postmarked between sixty-one (61) and 120 days after the renewal was due, the licensee shall:

1. Cease and desist from conducting home inspections***;[;]*** and

2. Pay the nonrefundable renewal fee of $200 ***per year for each year of licensure***, late renewal fee of $250, and reinstatement fee of $250.[the licensee shall pay a nonrefundable:

1. Renewal fee of $250 per year for each year of licensure; and

2. Late fee of $250.

(3) If a licensee has not submitted a renewal application within sixty (60) days of the last day of the licensee's renewal month, the license shall be cancelled and the licensee shall cease and desist from conducting home inspections.

(4)(a) If a licensee failed to submit a renewal application more than sixty (60) days from the last day of the licensee's renewal month and wants to be licensed, the licensee shall submit a completed Application for Licensure Reinstatement, form KBHI-6, within 120 days of the last day of the licensee's renewal month. The licensee shall pay a nonrefundable:

1. Renewal fee of $250 per year for each year of licensure; and

2. Late fee of $500.]

(d)[(b)] If a licensee failed to submit an Application for Licensure Renewal, Reinstatement or Reactivation***, form KBHI-2,*** [or an Application for Licensure Reinstatement] within 120 days of the last day of the licensee's renewal month, the license shall be terminated.[and wants to be licensed, the licensee shall submit a new application in accordance with existing requirements for initial applicants under KRS 198B.700 to 198B.738 and 815 KAR Chapter 6.]

(e) If a licensee failed to submit a timely Application for Licensure Renewal, Reinstatement or Reactivation, *form KBHI-2*, the licensee may seek reinstatement upon a showing of good cause, which shall include circumstances beyond the control of the licensee.[Section 5. Continuing Education. (1) The continuing education requirements of this section shall apply only to those licensees who will have been licensed at least twelve (12) months at license renewal.

(2) Each licensee who renews a license in an odd year shall have at least fourteen (14) hours of continuing education per license year. Each licensee who renews a license during an even year shall have at least twenty-eight (28) hours of continuing education during the license biennial period.

(3) Prior to renewal, the continuing education shall include a minimum of:

(a) Two (2) hours in manufactured housing;

(b) Three (3) hours in KRS 198B.700 to 198B.738 and 815 KAR Chapter 6;

(c) Three (3) hours in report writing; and

(d) Six (6) hours in technical courses, including identification and determination, as applicable within the standards of practice.

(4)(a) The continuing education courses identified in subsection (3)(a) through (c) of this section shall be completed face-to-face. An online continuing education course shall not satisfy the continuing education requirement for each respective category.

(b) The face-to-face requirement identified for the continuing education courses shall be effective beginning the next renewal period following September 4, 2015.

(5) Continuing education shall be obtained from those providers approved by the board as provided in 815 KAR 6:080.

(6) An approved prelicensing course shall satisfy the initial fourteen (14) hour continuing education requirement.

(7) A maximum of three (3) hours per license year shall be awarded for teaching part of a home inspection credit course or home inspection continuing education course as applied to the appropriate content area established in subsection (3)(a) through (d) of this section.

(8) A maximum of three (3) hours per license year shall be awarded for appointment to the board for a board member who is licensed and who has attended not less than eighty (80) percent of the board meetings each license year as applied to the content area established in subsection (3)(b) of this section.

(9) A licensee shall not take the same continuing education course during a licensure period.

(10) A licensee may complete the required continuing education hours within the sixty (60) day grace period from the last day of the licensee's renewal month.]

Section 6. Inactive License. (1)[Placement of a license in inactive status.

(a)1.] To place a license in inactive status, a licensee shall submit a [notarized] statement indicating the desire to have the license placed in inactive status.

(2)[2.] This[notarized] statement shall be mailed to the board and shall be accompanied by:

(a)[a.] A nonrefundable fee of[check for] ten (10) dollars made payable to the Kentucky State Treasurer;

(b)[b.] The licensee's[actual] license card[of the licensee]; and

(c)[c.] A current mailing address for the licensee.

(3) If the licensee no longer has his or her license card, the statement shall be notarized and provide a reason for the missing license card.

(4)[(b)] A licensee in inactive status shall not engage in home inspection activities within the Commonwealth of Kentucky.

(5)[(2)] Renewal of license in inactive status.

(a) A licensee with an inactive license shall pay an annual inactive status fee equal to fifty (50) percent of the current renewal fee for an active license.

(b) Failure to pay this annual fee shall result in the expiration of the license on the last day of the licensee's birth month.

(6)[(3) Insurance coverage for licensees with inactive license.] A licensee with an inactive status license shall not be required to maintain the insurance coverage required by KRS 198B.712(3)(d) [during inactive status].

Section 7. License Reactivation[of Inactive License to Active Status]. (1) A licensee who wishes to reactivate a license shall[contact the board and] submit a completed Application for Licensure Renewal, Reinstatement or Reactivation, form KBHI-2 with the following attachments:

(a) A certificate of completion for continuing education as required by 815 KAR 6:040;

(b) A certification of ***liability*** insurance showing continuous coverage; and

(c) If applicable, a letter of good standing from all other jurisdictions where the licensee is licensed.

(2) The reactivation application shall be accompanied by:

(a) A criminal background check performed by the Kentucky State Police completed within ninety (90) days of the date the

board receives the reactivation application; and

(b) A nonrefundable reactivation fee in the amount of ten (10) dollars made payable to the Kentucky State Treasurer.[notarized statement requesting approval to return to active status.

(2) This request shall be accompanied by:

(a) The name of the licensee requesting activation;

(b) The license number of the licensee requesting reactivation;

(c) The birth date of the licensee requesting reactivation;

(d) A current mailing address for the licensee requesting reactivation;

(e) A check in the amount of ten (10) dollars made payable to the Kentucky State Treasurer;

(f) Proof of liability insurance naming the individual in the amount of $250,000 as required by KRS 198B.712(3)(d);

(g) A state-wide criminal background check administered by a law enforcement agency capable of conducting a state-wide background check; and

(h) Proof of continuing education as required by Section 8 of this administrative regulation]***[.]***

(3) A license that has been inactive for a period of five (5) years from the date of board action shall be considered terminated[expired].

Section 8. Grounds for Denial or Nonrenewal and Appeal Rights. (1) The board may deny a license or refuse to renew or reactivate a license to an applicant or licensee who:

(a) Has entered a guilty plea to, pled guilty to, or been convicted of a crime directly related to the home inspection profession; or

(b) Has had disciplinary action taken against a home inspector license, certificate, registration, or permit held by the applicant or licensee in any jurisdiction or state.

(2) The board shall ***follow the procedures established in KRS Chapter 335B in denying a license or refusing to renew or reactivate a license.[base its decision on the nature, seriousness of the offense or disciplinary action, and passage of time since the offense or disciplinary action.***

(3) If the board denies an initial or renewal license application, the board shall issue written notice of the denial to the applicant. The notice shall contain:

(a) The specific reason for the board's action, including:

1. The statutory or regulatory violation; and

2. The factual basis on which the denial is based; and

(b) Notice that the applicant may request an administrative hearing on the pending denial by the board.

(4) The request for an administrative hearing shall be postmarked no more than twenty (20) calendar days after receipt of this notification, excluding the day he or she receives notice.]

(3)[(5)] The request ***for an administrative hearing*** 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.

(4)[(6)] If the request for an administrative hearing is not timely filed, the notice of denial shall be effective upon the expiration of the time to request an administrative hearing.[Continuing Education Requirements for Licensees in Inactive Status Returning to Active Status. (1) Except as provided by subsection (2) of this section, a licensee with an inactive status who wishes to reactivate the license shall complete the continuing education requirements established in this subsection prior to application to return to active status. The licensee shall complete fourteen (14) hours per year that the license has been inactive, which shall include:

(a) Two (2) hours in manufactured housing;

(b) Three (3) hours of KRS 198B.700 to 198B.738 and 815 KAR Chapter 6; and

(c) Nine (9) hours, in any combination, of:

1. Electrical;

2. Plumbing;

3. Heating, ventilation, and air conditioning;

4. Roofing; or

5. Report writing.

(2) A board approved sixty-four (64) hour prelicensing training course may be used to satisfy the requirement established in subsection (1) of this section.

Section 9. Maintenance of Records. (1) Address.

(a) A license holder shall report a change of address to the board in writing within ten (10) days after the change.

(b) The board shall not be responsible for the license holder's failure to receive notices, communications, or correspondence caused by the license holder's failure to promptly notify the board of a change of address.

(2) Names.

(a) A license holder shall notify the board in writing of a name change within thirty (30) days of the change.

(b) The notification shall be accompanied by a copy of a marriage certificate, divorce decree, court order, or other documentation that verifies the name change.

(c) The board shall not be responsible for the license holder's failure to receive notices, communications, or correspondence caused by the license holder's failure to promptly notify the board of a name change.

(3) Inspection records.

(a) A licensed home inspector shall retain for at least three (3) years from the date of the inspection:

1. The written reports;

2. The contract; and

3. Supporting documentation, if applicable.

(b) Records may be retained in retrievable, electronic format.

(c) The licensee shall provide all records requested by the board within ten (10) days of receipt of the request.

Section 10. (1) The board may deny a license or refuse to renew or reactivate a license to an applicant or licensee who:

(a) Has entered a guilty plea to, pled guilty to, or been convicted of a:

1. Felony; or

2. Misdemeanor; or

(b) Has had disciplinary action taken against a professional license, certificate, registration, or permit held by the applicant or licensee in any jurisdiction or state, including Kentucky.

(2) The board shall base its decision on the seriousness of the offense or disciplinary action, the length of time since the offense or disciplinary action, and the applicant's or licensee's showing of remorse, rehabilitation, and restitution by clear and convincing evidence.

Section 11. The board shall deny a license or refuse to renew or reactivate a license to an applicant or licensee who fails to comply with a provision of KRS 198B.700 to 198B.738 or 815 KAR Chapter 6.]

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

(a) "Application for Licensure", Form KBHI-1, ***1/2019[9/2018]***[2/2016];

(b) "Application for Licensure Renewal, Reinstatement or Reactivation", Form KBHI-2, 9/2018[2/2016];

(c)["Application for Licensure Reinstatement", Form KBHI-6, 2/2016; and

(d)] "Optional Affidavit for Licensure", Form KBHI-6[7], ***1/2019[12/2018]*****[9/2018]**[2/2016]; and

(d) "Consent to Service of Jurisdiction", Form KBHI-8, 9/2018.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Board of Home Inspectors[Office of Occupations and Professions], 656 Chamberlin Avenue, Suite B [911 Leawood Drive], Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

MITCHELL BUCHANAN, Chair
H.E. CORDER II, Executive Director
K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: December 12, 2018

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PUBLIC PROTECTION CABINET
Kentucky Real Estate Authority
Kentucky Board of Home Inspectors
(As Amended at ARRS, February 11, 2019)

815 KAR 6:030. Standards of conduct, complaints, and discipline[~~Home inspector standards of conduct~~].

RELATES TO: KRS 198B.706, 198B.712, 198B.722, 198B.728, 198B.730***, 411.270-411.282***

STATUTORY AUTHORITY: KRS 198B.706[~~(13), (15)~~]

NECESSITY, FUNCTION AND CONFORMITY: KRS 198B.706(15) requires the Kentucky Board of Home Inspectors, with the approval of the executive director of the Kentucky Real Estate Authority, to promulgate administrative regulations to carry out the effective administration and requirements[~~necessary to enforce the provisions~~] of KRS 198B.700 to 198B.738. KRS 198B.706(13) authorizes the board to establish standards of practice for home inspectors. KRS 198B.706(1) requires the board to determine the requirements for and prescribe the form of documents required by KRS 198B.700 to 198B.738. KRS 198B.706(4) requires the board to investigate, and take action if appropriate, complaints concerning licensees, or persons the board has reason to believe should be licensees, including complaints concerning failure to comply with KRS Chapter 198B or 815 KAR Chapter 6. KRS 198B.728 requires the board to take disciplinary actions against or impose sanctions on a licensee for failing to comply with any provision of KRS 198B.700 to 198B.738 or administrative regulations promulgated thereunder. KRS 198B.730(1) requires the board to schedule and conduct an administrative hearing in accordance with the provisions of KRS Chapter 13B.***[This administrative regulation establishes standards of conduct for home inspectors, the guidelines for advertising by home inspectors, and the process for filing and investigating complaints.]*** KRS 411.272(2) requires KRS 411.270 to 411.282 to prevail over any conflicting law otherwise applicable to any action, claim or cause of action against a home inspector, with specified exceptions. ***This administrative regulation establishes standards of conduct for home inspectors, standards for advertising by home inspectors, and the process for filing and investigating complaints.*** This administrative regulation also establishes supplemental administrative hearing procedures for matters before the board and the required forms for a complaint or answer.

Section 1. Standards of Conduct. A licensed home inspector or an entity under which the inspector conducts business shall:

(1) Act as an unbiased third party to the real estate transaction;

(2) Discharge the duties of a home inspector with integrity and fidelity to the client;

(3) Only express an opinion on any aspect of the inspected property[~~only~~] if that opinion is based upon the experience, training, education, and professional[~~personal~~] opinion of the inspector;

(4) Provide a written disclosure to the client of any interest the inspector maintains in the transaction and advise the client to obtain competitive bids before products or additional services are offered by the licensee including:

(a) Products or additional services to be purchased from or provided by the inspector, his or her agents, or employees;

(b) Products or additional services to be purchased from or provided by any entity, organization, or venture in which the inspector has an interest; or

(c) Products or additional services to be purchased that will result in any additional compensation or benefit to the inspector, financial or otherwise;[~~and~~]

(5) Provide the license number, following the licensee's signature, on any document signed by the home inspector pertaining to the home inspection; and[~~.~~]

(6) Report a conviction, plea of guilty, or an "Alford" plea to any felony or a misdemeanor involving sexual misconduct, theft, attempted sexual misconduct, or attempted theft to the board within thirty (30) days.

Section 2. Prohibited Conduct[~~Additional Standards~~]. In addition to the affirmative duties imposed by Section 1 of this administrative regulation, a licensed home inspector or an entity under which the licensee conducts business shall not:

(1) Engage in or knowingly cooperate in the commission of fraud or material deception to obtain a license to engage in the practice of home inspection, including cheating on the licensing examination;

(2) Perform repairs or modifications for compensation, or for other direct or indirect financial benefit, to a residential dwelling within twelve (12) months after performing a home inspection on the same residential dwelling, if the repairs or modifications are based upon the findings in the home inspection report. This subsection shall not apply if the home inspector purchases the residence after performing the inspection;

(3) Perform[~~Provide~~] a home inspection to the client that does not conform to the Standards of Practice selected on the initial or renewal application for licensure[~~or the application for renewal~~] submitted pursuant to 815 KAR 6:010;

(4) Provide services that constitute the unauthorized practice of any profession that requires a special license if the home inspector does not hold that license;

(5) Provide any compensation, inducement, or reward, either directly or indirectly, to any person or entity other than the client for the referral of business to the inspector. The purchase or use of advertising, marketing services, or products shall not be considered compensation, inducement, or reward;

(6) Conduct a home inspection or prepare a home inspection report for which the inspector's fee is contingent upon the conclusions contained in the report;

(7) Misrepresent the financial interests, either personally or through his or her employment, of any of the parties to the transfer or sale of a residential dwelling upon which the licensee has performed a home inspection;

(8) Disclose any information concerning the results or content of the home inspection report without the prior, written approval of the client for whom the home inspection was performed. The home inspector may disclose information if:

(a) There is an imminent danger to life, health, or safety; or

(b) The home inspector is compelled to disclose information by court order or a lawfully issued subpoena;

(9) Accept compensation, financial or otherwise, from more than one (1) interested party for the same home inspection on the same property without the written consent of all interested parties;

(10) Make a false or misleading representation regarding the:

(a) Condition of a residential dwelling for which the licensee has performed or contracted to perform a home inspection;

(b) Extent of[~~the~~] services the licensee has performed or will perform; or

(c) Type of license held by the licensee;

(11) Be convicted of a crime in the course of the practice of home inspection or commit any act constituting a violation of state law during the course of a home inspection;

(12)[~~Make a false or misleading representation in:~~

~~(a) A license or renewal application form; or~~

~~(b) Information provided to the board;~~

~~(13) Fail to pay any fees required by 815 KAR 6:010;~~

~~(14)~~] Fail to continuously maintain the ***liability*** insurance***[or other evidence of financial responsibility]*** required by KRS ***198B.712(3)(d) and 815 KAR 6:010[Chapter 198B or 815 KAR Chapter 6]***;

(13)[~~(15)~~] Engage in any course of lewd or immoral conduct in connection with the delivery of services to clients;

(14)[~~(16) Fail to complete the continuing education requirements established by the board in 815 KAR 6:010;~~

~~(17)~~] Use the term "certified" in advertising, unless the certification is current and the full name of the certifying body is clearly identified;

(15)[~~(18)~~] Use the term "fully insured," unless the person or entity has business liability and worker's compensation insurance coverage in effect at the time of the advertisement;

(16)[~~(19)~~] Continue to practice, if the licensed home inspector has become unfit to practice due to:

(a) Professional incompetence;

(b) Failure to keep abreast of current professional theory or practice;

(c) Physical or mental disability; or

(d) Addiction to, abuse of, or severe dependency on alcohol or other drugs that endanger the public by impairing a licensed home inspector's ability to practice safely;[~~or~~

~~(e) Failure to maintain a valid home inspector's license~~];

(17)[(19)][~~(20)~~] Omit information in a home inspection report required to be disclosed to a client by the Standards of Practice selected on the initial application for licensure or the application for renewal submitted pursuant to 815 KAR 6:010; or

(18)[(20)][~~(21)~~] Fail to comply with an order of the board.

Section 3. Content of Report. (1) A home inspection report shall state the Standards of Practice being followed by the licensee.

(2) A home inspection report shall include a statement that the report does not address environmental hazards and shall list all other exclusions with specificity. The presence or evidence of the following environmental hazards shall not be addressed in the report:

(a)[~~(1)~~] Air-borne hazards;

(b)[~~(2)~~] The air quality or the sickness of any building, including[~~, but not limited to,~~] the presence or[~~of~~] absence of all manner of biological activity, such as hazardous plants, insects, birds, pets, mammals, and other flora and fauna, and their consequent physical damage, toxicity, noxiousness, odors, waste products, and wood destroying animals and fungi;

(c)[~~(3)~~] Animals, insects, or rodents;

(d)[~~(4)~~] Asbestos;

(e)[~~(5)~~] Carcinogens, including[~~but not limited to~~] radon;

(f)[~~(6)~~] Contaminants in soil, water, and air;

(g)[~~(7)~~] Electro-magnetic fields;

(h)[~~(8)~~] Hazardous materials including[~~, but not limited to,~~] the presence of lead in paint;

(i)[~~(9)~~] Hazardous waste conditions;

(j)[~~(10)~~] Mold, mildew, or fungus;

(k)[~~(11)~~] Hazardous plants or animals including[~~, but not limited to~~] wood destroying organisms, wood destroying insects, or diseases harmful to humans including molds or mold-like substances;

(l)[~~(12)~~] Noise;

(m)[~~(13)~~] Potability of any water;

(n)[~~(14)~~] Toxins;

(o)[~~(15)~~] Urea formaldehyde;

(p)[~~(16)~~] The effectiveness of any system installed or method utilized to control or remove suspected environmental hazards; and

(q)[~~(17)~~] Compliance with regulatory requirements (for example, codes, regulations, laws, and ordinances[~~, etc.~~]), any manufacturer's recalls, conformance with manufacturer installation or instructions, or any information for consumer protection purposes.

Section 4. Maintenance of Records. (1) A licensed home inspector shall retain for at least three (3) years from the date of the inspection:

(a) The written reports; and

(b) The contract.

(2) Records may be retained in retrievable, electronic format.

(3) A licensee shall provide all records requested by the board within ten (10) days of receipt of the request.

Section 5. Advertising Standards. (1) Every person licensed as a home inspector or claiming to be a home inspector shall identify and display his or her license number in all advertising disseminated, either directly or indirectly, to the general public, unless the advertisement is a promotional item.

(2) Any vehicle used in advertising a home inspector business shall bear the license number of the home inspector in a conspicuous location. The letters and numbers shall be at least two (2) inches in height and shall be visible and legible while the vehicle is being operated.

(3) If the home inspector is operating under the name of a business entity, the requirements of this administrative regulation shall be satisfied by displaying the license number of the owner or an employee of the business who is a licensed home inspector.

Section 6. ***Complaints. (1) A complaint may be initiated by the board, an individual, an entity, or a governmental agency. The complaint shall be submitted on a Complaint Form, KBHI-7.***

(2) If the complaint is initiated by the public, it shall be notarized by a notary public.

(3) If the complaint screening committee recommends that a response is needed from the licensee pursuant to Section 7 of this administrative regulation, a copy of the initiating complaint shall be mailed to the licensee. The licensee shall file a written response to the initiating complaint with the board within twenty-one (21) days. The written response shall:

(a) Identify the respondent;

(b) State his or her response to the complaint;

(c) Include any documentation in dispute of the complaint;

(d) If applicable, state if he or she proposes to inspect the residence that is the subject of the claim and state the date by which the inspection will be complete. Any proposal shall include the statement that the home inspector shall, based on the inspection:

1. Offer to remedy the defect, compromise by payment, or dispute the claim;

2. Offer to compromise and settle the claim by monetary payment without inspection; or

3. State that the home inspector disputes the claim; and

(e) Be notarized by a notary public.

(4) A complaint shall be filed within one (1) year of the date the complainant knew or should have known of a violation by the licensee.

(5) The complainant may withdraw a complaint, which shall render the complaint null, void, and without effect, if:

(a) An answer has not been filed in accordance with this section;

(b) The withdrawal is made within twenty (20) days of the date the complaint was filed; or

(c) The withdrawal would not result in harm to the public.

(6) A withdrawn complaint shall not be refiled or reheard.

(7) A request for the board to take or refrain from taking an action shall be made by an oral or written motion and shall state the basis for the relief sought.

(8) After review by the complaint screening committee pursuant to Section 7 of this administrative regulation, the board shall investigate any complaint that alleges a violation of KRS 198B.700 to 198B.738 and 815 KAR Chapter 6.

(9) The board may appoint any of its members or any agent or representative of the board to conduct an investigation of the complaint.

(10) Upon the completion of the investigation, the investigator shall submit a written report to the board containing a succinct statement of the facts disclosed by the investigation.

(11) Based on consideration of the complaint and the investigative report, if any, the board shall determine if there has been a prima facie violation of KRS 198B.700 to 198B.738 or 815 KAR Chapter 6.

(12) If the investigator is a member of the board, he or she shall not vote.

(13) If the board finds that the facts alleged in the initiating complaint or investigative report:

(a) Do not constitute a prima facie violation of KRS 198B.700 to 198B.738 or 815 KAR Chapter 6, the board shall dismiss the complaint and notify the person making the complaint and the licensee that no further action will be taken at the present time; or

(b) Do constitute a prima facie violation of KRS 198B.700 to 198B.738 or 815 KAR Chapter 6, the board shall follow the procedures established in Section 9 of this administrative.

Section 7. Complaint Screening Committee. (1) The board chair shall create a complaint screening committee consisting of at least one (1) board member who is also a licensed home inspector.

(2) The complaint screening committee shall:

(a) Review new complaints and responses;

(b) Order investigation or further investigation;

(c) Review investigative reports; and

(d) Make recommendations for disposition of complaints to the full board***, including:***

1. Dismissal of the complaint;

2. A response to the complaint is needed; or

3. An investigation of the complaint is warranted.

(3) The committee may be assisted by the board staff and counsel.

(4) The committee shall report the committee's findings and recommendations to the board***[, and the board shall:***

(a) Dismiss the complaint and notify the person making the complaint and the licensee that no further action shall be taken at the present time;

(b) Find an investigation is warranted; or

(c) Find a violation of a provision of KRS 198B.700 to 198B.738 or 815 KAR Chapter 6 and issue notice of disciplinary action to the licensee].

Section ***8[7]***. Settlement by Informal Proceedings. (1) The board, through counsel and the complaint screening committee, may, at any time during the complaint process established in this administrative regulation, enter into informal proceedings with the licensee who is the subject of the complaint for the purpose of appropriately dispensing with the matter.

(2) An agreed order or settlement reached through this process shall be approved or denied by the board and signed by the individual who is the subject of the complaint.

(3) The board may employ mediation as a method of resolving the matter informally.***[Section 8. Complaints. (1) A complaint may be initiated by the board, an individual, an entity, or any governmental agency. The complaint shall be submitted on a Complaint Form, KBHI-7.***

(2) If the complaint is initiated by the public, it shall be notarized by a notary public.

(3) Upon a recommendation by the complaint screening committee, a copy of the initiating complaint shall be mailed to the licensee. The licensee shall file a written response to the initiating complaint with the board within twenty-one (21) days. The written response shall:

(a) Identify the respondent;

(b) State his or her response to the complaint;

(c) Include any documentation in dispute of the complaint;

(d) If applicable, state if he or she proposes to inspect the residence that is the subject of the claim and state the date by which the inspection will be complete. Any proposal shall include the statement that the home inspector shall, based on the inspection, offer to remedy the defect, compromise by payment, or dispute the claim; offer to compromise and settle the claim by monetary payment without inspection; or state that the home inspector disputes the claim; and

(e) Be notarized by a notary public.

(3) A complaint shall be filed within one (1) year of the date the complainant knew or should have known of a violation by the licensee.

(4) The complainant may withdraw a complaint, which shall render the complaint null, void, and without effect, if:

(a) An answer has not been filed in accordance with this section;

(b) The withdrawal is made within twenty (20) days of the date the complaint was filed; or

(c) The withdrawal would not result in harm to the public.

(5) A withdrawn complaint shall not be refiled or reheard.

(6) A request for the board to take or refrain from taking an action shall be made by an oral or written motion and shall state the basis for the relief sought.]

Section 9. Disciplinary Action. (1)***(a)[The board shall investigate any complaint that alleges a violation of KRS 198B.700 to 198B.738 and 815 KAR Chapter 6.***

(2) The board may appoint any of its members or any agent or representative of the board to conduct an investigation of the complaint.

(3) Upon the completion of the investigation, the investigator shall submit a written report to the board containing a succinct statement of the facts disclosed by the investigation.

(4) Based on consideration of the complaint and the investigative report, if any, the board shall determine if there has been a prima facie violation of a provision of KRS 198B.700 to 198B.738 or 815 KAR Chapter 6.

(5) If the investigator is a member of the board, he or she shall not vote.

(6) If it is found that the facts alleged in the initiating complaint or investigative report do not constitute a prima facie violation of KRS 198B.700 to 198B.738 or 815 KAR Chapter 6, the board shall notify the person making the complaint and the licensee that no further action shall be taken at the present time.

(7)] If ***the board finds[it is found]*** that there is a prima facie violation of a provision of KRS 198B.700 to 198B.738 or 815 KAR Chapter 6 ***in accordance with Section 6 of this administrative regulation***, the board shall issue***:***

1. Written notice of disciplinary action to the licensee***;*** or

2. Initiate any remedy permitted by KRS 198B.700 to 198B.738 against an unlicensed individual.

(b) If a licensee, the board may propose any combination of discipline permitted by KRS 198B.700 to 198B.738.

(2)[(8)] The written notice of disciplinary action shall be sent to the licensee's address on file with the board and inform the licensee:

(a) Of the specific reason for the board's action, including:

1. The statutory or regulatory violation; and

2. The factual basis on which the disciplinary action is based;

(b) Of the proposed penalty; and

(c) That the licensee may request an administrative hearing of the penalty to the board within twenty (20) calendar days of the date of the board's notice.

(3)[(9)] A written request for an administrative hearing shall be postmarked no later than twenty (20) calendar days of the date of the board's notice. The request shall identify the specific issues in dispute and the legal basis on which the board's decision on each issue is believed to be erroneous.

(4)[(10)] If the request for an administrative hearing is not timely filed, the notice of disciplinary action shall be effective upon the expiration of the time for the licensee to request an administrative hearing.

Section 10. Revocation of Probation. (1) If the board moves to revoke probation previously granted, the board shall issue written notice of the revocation and inform the probationee:

(a) Of the factual basis on which the revocation is based;

(b) Of each probation term violated; and

(c) That the probationee may request an administrative hearing of the revocation to the board within twenty (20) calendar days of the date of notification of revocation. The notification shall be sent to the last known address on file with the board for the ***probationee[certificate holder]***.

(2) A written request for an administrative hearing shall be postmarked no later than twenty (20) calendar days of the date of the board's notice. The request shall identify the specific issues in dispute and the legal basis on which the board's decision on each issue is believed to be erroneous.

(3) If the request for an administrative hearing is not timely filed, the notice of revocation shall be effective upon the expiration of the time for the ***probationee[certificate holder]*** to request an administrative hearing.

Section 11. Incorporation by Reference. (1) "Complaint Form", Form KBHI-7, 9/2018, is incorporated by reference.

MITCHELL BUCHANAN, Chair
H.E. CORDER II, Executive Director
K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: September 12, 2018

FILED WITH LRC: September 13, 2018 at 11 a.m.

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PUBLIC PROTECTION CABINET
Kentucky Real Estate Authority
Kentucky Board of Home Inspectors
(As Amended at ARRS, February 11, 2019)

815 KAR 6:040. Education *and testing* requirements and providers[~~Home inspector prelicensing providers~~].

RELATES TO: KRS Chapter 165A, 198B.706, 198B.712, 198B.722, 198B.724

STATUTORY AUTHORITY: KRS 198B.706[~~(2), (13), (15)~~], 198B.712***(3)(c)***[~~(2)(c)~~], 198B.722, 198B.724

NECESSITY, FUNCTION AND CONFORMITY: KRS 198B.706(15) requires the Kentucky Board of Home Inspectors, with the approval of the executive director of the Kentucky Real Estate Authority, to promulgate administrative regulations to carry out the effective administration and requirements[~~necessary to enforce the provisions~~] of KRS 198B.700 to 198B.738. KRS 198B.706(11) and KRS 198B.724 require the board to establish requirements for continuing education courses and providers. KRS 198B.712***(3)[(2)]***(c) requires an applicant to complete a board-approved course of study prior to seeking licensure. This administrative regulation establishes continuing education requirements for licensees and the procedures for obtaining board approval to be[~~being approved by the board as~~] a prelicensing provider and a continuing education provider.

Section 1. ***Test Provider and Examination Approval. (1) To become an approved test provider, an applicant shall submit a written proposal to the board regarding the proposed examination.***

(2) The proposal shall indicate that the examination:

(a) Consists of at least 200 questions;

(b) Draws questions from a question bank consisting of:

1. At least 800 unique questions, if no state-specific questions are asked; or

2. At least 650 general knowledge questions and at least 150 state-specific questions, if state-specific questions are asked;

(c) Contains questions reasonably calculated to evaluate the competency and aptitude of the prospective licensee to be a home inspector;

(d)1. Includes questions that cover, at a minimum, building sciences and report writing; and

2. The exam may include questions that cover one (1) or both of the standards of practice authorized in KRS 198B.706(13);

(e) Indicates how a passing score is to be calculated;

(f) Includes details indicating how the examination will be proctored; and

(g) Is third-party accredited by the Buros Center for Testing, or another independent, nationally recognized examination or credential accreditation entity acceptable to the Board, as being an examination developed and administered in accordance with generally accepted standards for psychometric validity, consistent with the 2014 Standards for Educational and Psychological Testing.

(3) The proposed examination may contain state-specific questions totaling no more than ten (10) percent of the total questions on the examination.

Section 2. Education[~~Prelicense Course~~] Provider Approval.

(1) A prelicensing course provider applicant[~~An applicant to be a prelicensing course provider~~] shall submit:

(a)[~~(1)~~] A completed Application for Pre-licensing Course Provider, form KBHI-3;

(b)[~~(2)~~] A $500 nonrefundable application fee;

(c)[~~(3)~~] A copy of:

1. The ***applicant's license[Certificate of Approval]*** from the Kentucky***[State]*** Commission ***on[for]*** Proprietary Education, if required by KRS Chapter 165A;[~~,~~] or

2. Proof that the applicant is exempt from licensure;

(d)[~~(4)~~] A syllabus of all courses that will be offered, which shall include the physical location of each laboratory and field training portion of the courses;

(e)[~~(5)~~] A list of all course instructors and copies of their current curriculum vitae;

(f)[~~(6)~~] A copy of **all advertising material[~~each brochure~~]** used to advertise the courses; and

(g)[~~(7)~~] A sample of the official transcript.

(2) A continuing education course provider applicant shall submit to the board:

(a) A completed Application for Continuing Education Course Provider, form KBHI-4; and

(b) A $500 nonrefundable application fee.

(3) Upon approval, the board shall assign the provider a provider number. The provider shall use the provider number in the course syllabus, all course materials, and all written advertising materials for the course.

(4) A provider's approval shall expire every two (2) years. Each provider shall resubmit the application and fee required for initial approval ***no later than forty-five (45) days prior to the date of expiration***.

Section ***3.[~~2.~~]*** Prelicensing Course Approval.

(1) To be approved by the board, a prelicensing training course shall require a minimum of:

(a) Sixty-four (64) credit hours of training in the subject areas listed in subparagraphs 1 through 9 of this paragraph for at least the number of hours specified:

1. Manufactured housing: two (2) hours;

2. Standards of practice, KRS 198B.700 to 198B.738 and 815 KAR Chapter 6, contracts, report writing, and communications: twelve (12) hours;

3. Exterior, roofing, insulation, and ventilation: six (6) hours;

4. Structure and interior: nine (9) hours;

5. Electrical and plumbing: nine (9) hours;

6. Heating and air conditioning: six (6) hours;

7. Field training: sixteen (16) hours, including not more than eight (8) hours in a laboratory;

8. General residential construction: three (3) hours; and

9. Environmental hazards, mitigation, water quality, and indoor air quality: one (1) hour;

(b) The completion of three (3) unpaid home inspections under the direct supervision of a Kentucky licensed home inspector with satisfactory written reports submitted to the course provider in addition to the sixteen (16) hours of field training required by paragraph (a)7 of this subsection; and

(c) An exit examination with a passing score to be determined by the provider.

(2) An online prelicensing training course shall not be accepted by the board unless the applicant:

(a) Was enrolled in a prelicensing course on or before September 4, 2015;

(b) Maintained continuous enrollment; and

(c) Completed the prelicensing course no later than six (6) months from September 4, 2015.

Section ***4.[~~3.~~]*** Continuing Education Course Approval.

(1) To offer a continuing education course, an approved continuing education provider shall submit to the board at least thirty (30) days prior to the next regularly scheduled board meeting:

(a) A completed Application for Continuing Education Course, form KBHI-5;

(b) An official course curriculum and description;

(c) A copy of the course agenda indicating hours of education and breaks;

(d) The number of continuing education hours requested;

(e) A list of all course instructors and copies of their current curriculum vitae; and

(f) An official certificate of completion.

(2) To receive approval, each course shall be in hourly increments from one (1) to six (6) hours.

(a) One (1) hour of continuing education shall be allowed for each fifty (50) minutes of actual instruction; and

(b) The board may approve a course for hours different than

the provider's request based on the education and experience of the licensed home inspector board members.

(3) The board shall approve continuing education courses that:

(a) **Contribute to the competence[~~Relate to the technical skills required~~]** of licensees***;[,]***

(b) Contain sufficient educational content to improve the quality of licensee performance***;[,]*** and

(c) Comply with this administrative regulation.

(4) If the continuing education course is an online course, the course:

(a) Shall not satisfy the continuing education requirements established in Section 10**(3)(a) and (b)[~~(2)(a) and (b)~~]** of this administrative regulation***;[, and]***

(b) ***May satisfy the continuing education requirements established in Section 10(3)(c) of this administrative regulation; and***

(c) Shall contain an explanation or provide proof that the continuing education provider has an attendance verification process.

(5) Upon approval, the board shall assign the course a number. The course provider shall use the course number in the course syllabus, all course materials, and all written advertising materials for the course.

(6) Prelicensing and continuing education course approval shall be valid for two (2) years from date of issue if no substantial change is made in the course and the board has not imposed discipline upon the provider or its instructors.

(7) Substantial changes, such as a change in the agenda, published course description, or instructor, made in any course shall require a new approval of that course.

(8) A provider shall apply for course approval no later than forty-five (45) days prior to the date of expiration of the original course approval.

Section ***5.[~~4.~~]*** Denial of Application. Unless a denial is being considered pursuant to 815 KAR 6:030, a course that has been denied may be resubmitted to the board after adopting the suggested modifications provided by the board.[~~Renewals. A provider's approval shall expire every two (2) years. To renew its approval, each provider shall file the application and fee required for initial approval.~~]

Section ***6.[~~5.~~]*** Required Records.

(1) Each provider shall maintain with respect to each course:

(a) The time, date, and location of[~~place~~] each course[~~is~~] completed;

(b) The name, address, and qualifications of each instructor who teaches any portion of the course and if each instructor has been approved by the board;

(c) The name and address of each person who registered for the course;

(d) The course syllabus used for each course; and

(e) The course evaluations.

(2) The provider shall issue to each person who successfully completes an approved course, a certificate of completion containing:

(a) The name of the attendee;

(b) The name of the provider;

(c) The course name;

(d) The course number;

(e) The date of the course; and

(f) The total number of continuing education[~~contact~~] hours successfully completed in each subject covered by the course.

(3) Each provider shall maintain its records for at least three (3) years after the completion of each course. These records shall be submitted to the board or its agents upon request.[~~(4) Each provider shall submit to the board, in writing, notice of any changes in the information provided in the initial registration of the provider. The notification shall be made within thirty (30) days following the date the change is effective.~~]

Section ***7.[~~6.~~]*** Qualifications of Course Instructors.

(1) Each course instructor shall be qualified, by education or experience, to teach the course, or parts of a course, to which the instructor is assigned.

(2) Any person with a four (4) year college degree or graduate degree, with at least two (2) years of work experience in that field, shall be qualified to teach a prelicensing or continuing education course in that person's field of study.

(3) To qualify as an instructor based on experience, an individual shall:

(a) Be licensed and have actively practiced for at least five (5) years as a home inspector; or

(b) Have five (5) years of experience in a related field of home inspection or the building sciences.

(4)(a) A licensee whose license is suspended[~~or revoked~~] as a result of board discipline shall not teach or serve as a course instructor during the time the license is suspended[~~or revoked~~].

(b) A licensee whose license has been revoked as a result of board discipline shall not teach or serve as a course instructor after the license has been revoked.

(5) A course provider may request prior approval by the board regarding the qualifications of a particular instructor for a particular course.

Section ***8.[~~7.~~]*** Course Syllabus.

(1) Each course shall have a course syllabus that identifies:

(a) The name of the course;

(b) [~~The number of the course assigned by the board;~~

~~(c)~~] The name and address of the provider;

(c)[~~(d)~~] A description or outline of the contents of the course; and

(d)[~~(e)~~] The location of each course component.

(2) Each person who registers for a course shall be given the course syllabus prior to the beginning of the course.

Section ***9.[~~8.~~]*** Course Advertising.

(1) A provider shall not advertise a course as approved until the approval is granted by the board.

(2) A provider shall not include any false or misleading information regarding the contents, instructors, location of classrooms or laboratory courses, or number of continuing education[~~contact~~] hours of any course approved under this administrative regulation.[~~(3) A provider shall include its provider number and course numbers in all advertising.~~]

Section ***10.[~~9.~~]*** Complaints and Disciplinary Action Against a Prelicensing Provider or Continuing Educational Provider.

(1) A complaint against an approved provider shall be notarized and filed on the Complaint Form, form KBHI-7, which is incorporated by reference in 815 KAR 6:030.

(2) The board may deny, suspend, probate, or revoke the registration of any prelicensing course provider or continuing educational provider for:

(a) Obtaining or attempting to obtain registration or approval through fraud, deceit, false ***statement[~~statements~~]***, or misrepresentation;

(b) Failing to timely provide complete and accurate information in registration materials;

(c) Falsifying any records, including attendance, regarding courses conducted;

(d) Failing to maintain, or provide to the board upon request, any required records regarding courses;

(e) Failing to take attendance at any approved course; or

(f) Failing to comply with any other duty established for providers in this administrative regulation.

(3) The board shall issue written notice of disciplinary action ***by certified mail*** sent to the prelicensing course or continuing educational provider's address on file with the board and inform the provider:

(a) Of the disciplinary action being taken by the board;

(b) Of the specific reason for the board's action, including:

1. The statutory or regulatory violation; and

2. The factual basis on which the disciplinary action is based; and

(c) That the provider may request an administrative hearing on

the board's proposed disciplinary action by written request to the board, postmarked ***or delivered*** no more than ten (10) calendar days following the date of the board's notice.

(4) If the request for an administrative hearing is not timely filed, the notice of disciplinary action shall be effective upon the expiration of the time for the licensee to request an administrative hearing.

(5) A provider whose approval has been revoked shall not be approved for two (2) years from the date of revocation.

Section ***11.[~~10.~~]*** Continuing Education for Licensees.

(1) The continuing education requirements of this section shall apply only to those licensees who will have been licensed at least twelve (12) months at license renewal.

(2)(a) Each licensee who renews a license in an odd year shall have at least fourteen (14) hours of continuing education per license year**[~~from at least five (5) separate courses~~]**.

(b) Each licensee who renews a license during an even year shall have at least twenty-eight (28) hours of continuing education**[~~from at least ten (10) separate courses~~]** during the license biennial period**.[~~, including a minimum of:~~]**

(3) Satisfaction of the educational requirements in Section 10(2)(a) and (b) shall consist of a minimum of:

(a)[~~1.~~] Three (3) hours in KRS 198B.700 to 198B.738 and 815 KAR Chapter 6;

(b)[~~2.~~] Three (3) hours in report writing; and

(c)1.[~~3.~~] Eight (8) hours in **elective[~~technical~~] courses.**

2. Elective courses may be technical or non-technical in subject matter.

3. Technical courses include identification and determination, as applicable within the standards of practice.

4. For a licensee satisfying the education requirement in Section 10(2)(a), non-technical courses shall be limited to three (3) hours of instruction for credit.

5. For a licensee satisfying the education requirement in Section 10(2)(b), non-technical courses shall be limited to six (6) hours of instruction for credit.[~~including identification and determination, as applicable within the standards of practice.~~]

(4)[~~(3)~~] An approved prelicensing course shall satisfy the initial fourteen (14) hour continuing education requirement.

(5)[~~(4)~~] The continuing education courses established in subsection **(3)(a) and (b)[~~(2)(a) and (b)~~]** of this section shall be completed face-to-face. An online continuing education course shall not satisfy the continuing education requirement for each respective category.

(6)[~~(5)~~] A maximum of three (3) hours per license year shall be awarded for teaching part of a home inspection continuing education course as applied to the appropriate content area established in subsection **(3)(a) through (c)[~~(2)(a) through (c)~~]** of this section.

(7)[~~(6)~~] A maximum of three (3) hours per license year shall be awarded to a board member who is licensed and who has attended not less than eighty (80) percent of the board meetings each license ***year***. The hours awarded shall apply to the content area established in subsection **(3)(a)[~~(2)(a)~~]** of this section.

(8)[~~(7)~~] A licensee shall not receive credit for the same continuing education course during a licensure period.

Section ***12.[~~11.~~]*** Continuing Education Requirements for Inactive Licensees Returning to Active Status. An inactive licensee who wishes to reactivate his or her license shall complete either:

(1) Fourteen (14) hours of continuing education **consistent with Sections 10(3) and 10(8) of this administrative regulation for each[~~per~~]** year that the license has been inactive **[~~, which shall include:~~**

~~(a) Three (3) hours of KRS 198B.700 to 198B.738 and 815 KAR Chapter 6; and~~

~~(b) Eleven (11) hours, in any combination, of:~~

~~1. Electrical;~~

~~2. Plumbing;~~

~~3. Heating, ventilation, and air conditioning;~~

~~4. Roofing; or~~

~~5. Report writing~~]; or

(2) A board approved sixty-four (64) hour prelicensing training course.

Section ***13.[~~12.~~]*** Incorporation by Reference. (1) The following material is incorporated by reference:

(a)[~~(1)~~] "Application for Continuing Education Course Provider", Form KBHI-4, 9/2018[~~2/2016~~];

(b) "Application for Continuing Education Course", Form KBHI-5, **12/2018[~~9/2018~~]**; and

(c) "Application for Pre-Licensing Course Provider", Form KBHI-3, **12/2018[~~9/2018~~]**.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Board of Home Inspectors,[~~Division of Occupations and Professions,~~] 656 Chamberlin Avenue, Suite B[~~911 Leawood Drive~~], Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

MITCHELL BUCHANAN, Chair
H.E. CORDER II, Executive Director
K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: December 12, 2018

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

CONTACT PERSON: Heather L. Becker, General Counsel, Kentucky Real Estate Authority, 656 Chamberlin Ave., Suite B, Frankfort, Kentucky 40601, phone (502) 564-7760, fax (502) 564-1538, email Heather.Becker@ky.gov.

CABINET FOR HEALTH AND FAMILY SERVICES
Kentucky Office of Health Data and Analytics
Division of Health Information
(As Amended at ARRS, February 11, 2019)

900 KAR 9:010. Kentucky Health Information Exchange participation.

RELATES TO: KRS 194A.030(1)(d), 311.621(10), 42 C.F.R. Part 495, 45 C.F.R. 160.103, Part 164[~~(e)~~]

STATUTORY AUTHORITY: KRS ***194A.030,*** 194A.050(1), ***205.520,*** EO 2018-325

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.030(1)(d)[~~(e)~~] requires the Governor's Office of Electronic Health Information (GOEHI)[~~Kentucky Office of Health Benefit and Health Information Exchange, Division of Kentucky Electronic Health Information~~] within the Cabinet for Health and Family Services to improve patient care, reduce medical errors, and make more efficient use of health care dollars by reducing redundant services. EO 2018-325 abolished GOEHI and transferred its functions to the Office of Health Data and Analytics (OHDA) within the Cabinet for Health and Family Services. To support the health care delivery system using electronic information technology as directed by KRS 194A.030(1)(d) and EO 2018-325, the Office of Health Data and Analytics, Division of Health Information (DHI)[~~(e), GOEHI~~] has implemented the[~~a~~] Kentucky Health Information Exchange (KHIE). This administrative regulation establishes the procedures for participation by health care providers in the KHIE.

Section 1. Definitions.

(1) "CCD" means the Continuity of Care Document, which is:

(a) Defined by the Health Information Technology Standards Panel (HITSP)[~~of the American National Standards Institute (ANSI)~~]; and

(b) Found in the HL7 Implementation Guide: CDA Release 2 - Continuity of Care Document (CCD)[~~"HITSP Summary Documents Using HL7 Continuity of Care (CCD) Component", version 2.5, July 8, 2009~~].

(2) "Edge services" means hardware and software technology used in the storage and transmission of participant data.

(3) "Health care provider" is defined by KRS 311.621(10).

(4) [~~"HIPAA" is defined by KRS 216.263(4).~~

~~(5)~~] "HL7 transaction" means the specifications for electronic data exchange by health care environments as defined by HITSP [~~ANSI that may be found at http://www.hl7.org/implement/standards/ansiapproved.cfm?ref=nav~~].

(5)[(6)] "Interface" means the point of interaction or communication between the participant's health information system and the KHIE.

Section 2. Participation in the KHIE. In order to participate in the KHIE, the health care provider shall:

(1) Have entered into an agreement, using[either]:

(a) DHI[The KEHI] – Form 1A, Kentucky Office of Health Data and Analytics[Benefit and Health Information Exchange], Division of[Kentucky Electronic] Health Information, Hospital Participation Agreement;[or]

(b) DHI[The KEHI] – Form 1B, Kentucky Office of Health Data and Analytics[Benefit and Health Information Exchange], Division of[Kentucky Electronic] Health Information, Other Provider Participation Agreement[Other Providers]; or

(c) DHI – Form 1C, Kentucky Office of Health Data and Analytics, Division of Health Information, Pharmacy Participation Agreement;

(2) Continue to operate under the agreement entered into under subsection (1) of this section without the agreement being terminated; and

(3) Be:

(a) A covered entity as defined by 45 C.F.R. 160.103[HIPAA];

(b) The Kentucky Department for Medicaid Services; or

(c) The Kentucky State Laboratory, Division of Laboratory Services, Department of Public Health.

Section 3. Kentucky Health Information Exchange services. KHIE shall provide information sharing and software for the following:

(1) A CCD interface using web services to support data exchange with participants;

(2) Support for a standard series of HL7 transactions sent from the health care provider's health information system via secure edge services for storage and retrieval; and

(3) Collaboration with participants to support development of the interfaces required for participants to connect to KHIE.

Section 4. Participant responsibilities. Participants shall be responsible for building interfaces to connect to the KHIE.

Section 5. Data exchanged by the Kentucky Health Information Exchange. KHIE may exchange data and make data available consisting of patient admission, discharge and transfer systems, laboratory systems, diagnostic imaging systems, medication histories, allergies, and technologically available patient information required to support data exchange.

Section 6. Access to data by participants. Participants may access data through the KHIE as well as provide data through the KHIE for access by other participants.

Section 7. Access to other health information exchanges. DHI[KEHI] may establish arrangements with other health information exchanges to allow participants access to data permitted by DHI[the GOEHI] – Form 1A, DHI[or KEHI] – Form 1B, or DHI – Form 1C.

Section 8. Recipient of Kentucky Health Information Exchange Services. A health care provider that is participating in the KHIE shall qualify to become a recipient of KHIE services upon:

(1) Validation of any KHIE Go-Live transaction by the participant and DHI[the KEHI]; and

(2) The sending of electronic notification of Go-Live approval by DHI to the participant[Completion of:

(a) The KEHI– Form 2A, Kentucky Health Information Exchange Go-Live Approval for Edge Services; or

(b) The KEHI – Form 2B, Kentucky Health Information Exchange Go-Live Approval for Web Services].

Section 9. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) DHI[KEHI] – Form 1A, "Kentucky Office of Health Data and Analytics, Division of[Governor's Office of Electronic] Health Information,[Exchange] Hospital Participation Agreement", January, 2019[September 2012];

(b) DHI[KEHI] – Form 1B, "Kentucky Office of Health Data and Analytics, Division of[Governor's Office of Electronic] Health Information, Other Provider[Exchange] Participation Agreement [Other Providers]", January, 2019[September, 2012];

(c) DHI – Form 1C, "Kentucky Office of Health Data and Analytics, Division of Health Information, Pharmacy Participation Agreement", January, 2019; and

(d) "HL7 Implementation Guide: CDA Release 2 - Continuity of Care Document (CCD)", April 01, 2007[KEHI – Form 2A, "Kentucky Health Information Exchange Go-Live Approval for Edge Services," September, 2012;

(d) KEHI – Form 2B, "Kentucky Health Information Exchange Go-Live Approval for Web Services", September, 2012; and

(e) KEHI - Form 3, "HITSP Summary Documents Using HL7 Continuity of Care (CCD) Component", Version 2.5, July 8, 2009].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Cabinet for Health and Family Services, Office of Health Data and Analytics[Governor's Office of Electronic Health Information], 8 Mill Creek Park[275 East Main Street 4WA], Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

ROBERT E. PUTT, Executive Director
ADAM M. MEIER, Secretary

APPROVED BY AGENCY: December 10, 2018

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

CONTACT PERSON: Chase Coffey, Executive Administrative Assistant, 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.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Policy and Operations
(As Amended at ARRS, February 11, 2019)

907 KAR 1:270. Podiatry Program services.

RELATES TO: KRS 205.520, 205.560, 42 C.F.R. 440.60, 42 U.S.C. 1396a, b, d

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. 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 Medicaid funds[for the provision of medical assistance to Kentucky's indigent citizenry]. This administrative regulation establishes the coverage provisions relating to podiatry services for which payment shall be made by the Medicaid Program on behalf of both categorically needy and medically needy beneficiaries.

Section 1. Coverage. The Medicaid program shall cover a medical or surgical service provided to an eligible Medicaid recipient by a licensed, participating podiatrist if the service falls within the scope of the practice of podiatry except as provided in Section 2 of this administrative regulation.

Section 2. Exclusions From Coverage***[and]***[;]***[Exceptions to Exclusions from Coverage]***.

(1) Except as provided in ***Section 3 of this administrative regulation,[this section, the following areas of care shall not be covered by the Medicaid program:***

(1) Routine foot care.

(a) Except as provided in paragraph (b) of this subsection and subsection (2) of this section, a service characterized as] routine foot care shall not be covered ***by the Medicaid program***.

(2) Routine foot care ***excluded by this section*** shall include:

(a)[1.] The cutting or removal of a corn or callus;

(b)[2.] The trimming of a nail; or

(c)[3.] Other hygienic or preventive maintenance care in the realm of self-care including:

1.[a.] Cleaning or soaking a foot;

2.[b.] The use of a skin cream to maintain skin tone of an ambulatory or bedfast patient; or

3.[c.] A service performed in the absence of localized illness, injury, or symptom involving the foot.

Section 3. Covered Services.

(1)(a)[(b)1.] Payment shall be made for routine foot care if:

1.[a.] The[If the] patient has a systematic disease of sufficient severity such as arteriosclerosis, chronic thrombophlebitis, diabetes, or a peripheral neuropathy; ***[and]***

2.[b.][that] Unskilled performance of a procedure included in ***paragraph (b) of this subsection[subparagraph 2. of this paragraph]***[the following procedures] would be hazardous; and

3.[c.] The patient's condition results from:

a.[(i)] Severe circulatory embarrassment; or

b.[(ii)] An area of desensitization in a leg or foot.

(b)[2. For the purposes of this paragraph,] Routine foot care ***covered under this subsection*** shall include[, payment shall be made for routine foot care, including] the cutting or removing of a:

1.[a.][1.] Corn;

2.[b.][2.] Callus; or

3.[c.][3.] Nail.

(2) A service ordinarily considered routine shall be covered if the service is performed as a necessary and integral part of an otherwise covered service, including the diagnosis or treatment of:

(a) A diabetic ulcer;

(b) A wound; or

(c) An infection.

(3) A diagnostic or treatment service for a foot infection shall be covered.[Section 3. Incorporation by Reference. (1) "Podiatry Program Manual", July 1997 edition, Department of Medicaid Services, is incorporated by reference.

(2) It may be inspected, copied, or obtained at the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.]

CAROL H. STECKEL, Commissioner
ADAM M. MEIER, Secretary

APPROVED BY AGENCY: December 4, 2018

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

CONTACT PERSON: Chase Coffey, Executive Administrative Assistant, 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.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Protection and Permanency
(As Amended at ARRS, February 11, 2019)

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[.]

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) ***"Special needs child" is defined by KRS 199.555(1).***

(6) "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 ***shall include[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)***1.***[1.] Is age seven (7) or older***;[and:]***

2.[1. The child] Has a significant emotional attachment or psychological tie to his or her foster family; and

3.[2.] The cabinet has determined ***should[that it would be in the child's best interest to]*** remain with the family ***because it is in the best interest of the child***.

(3) To qualify for state-funded adoption assistance ***in accordance with KRS 199.555***, 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)[(1)] 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 ***in accordance with KRS 199.555[~~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[~~11~~] 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[~~10~~]. 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[~~11~~]. 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[~~12~~]. 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[~~13~~]. 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[~~1:350~~].

ERIC T. CLARK, Commissioner
ADAM M. MEIER, Secretary

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ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING OR RECEIPT OF WRITTEN COMMENTS

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
(Amended After Comments)

103 KAR 16:270. Apportionment; receipts[~~sales~~] factor.

RELATES TO: KRS 141.120, 141.040[~~(5)(b)1~~], 141.206
STATUTORY AUTHORITY: KRS 131.130, 141.018, 141.120[~~(10)(b)~~]
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 141.120(9)[~~KRS 141.120(8)~~] requires that all apportionable[~~business~~] income of multi-state 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 weighted sales factor and the denominator of which is four (4).~~] KRS 141.120(11)(d)[~~(10)(b)~~] authorizes the cabinet to promulgate administrative regulations providing how to determine the receipts[~~sales~~] factor used in the multi-state apportionable[~~business~~] income apportionment formula. This administrative regulation provides guidelines for determining the receipts[~~sales~~] factor of a multistate corporation.

Section 1. Definitions.
(1) "Billing address" means the location indicated in the books and records of the taxpayer as the primary mailing address relating to a customer's account as of the time of the transaction as kept in good faith in the normal course of business and not for tax avoidance purposes.
(2) "Broadcaster" means a taxpayer that is a television broadcast network, a cable program network, or a television distribution company. The term "broadcaster" does not include a platform distribution company.
(3) "Broadcast customer" means a person, corporation, partnership, limited liability company, or other entity, such as an advertiser or a platform distribution company, that has a direct connection or contractual relationship with the broadcaster under which revenue is derived by a broadcaster.
(4) "Business customer" means a customer that is a business operating in any form, including a sole proprietorship. Sales to a non-profit organization, to a trust, to the U.S. Government, to a foreign, state or local government, or to an agency or instrumentality of that government are treated as sales to a business customer and must be assigned consistent with the rules for those sales.
(5) "Code" means the Internal Revenue Code as defined by KRS 141.010(14).
(6) "Film programming" means one (1) or more performances, events, or productions (or segments of performances, events, or productions) intended to be distributed for visual and auditory perception, **including but not limited to** news, entertainment, sporting events, plays, stories, or other literary, commercial, educational, or artistic works.
(7) "Individual customer" means a customer that is not a business customer.
(8) "Intangible property" generally means property that is not physical or whose representation by physical means is merely incidental and includes, without limitation, copyrights; patents; trademarks; trade names; brand names; franchises; licenses; trade secrets; trade dress; information; know-how; methods; programs; procedures; systems; formulae; processes; technical data; designs; licenses; literary, musical, or artistic compositions; information; ideas; contract rights including broadcast rights; agreements not to compete; goodwill and going concern value; securities; and computer software, except as otherwise provided in this administrative regulation.
(9) "Place of order," means the physical location from which a customer places an order for a sale other than a sale of tangible personal property from a taxpayer, resulting in a contract with the taxpayer.
(10) "Platform distribution company" means a cable service provider, a direct broadcast satellite system, an Internet content distributor, or any other distributor that directly charges viewers for access to any film programming.
(11) "Population" means the most recent population data maintained by the U.S. Census Bureau for the year in question as of the close of the taxable period.
(12) "Related member" is defined by KRS 141.205(g).
(13) "State where a contract of sale is principally managed by the customer," means the primary location at which an employee or other representative of a customer serves as the primary contact person for the taxpayer with respect to the day-to- day execution and performance of a contract entered into by the taxpayer with the customer.

Section 2. Additional Principles.
(1) Year to year consistency. If the taxpayer departs from or modifies the basis for excluding or including gross receipts in the receipts 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 inclusion or exclusion of gross receipts, the taxpayer shall disclose in its Kentucky return the nature and extent of the variance.
(3) Denominator. The denominator of the receipts factor shall include the gross receipts derived by the taxpayer from transactions and activity in the regular course of its trade or business, except gross receipts excluded under this administrative regulation.
(4) Numerator. The numerator of the receipts factor shall include gross receipts attributable to this state and derived by the taxpayer from transactions and activity in the regular course of its trade or business, except gross receipts excluded under this administrative regulation.

Section 3. Sales of Tangible Personal Property in This State.
(1) Gross receipts from sales of tangible personal property (except sales to the United States Government) are in this state if the property is delivered or shipped to a purchaser within this state regardless of the f.o.b. point or other conditions of sale.
(2) Property shall be deemed to be delivered or shipped to a purchaser within this state if the recipient is located in this state, even though the property is ordered from outside this state.
Example. The taxpayer, with inventory in State A, sold $100,000 of its products to a purchaser having branch stores in several states, including Kentucky. The order for the purchase was placed by the purchaser's central purchasing department located in State B. $25,000 of the purchase order was shipped directly to purchaser's branch store in Kentucky. The branch store in Kentucky is the purchaser with respect to $25,000 of the taxpayer's sales.
(3) Property is delivered or shipped to a purchaser within this state if the shipment terminates in this state, even though the property is subsequently transferred by the purchaser to another state.
Example. The taxpayer makes a sale to a purchaser who maintains a central warehouse in Kentucky at which all merchandise purchases are received. The purchaser reships the goods to its branch stores in other states for sale. All of the taxpayer's products shipped to the purchaser's warehouse in Kentucky constitute property delivered or shipped to a purchaser within Kentucky.
(4) The term "purchaser within this state" shall include the ultimate recipient of the property if the taxpayer in this state, at the designation of the purchaser, delivers to or has the property shipped to the ultimate recipient within this state.
Example. A taxpayer in Kentucky sold merchandise to a

purchaser in State A. Taxpayer directed the manufacturer or supplier of the merchandise in State B to ship the merchandise to the purchaser's customer in Kentucky pursuant to purchaser's instructions. The sale by the taxpayer is in Kentucky.

(5) When property being shipped by a seller from the state of origin to a consignee in another state is diverted while en route to a purchaser in this state, the sales are in this state.

Example. The taxpayer, a produce grower in State A, begins shipment of perishable produce to the purchaser's place of business in State B. While en route, the produce is diverted to the purchaser's place of business in Kentucky in which state the taxpayer is subject to tax. The sale by the taxpayer is attributed to Kentucky.

Section 4. Sales of Tangible Personal Property to the United States Government. Gross receipts from sales of tangible personal property to the United States Government are in this state if the property is shipped from an office, store, warehouse, factory, or other place of storage in this state. For the purposes of this administrative regulation, only sales for which the United States Government makes direct payment to the seller pursuant to the terms of a contract constitute sales to the United States Government. Thus, sales by a subcontractor to the prime contractor, the party to the contract with the United States Government, do not constitute sales to the United States Government.

Example (i). A taxpayer contracts with General Services Administration to deliver X number of trucks which were paid for by the United States Government. The sale is a sale to the United States Government.

Example (ii). The taxpayer, as a subcontractor to a prime contractor with the National Aeronautics and Space Administration, contracts to build a component of a rocket for $1,000,000. The sale by the subcontractor to the prime contractor is not a sale to the United States Government.

Section 5. Sales Other Than Sales of Tangible Personal Property: General Rules. In general, KRS 141.120(11) provides for the inclusion in the numerator of the receipts factor of gross receipts arising from transactions other than sales of tangible personal property.

(1) Market-Based Sourcing. Receipts, other than receipts described in KRS 141.120(10) (from sales of tangible personal property) are in this state within the meaning of KRS 141.120(11) if and to the extent that the taxpayer's market for the sales is in this state. In general, the provisions in this section establish uniform rules for:

(a) Determining whether and to what extent the market for a sale other than the sale of tangible personal property is in this state;

(b) Reasonably approximating the state or states of assignment where the state or states cannot be determined;

(c) Excluding receipts from the sale of intangible property from the numerator and denominator of the receipts factor pursuant to KRS141.120(11)(a)(4)(b)iii; excluding receipts from the denominator of the receipts factor, pursuant to KRS 141.120(11)(c) where the state or states of assignment cannot be determined or reasonably approximated; or excluding receipts from the denominator of the receipts factor, pursuant to KRS 141.120(11)(c) where the taxpayer is not taxable in the state to which the receipts are assigned as determined under KRS 141.120(3).

(2) General Principles of Application; Contemporaneous Records. In order to satisfy the requirements of this administrative regulation, a taxpayer's assignment of receipts from sales of other than tangible personal property must be consistent with the following principles:

(a)1. A taxpayer shall apply the rules set forth in this administrative regulation based on objective criteria and shall consider all sources of information reasonably available to the taxpayer at the time of its tax filing including, without limitation, the taxpayer's books and records kept in the normal course of business;

2. A taxpayer shall determine its method of assigning receipts in good faith, and apply it consistently with respect to similar transactions and year to year; and

3. A taxpayer shall retain contemporaneous records that explain the determination and application of its method of assigning its receipts, including its underlying assumptions, and shall provide those records to the department upon request.

(b) This administrative regulation provides various assignment rules that apply sequentially in a hierarchy. For each sale to which a hierarchical rule applies, a taxpayer must make a reasonable effort to apply the primary rule applicable to the sale before seeking to apply the next rule in the hierarchy (and must continue to do so with each succeeding rule in the hierarchy, where applicable). For example, in some cases, the applicable rule first requires a taxpayer to determine the state or states of assignment, and if the taxpayer cannot do so, the rule requires the taxpayer to reasonably approximate the state or states. In these cases, the taxpayer must attempt to determine the state or states of assignment (i.e., apply the primary rule in the hierarchy) in good faith and with reasonable effort before it may reasonably approximate the state or states.

(c) A taxpayer's method of assigning its receipts, including the use of a method of approximation, where applicable, must reflect an attempt to obtain the most accurate assignment of receipts consistent with this administrative regulation, rather than an attempt to lower the taxpayer's tax liability. A method of assignment that is reasonable for one (1) taxpayer may not necessarily be reasonable for another taxpayer, depending upon the applicable facts.

(3) Rules of Reasonable Approximation.

(a) In general, this administrative regulation establishes uniform rules for determining whether and to what extent the market for a sale other than the sale of tangible personal property is in this state. The administrative regulation also sets forth rules of reasonable approximation, which apply if the state or states of assignment cannot be determined. In some instances, the reasonable approximation must be made in accordance with specific rules of approximation prescribed in this administrative regulation. In other cases, the applicable rule in this administrative regulation permits a taxpayer to reasonably approximate the state or states of assignment, using a method that reflects an effort to approximate the results that would be obtained under the applicable rules or standards set forth in this administrative regulation.

(b) Approximation Based Upon Known Sales. In an instance where, applying the applicable rules set forth in subsections (7), (8), (9), and (10) of this section, a taxpayer can ascertain the state or states of assignment of a substantial portion of its receipts from sales of substantially similar services ("assigned receipts"), but not all of those sales, and the taxpayer reasonably believes, based on all available information, that the geographic distribution of some or all of the remainder of those sales generally tracks that of the assigned receipts, it shall include receipts from those sales which it believes tracks the geographic distribution of the assigned receipts in its receipts factor in the same proportion as its assigned receipts. This rule also applies in the context of licenses and sales of intangible property where the substance of the transaction resembles a sale of goods or services.

(c) Related-Member Transactions – Information Imputed from Customer to Taxpayer. Where a taxpayer has receipts subject to this administrative regulation from transactions with a related-member customer, information that the customer has that is relevant to the sourcing of receipts from these transactions is imputed to the taxpayer.

(4) Rules with Respect to Exclusion of Receipts from the Receipts Factor.

(a) The receipts factor only includes those amounts defined as receipts under KRS 141.120(1)(e).

(b) Certain receipts arising from the sale of intangibles are excluded from the numerator and denominator of the sales factor pursuant to KRS 141.120(11)(a)(4)(b)iii.

(c) In a case in which a taxpayer cannot ascertain the state or states to which receipts of a sale are to be assigned pursuant to the applicable rules set forth in this administrative regulation

(including through the use of a method of reasonable approximation, where relevant) using a reasonable amount of effort undertaken in good faith, the receipts must be excluded from the denominator of the taxpayer's receipts factor pursuant to KRS 141.120(11)(c).

(d) In a case in which a taxpayer can ascertain the state or states to which receipts from a sale are to be assigned pursuant to the applicable rules set forth in this administrative regulation, but the taxpayer is not taxable in one (1) or more of those states, the receipts that would otherwise be assigned to those states where the taxpayer is not taxable must be excluded from the denominator of the taxpayer's receipts factor pursuant to KRS 141.120(11)(c).

(e) Receipts of a taxpayer from hedging transactions, or from the maturity, redemption, sale, exchange, loan, or other disposition of cash or securities, shall be excluded pursuant to KRS 141.120(1)(e).

(f) Nothing in the provisions adopted here pursuant to KRS 141.120 is intended to limit the application of KRS 141.120(12) or the authority granted to the department under KRS 141.120(12).

(5) Sale, Rental, Lease, or License of Real Property. In the case of a sale, rental, lease or license of real property, the receipts from the sale are in this state if and to the extent that the property is in this state.

(6) Rental, Lease, or License of Tangible Personal Property. In the case of a rental, lease or license of tangible personal property, the receipts from the sale are in this state if and to the extent that the property is in this state. If property is mobile property that is located both within and without this state during the period of the lease or other contract, the receipts assigned to this state are the receipts from the contract period multiplied by the fraction computed under 103 KAR 16:290. (as adjusted when necessary to reflect differences between usage during the contract period and usage during the taxable year).

(7) Sale of a Service.

(a) General Rule. The receipts from a sale of a service are in this state if and to the extent that the service is delivered to a location in this state. In general, the term "delivered to a location" refers to the location of the taxpayer's market for the service, which may not be the location of the taxpayer's employees or property. The rules to determine the location of the delivery of a service in the context of several specific types of service transactions are set forth in subsections (7), (8), (9), and (10) of this section.

(b) In-Person Services.

1. In general, except as otherwise provided in this paragraph, in-person services are services that are physically provided in person by the taxpayer, where the customer or the customer's real or tangible property upon which the services are performed is in the same location as the service provider at the time the services are performed. This rule includes situations where the services are provided on behalf of the taxpayer by a third-party contractor. Examples of in-person services may include:

a. Warranty and repair services;
b. Cleaning services;
c. Plumbing services;
d. Carpentry;
e. Construction contractor services;
f. Pest control;
g. Landscape services;
h. Medical and dental services,
i. Including medical testing,
j. X-rays and mental health care and treatment;
k. Child care;
l. Hair cutting and salon services;
m. Live entertainment and athletic performances; and
n. In-person training or lessons.

In-person services include services described in 1.a.-n. above that are performed:

a. At a location that is owned or operated by the service provider; or

b. A location of the customer, including the location of the customer's real or tangible personal property.

Various professional services, including**[**~~, but not limited to,~~**]** accounting, financial and consulting services, and other similar services are not treated as in-person services within the meaning of this subparagraph, although they may involve some amount of in-person contact.

2. Assignment of Receipts.

a. Rule of Determination. Except as otherwise provided in this subparagraph, if the service provided by the taxpayer is an in-person service, the service is delivered to the location where the service is received. Therefore, the receipts from a sale are in this state if and to the extent the customer receives the in-person service in this state. In assigning its receipts from sales of in-person services, a taxpayer must first attempt to determine the location where a service is received, as follows:

a. If the service is performed with respect to the body of an individual customer in this state (e.g., hair cutting or x-ray services) or in the physical presence of the customer in this state (e.g., live entertainment or athletic performances), the service is received in this state.

b. If the service is performed with respect to the customer's real estate in this state or if the service is performed with respect to the customer's tangible personal property at the customer's residence or in the customer's possession in this state, the service is received in this state.

c. If the service is performed with respect to the customer's tangible personal property and the tangible personal property is to be shipped or delivered to the customer, whether the service is performed within or outside this state, the service is received in this state if the property is shipped or delivered to the customer in this state.

3. Rule of Reasonable Approximation. In an instance in which the state or states where a service is actually received cannot be determined, but the taxpayer has sufficient information regarding the place of receipt from which it can reasonably approximate the state or states where the service is received, the taxpayer shall reasonably approximate such state or states. If the state to which the receipts are to be assigned can be determined or reasonably approximated, but the taxpayer is not taxable in that state, the receipts that would otherwise be assigned to the state are excluded from the denominator of the taxpayer's receipts factor pursuant to KRS 141.120(11)(c).

4. Examples. In these examples assume, unless otherwise stated, that the taxpayer is taxable in each state to which its receipts would be assigned, so that there is no requirement that the receipts from the sale or sales be eliminated from the denominator of the taxpayer's receipts factor. Note that for purposes of the examples, it is irrelevant whether the services are performed by an employee of the taxpayer or by an independent contractor acting on the taxpayer's behalf.

Example (i). Salon Corp has retail locations in Kentucky and in other states where it provides hair cutting services to individual and business customers, the latter of whom are paid for through the means of a company account. The receipts from sales of services provided at Salon Corp's in-state locations are in Kentucky. The receipts from sales of services provided at Salon Corp's locations outside Kentucky, even when provided to residents of Kentucky, are not receipts from in-state sales.

Example (ii). Landscape Corp provides landscaping and gardening services in Kentucky and in neighboring states. Landscape Corp provides landscaping services at the in-state vacation home of an individual who is a resident of another state and who is located outside Kentucky at the time the services are performed. The receipts from sale of services provided at the in-state location are in Kentucky.

Example (iii). Same facts as in Example (ii), except that Landscape Corp provides the landscaping services to Retail Corp, a corporation with retail locations in several states, and the services are with respect to those locations of Retail Corp that are in Kentucky and in other states. The receipts from the sale of services provided to Retail Corp are in Kentucky to the extent the services are provided in Kentucky.

Example (iv). Camera Corp provides camera repair services at a Kentucky retail location to walk-in individual and business customers. In some cases, Camera Corp actually repairs a camera that is brought to its in-state location at a facility that is in another

state. In these cases, the repaired camera is then returned to the customer at Camera Corp's Kentucky location. The receipts from sale of these services are in Kentucky.

Example (v). Same facts as in Example (iv), except that a customer located in Kentucky mails the camera directly to the out-of-state facility owned by Camera Corp to be fixed, and receives the repaired camera back in Kentucky by mail. The receipts from sale of the service are in Kentucky.

Example (vi). Teaching Corp provides seminars in Kentucky to individual and business customers. The seminars and the materials used in connection with the seminars are prepared outside the state, the teachers who teach the seminars include teachers that are resident outside the state, and the students who attend the seminars include students that are resident outside the state. Because the seminars are taught in Kentucky the receipts from sales of the services are in Kentucky.

(8) Services Delivered to the Customer, or on Behalf of the Customer, or Delivered Electronically Through the Customer.

(a) In general, if the service provided by the taxpayer is not an in-person service within the meaning of subsection (7)(b) of this section, or a professional service within the meaning of subsection (10) of this section, and the service is delivered to or on behalf of the customer, or delivered electronically through the customer, the receipts from a sale are in this state if and to the extent that the service is delivered in this state. For purposes of subsections (8) and (9) of this section, a service that is delivered "to" a customer is a service in which the customer and not a third party is the recipient of the service. A service that is delivered "on behalf of" a customer is one in which a customer contracts for a service but one (1) or more third parties, rather than the customer, is the recipient of the service, such as fulfillment services, or the direct or indirect delivery of advertising to the customer's intended audience. A service can be delivered to or on behalf of a customer by physical means or through electronic transmission. A service that is delivered electronically "through" a customer is a service that is delivered electronically to a customer for purposes of resale and subsequent electronic delivery in substantially identical form to an end user or other third-party recipient.

(b) Assignment of Receipts. The assignment of receipts to a state or states in the instance of a sale of a service that is delivered to the customer or on behalf of the customer, or delivered electronically through the customer, depends upon the method of delivery of the service and the nature of the customer. Separate rules of assignment apply to services delivered by physical means and services delivered by electronic transmission. (For purposes of this subsection,, a service delivered by an electronic transmission is not a delivery by a physical means). If a rule of assignment set forth in this administrative regulation, depends on whether the customer is an individual or a business customer, and the taxpayer acting in good faith cannot reasonably determine whether the customer is an individual or business customer, the taxpayer shall treat the customer as a business customer. If the state to which the receipts from a sale are to be assigned can be determined or reasonably approximated, but the taxpayer is not taxable in that state, the receipts that would otherwise be assigned to that state are excluded from the denominator of the taxpayer's receipts factor.

1. Delivery to or on Behalf of a Customer by Physical Means Whether to an Individual or Business Customer. Services delivered to a customer or on behalf of a customer through a physical means include, for example;

a. Product delivery services where property is delivered to the customer or to a third party on behalf of the customer;

b. The delivery of brochures, fliers or other direct mail services;

c. The delivery of advertising or advertising-related services to the customer's intended audience in the form of a physical medium; and

d. The sale of custom software where the taxpayer installs the custom software at the customer's site (e.g., where software is developed for a specific customer in a case where the transaction is properly treated as a service transaction for purposes of corporate taxation.) The rules in this administrative regulation apply whether the taxpayer's customer is an individual customer or a business customer.

e. Rule of Determination. In assigning the receipts from a sale of a service delivered to a customer or on behalf of a customer through a physical means, a taxpayer must first attempt to determine the state or states where the service is delivered. If the taxpayer is able to determine the state or states where the service is delivered, it shall assign the receipts to that state or states.

f. Rule of Reasonable Approximation. If the taxpayer cannot determine the state or states where the service is actually delivered, but has sufficient information regarding the place of delivery from which it can reasonably approximate the state or states where the service is delivered, it shall reasonably approximate the state or states.

g. Examples. In these examples assume, unless otherwise stated, that the taxpayer is taxable in each state to which its receipts would be assigned, so that there is no requirement in these examples that the receipts must be eliminated from the denominator of the taxpayer's receipts factor.

Example (i). Direct Mail Corp, a corporation based outside Kentucky, provides direct mail services to its customer, Business Corp. Business Corp contracts with Direct Mail Corp to deliver printed fliers to a list of customers that is provided to it by Business Corp. Some of Business Corp's customers are in Kentucky and some of those customers are in other states. Direct Mail Corp will use the postal service to deliver the printed fliers to Business Corp's customers. The receipts from the sale of Direct Mail Corp's services to Business Corp are assigned to Kentucky to the extent that the services are delivered on behalf of Business Corp to Kentucky customers (i.e., to the extent that the fliers are delivered on behalf of Business Corp to Business Corp's intended audience in Kentucky).

Example (ii). Ad Corp is a corporation based outside Kentucky that provides advertising and advertising-related services in Kentucky and in neighboring states. Ad Corp enters into a contract at a location outside Kentucky with an individual customer who is not a Kentucky resident to design advertisements for billboards to be displayed in Kentucky, and to design fliers to be mailed to Kentucky residents. All of the design work is performed outside Kentucky. The receipts from the sale of the design services are in Kentucky because the service is physically delivered on behalf of the customer to the customer's intended audience in Kentucky.

Example (iii). Same facts as Example (ii), except that the contract is with a business customer that is based outside Kentucky. The receipts from the sale of the design services are in Kentucky because the services are physically delivered on behalf of the customer to the customer's intended audience in Kentucky.

Example (iv). Fulfillment Corp, a corporation based outside Kentucky, provides product delivery fulfillment services in Kentucky and in neighboring states to Sales Corp, a corporation located outside Kentucky that sells tangible personal property through a mail order catalog and over the Internet to customers. In some cases when a customer purchases tangible personal property from Sales Corp to be delivered in Kentucky, Fulfillment Corp will, pursuant to its contract with Sales Corp, deliver that property from its fulfillment warehouse located outside Kentucky. The receipts from the sale of the fulfillment services of Fulfillment Corp to Sales Corp are assigned to Kentucky to the extent that Fulfillment Corp's deliveries on behalf of Sales Corp are to recipients in Kentucky.

Example (v). Software Corp, a software development corporation, enters into a contract with a business customer, Buyer Corp, which is physically located in Kentucky, to develop custom software to be used in Buyer Corp's business. Software Corp develops the custom software outside Kentucky, and then physically installs the software on Buyer Corp's computer hardware located in Kentucky. The development and sale of the custom software is properly characterized as a service transaction, and the receipts from the sale are assigned to Kentucky because the software is physically delivered to the customer in Kentucky.

Example (vi). Same facts as Example (v), except that Buyer Corp has offices in Kentucky and several other states, but is commercially domiciled outside Kentucky and orders the software from a location outside Kentucky. The receipts from the development and sale of the custom software service are assigned

to Kentucky because the software is physically delivered to the customer in Kentucky.

(9) Delivery to a Customer by Electronic Transmission. Services delivered by electronic transmission include, without limitation, services that are transmitted through the means of wire, lines, cable, fiber optics, electronic signals, satellite transmission, audio or radio waves, or other similar means, whether or not the service provider owns, leases or otherwise controls the transmission equipment. In the case of the delivery of a service by electronic transmission to a customer, the following rules apply:

(a) Services Delivered By Electronic Transmission to an Individual Customer.

1.a. Rule of Determination. In the case of the delivery of a service to an individual customer by electronic transmission, the service is delivered in this state if and to the extent that the taxpayer's customer receives the service in this state. If the taxpayer can determine the state or states where the service is received, it shall assign the receipts from that sale to that state or states.

b. Rules of Reasonable Approximation. If the taxpayer cannot determine the state or states where the customer actually receives the service, but has sufficient information regarding the place of receipt from which it can reasonably approximate the state or states where the service is received, it shall reasonably approximate the state or states. If a taxpayer does not have sufficient information from which it can determine or reasonably approximate the state or states in which the service is received, it shall reasonably approximate the state or states using the customer's billing address.

2. Services Delivered By Electronic Transmission to a Business Customer.

a. Rule of Determination. In the case of the delivery of a service to a business customer by electronic transmission, the service is delivered in this state if and to the extent that the taxpayer's customer receives the service in this state. If the taxpayer can determine the state or states where the service is received, it shall assign the receipts from that sale to the state or states. For purposes of this subsection 9(b)(2) of this section it is intended that the state or states where the service is received reflect the location at which the service is directly used by the employees or designees of the customer.

b. Rule of Reasonable Approximation. If the taxpayer cannot determine the state or states where the customer actually receives the service, but has sufficient information regarding the place of receipt from which it can reasonably approximate the state or states where the service is received, it shall reasonably approximate the state or states.

c. Secondary Rule of Reasonable Approximation. In the case of the delivery of a service to a business customer by electronic transmission where a taxpayer does not have sufficient information from which it can determine or reasonably approximate the state or states in which the service is received, the taxpayer shall reasonably approximate the state or states as set forth in this administrative regulation. In these cases, unless the taxpayer can apply the safe harbor set forth in this subsection the taxpayer shall reasonably approximate the state or states in which the service is received as follows:

i. By assigning the receipts from the sale to the state where the contract of sale is principally managed by the customer;

ii. If the state where the customer principally manages the contract is not reasonably determinable, by assigning the receipts from the sale to the customer's place of order; and

iii. If the customer's place of order is not reasonably determinable, by assigning the receipts from the sale using the customer's billing address; provided, however, if the taxpayer derives more than five (5) percent of its receipts from sales of services from any single customer, the taxpayer is required to identify the state in which the contract of sale is principally managed by that customer.

d. Safe Harbor. In the case of the delivery of a service to a business customer by electronic transmission a taxpayer may not be able to determine, or reasonably approximate the state or states in which the service is received. In these cases, the taxpayer may, in lieu of the rule stated at subsection (9)(b)2.c. of this section, apply the safe harbor stated in this subsection. Under this safe harbor, a taxpayer may assign its receipts from sales to a particular customer based upon the customer's billing address in a taxable year in which the taxpayer (1) engages in substantially similar service transactions with more than 250 customers, whether business or individual, and (2) does not derive more than five (5) percent of its receipts from sales of all services from that customer. This safe harbor applies only for purposes of services delivered by electronic transmission to a business customer, and not otherwise.

e. Related Member Transactions. In the case of a sale of a service by electronic transmission to a business customer that is a related member, the taxpayer may not use the secondary rule of reasonable approximation in subparagraph iii of this section but may use the rule of reasonable approximation and the safe harbor provided that the department may aggregate sales to related members in determining whether the sales exceed five (5) percent of receipts from sales of all services under that safe harbor provision if necessary or appropriate to prevent distortion.

f. Examples. In these examples, unless otherwise stated, assume that the taxpayer is not related to the customer to which the service is delivered. Also, unless otherwise stated, assume that the taxpayer is taxable in each state to which its receipts would be assigned, so that there is no requirement in these examples that the receipts must be eliminated from the denominator of the taxpayer's receipts factor. Further, assume if relevant, unless otherwise stated, that the safe harbor set forth in subparagraph d. above does not apply.

Example (i). Support Corp, a corporation that is based outside Kentucky, provides software support and diagnostic services to individual and business customers that have previously purchased certain software from third-party vendors. These individual and business customers are located in Kentucky and other states. Support Corp supplies its services on a case-by-case basis when directly contacted by its customer. Support Corp generally provides these services through the Internet but sometimes provides these services by phone. In all cases, Support Corp verifies the customer's account information before providing any service. Using the information that Support Corp verifies before performing a service, Support Corp can determine where its services are received, and therefore must assign its receipts to these locations. The receipts from sales made to Support Corp's individual and business customers are in Kentucky to the extent that Support Corp's services are received in Kentucky.

Example (ii). Online Corp, a corporation based outside Kentucky, provides web-based services through the means of the Internet to individual customers who are residents in Kentucky and in other states. These customers access Online Corp's web services primarily in their states of residence, and sometimes, while traveling, in other states. For a substantial portion of its receipts from the sale of services, Online Corp can either determine the state or states where the services are received, or, where it cannot determine the state or states, it has sufficient information regarding the place of receipt to reasonably approximate the state or states. However, Online Corp cannot determine or reasonably approximate the state or states of receipt for all of the sales of its services. Assuming that Online Corp reasonably believes, based on all available information, that the geographic distribution of the receipts from sales for which it cannot determine or reasonably approximate the location of the receipt of its services generally tracks those for which it does have this information, Online Corp must assign to Kentucky the receipts from sales for which it does not know the customers' locations in the same proportion as those receipts for which it has this information.

Example (iii). Same facts as in Example (ii), except that Online Corp reasonably believes that the geographic distribution of the receipts from sales for which it cannot determine or reasonably approximate the location of the receipt of its web-based services do not generally track the sales for which it does have this information. Online Corp must assign the receipts from sales of its services for which it lacks information as provided to its individual customers using the customers' billing addresses.

Example (iv). Same facts as in Example (iii), except that Online Corp is not taxable in one (1) state to which some of its receipts from sales would be otherwise assigned. The receipts that would be otherwise assigned to that state are excluded from the denominator of Online Corp's receipts factor.

Example (v). Net Corp, a corporation based outside Kentucky, provides web-based services to a business customer, Business Corp, a company with offices in Kentucky and two neighboring states. Particular employees of Business Corp access the services from computers in each Business Corp office. Assume that Net Corp determines that Business Corp employees in Kentucky were responsible for seventy-five (75) percent of Business Corp's use of Net Corp's services, and Business Corp employees in other states were responsible for twenty-five (25) percent of Business Corp's use of Net Corp's services. In this case, seventy-five (75) percent of the receipts from the sale are received in Kentucky. Assume alternatively that Net Corp lacks sufficient information regarding the location or locations where Business Corp's employees used the services to determine or reasonably approximate the location or locations. Under these circumstances, if Net Corp derives five (5) percent or less of its receipts from sales to Business Corp, Net Corp must assign the receipts under the secondary rule of approximation to the state where Business Corp principally managed the contract, or if that state is not reasonably determinable, to the state where Business Corp placed the order for the services, or if that state is not reasonably determinable, to the state of Business Corp's billing address. If Net Corp derives more than five (5) percent of its receipts from sales of services to Business Corp, Net Corp is required to identify the state in which its contract of sale is principally managed by Business Corp and must assign the receipts to that state.

Example (vi). Net Corp, a corporation based outside Kentucky, provides web-based services through the means of the Internet to more than 250 individual and business customers in Kentucky and in other states. Assume that for each customer Net Corp cannot determine the state or states where its web services are actually received, and lacks sufficient information regarding the place of receipt to reasonably approximate the state or states. Also assume that Net Corp does not derive more than five (5) percent of its receipts from sales of services to a single customer. Net Corp may apply the safe harbor, and may assign its receipts using each customer's billing address. If Net Corp is not taxable in one (1) or more states to which some of its receipts would be otherwise assigned, it must exclude those receipts from the denominator of its receipts factor.

(b) Services Delivered Electronically Through or "on Behalf of" an Individual or Business Customer. A service delivered electronically "on behalf of" the customer is one in which a customer contracts for a service to be delivered electronically but one (1) or more third parties, rather than the customer, is the recipient of the service, such as the direct or indirect delivery of advertising on behalf of a customer to the customer's intended audience. A service delivered electronically "through" a customer to third-party recipients is a service that is delivered electronically to a customer for purposes of resale and subsequent electronic delivery in substantially identical form to end users or other third-party recipients.

1. Rule of Determination. In the case of the delivery of a service by electronic transmission, where the service is delivered electronically to end users or other third-party recipients through or on behalf of the customer, the service is delivered in this state if and to the extent that the end users or other third-party recipients are in this state. For example, in the case of the direct or indirect delivery of advertising on behalf of a customer to the customer's intended audience by electronic means, the service is delivered in this state to the extent that the audience for the advertising is in this state. In the case of the delivery of a service to a customer that acts as an intermediary in reselling the service in substantially identical form to third-party recipients, the service is delivered in this state to the extent that the end users or other third-party recipients receive the services in this state. These rules ~~in this subsection~~ apply whether the taxpayer's customer is an individual customer or a business customer and whether the end users or other third-party recipients to which the services are delivered through or on behalf of the customer are individuals or businesses.

2. Rule of Reasonable Approximation. If the taxpayer cannot determine the state or states where the services are actually delivered to the end users or other third-party recipients either through or on behalf of the customer, but has sufficient information regarding the place of delivery from which it can reasonably approximate the state or states where the services are delivered, it shall reasonably approximate the state or states.

3. Select Secondary Rules of Reasonable Approximation.

a. If a taxpayer's service is the direct or indirect electronic delivery of advertising on behalf of its customer to the customer's intended audience, and if the taxpayer lacks sufficient information regarding the location of the audience from which it can determine or reasonably approximate that location, the taxpayer shall reasonably approximate the audience in a state for the advertising using the following secondary rules of reasonable approximation. If a taxpayer is delivering advertising directly or indirectly to a known list of subscribers, the taxpayer shall reasonably approximate the audience for advertising in a state using a percentage that reflects the ratio of the state's subscribers in the specific geographic area in which the advertising is delivered relative to the total subscribers in that area. For a taxpayer with less information about its audience, the taxpayer shall reasonably approximate the audience in a state using the percentage that reflects the ratio of the state's population in the specific geographic area in which the advertising is delivered relative to the total population in that area.

b. If a taxpayer's service is the delivery of a service to a customer that then acts as the taxpayer's intermediary in reselling that service to end users or other third party recipients; or if the taxpayer lacks sufficient information regarding the location of the end users or other third party recipients from which it can determine or reasonably approximate that location; the taxpayer shall reasonably approximate the extent to which the service is received in a state by using the percentage that reflects the ratio of the state's population in the specific geographic area in which the taxpayer's intermediary resells the services, relative to the total population in that area.

c. Examples. Assume in each of these examples that the taxpayer that provides the service is taxable in this state and must apportion its income pursuant to KRS 141.120.

Example: Web Corp, a corporation that is based outside Kentucky, provides Internet content to viewers in Kentucky and other states. Web Corp sells advertising space to business customers pursuant to which the customers' advertisements will appear in connection with Web Corp's Internet content. Web Corp receives a fee for running the advertisements that is determined by reference to the number of times the advertisement is viewed or clicked upon by the viewers of its website. Web Corp's sale of advertising space to its business customers is assigned to Kentucky to the extent that the viewers of the Internet content are in Kentucky, as measured by viewings or clicks. If Web Corp is unable to determine the actual location of its viewers, and lacks sufficient information regarding the location of its viewers to reasonably approximate such location, Web Corp must approximate the amount of its Kentucky sales by multiplying the amount of such sales by a percentage that reflects the Kentucky population in the specific geographic area in which the content containing the advertising is delivered relative to the total population in such area.

Example (ii). Retail Corp, a corporation that is based outside of Kentucky, sells tangible property through its retail stores located in Kentucky and other states, and through a mail order catalog. Answer Co, a corporation that operates call centers in multiple states, contracts with Retail Corp to answer telephone calls from individuals placing orders for products found in Retail Corp's catalogs. In this case, the phone answering services of Answer Co are being delivered to Retail Corp's customers and prospective customers. Therefore, Answer Co is delivering a service electronically to Retail Corp's customers or prospective customers on behalf of Retail Corp, and must assign the proceeds from this service to the state or states from which the phone calls are placed by such customers or prospective customers. If Answer Co cannot

determine the actual locations from which phone calls are placed, and lacks sufficient information regarding the locations to reasonably approximate such locations, Answer Co must approximate the amount of its Kentucky sales by multiplying the amount of its fee from Retail Corp by a percentage that reflects the Kentucky population in the specific geographic area from which the calls are placed relative to the total population in such area.

Example (iii). Web Corp, a corporation that is based outside of Kentucky, sells tangible property to customers via its Internet website. Design Co designed and maintains Web Corp's website, including making changes to the site based on customer feedback received through the site. Design Co's services are delivered to Web Corp, the proceeds from which are assigned pursuant to Section 5(9) of this administrative regulation. The fact that Web Corp's customers and prospective customers incidentally benefit from Design Co's services, and may even interact with Design Co in the course of providing feedback, does not transform the service into one delivered "on behalf of" Web Corp to Web Corp's customers and prospective customers.

Example (iv). Wholesale Corp, a corporation that is based outside Kentucky, develops an Internet-based information database outside Kentucky and enters into a contract with Retail Corp whereby Retail Corp will market and sell access to this database to end users. Depending on the facts, the provision of database access may be either the sale of a service or the license of intangible property or may have elements of both. Assume that on the particular facts applicable in this example, Wholesale Corp is selling database access in transactions properly characterized as involving the performance of a service. When an end user purchases access to Wholesale Corp's database from Retail Corp, Retail Corp in turn compensates Wholesale Corp in connection with that transaction. In this case, Wholesale Corp's services are being delivered through Retail Corp to the end user. Wholesale Corp must assign its sales to Retail Corp to the state or states in which the end users receive access to Wholesale Corp's database. If Wholesale Corp cannot determine the state or states where the end users actually receive access to Wholesale Corp's database, and lacks sufficient information regarding the location from which the end users access the database to reasonably approximate such location, Wholesale Corp must approximate the extent to which its services are received by end users in Kentucky by using a percentage that reflects the ratio of the Kentucky population in the specific geographic area in which Retail Corp regularly markets and sells Wholesale Corp's database relative to the total population in such area. Note that it does not matter for purposes of the analysis whether Wholesale Corp's sale of database access constitutes a service or a license of intangible property, or some combination of both.

(10) Professional Services.

(a) Except as otherwise provided in this subsection, professional services are services that require specialized knowledge, and in some cases, require a professional certification, license, or degree. These services include the performance of technical services that require the application of specialized knowledge. Professional services include, without limitation:

1. Management services;
2. Bank and financial services;
3. Financial custodial services;
4. Investment and brokerage services;
5. Fiduciary services;
6. Tax preparation;
7. Payroll and accounting services;
8. Lending services;
9. Credit card services (including credit card processing services);
10. Data processing services;
11. Legal services;
12. Consulting services;
13. Video production services;
14. Graphic and other design services;
15. Engineering services; and
16. Architectural services.

(b) Overlap with Other Categories of Services.

1. Certain services that fall within the definition of "professional services" set forth in this subsection are nevertheless treated as "in-person services", and are assigned under the rules of that subsection (7)(b) of this section. Specifically, professional services that are physically provided in person by the taxpayer such as carpentry, certain medical and dental services or child care services, where the customer or the customer's real or tangible property upon which the services are provided is in the same location as the service provider at the time the services are performed, are "in-person services" and are assigned as such, notwithstanding that they may also be considered to be "professional services." However, professional services where the service is of an intellectual or intangible nature, such as legal, accounting, financial and consulting services, are assigned as professional services under the rules of this subsection, notwithstanding the fact that these services may involve some amount of in-person contact.

2. Professional services may in some cases include the transmission of one (1) or more documents or other communications by mail or by electronic means. In some cases, all or most communications between the service provider and the service recipient may be by mail or by electronic means. However, in these cases, despite this transmission, the assignment rules that apply are those set forth in this subsection and not those set forth in subsection (8) of this section pertaining to services delivered to a customer or through or on behalf of a customer.

(c) Assignment of Receipts. In the case of a professional service, it is generally possible to characterize the location of delivery in multiple ways by emphasizing different elements of the service provided, no one (1) of which will consistently represent the market for the services. Therefore, the location of delivery in the case of professional services is not susceptible to a general rule of determination, and must be reasonably approximated. The assignment of receipts from a sale of a professional service depends in many cases upon whether the customer is an individual or business customer. In any instance in which the taxpayer, acting in good faith, cannot reasonably determine whether the customer is an individual or business customer, the taxpayer shall treat the customer as a business customer. For purposes of assigning the receipts from a sale of a professional service, a taxpayer's customer is the person that contracts for the service, irrespective of whether another person pays for or also benefits from the taxpayer's services. In any instance in which the taxpayer is not taxable in the state to which receipts from a sale is assigned, the receipts are excluded from the denominator of the taxpayer's receipts factor.

1. General Rule. Receipts from sales of professional services are assigned in accordance with Section 5 of this administrative regulation, other than those services described in:

a. Subsection (10)(c)2. of this section. (architectural and engineering services);

b. Subsection (10)(c)3. of this section. (services provided by a financial institution); and

c. Subsection (10)(c)4. of this section. (transactions with related members)

d. Professional Services Delivered to Individual Customers. Except as otherwise provided in this subsection, in any instance in which the service provided is a professional service and the taxpayer's customer is an individual customer, the state or states in which the service is delivered must be reasonably approximated as set forth in this subsection. In particular, the taxpayer shall assign the receipts from a sale to the customer's state of primary residence, or, if the taxpayer cannot reasonably identify the customer's state of primary residence, to the state of the customer's billing address; provided, however, in any instance in which the taxpayer derives more than five (5) percent of its receipts from sales of all services from an individual customer, the taxpayer shall identify the customer's state of primary residence and assign the receipts from the service or services provided to that customer to that state.

e. Professional Services Delivered to Business Customers. Except as otherwise provided in this subsection, in any instance in which the service provided is a professional service and the

taxpayer's customer is a business customer, the state or states in which the service is delivered must be reasonably approximated as set forth in this section. In particular, unless the taxpayer may use the safe harbor set forth in subsection (10)(f) of this section, the taxpayer shall assign the receipts from the sale as follows: first, by assigning the receipts to the state where the contract of sale is principally managed by the customer; second, if the place of customer management is not reasonably determinable, to the customer's place of order; and third, if the customer place of order is not reasonably determinable, to the customer's billing address; provided, however, in any instance in which the taxpayer derives more than five (5) percent of its receipts from sales of all services from a customer, the taxpayer is required to identify the state in which the contract of sale is principally managed by the customer.

f. Safe Harbor; Large Volume of Transactions. Notwithstanding the rules set forth in paragraph (d) and (e) of this subsection, a taxpayer may assign its receipts from sales to a particular customer based on the customer's billing address in any taxable year in which the taxpayer engages in substantially similar service transactions with more than 250 customers, whether individual or business, and does not derive more than five (5) percent of its receipts from sales of all services from that customer. This safe harbor applies only for purposes of subsection (10)(d) of this section, and not otherwise.

2. Architectural and Engineering Services with respect to Real or Tangible Personal Property. Architectural and engineering services with respect to real or tangible personal property are professional services within the meaning of subsection (10) of this section. However, unlike in the case of the general rule that applies to professional services,

a. The receipts from a sale of an architectural service are assigned to a state or states if and to the extent that the services are with respect to real estate improvements located, or expected to be located, in the state or states; and

b. The receipts from a sale of an engineering service are assigned to a state or states if and to the extent that the services are with respect to tangible or real property located in the state or states, including real estate improvements located in, or expected to be located in, the state or states. These rules apply whether or not the customer is an individual or business customer. In any instance in which architectural or engineering services are not described in subsection (10)(d)2. of this section, the receipts from a sale of these services must be assigned under the general rule for professional services.

3. Services Provided by Financial Organizations and Institutions. The apportionment rules that apply to "financial organizations," as defined by KRS 141.120(1)(c), are set forth in KRS 141.121(5) and this administrative regulation. In any instance in which a financial **organization[~~institution~~]** performs services that are to be assigned pursuant to KRS 141.121(5) and this administrative regulation, including, for example, financial custodial services, those services are considered professional services within the meaning of subsection (10) of this section, and are assigned according to the general rule for professional service transactions as set forth in subsection (10)(c)1. of this section. Note that "financial institutions," as defined by KRS 136.500(10), are subject to the franchise tax imposed by KRS 136.505 and related statutes and administrative regulations under KRS Chapter 136 and are exempt from the corporation income tax per KRS 141.040(1)(a) and the limited liability entity tax per KRS 141.0401(6)(a).

4. Related Member Transactions. In any instance in which the professional service is sold to a related member, rather than applying the rule for professional services delivered to business customers in subsection (10)(e) of this section, the state or states to which the service is assigned is the place of receipt by the related member as reasonably approximated using the following hierarchy: (1) if the service primarily relates to specific operations or activities of a related member conducted in one (1) or more locations, then to the state or states in which those operations or activities are conducted in proportion to the related member's payroll at the locations to which the service relates in the state or states; or (2) if the service does not relate primarily to operations or activities of a related member conducted in particular locations, but instead relates to the operations of the related member generally, then to the state or states in which the related member has employees, in proportion to the related member's payroll in those states. The taxpayer may use the safe harbor provided by this administrative regulation provided that the department may aggregate the receipts from sales to related members in applying the five (5) percent rule if necessary or appropriate to avoid distortion.

5. Broadcast Advertising Services. Notwithstanding anything herein to the contrary, receipts from a broadcaster's sale of advertising services to a broadcast customer are assigned to this state if the commercial domicile of the broadcast customer is in this state. For purposes of this provision, "advertising services" means an agreement to include the broadcast customer's advertising content in the broadcaster's film programming.

6. Examples. Unless otherwise stated, assume in each of these examples, where relevant, that the taxpayer is taxable in each state to which its receipts would be assigned, so that there is no requirement in the examples that the receipts must be excluded from the denominator of the taxpayer's receipts factor. Assume also that the customer is not a related member and that the safe harbor does not apply.

Example (i). Broker Corp provides securities brokerage services to individual customers who are resident in Kentucky and in other states. Assume that Broker Corp knows the state of primary residence for many of its customers, and where it does not know this state of primary residence, it knows the customer's billing address. Also, assume that Broker Corp does not derive more than five (5) percent of its receipts from sales of all services from any one (1) individual customer. If Broker Corp knows its customer's state of primary residence, it shall assign the receipts to that state. If Broker Corp does not know its customer's state of primary residence, but rather knows the customer's billing address, it shall assign the receipts to that state.

Example (ii). Same facts as in Example (i), except that Broker Corp has several individual customers from whom it derives, in each instance, more than five (5) percent of its receipts from sales of all services. Receipts from sales to customers from whom Broker Corp derives five (5) percent or less of its receipts from sales of all services must be assigned as described in Example (i). For each customer from whom it derives more than five (5) percent of its receipts from sales of all services, Broker Corp is required to determine the customer's state of primary residence and must assign the receipts from the services provided to that customer to that state. In any case in which a five (5) percent customer's state of primary residence is Kentucky, receipts from a sale made to that customer must be assigned to Kentucky; in any case in which a five (5) percent customer's state of primary residence is not Kentucky receipts from a sale made to that customer are not assigned to Kentucky. Where receipts from a sale are assigned to a state other than Kentucky, if the state of assignment (i.e., the state of primary residence of the individual customer) is a state in which Broker Corp is not taxable, receipts from the sales must be excluded from the denominator of Broker Corp's receipts factor.

Example (iii). Architecture Corp provides building design services as to buildings located, or expected to be located, in Kentucky to individual customers who are resident in Kentucky and other states, and to business customers that are based in Kentucky and other states. The receipts from Architecture Corp's sales are assigned to Kentucky because the locations of the buildings to which its design services relate are in Kentucky, or are expected to be in Kentucky. For purposes of assigning these receipts, it is not relevant where, in the case of an individual customer, the customer primarily resides or is billed for the services, and it is not relevant where, in the case of a business customer, the customer principally manages the contract, placed the order for the services, or is billed for the services. Further, these receipts are assigned to Kentucky even if Architecture Corp's designs are either physically delivered to its customer in paper form in a state other than Kentucky or are electronically delivered to its customer in a state other than Kentucky.

Example (iv). Law Corp provides legal services to individual

clients who are residents in Kentucky and in other states. In some cases, Law Corp may prepare one (1) or more legal documents for its client as a result of these services and/or the legal work may be related to litigation or a legal matter that is ongoing in a state other than where the client is resident. Assume that Law Corp knows the state of primary residence for many of its clients, and where it does not know this state of primary residence, it knows the client's billing address. Also, assume that Law Corp does not derive more than five (5) percent of its receipts from sales of all services from any one (1) individual client. If Law Corp knows its client's state of primary residence, it shall assign the receipts to that state. If Law Corp does not know its client's state of primary residence, but rather knows the client's billing address, it shall assign the receipts to that state. For purposes of the analysis it is irrelevant whether the legal documents relating to the service are mailed or otherwise delivered to a location in another state, or the litigation or other legal matter that is the underlying predicate for the services is in another state.

Example (v). Same facts as in Example (iv), except that Law Corp provides legal services to several individual clients who it knows have a primary residence in a state where Law Corp is not taxable. Receipts from these services are excluded from the denominator of Law Corp's receipts factor even if the billing address of one (1) or more of these clients is in a state in which Law Corp is taxable, including Kentucky.

Example (vi). Law Corp provides legal services to several multistate business clients. In each case, Law Corp knows the state in which the agreement for legal services that governs the client relationship is principally managed by the client. In one (1) case, the agreement is principally managed in Kentucky; in the other cases, the agreement is principally managed in a state other than Kentucky. If the agreement for legal services is principally managed by the client in Kentucky the receipts from sale of the services are assigned to Kentucky; in the other cases, the receipts are not assigned to Kentucky. In the case of receipts that are assigned to Kentucky, the receipts are so assigned even if (1) the legal documents relating to the service are mailed or otherwise delivered to a location in another state, or (2) the litigation or other legal matter that is the underlying predicate for the services is in another state.

Example (vii). Same facts as in Example (vi), except that Law Corp is not taxable in one (1) of the states other than Kentucky in which Law Corp's agreement for legal services that governs the client relationship is principally managed by the business client. Receipts from these latter services are excluded from the denominator of Law Corp's receipts factor.

Example (viii). Consulting Corp, a company that provides consulting services to law firms and other customers, is hired by Law Corp in connection with legal representation that Law Corp provides to Client Co. Specifically, Consulting Corp is hired to provide expert testimony at a trial being conducted by Law Corp on behalf of Client Co. Client Co pays for Consulting Corp's services directly. Assuming that Consulting Corp knows that its agreement with Law Corp is principally managed by Law Corp in Kentucky, the receipts from the sale of Consulting Corp's services are assigned to Kentucky. It is not relevant for purposes of the analysis that Client Co is the ultimate beneficiary of Consulting Corp's services, or that Client Co pays for Consulting Corp's services directly.

Example (ix). Bank Corp provides financial custodial services, including the safekeeping of some of its customers' financial assets, to 100 individual customers who are resident in Kentucky and in other states. Assume for purposes of this example that Bank Corp knows the state of primary residence for many of its customers, and where it does not know the state of primary residence, it knows the customer's billing address. Also assume that Bank Corp does not derive more than five (5) percent of its receipts from sales of all of its services from any single customer. Note that because Bank Corp does not have more than 250 customers, it may not apply the safe harbor for professional services stated in Section 5(10) of this administrative regulation. If Bank Corp knows its customer's state of primary residence, it must assign the receipts to that state. If Bank Corp does not know its customer's state of primary residence, but rather knows the customer's billing address, it must assign the receipts to that state. Bank Corp's receipts are assigned to Kentucky if the customer's state of primary residence (or billing address, in cases where it does not know the customer's state of primary residence) is in Kentucky, even if Bank Corp's financial custodial work, including the safekeeping of the customer's financial assets, takes place in a state other than Kentucky.

Example (x). Same facts as Example (ix), except that Bank Corp has more than 250 customers, individual or business. Bank Corp may apply the safe harbor for professional services stated in Section 5(10)(f) of this administrative regulation, and may assign its receipts from sales to a state or states using each customer's billing address.

Example (xi). Same facts as Example (x), except that Bank Corp derives more than five (5) percent of its receipts from sales from a single individual customer. As to the sales made to this customer, Bank Corp is required to determine the individual customer's state of primary residence and must assign the receipts from the service or services provided to that customer to that state. Receipts from sales to all other customers are assigned as described in Example (x).

Example (xii). Advisor Corp, a corporation that provides investment advisory services, provides these advisory services to Investment Co. Investment Co is a multistate business client of Advisor Corp that uses Advisor Corp's services in connection with investment accounts that it manages for individual clients, who are the ultimate beneficiaries of Advisor Corp's services. Assume that Investment Co's individual clients are persons that are residents in numerous states, which may or may not include Kentucky. Assuming that Advisor Corp knows that its agreement with Investment Co is principally managed by Investment Co in Kentucky, receipts from the sale of Advisor Corp's services are assigned to Kentucky. It is not relevant for purposes of the analysis that the ultimate beneficiaries of Advisor Corp's services may be Investment Co's clients, who are residents of numerous states.

Example (xiii). Advisor Corp provides investment advisory services to Investment Fund LP, a partnership that invests in securities and other assets. Assuming that Advisor Corp knows that its agreement with Investment Fund LP is principally managed by Investment Fund LP in Kentucky, receipts from the sale of Advisor Corp's services are assigned to Kentucky. Note that it is not relevant for purposes of the analysis that the partners in Investment Fund LP are residents of numerous states.

Example (xiv). Design Corp is a corporation based outside Kentucky that provides graphic design and similar services in Kentucky and in neighboring states. Design Corp enters into a contract at a location outside Kentucky with an individual customer to design fliers for the customer. Assume that Design Corp does not know the individual customer's state of primary residence and does not derive more than five (5) percent of its receipts from sales of services from the individual customer. All of the design work is performed outside Kentucky. Receipts from the sales are in Kentucky if the customer's billing address is in Kentucky.

(11) License or Lease of Intangible Property.

(a)1. The receipts from the license of intangible property are in this state if and to the extent the intangible is used in this state. In general, the term "use" is construed to refer to the location of the taxpayer's market for the use of the intangible property that is being licensed and is not to be construed to refer to the location of the property or payroll of the taxpayer. The rules that apply to determine the location of the use of intangible property in the context of several specific types of licensing transactions are set forth in subsection (11)(b)-(f) of this section. For purposes of the rules set forth in this subsection, a lease of intangible property is to be treated the same as a license of intangible property.

2. In general, a license of intangible property that conveys all substantial rights in that property is treated as a sale of intangible property for purposes of this administrative regulation. Note, however, that for purposes of subsection (11) and (12) of this section, a sale or exchange of intangible property is treated as a license of that property where the receipts from the sale or exchange derived from payments that are contingent on the

productivity, use or disposition of the property.

3. Intangible property licensed as part of the sale or lease of tangible property is treated under Section 5 of this administrative regulation as the sale or lease of tangible property.

4. In any instance in which the taxpayer is not taxable in the state to which the receipts from the license of intangible property are assigned, the receipts are excluded from the denominator of the taxpayer's receipts factor.

5. Nothing in this administrative regulation shall be construed to allow or require inclusion of receipts in the receipts factor that are not included in the definition of "receipts" pursuant to KRS 141.120(1)(e), or that are excluded from the numerator and the denominator of the receipts factor pursuant to KRS 141.120(11)(a)(4)(b)iii. So, to the extent that the transfer of either a security or business "goodwill" or similar intangible value, including, without limitation, "going concern value" or "workforce in place," may be characterized as a license or lease of intangible property, receipts from such transaction shall be excluded from the numerator and the denominator of the taxpayer's receipts factor.

(b) License of a Marketing Intangible. Where a license is granted for the right to use intangible property in connection with the sale, lease, license, or other marketing of goods, services, or other items (i.e., a marketing intangible) to a consumer, the royalties or other licensing fees paid by the licensee for that marketing intangible are assigned to this state to the extent that those fees are attributable to the sale or other provision of goods, services, or other items purchased or otherwise acquired by consumers or other ultimate customers in this state. Examples of a license of a marketing intangible include, without limitation, the license of a service mark, trademark, or trade name; certain copyrights; the license of a film, television or multimedia production or event for commercial distribution; and a franchise agreement. In each of these instances, the license of the marketing intangible is intended to promote consumer sales. In the case of the license of a marketing intangible, where a taxpayer has actual evidence of the amount or proportion of its receipts that is attributable to this state, it shall assign that amount or proportion to this state. In the absence of actual evidence of the amount or proportion of the licensee's receipts that are derived from consumers in this state, the portion of the licensing fee to be assigned to this state must be reasonably approximated by multiplying the total fee by a percentage that reflects the ratio of the population of this state in the specific geographic area in which the licensee makes material use of the intangible property to regularly market its goods, services or other items relative to the total population in that area. If the license of a marketing intangible is for the right to use the intangible property in connection with sales or other transfers at wholesale rather than directly to retail customers, the portion of the licensing fee to be assigned to this state must be reasonably approximated by multiplying the total fee by a percentage that reflects the ratio of the population of this state in the specific geographic area in which the licensee's goods, services, or other items are ultimately and materially marketed using the intangible property relative to the total population of that area. Unless the taxpayer demonstrates that the marketing intangible is materially used in the marketing of items outside the United States, the fees from licensing those marketing intangible will be presumed to be derived from within the United States.

(c) License of a Production Intangible. If a license is granted for the right to use intangible property other than in connection with the sale, lease, license, or other marketing of goods, services, or other items, and the license is to be used in a production capacity (a "production intangible"), the licensing fees paid by the licensee for that right are assigned to this state to the extent that the use for which the fees are paid takes place in this state. Examples of a license of a production intangible include, without limitation, the license of a patent, a copyright, or trade secrets to be used in a manufacturing process, where the value of the intangible lies predominately in its use in that process. In the case of a license of a production intangible to a member other than a related member where the location of actual use is unknown, it is presumed that the use of the intangible property takes place in the state of the licensee's commercial domicile (where the licensee is a business) or the licensee's state of primary residence (where the licensee is an individual). If the department can reasonably establish that the actual use of intangible property pursuant to a license of a production intangible takes place in part in this state, it is presumed that the entire use is in this state except to the extent that the taxpayer can demonstrate that the actual location of a portion of the use takes place outside this state. In the case of a license of a production intangible to a related member, the taxpayer must assign the receipts to where the intangible property is actually used.

(d) License of a Broadcasting Intangible. Where a broadcaster grants a license to a broadcast customer for the right to use film programming, the licensing fees paid by the licensee for such right are assigned to this state to the extent that the broadcast customer is located in this state. In the case of business customers, the broadcast customer's location shall be determined using the broadcast customer's commercial domicile. In the case of individual customers, the broadcast customer's location shall be determined using the address of the broadcast customer listed in the broadcaster's records.

(e) License of a Mixed Intangible. If a license of intangible property includes both a license of a marketing intangible and a license of a production intangible (a "mixed intangible") and the fees to be paid in each instance are separately and reasonably stated in the licensing contract, the department will accept that separate statement for purposes of this administrative regulation. If a license of intangible property includes both a license of a marketing intangible and a license of a production intangible and the fees to be paid in each instance are not separately and reasonably stated in the contract, it is presumed that the licensing fees are paid entirely for the license of the marketing intangible except to the extent that the taxpayer or the department can reasonably establish otherwise.

(f) License of Intangible Property where Substance of Transaction Resembles a Sale of Goods or Services.

1. In some cases, the license of intangible property will resemble the sale of an electronically-delivered good or service rather than the license of a marketing intangible or a production intangible. In these cases, the receipts from the licensing transaction are assigned by applying the rules set forth in subsection (9)(a) and (b) of this section, as if the transaction were a service delivered to an individual or business customer or delivered electronically through an individual or business customer, as applicable. Examples of transactions to be assigned under this subsection include, without limitation, the license of database access, the license of access to information, the license of digital goods and the license of certain software (e.g., where the transaction is not the license of pre-written software that is treated as the sale of tangible personal property.

2. Sublicenses. Pursuant to subsection (11)(f). of this section, the rules of subsection (9)(b) may apply where a taxpayer licenses intangible property to a customer that in turn sublicenses the intangible property to end users as if the transaction were a service delivered electronically through a customer to end users. In particular, the rules set forth in subsection (9)(b) that apply to services delivered electronically to a customer for purposes of resale and subsequent electronic delivery in substantially identical form to end users or other recipients may also apply with respect to licenses of intangible property for purposes of sublicense to end users. For this purpose, the intangible property sublicensed to an end user shall not fail to be substantially identical to the property that was licensed to the sublicensor merely because the sublicense transfers a reduced bundle of rights with respect to that property (e.g., because the sublicensee's rights are limited to its own use of the property and do not include the ability to grant a further sublicense), or because that property is bundled with additional services or items of property.

3. Examples. In these examples, unless otherwise stated, assume that the taxpayer is taxable in each state to which its receipts would be assigned so that there is no requirement in these examples that the receipts must be eliminated from the denominator of the taxpayer's receipts factor. Also assume that the customer is not a related member.

Example (i). Crayon Corp and Dealer Co enter into a license contract under which Dealer Co as licensee is permitted to use trademarks that are owned by Crayon Corp in connection with Dealer Co's sale of certain products to retail customers. Under the contract, Dealer Co is required to pay Crayon Corp a licensing fee that is a fixed percentage of the total volume of monthly sales made by Dealer Co of products using the Crayon Corp trademarks. Under the contract, Dealer Co is permitted to sell the products at multiple store locations, including store locations that are both within and without Kentucky. Further, the licensing fees that are paid by Dealer Co are broken out on a per- store basis. The licensing fees paid to Crayon Corp by Dealer Co represent fees from the license of a marketing intangible. The portion of the fees to be assigned to Kentucky are determined by multiplying the fees by a percentage that reflects the ratio of Dealer Co's receipts that are derived from its Kentucky stores relative to Dealer Co's total receipts.

Example (ii). Network Corp is a broadcaster that licenses rights to its film programming to both platform distribution companies and individual customers. Platform distribution companies pay licensing fees to Network Corp for the rights to distribute Network Corp's film programming to the platform distribution companies' customers. Network Corp's individual customers pay access fees to Network Corp for the right to directly access and view Network Corp's film programming. Network Corp's receipts from each platform distribution company will be assigned to Kentucky if the broadcast customer's commercial domicile is in Kentucky. Network Corp's receipts from each individual broadcast customer will be assigned to Kentucky if the address of the broadcast customer listed in the broadcaster's records is in Kentucky.

Example (iii). Moniker Corp enters into a license contract with Wholesale Co. Pursuant to the contract Wholesale Co is granted the right to use trademarks owned by Moniker Corp to brand sports equipment that is to be manufactured by Wholesale Co or an unrelated entity, and to sell the manufactured equipment to unrelated companies that will ultimately market the equipment to consumers in a specific geographic region, including a foreign country. The license agreement confers a license of a marketing intangible, even though the trademarks in question will be affixed to property to be manufactured. In addition, the license of the marketing intangible is for the right to use the intangible property in connection with sales to be made at wholesale rather than directly to retail customers. The component of the licensing fee that constitutes the Kentucky receipts of Moniker Corp is determined by multiplying the amount of the fee by a percentage that reflects the ratio of the Kentucky population in the specific geographic region relative to the total population in that region. If Moniker Corp is able to reasonably establish that the marketing intangible was materially used throughout a foreign country, then the population of that country will be included in the population ratio calculation. However, if Moniker Corp is unable to reasonably establish that the marketing intangible was materially used in the foreign country in areas outside a particular major city; then none of the foreign country's population beyond the population of the major city is include in the population ratio calculation. If Moniker Corp is not taxable in any state (including a foreign country) in which Wholesale Co's ultimate consumers are located, the receipts that would be assigned to that state are excluded from the denominator of Moniker Corp's receipts factor.

Example (iv). Formula, Inc and Appliance Co enter into a license contract under which Appliance Co is permitted to use a patent owned by Formula, Inc to manufacture appliances. The license contract specifies that Appliance Co is to pay Formula, Inc a royalty that is a fixed percentage of the gross receipts from the products that are later sold. The contract does not specify any other fees. The appliances are both manufactured and sold in Kentucky and several other states. Assume the licensing fees are paid for the license of a production intangible, even though the royalty is to be paid based upon the sales of a manufactured product (i.e., the license is not one that includes a marketing intangible). Because the department can reasonably establish that the actual use of the intangible property takes place in part in Kentucky, the royalty is assigned based to the location of that use rather than to location of the licensee's commercial domicile. It is presumed that the entire use is in Kentucky except to the extent that the taxpayer can demonstrate that the actual location of some or all of the use takes place outside Kentucky. Assuming that Formula, Inc can demonstrate the percentage of manufacturing that takes place in Kentucky using the patent relative to the manufacturing in other states, that percentage of the total licensing fee paid to Formula, Inc under the contract will constitute Formula, Inc's Kentucky receipts.

Example (v). Axel Corp enters into a license agreement with Biker Co in which Biker Co is granted the right to produce motor scooters using patented technology owned by Axel Corp, and also to sell the scooters by marketing the fact that the scooters were manufactured using the special technology. The contract is a license of both a marketing and production intangible, i.e., a mixed intangible. The scooters are manufactured outside Kentucky. Assume that Axel Corp lacks actual information regarding the proportion of Biker Co.'s receipts that are derived from Kentucky customers. Also assume that Biker Co is granted the right to sell the scooters in a U.S. geographic region in which the Kentucky population constitutes twenty-five (25) percent of the total population during the period in question. The licensing contract requires an upfront licensing fee to be paid by Biker Co to Axel Corp and does not specify what percentage of the fee derives from Biker Co's right to use Axel Corp's patented technology. Because the fees for the license of the marketing and production intangible are not separately and reasonably stated in the contract, it is presumed that the licensing fees are paid entirely for the license of a marketing intangible, unless either the taxpayer or the department reasonably establishes otherwise. Assuming that neither member establishes otherwise, twenty-five (25) percent of the licensing fee constitutes Kentucky receipts.

Example (vi). Same facts as Example (v), except that the license contract specifies separate fees to be paid for the right to produce the motor scooters and for the right to sell the scooters by marketing the fact that the scooters were manufactured using the special technology. The licensing contract constitutes both the license of a marketing intangible and the license of a production intangible. Assuming that the separately stated fees are reasonable, the department will: (1) assign no part of the licensing fee paid for the production intangible to Kentucky, and (2) assign twenty-five (25) percent of the licensing fee paid for the marketing intangible to Kentucky.

Example (vii). Better Burger Corp, which is based outside Kentucky, enters into franchise contracts with franchisees that agree to operate Better Burger restaurants as franchisees in various states. Several of the Better Burger Corp franchises are in Kentucky. In each case, the franchise contract between the individual and Better Burger provides that the franchisee is to pay Better Burger Corp an upfront fee for the receipt of the franchise and monthly franchise fees, which cover, among other things, the right to use the Better Burger name and service marks, food processes and cooking know-how, as well as fees for management services. The upfront fees for the receipt of the Kentucky franchises constitute fees paid for the licensing of a marketing intangible. These fees constitute Kentucky receipts because the franchises are for the right to make Kentucky sales. The monthly franchise fees paid by Kentucky franchisees constitute fees paid for (1) the license of marketing intangibles (the Better Burger name and service marks), (2) the license of production intangibles (food processes and know-how), and (3) personal services (management fees). The fees paid for the license of the marketing intangibles and the production intangibles constitute Kentucky receipts because in each case the use of the intangibles is to take place in Kentucky. The fees paid for the personal services are to be assigned pursuant to this section.

Example (viii). Online Corp, a corporation based outside Kentucky, licenses an information database through the means of the Internet to individual customers that are resident in Kentucky and in other states. These customers access Online Corp's information database primarily in their states of residence, and sometimes, while traveling, in other states. The license is a license of intangible property that resembles a sale of goods or services

and are assigned in accordance with subsection (11)(f) of this section. If Online Corp can determine or reasonably approximate the state or states where its database is accessed, it must do so. Assuming that Online Corp cannot determine or reasonably approximate the location where its database is accessed, Online Corp must assign the receipts made to the individual customers using the customers' billing addresses to the extent known. Assume for purposes of this example that Online Corp knows the billing address for each of its customers. In this case, Online Corp's receipts from sales made to its individual customers are in Kentucky in any case in which the customer's billing address is in Kentucky.

Example (ix). Net Corp, a corporation based outside Kentucky, licenses an information database through the means of the Internet to a business customer, Business Corp, a company with offices in Kentucky and two neighboring states. The license is a license of intangible property that resembles a sale of goods or services and are assigned in accordance with subsection (11)(f) of this section. Assume that Net Corp cannot determine where its database is accessed but reasonably approximates that seventy-five (75) percent of Business Corp's database access took place in Kentucky, and twenty-five (25) percent of Business Corp's database access took place in other states. In that case, seventy-five (75) percent of the receipts from database access is in Kentucky. Assume alternatively that Net Corp lacks sufficient information regarding the location where its database is accessed to reasonably approximate the location. Under these circumstances, if Net Corp derives five (5) percent or less of its receipts from database access from Business Corp, Net Corp must assign the receipts under Section 5(9)(b) of this administrative regulation to the state where Business Corp principally managed the contract, or if that state is not reasonably determinable to the state where Business Corp placed the order for the services, or if that state is not reasonably determinable to the state of Business Corp's billing address. If Net Corp derives more than five (5) percent of its receipts from database access from Business Corp, Net Corp is required to identify the state in which its contract of sale is principally managed by Business Corp and must assign the receipts to that state.

Example (x). Net Corp, a corporation based outside Kentucky, licenses an information database through the means of the Internet to more than 250 individual and business customers in Kentucky and in other states. The license is a license of intangible property that resembles a sale of goods or services and receipts from that license are assigned in accordance with Section 5(11)(f) of this administrative regulation. Assume that Net Corp cannot determine or reasonably approximate the location where its information database is accessed. Also assume that Net Corp does not derive more than five (5) percent of its receipts from sales of database access from any single customer. Net Corp may apply the safe harbor stated in Section 5(9)(a)2.d. of this administrative regulation, and may assign its receipts to a state or states using each customer's billing address. If Net Corp is not taxable in one (1) or more states to which some of its receipts would be otherwise assigned, it must exclude those receipts from the denominator of its receipts factor.

Example (xi). Web Corp, a corporation based outside of Kentucky, licenses an Internet-based information database to business customers who then sublicense the database to individual end users that are resident in Kentucky and in other states. These end users access Web Corp's information database primarily in their states of residence, and sometimes, while traveling, in other states. Web Corp's license of the database to its customers includes the right to sublicense the database to end users, while the sublicenses provide that the rights to access and use the database are limited to the end users' own use and prohibit the individual end users from further sublicensing the database. Web Corp receives a fee from each customer based upon the number of sublicenses issued to end users. The license is a license of intangible property that resembles a sale of goods or services and are assigned by applying the rules set forth in Section 5(9)(b) of this administrative regulation. If Web Corp can determine or reasonably approximate the state or states where its database is accessed by end users, it must do so. Assuming that Web Corp lacks sufficient information from which it can determine or reasonably approximate the location where its database is accessed by end users, Web Corp must approximate the extent to which its database is accessed in Kentucky using a percentage that represents the ratio of the Kentucky population in the specific geographic area in which Web Corp's customer sublicenses the database access relative to the total population in that area.

(12) Sale of Intangible Property.

(a) Assignment of Receipts. The assignment of receipts to a state or states in the instance of a sale or exchange of intangible property depends upon the nature of the intangible property sold. For purposes of this subsection, a sale or exchange of intangible property includes a license of that property where the transaction is treated for tax purposes as a sale of all substantial rights in the property and the receipts from transaction are not contingent on the productivity, use or disposition of the property. For the rules that apply where the consideration for the transfer of rights is contingent on the productivity, use or disposition of the property, see KRS 141.120(11)(a)(4)(b)ii.

1. Contract Right or Government License that Authorizes Business Activity in Specific Geographic Area. In the case of a sale or exchange of intangible property where the property sold or exchanged is a contract right, government license or similar intangible property that authorizes the holder to conduct a business activity in a specific geographic area, the receipts from the sale are assigned to a state if and to the extent that the intangible property is used or is authorized to be used within the state. If the intangible property is used or may be used only in Kentucky, the taxpayer shall assign the receipts from the sale to this state. If the intangible property is used or is authorized to be used in this state and one (1) or more other states, the taxpayer shall assign the receipts from the sale to this state to the extent that the intangible property is used in or authorized for use in this state, through the means of a reasonable approximation.

2. Sale that Resembles a License (Receipts are Contingent on Productivity, Use or Disposition of the Intangible Property). In the case of a sale or exchange of intangible property where the receipts from the sale or exchange are contingent on the productivity, use or disposition of the property, the receipts from the sale are assigned by applying the rules set forth in subsection (11) of this section (pertaining to the license or lease of intangible property).

3. Sale that Resembles a Sale of Goods and Services. In the case of a sale or exchange of intangible property where the substance of the transaction resembles a sale of goods or services and where the receipts from the sale or exchange do not derive from payments contingent on the productivity, use or disposition of the property, the receipts from the sale are assigned by applying the rules set forth in subsection (11)(f) of this section (relating to licenses of intangible property that resemble sales of goods and services). Examples of these transactions include those that are analogous to the license transactions cited as examples in subsection (11)(f)3. of this section.

4. Excluded Receipts. Receipts from the sale of intangible property are not included in the receipts factor in any case in which the sale does not give rise to receipts within the meaning of KRS 141.120(1)(e). In addition, pursuant to KRS 141.120(11)(a)(4)(b)(iii) receipts from the sale of intangible property are excluded from the numerator and the denominator of the taxpayer's receipts factor if the receipts are not referenced in KRS 141.120(11)(a)(4)(b)(i) or KRS 141.120(11)(a)(4)(b)(ii). The sale of intangible property that is excluded from the numerator and denominator of the taxpayer's receipts factor under KRS 141.120(11)(a)(4)(b)(iii) includes, without limitation, the sale of a partnership interest, the sale of business "goodwill," the sale of an agreement not to compete, or similar intangible value. Also, in any instance in which, the state to which the receipts from a sale is to be assigned can be determined or reasonably approximated, but where the taxpayer is not taxable in such state, the receipts that would otherwise be assigned to such state shall be excluded from the denominator of the taxpayer's receipts factor.

5. Examples. In these examples, unless otherwise stated,

assume that the taxpayer is taxable in each state to which some of its receipts would be assigned, so that there is no requirement in these examples that the receipts to other states must be excluded from the taxpayer's denominator pursuant to subsection (11)(a) of this section and KRS 141.120(11)(c).

Example (i). Airline Corp, a corporation based outside Kentucky, sells its rights to use several gates at an airport located in Kentucky to Buyer Corp, a corporation that is based outside Kentucky. The contract of sale is negotiated and signed outside of Kentucky. The receipts from the sale are in Kentucky because the intangible property sold is a contract right that authorizes the holder to conduct a business activity solely in Kentucky.

Example (ii). Wireless Corp, a corporation based outside Kentucky, sells a license issued by the Federal Communications Commission (FCC) to operate wireless telecommunications services in a designated area in Kentucky to Buyer Corp, a corporation that is based outside Kentucky. The contract of sale is negotiated and signed outside of Kentucky. The receipts from the sale are in Kentucky because the intangible property sold is a government license that authorizes the holder to conduct business activity solely in Kentucky.

Example (iii). Same facts as in Example (ii) except that Wireless Corp sells to Buyer Corp an FCC license to operate wireless telecommunications services in a designated area in Kentucky and an adjacent state. Wireless Corp must attempt to reasonably approximate the extent to which the intangible property is used in or may be used in Kentucky. For purposes of making this reasonable approximation, Wireless Corp may rely upon credible data that identifies the percentage of persons that use wireless telecommunications in the two states covered by the license.

Example (iv). Same facts as in Example (iii) except that Wireless Corp is not taxable in the adjacent state in which the FCC license authorizes it to operate wireless telecommunications services. The receipts paid to Wireless Corp that would be assigned to the adjacent state must be excluded from the denominator of Wireless Corp's receipts factor.

Example (v). Sports League Corp, a corporation that is based outside Kentucky, sells the rights to broadcast the sporting events played by the teams in its league in all fifty (50) U.S. states to Network Corp. Although the games played by Sports League Corp will be broadcast in all fifty (50) states, the games are of greater interest in the southeast region of the country, including Kentucky. Because the intangible property sold is a contract right that authorizes the holder to conduct a business activity in a specified geographic area, Sports League Corp must attempt to reasonably approximate the extent to which the intangible property is used in or may be used in Kentucky. For purposes of making this reasonable approximation, Sports League Corp may rely upon audience measurement information that identifies the percentage of the audience for its sporting events in Kentucky and the other states.

Example (vi). Same facts as in Example (v), except that Sports League Corp is not taxable in one (1) state. The receipts paid to Sports League Corp that would be assigned to that state must be excluded from the denominator of Sports League Corp's receipts factor.

Example (vii). Inventor Corp, a corporation that is based outside Kentucky, sells patented technology that it has developed to Buyer Corp, a business customer that is based in Kentucky. Assume that the sale is not one in which the receipts derive from payments that are contingent on the productivity, use, or disposition of the property. Inventor Corp understands that Buyer Corp is likely to use the patented technology in Kentucky, but the patented technology can be used anywhere (i.e., the rights sold are not rights that authorize the holder to conduct a business activity in a specific geographic area). The receipts from the sale of the patented technology are excluded from the numerator and denominator of Inventor Corp's receipts factor.

(13) Special Rules.

(a) Software Transactions. A license or sale of pre-written software for purposes other than commercial reproduction (or other exploitation of the intellectual property rights) transferred on a tangible medium is treated as the sale of tangible personal property, rather than as either the license or sale of intangible property or the performance of a service. In these cases, the receipts are in this state as determined under the rules for the sale of tangible personal property set forth under KRS 141.120(10) and related administrative regulations. In all other cases, the receipts from a license or sale of software are to be assigned to this state as determined otherwise under this administrative regulation. (e.g., depending on the facts, as the development and sale of custom software, see subsection (8) of this section, as a license of a marketing intangible, see subsection (11)(b) of this section, as a license of a production intangible, see subsection (11)(c) of this section, as a license of intangible property where the substance of the transaction resembles a sale of goods or services, see subsection (11)(f) of this section, or as a sale of intangible property, see subsection (12) of this section.

(b) Sales or Licenses of Digital Goods or Services.

1. In the case of a sale or license of digital goods or services, including, among other things, the sale of various video, audio, and software products, or similar transactions, the receipts from the sale or license are assigned by applying the same rules as are set forth in subsection (9)(a) and (b) or subsection 10(c)(5) of this section, as if the transaction were a service delivered to an individual or business customer or delivered through or on behalf of an individual or business customer. For purposes of the analysis, it is not relevant what the terms of the contractual relationship are or whether the sale or license might be characterized, depending upon the particular facts, as, for example, the sale or license of intangible property or the performance of a service.

2. Providers of communication services, cable service, and Internet access. Providers, as defined by KRS 141.121(1)(e), shall apportion income to this state using a three (3) factor formula as provided in KRS 141.901 pursuant to KRS 141.121(3).

Section 6. Special Rules: Receipts Factor. The following special rules are established in respect to the receipts factor of the apportionment formula:

(1) **Bank holding company. For any corporation or other business entity registered under state law as a bank holding company or registered under the Federal Bank Holding Company Act of 1956, as amended, or registered as a savings and loan holding company under the Federal National Housing Act, as amended, and any entity more than fifty (50) percent owned, directly or indirectly, by such holding companies, receipts are included in the receipts factor denominator and assigned to the receipts factor numerator in this state to the extent those receipts would be included in the denominator and assigned to this state under KRS 136.530.**

(2) Bargeline. Bargelines shall determine receipts in this state by multiplying total transportation revenues by a fraction, the numerator of which is miles operated in this state and the denominator of which is total miles operated for the taxable year. Miles operated in this state shall be fifty (50) percent of the miles operated on the Ohio River, the Big Sandy River, and the Mississippi River adjacent to this state's shoreline plus all miles operated on other inland waterways within this state. A "mile operated" shall mean the movement of a barge, tug, or other watercraft one (1) mile.

(3)[~~(2)~~] Busline. Buslines shall determine receipts in this state by multiplying total transportation revenues by a fraction, the numerator of which is miles operated in this state and the denominator of which is total miles operated for the taxable year.

(4)[~~(3)~~] Passenger airline. Pursuant to KRS 141.121(2)(b)(1), passenger airlines, as defined by KRS 141.121(1)(d), shall determine receipts in this state by multiplying total transportation revenues by a fraction, the numerator of which is Kentucky revenue passenger miles in this state and the denominator of which is total revenue passenger miles for the taxable year. The term "Kentucky revenue passenger mile" is defined by KRS 141.121(1)(c), and the term "revenue passenger mile" is defined by KRS 141.121(1)(g).

(5)[~~(4)~~] Pipeline. Pipeline companies shall determine receipts in this state by multiplying total operating revenues by a fraction,

the numerator of which is barrel miles transported in this state and the denominator of which is total barrel miles transported for the taxable year. The term "barrel mile" shall mean the transportation of one (1) barrel of liquid or gas one (1) mile.

(6)[~~(5)~~] Public service company. Public service companies, as defined by KRS 141.0401(6)(i), shall allocate and apportion net income in accordance with KRS 141.121(5).

(7)[~~(6)~~] Qualified air freight forwarder. Pursuant to KRS 141.121(2)(b)(2), qualified air freight forwarders, as defined by KRS 141.121(1)(f), shall determine receipts in this state by multiplying total freight forwarding revenues by a fraction, the numerator of which is miles operated in this state and the denominator of which is total miles operated by the affiliated airline for the taxable year. The term "affiliated airline" is defined by KRS 141.121(1)(a).

(8)[~~(7)~~] Railroad. Railroads shall determine receipts in this state by multiplying total transportation revenues by a fraction, the numerator of which is revenue car miles in this state and the denominator of which is total revenue car miles for the taxable year. The term "revenue car mile" shall mean the movement of a loaded railcar one (1) mile.

(9)[~~(8)~~] Regulated investment company. Regulated investment companies shall apportion income pursuant to KRS 141.120 and this administrative regulation; provided, however, that a regulated investment company may elect an alternative method for determining receipts pursuant to KRS 141.121(4)(b).

(10)[~~(9)~~] Securities brokerage services. Securities brokers operating within certain Kentucky Enterprises Zones defined by KRS 141.121(4)(c), shall apportion income pursuant to KRS 141.120 and this administrative regulation provided, however, that a securities broker so defined may elect an alternative method for determining receipts pursuant to KRS 141.121(4)(c).

(11)[~~(10)~~] Truckline. Trucklines shall determine receipts in this state by multiplying total transportation revenues by a fraction, the numerator of which is miles operated in this state and the denominator of which is total miles operated for the taxable year.[~~Definition. (1) "Gross receipts" means the total amount of consideration, including cash, credit, property, and services, paid for the sale, lease, rental, or use of property.~~

~~Section 2. The following shall be examples of activities that result in the assignments of gross receipts to Kentucky and shall be included in the numerator described in KRS 141.120(8)(c), if the receipts are business income:~~

~~(1) The sale, lease, rental, or other use of tangible personal property in this state;~~

~~(2) The sale of real property located in Kentucky;~~

~~(3) The lease, rental or other use of real property located in Kentucky;~~

~~(4) The provision of services performed entirely in Kentucky during the tax period;~~

~~(5) The provision of services performed within and without Kentucky during the tax period;~~

~~(6) Intangible property received by a business with a commercial domicile in Kentucky;~~

~~(7) Intangible property, if the intangible has acquired a Kentucky business situs;~~

~~(8) Franchise fees received from a franchisee located in Kentucky; and~~

~~(9) The distributive share of net income received from a general partnership that is required to file a Kentucky income tax return under the provisions of KRS 141.206.~~

~~Section 3. Assignment of Sales to Kentucky. (1) Sales of real or tangible personal property shall be assigned to Kentucky if the property is in Kentucky or is shipped or delivered to a purchaser in Kentucky.~~

~~(2) Sales of goods destined for delivery outside of Kentucky shall not be assigned to Kentucky, irrespective of method of shipment or delivery.~~

~~(3) Sales of tangible personal property to the U.S. Government shall be assigned to Kentucky if the property is shipped from Kentucky.~~

~~(4) Receipts from intangibles shall be assigned to Kentucky if the corporation's commercial domicile is in Kentucky or the intangible has acquired a Kentucky business situs. Examples of receipts from intangibles which are deemed to have acquired a Kentucky business situs shall be franchise fees from a franchisee located in Kentucky and a corporation's Kentucky distributive share of net income from a general partnership doing business in Kentucky.~~

~~(5) Rents or royalties from real or tangible personal property shall be assigned to Kentucky if the property is located in Kentucky or in the case of mobile property the rent is assigned to Kentucky, if the lessee's base of operations for the property is in Kentucky.~~

~~(6) Receipts from the performance of services shall be assigned to Kentucky if the services are performed entirely in Kentucky, or the services are performed both within and without Kentucky but a greater portion is performed in Kentucky than in any other state based on cost of performance.~~

~~(7) If the corporation has income from a general partnership, the distributive share income shall be included in the sales factor. The denominator shall include the total distributive share; the numerator shall include the amount of the distributive share apportioned to Kentucky pursuant to KRS 141.206(9).~~

~~Section 4.(1) Receipts from intangible property shall be assigned to Kentucky, regardless of the corporation's or general partnership's commercial domicile, if possession and control of the intangible personal property is localized in connection with a trade or business, creating business situs with Kentucky, so that substantial use or value attaches to the intangible property in Kentucky.~~

~~(2) In determining if possession and control is localized in connection with a trade or business, the following factors shall be considered:~~

~~(a) The use of the intangible property in the continuous course of the trade or business in Kentucky;~~

~~(b) The permanency of the location of the intangible property in Kentucky;~~

~~(c) The independent control and management of the intangible property in Kentucky;~~

~~(d) The possession and control of the intangible property in Kentucky by an independent local agent for the purpose of transacting a permanent business; and~~

~~(e) The establishment or use of the intangible property in Kentucky in a manner that attaches substantial use and value of the intangible property to the Kentucky trade or business.~~

~~Section 5. This administrative regulation shall apply to tax periods beginning on or after January 1, 2005.~~]

DANIEL BORK, Commissioner

APPROVED BY AGENCY: February 12, 2019

FILED WITH LRC: February 13, 2019 at 1 p.m.

CONTACT PERSON: Todd Renner, Executive Director, Office of Tax Policy and Regulation, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky 40601, phone (502) 782-6081, fax (502) 564-3875, email Todd.Renner@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Todd Renner

(1) Provide a brief summary of:

(a) What this administrative regulation does: HB 487 implementing a significant change in the way corporations that delivered services to Kentucky are taxed. The Commonwealth moved from a "cost of performance" to a "market-based" standard for determining what services should be apportioned to the Commonwealth. LRC utilized a Multi-State Tax Commission (MTC) model regulation when drafting HB 487, and this administrative regulation uses the MTC model regulations as its foundation. This administrative regulation provides guidance to taxpayers to determine what services are considered sourced in Kentucky under the "market-based" sourcing rules for use in the single receipts factor apportionment calculations.

(b) The necessity of this administrative regulation: There are myriad different ways to determine how property and services are delivered to the market in Kentucky. This administrative regulation sets forth uniform methods for determining when property and services are sold, marketed, and delivered to customers in Kentucky. It also provides guidance for non-traditional industries for determining receipts in Kentucky based on market-related concepts (e.g., bargelines, railroads, etc.).

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation provides guidance for the significant changes HB 487 made to KRS 141.120(11) related to the marketing of services and other intangible property. The changes to statute require companies to apportion those receipts to Kentucky based on whether they are marketed in the Commonwealth. This administrative regulation expands guidance for determining what is "marketed."

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides the 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 statues: See (1)(d).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Any multi-state corporation with apportionable income in Kentucky will be affected by this administrative regulation. There are approximately 200,000 corporate returns filed annually in the state.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Taxpayers are required to evaluate the nature of their receipts in the Commonwealth and may be required to change the apportionment of those receipts if they are marketed in Kentucky.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Compliance costs are not readily available. However, multi-state taxpayers currently comply with market-based receipts sourcing in many other states, so they are familiar with the concept and have systems in place to comply.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Taxpayers that perform services in Kentucky and generate receipts for those services outside Kentucky will benefit from the elimination of the "cost of performance" standard and the adoption of the "market-based" standard for sourcing those receipts.

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

(a) Initially: There are no new costs are associated with this administrative 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 will be utilized 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 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 administrative regulation.

(9) TIERING: Is tiering applied? Tiering was not applied to this administrative regulation. All taxpayers who fall under the provisions of this administrative regulation will be treated equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Finance and Administration Cabinet, Department of Revenue, will be impacted.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 131.130(1), 141.018, 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 state and local government agencies as a result of the changes to this administrative regulation.

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

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

(c) How much will it cost to administer this program for the first year? None.

(d) How much will it cost to administer this program for subsequent years? None.

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

Revenues (+/-): $0

Expenditures (+/-): $0

Other Explanation: Not Applicable

GENERAL GOVERNMENT CABINET
Board of Nursing
(Amended After Comments)

201 KAR 20:065. Professional standards for prescribing Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone by APRNs for medication assisted treatment for opioid use disorder.

RELATES TO: KRS 314.011, 314.042, Pub.L. 114-198

STATUTORY AUTHORITY: KRS 314.131

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131 authorizes the board to promulgate administrative regulations to regulate the conduct of its licensees. This administrative regulation establishes the professional standards for APRNs practicing in Kentucky who prescribe Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone.

Section 1. Definitions. (1) "Advanced Practice Registered Nurse" or "APRN" is defined by KRS 314.011(7).

(2) "Buprenorphine" means the controlled substances Buprenorphine-Mono-Product and Buprenorphine-Combined-with-Naloxone.

Section 2. Minimum Qualifications for Prescribing Buprenorphine. An advanced practice registered nurse (APRN) shall not prescribe Buprenorphine for Opioid Use Disorder unless that APRN possesses the minimum qualifications established in this section. (1) The APRN shall obtain and maintain in good standing a DATA 2000 waiver and registration as issued by the Drug Enforcement Administration (DEA) to prescribe

Buprenorphine for the treatment of Opioid Use Disorder.

(2) The APRN shall:

(a) Be a DEA-registered prescriber of Buprenorphine; and

(b) Have obtained medication assisted treatment education through completion of a Substance Abuse and Mental Health Services Administration (SAMHSA) sponsored course.

(3)[~~Only an APRN designated nurse practitioner may prescribe Buprenorphine.~~

~~(4)~~] The APRN shall provide to the board a copy of the DEA Controlled Substance Registration Certificate as required by 201 KAR 20:057, Section 6(4).

(4)[~~(5)~~] The APRN shall comply with all federal statutes and regulations pertaining to the prescribing of Buprenorphine. This shall include the maximum number of patients, which may be seen by the APRN each year, and the inclusion of the special DEA identification number in addition to the regular DEA registration number on all prescriptions for opioid dependency treatment.

Section 3. Professional Standards for Prescribing Buprenorphine for Supervised Withdrawal or the Treatment of Opioid Use Disorder. (1) Buprenorphine may be prescribed for supervised withdrawal or as a maintenance treatment for a patient diagnosed with Opioid Use Disorder in accordance with the standards established by this administrative regulation.

(2) Buprenorphine-Mono-Product shall not be prescribed for supervised withdrawal or as a maintenance treatment for a patient diagnosed with Opioid Use Disorder, except:

(a) To a pregnant patient, as established in subsection (4)(b) of this section;

(b) To a patient with demonstrated hypersensitivity to naloxone; or

(c) As an implant-delivered**,[or]** injectable treatment administered**, or observed induction** in an APRN's office or other healthcare facility.

(3)(a) Except as provided in paragraph (b) of this subsection, Buprenorphine shall not be prescribed to a patient who is also being prescribed benzodiazepines, other sedative hypnotics, stimulants or other opioids, without consultation of:

1. A physician certified in addiction medicine or psychiatry as required by 201 KAR 9:270;

2. An APRN who is certified in addiction therapy by the:

a. Addictions Nursing Certification Board;

b. American Academy of Health Care Providers in the Addictive Disorders; or

c. National Certification Commission for Addiction Professionals; or

3. A psychiatric-mental health nurse practitioner.

(b) An APRN may prescribe Buprenorphine to a patient who is also being prescribed benzodiazepines, other sedative hypnotics, stimulants, or other opioids, without consultation in order to address an extraordinary and acute medical need not to exceed a combined period of thirty (30) days.

(4) Each APRN who prescribes Buprenorphine for supervised withdrawal or for the treatment of Opioid Use Disorder shall fully comply with the professional standards established in this subsection.

(a) Prior to initiating treatment, the APRN shall:

1. Obtain, review, and record a complete and appropriate evaluation of the patient, which shall at a minimum include:

a. The patient's history of present illness;

b. The patient's history of drug use;

c. The patient's social and family history;

d. The patient's medical and psychiatric histories;

e. A physical examination of the patient;

f. Appropriate laboratory tests, which may include a complete blood count (CBC), a comprehensive quantitative drug screen, liver function tests, a complete metabolic panel (CMP), HIV screening, and hepatitis serology; and

g. An evaluation by a mental health provider with expertise in addiction and compliance with the recommendations of the evaluator.

2. Obtain the patient's consent and authorizations in order to obtain and discuss the patient's prior medical records.

a. Upon receipt of the medical records, the APRN shall review and incorporate the information from the records into the evaluation and treatment of the patient.

b. If the APRN is unable, despite best efforts, to obtain the patient's prior medical records, the APRN shall document those efforts in the patient's chart.

3. Obtain and review a KASPER or other prescription drug monitoring program (PDMP) report for that patient for the twelve (12) month period immediately preceding the initial patient encounter and appropriately utilize that information in the evaluation and treatment of the patient;

4. Explain treatment alternatives, the risks, and the benefits of treatment with Buprenorphine to the patient.

5. Obtain written informed consent from the patient for treatment.

6. Discuss and document the patient's treatment with the patient's other providers;

7. If the patient is a female of childbearing potential and age, meet the requirements of paragraph (b) of this subsection; and

8. Develop a treatment plan that incorporates objective behavior modification including counseling or a twelve (12) step program for the duration of the treatment.

(b) 1. Prior to initiating treatment, the APRN shall require that the patient first submit to a pregnancy test and the APRN shall provide counseling as to the risk of neonatal abstinence syndrome which shall be consistent with patient education material on neonatal abstinence syndrome from the American Congress of Obstetricians and Gynecologists, American Academy of Pediatrics, American Society of Addiction Medicine (ASAM) and the Kentucky Department for Public Health, and offer means to prevent pregnancy.

2. An APRN shall not prescribe Buprenorphine to a patient who is pregnant or breastfeeding unless the APRN first obtains and documents consultation for an opinion as to whether the potential benefit of Buprenorphine use outweighs the potential risk of use.

3. The consultation shall be obtained from a physician or an APRN as established in subsection (3)(a) of this section.

(c) Except as provided by paragraph (d) of this subsection, while initiating treatment with Buprenorphine, the APRN shall comply with the following requirements:

1. The APRN shall recommend to the patient an in-office observed induction protocol.

a. Except as provided in clause b. of this subparagraph, the APRN shall conduct the in-office observed induction protocol.

b. If an in-office observed induction does not occur, the APRN shall appropriately document the circumstances in the patient record and shall implement a SAMHSA-recognized or ASAM-recognized home-based induction protocol.

2. The APRN shall document the presence of any opioid withdrawal symptoms before the first dose is given by using a standardized instrument, such as the clinic opioid withdrawal scale (COWS) or other similarly recognized instrument.

3. The APRN shall initiate treatment with a dose not to exceed the dose equivalency of four (4) milligrams buprenorphine generic tablet, which:

a. May be followed by subsequent doses if withdrawal persists and is not improving; and

b. Shall not exceed the dose equivalency of sixteen (16) milligrams buprenorphine generic tablet on the first day of treatment.

(d) If the patient is transferred from another treatment provider and has previously experienced withdrawal without a relapse, the APRN shall:

1. Document the previous history of withdrawal;

2. Educate the patient about the potential for precipitated withdrawal; and

3. Continue maintenance treatment of the patient on the same dosage as established by the previous treatment provider and then as provided in paragraph (e) of this subsection.

(e) After initial induction of Buprenorphine, the APRN shall prescribe to the patient an amount of Buprenorphine that:

1. Is necessary to minimize craving and opiate withdrawal;

2. Does not produce opiate sedation;

3. Is able only to supply the patient until the next visit, which shall be scheduled as required by this section; and

4. Does not exceed the FDA-approved dosage limit of twenty-four (24) milligrams per day.

(f) The patient's visits shall be scheduled as follows:

1. The APRN shall see the patient at least weekly for the first two (2) months.

2. If the patient demonstrates objective signs of positive treatment progress after the first two (2) months, the APRN shall see the patient at least once monthly thereafter for up to two (2) years.

3. If after two (2) years after initiation of treatment, the patient has demonstrated objective signs of positive treatment progress, including documented evidence that the patient has been compliant with the treatment plan and all treatment directives, then the APRN may require that the patient be seen only by the APRN at least once every three (3) months. The APRN shall:

a. Evaluate the patient to determine whether the patient's dosage should be continued or modified; and

b. Appropriately document that evaluation and clinical judgment in the patient's chart.

4. The APRN shall see the patient in shorter intervals if the patient demonstrates any non-compliance with the treatment plan.

5. If extenuating circumstances arise that require a patient to unexpectedly reschedule a visit, the APRN shall make best efforts to see the patient as soon as possible and document the circumstances in the patient chart.

(g) The APRN shall review compliance with the recommendations of the treatment plan, including review of KASPER or other PDMP reports and drug screens to help guide the treatment plan at each visit.

1. The APRN shall:

a. Incorporate those findings into the treatment plan to support the continuation or modification of treatment; and

b. Accurately document the same in the patient record.

2. Appropriate evaluation may include adjustment of dose strength or frequency of visits, increased screening, a consultation with or referral to a specialist, or an alternative treatment, including consideration of weaning.

3. The APRN shall obtain a minimum of eight (8) drug screens from the patient within each twelve (12) month period of treatment in order to help guide the treatment plan.

a. At least two (2) of the drug screens shall be random and coupled with a pill count. At least one (1) of those two (2) drug screens shall be confirmed by gas chromatography/mass spectrometry (GC/MS) or liquid chromatography/mass spectrometry (LC/MS).

b. Each drug screen shall, at a minimum, screen for buprenorphine, methadone, oxycodone, other opioids, THC, benzodiazepines, amphetamines, alcohol, **gabapentin,** and cocaine.

c. If a drug screen indicates the presence of any of the drugs screened, the APRN shall:

(i) Incorporate those findings into appropriate clinical evaluation to support the continuation or modification of treatment; and

(ii) Document in the patient record.

d. Appropriate evaluation may include adjustment of dose strength or frequency of visits, increased screening, a consultation with or referral to a specialist, or an alternative treatment.

(h) Every twelve (12) months following initiation of treatment, if a patient's prescribed daily therapeutic dosage exceeds the dose equivalency of sixteen (16) milligrams Buprenorphine generic tablet per day, then the APRN who is not certified in addiction therapy shall:

1. Refer the patient for an evaluation by a physician or an APRN as established in subsection (3)(a) of this section for an opinion as to whether continued treatment and dosage is appropriate; and

2. Document the results of that evaluation in the patient chart.

(i) For patients who have demonstrated objective signs of positive treatment progress for at least two (2) years from the date of initiation of treatment, including documented evidence that the patient has been compliant with the treatment plan and all treatment directives, the APRN shall evaluate for and document every twelve (12) months the medical necessity for continued treatment at the established dose.

(j) The APRN shall document a plan for dealing with any lost or stolen medication, which:

1. Shall not provide for the automatic replacement of medication prior to the specified interval date; and

2. If the APRN determines that it is necessary to minimize improper or illegal diversion of medications under the circumstances, the APRN shall require the patient to first report the lost or stolen medications to police or other law enforcement agencies and require the patient to provide evidence to the APRN of having so reported.

Section 4. Continuing education. An APRN who has obtained a waiver and registration as issued by the Drug Enforcement Administration (DEA) to prescribe Buprenorphine for the treatment of Opioid Use Disorder shall complete the one and one-half (1.5) contact hours of continuing education required annually by 201 KAR 20:215, Section 5(1)(b) in addiction disorders.

KELLY JENKINS, President

APPROVED BY AGENCY: February 8, 2019

FILED WITH LRC: February 8, 2019 at 4 p.m.

CONTACT PERSON: Megan LaFollette, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-7192, fax (502) 429-1248, email Megan.LaFollette@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Megan LaFollette

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes professional standards for prescribing Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone by APRNs for medication assisted treatment for opioid use disorder.

(b) The necessity of this administrative regulation: This administrative regulation is necessary because of KRS 314.011 and KRS 314.042.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by setting standards for prescribing by APRNs.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by setting standards for prescribing by APRNs.

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

(a) How the amendment will change this existing administrative regulation: The amendment is necessary to conform to Public Law No. 115-271.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to conform to Public Law No. 115-271.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment allows additional licensed APRNs to perform the tasks at issue, which were previously only allowed to be performed by one category of licensed APRNs.

(d) How the amendment will assist in the effective administration of the statutes: By conforming the state regulation to the federal statute.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: APRN licensees. There are 8142 APRN licensees in Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: They will have to follow the provisions of the administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be a minor cost to take the examination. The exact cost has not yet been determined. There may be some cost for testing for gabapentin in addition to other screening substances.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be in compliance with the regulation.

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

(a) Initially: There is no additional cost.

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

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

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

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

(9) TIERING: Is tiering applied? Tiering was not applied as the changes apply to all equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Nursing.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 314.131.

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT
Board of Licensure for Marriage and Family Therapists
(Amended After Comments)

201 KAR 32:110. Telehealth.

RELATES TO: KRS 335.305, 335.310, 335.320, 335.325, 335.380, 335.399

STATUTORY AUTHORITY: KRS 335.310, 335.380

NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.380 requires the board to promulgate administrative regulations to govern telehealth services in the provision of marriage and family therapy services. This administrative regulation establishes procedures for the use of telehealth by licensees.

Section 1. Definitions.

(1) "Asynchronous" **shall mean[~~means~~]** a communication that does not occur simultaneously in real time.

(2) "Electronic communication" **shall mean[~~means~~]** the use of websites, cell phones, email, texting, online social networking, video, or other digital methods and technology used to send and receive messages or post information.

(3) "Encryption" **shall mean[~~means~~]** a mathematical process that converts text, video, or audio streams into a scrambled, unreadable format when transmitted electronically.

(4) "HIPAA" **shall mean[~~means~~]** the Health Insurance Portability and Accountability Act of 1996.

(5) "HITECH" **shall mean[~~means~~]** the Health Information Technology for Economic and Clinical Health Act of 2009.

(6) "Social media" **shall mean[~~means~~]** a Web-based communication tool that enables people to interact with each other by both sharing and consuming information.

(7) "Synchronous" **shall mean[~~means~~]** a communication that occurs simultaneously in real time.

Section 2. **Licensure,** Standard of Practice**,** and Competency.

(1) **License required. Any marriage and family therapist practicing teletherapy in this state shall be licensed by the board and comply with all statutes, administrative regulations, and ethics guidelines applicable to the practice of marriage and family therapy.**

(2) Standard of appropriate practice. A marriage and family therapist providing telehealth services in this state shall be held to the same standards of practice as those applicable for in person therapy settings.

(3)[~~(2)~~] Competency. A marriage and family therapist shall only provide telehealth services in this state in those instances in which the marriage and family therapist has technical and clinical competency to render such services.

(4)[~~(3)~~] Continued competency. A marriage and family therapist providing telehealth services in this state shall have an ongoing obligation to assess their technical and clinical competency to render such services.

Section 3. Education and Continuing Education Requirements.

(1) Initial training. Effective January 1, 2020, a licensed marriage and family therapist providing telehealth services in this state shall have completed fifteen (15) hours of board-approved training in the practice of telehealth, which shall include three (3) hours of ethics in the practice of telehealth. **Each approved course shall be live or online. Areas to be covered in the training shall include:**

(a) Appropriateness of teletherapy;

(b) Teletherapy theory and practice;

(c) Modes of delivery;

(d) Legal and ethical issues;

(e) Handling online emergencies; and

(f) Best practices and informed consent.

(2) Continuing education. A licensed marriage and family therapist who has completed the initial training in the practice of telehealth shall complete at least two (2) credit hours of board-approved continuing education in the practice of telehealth during each subsequent licensure renewal period.

(3) Credit hours earned to comply with subsections (1) and (2) above may be applied to continuing education requirements set forth in 201 KAR 32:060.

Section 4. Verification of the Client. Prior to providing telehealth services in this state a marriage and family therapist shall take appropriate steps to verify the identity of the client.

Section 5. Client Assessment.

(1) Initial assessment. Prior to providing telehealth services in

this state a marriage and family therapist shall conduct an initial assessment of the client to determine if telehealth is an appropriate delivery of treatment considering the professional, intellectual, or emotional needs of the client.

(2) Ongoing assessment. Throughout the duration of providing telehealth services in this state a marriage and family therapist shall engage in a continual assessment of the appropriateness of providing such services to the client.

(3) Telehealth may not be appropriate if the client:

(a) Recurrently experiences, or is likely to experience, crises or emergencies;

(b) Is a suicide risk, or likely to become a suicide risk;

(c) Is violent, or likely to become violent; or

(d) Otherwise poses a risk to themselves or to others.

Section 6. Informed Consent. (1) Generally. Prior to providing telehealth services in this state, the marriage and family therapist providing such services shall obtain the informed consent of the client, which shall include:

(a) Disclosure of specific information regarding the marriage and family therapist's:

1. Training and credentials;
2. License number;
3. Physical location and contact information;
4. Social media policy;
5. Encryption policy; and
6. Collection, documentation, tracking, and storage of client information;

(b) Client confidentiality and the limits to confidentiality in electronic communication;

(c) Information on reporting complaints to the board and other appropriate licensing bodies;

(d) The specific services to be provided;

(e) The risks and benefits of engaging in telehealth in the clinical setting;

(f) The possibility of technology failure and alternate methods of service delivery;

(g) Time zone differences, if any;

(h) Cultural or language differences that may affect the delivery of services;

(i) The possible denial of insurance benefits;

(j) The pertinent legal rights and limitations governing practice across state lines or international boundaries, where appropriate; and

(k) Whether delivery of service will be asynchronous or synchronous.

(2) Minors. If the client is a minor, prior to providing telehealth services in this state the marriage and family therapist shall verify the identity of the parent, guardian, or other person consenting to the minor's treatment and obtain from that person the informed consent required by this section.

Section 7. Emergency Procedures, Coordination of Care and Referrals. Prior to providing telehealth services in this state, the marriage and family therapist shall establish with the client:

(1) Acceptable ways to contact the marriage and family therapist in an emergency;

(2) Emergency procedures to include emergency services at the client's location;

(3) Coordination of care with other professionals; and

(4) Conditions under which telehealth services may be terminated and a referral made to in-person care.

Section 8. Compliance with Privacy Laws, Documentation and Recordkeeping. A marriage and family therapist performing telehealth services in this state shall:

(1) Comply with all privacy laws and regulations relating to the transmission and protection of protected health information, including HIPAA and HITECH; and

(2) Comply with all state and federal laws and regulations relating to the practice of telehealth, and the documentation of services delivered and recordkeeping related thereto.

SHAWN OAK, Chair

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FILED WITH LRC: February 14, 2019 at 1 p.m.

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REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Bryan Morrow

(1) Provide a brief summary of:

(a) What this administrative regulation does: KRS 335.380 requires the board to promulgate administrative regulations to implement the practice of telehealth. This administrative regulation establishes procedures and education requirements for licensees to provide telehealth services to patients in Kentucky.

(b) The necessity of this administrative regulation: This administrative regulation is required by KRS 335.380(2).

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 335.380 requires the board to promulgate administrative regulations to implement the practice of telehealth, including: (1) preventing abuse and fraud through the use of telehealth services; (2) preventing fee-splitting; and (3) utilizing telehealth in the provision of marriage and family therapy services and in the provision of continuing education. This administrative regulation prevents fraud and abuse in six ways: (1) applying standards for in-person counseling to telehealth; (2) requiring verification of the client; (3) requiring an initial assessment to ensure the client is a proper candidate for telehealth services; (4) making that assessment an on-going concern; (5) obtaining the informed consent of the client; and (6) establishing procedures for the client in case of an emergency. The regulation does not address fee-splitting, because that issue is covered in an existing regulation. Finally, the regulation sets forth education and continuing education requirements specific to telehealth services.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation assists in the effective administration of KRS 335.380 by carrying out the legislative mandate for the board to establish a regulation regarding telehealth services.

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

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect 705 licensed Marriage and Family Therapist and Marriage and Family Therapist Associates in Kentucky, as well as any Marriage and Family Therapists from other jurisdictions seeking to provide telehealth to patients located in Kentucky.

(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: In order to use telehealth to practice marriage and family therapy in Kentucky, each licensee will be required to complete initial training and continuing education each subsequent year. The licensed therapist will also have to verify the client, continuously assess the client as an appropriate recipient of telehealth, obtain consent from the client, establish emergency procedures, and ensure compliance with applicable privacy laws.

(b) In complying with this administrative regulation or

amendment, how much will it cost each of the entities: This regulation should add no cost to the licensee. Licensee education and continuing education requirements are already in place as part of 201 KAR Chapter 32. The education and continuing education requirements specific to telehealth will count toward those hours licensees are already required to obtain.

(c) As a result of compliance, what benefits will accrue to the entities: As a result of compliance, licensees and clients will be permitted to engage in telehealth, increasing access and availability of needed services.

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

(a) Initially: This administrative regulation does not create a cost for the administrative body; a licensee that provides telehealth will be governed by the same licensure process as a Marriage and Family Therapist in an office setting.

(b) On a continuing basis: This administrative regulation does not create a cost for the administrative body; a licensee that provides telehealth will be governed by the same licensure process as a Marriage and Family Therapist in an office setting.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Marriage and Family Therapy Board is self-funded through the fees paid by licensees. No additional funding is necessary for the implementation and enforcement of this administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering is not applied because similarly situated licensees are treated similarly under this administrative regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Board of Licensure for Marriage and Family Therapists will be affected.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 335.380

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 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 regulation will not generate revenue for state or local government.

(c) How much will it cost to administer this program for the first year? A licensee providing telehealth services will abide by the same licensure process as a Marriage and Family Therapist in an office setting so there will be no additional cost to administer this program.

(d) How much will it cost to administer this program for subsequent years? A licensee providing telehealth services will abide by the same licensure process as a Marriage and Family Therapist in an office setting so there will be no additional cost to administer this program.

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

Revenues (+/-): Neutral.

Expenditures (+/-): Neutral.

Other Explanation: None.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Kentucky Board of Education
Department of Education
(Amended After Comments)

703 KAR 5:270. Kentucky's Accountability System.

RELATES TO: KRS 158.645, 158.6451, 158.6453, 158.6455, 20 U.S.C. 6311

STATUTORY AUTHORITY: KRS 158.6453, 158.6455

NECESSITY, FUNCTION, AND CONFORMITY: KRS 158.6453 requires the Kentucky Board of Education to create and implement a balanced statewide assessment program that measures the achievement of students, schools, and districts; complies with the federal Every Student Succeeds Act of 2015, 20 U.S.C. secs. 6301 et seq., or its successor; and ensures accountability. KRS 158.6455 requires the Kentucky Board of Education to create an accountability system to classify schools and districts, including a process for annual summative performance evaluations and goals for improvement. This administrative regulation establishes the statewide system of accountability, and meets requirements set forth in the federal Every Student Succeeds Act of 2015 at 20 U.S.C. 6311.

Section 1. Definitions. (1) "Achievement gap**[~~closure~~]**" means a**[~~combined~~]** measure of**[~~reducing~~]** the performance difference between student demographic groups to each other**[~~and to proficiency~~]** for reading and mathematics[~~each of the tested areas~~]. [~~(2) "Behavior events" are student infractions involving drugs, weapons, harassment including bullying, alcohol, tobacco, assault first degree, other assault or violence, and state resolutions not reported.~~

~~(3) "Catch up" means individual student performance below proficient grows enough to achieve proficiency or to be on track to become proficient.~~

~~(4) "Chronic absenteeism" means a student who misses ten (10) percent or more of his/her enrolled academic year~~].

(2)[~~(5)~~] "Comparison**[~~student~~]** group" means the student demographic group being contrasted to the reference group.**[~~(3)~~]**[~~(6)~~] **~~"Consolidated student groups" means a non-duplicated aggregation of student groups that includes: African American, Hispanic, Native Hawaiian or other Pacific Islander, American Indian or Alaska Native, two (2) or more races, students with disabilities who have an individual education program (IEP), and English learners.~~]**

(3)[~~(4)~~][~~(7)~~] "English learners" in the indicators of growth and transition readiness means students currently identified on an English language proficiency exam. For all other areas, it means students currently identified and those who continue to be monitored.[~~(8) "Essential skills" means the foundational abilities that include attendance, positive dispositions, and communication needed to successfully complete academic, workplace, or military responsibilities as demonstrated through a variety of co-curricular learning and leadership experiences.~~]

(4)[~~(5)~~][~~(9)~~] "Federal student group designation" means targeted support and improvement, and comprehensive support and improvement as provided in KRS 160.346.

(5)[~~(6)~~][~~(10)~~] "Federally defined student demographic groups" include White, African American, Hispanic, Asian, Native Hawaiian or other Pacific Islander, American Indian or Alaska Native, two (2) or more races, free/reduced-price meal eligible, students with disabilities who have an IEP, and English learners.

(6)[~~(7)~~][~~(11)~~] "Full academic year" means 100 or more instructional days of student enrollment within the school year.

(7)[(8)][(12)] "Graduation rate" means the percentage of students who enter high school and receive a diploma based on their cohort in four (4) and five (5) years, adjusting for transfers in and out, émigrés, and deceased students.

(8)[(9)][(13)] "Growth" means a student's continuous improvement toward proficiency or above.

(9)[(10)][(14)] "Indicator" means a component of the accountability system that provides specific information on the school or district.

(10)[(11)][(15)] "Individual education program" or "IEP" means an individual education program as defined in 707 KAR 1:002. [(16) "Keep up" means individual student performance at or above proficient that grows at a rate to maintain proficiency or above.

(17) "Less than catch up" means individual student performance below proficient and not on track to become proficient.]

(11)[(12)][(18)] "Local education agency" or "LEA" for the purposes of this administrative regulation shall mean a local school district as provided in KRS 161.010 and KRS 161.020 or a charter school board of directors as provided in KRS 161.1590. [(19) "Move up" means individual student performance at proficient that grows at a rate to be on track to become distinguished.

(20) "Opportunity and access" means equitable availability to research-based student experiences and school factors that impact student success.]

(12)[(13)][(21)] "Practical significance" means a measure of the differences between student groups has real meaning.

(13)[(14)][(22)]"Proficiency indicator" means the measure of academic status or performance for reading and mathematics on state assessments.

(14)[(15)] [(23)] "Proficient" or "proficiency" means reaching the desired level of knowledge and skills as measured on academic assessments.

(15)[(16)] "Quality of school climate and safety **indicator"** means the measures of school environment.

(16)[(17)][(24)] "Rating" means the process of inclusion of an indicator in the formal overall rating of the school or district.

(17)[(18)][(25)] "Reference group" means a student demographic group to which another group is contrasted to provide a benchmark for performance.

(18)[(19)][(26)] "Separate academic indicator for science, social studies, and writing" means the measure of academic status or performance for science, social studies, and writing on state assessments.

(19)[(20)][(27)] "Transition readiness" means the attainment of the necessary knowledge, skills, and dispositions to successfully transition to the next level.

(20)[(21)][(28)] "Value table" means a set of numbers that are used to attribute scores to different performance levels.[(29) "Work ethic certification" means a process by which a student demonstrates essential skills and workplace readiness.]

(21)[(22)][(30)]"Writing" means the content area that includes on-demand writing, and editing
and mechanics.

Section 2. Kentucky's accountability system that is used to classify schools and LEAs shall include the indicators of: proficiency; separate academic indicator for science, social studies, and writing; growth; transition readiness;**[achievement gap closure;]** quality of school climate and safety [opportunity and access]; and graduation rate. (1) The proficiency indicator shall be measured by student performance on state tests in reading and mathematics.

(2) A separate academic indicator shall be measured by student performance on state tests in science, social studies, and writing.

(3) The growth indicator shall be calculated at the elementary and middle school levels. The growth indicator shall be measured:

(a) Based on a growth value table in reading and mathematics; and

(b) Progress toward achieving English proficiency by English learners. **[(4) The achievement gap closure indicator shall be measured as follows:**

(a) Reducing the gap in performance between the following comparison groups and reference group in the combined content areas of reading and] [,] **[mathematics]** [, science, social studies, and writing]**[:**

1. African American, Hispanic, Asian, Native Hawaiian or other Pacific Islander, American Indian or Alaska Native, White, and two (2) or more races compared to the reference group, which shall be the highest of these;

2. Free and] [/] **[reduced-price meal eligible students compared to non-free and]** [/] **[reduced /reduced-price meal eligible students;**

3. Students with disabilities who have an IEP compared to students without IEPs; and

4. English learners compared to non-English learners.

(b) Reducing the gap to proficiency for the combined content areas of reading and] [,] **[mathematics]** [, science, social studies, and writing by the following groups]**[: White, African American, Hispanic, Asian, Native Hawaiian or other Pacific Islander, American Indian or Alaska Native, two (2) or more races, free and]** [/] **[reduced and]** [/] **[reduced-price meal eligible, students with disabilities who have an IEP, English learners, and a consolidated student group.]**

(4)[(5)] The quality of school climate and safety indicator **shall include perception data from surveys that measure insight to the school environment.**[The opportunity and access indicator shall be measured for rich curricula, equitable access, and school quality as follows:

(a) Elementary schools that provide all students opportunities and access to:

1. Rich curricula annually including:

a. Visual and performing arts;

b. Health and physical education;

c. Science; and

d. Social studies.

2. School quality as measured by a lack of student chronic absenteeism, behavior events, and physical restraint and seclusion.

3. Equitable access by federally defined student demographic groups in proportion to the school population to gifted and talented services excluding the primary talent pool.

(b) Middle schools that provide all students opportunities and access to:

1. Rich curricula annually including:

a. Visual and performing arts;

b. Health and physical education;

c. Science;

d. Social studies; and

e. Career exploration including career and technical education courses, other courses that focus on essential skills and co-curricular learning and leadership experiences.

2. School quality as indicated by a lack of student chronic absenteeism, behavior events, and physical restraint and seclusion.

3. Equitable access of federally defined student demographic groups in proportion to the school population to gifted and talented services.

(c) High schools that provide all students with opportunities and access to:

1. Rich curricula including:

a. Visual and performing arts;

b. Health and physical education;

c. Cultural studies or world language;

d. Career and technical education (CTE), including specialized career pathways in state and regional high demand sectors as approved by Kentucky's Workforce Innovation Board; and

e. Essential skills demonstrated as part of a work ethic certification.

2. School quality as indicated by a lack of student chronic absenteeism, behavior events, and restraint and seclusion.

3. Equitable access of federally defined student demographic groups to the following advanced coursework: advanced placement, international baccalaureate, Cambridge Advanced International, and dual credit.]

(5)[(6)] The transition readiness indicator shall be measured at high school for students meeting the following criteria:[~~(a) At the elementary and middle school level, students meet or exceed the benchmark on a composite score that combines student performance on state-required assessments for reading, mathematics, science, social studies, and writing. A composite score shall include the most recent content area assessment by grade level available for each school. Students participating in the alternate assessment program will have criteria based on alternate assessment requirements~~.

~~(b) At the high school level, students:~~]

(a)[~~1.~~] Earn a regular or alternative high school diploma; and

(b)[~~2.~~] Achieve academic readiness or career readiness.

1.[~~a.~~] A school shall receive credit for each student demonstrating academic readiness by:

a.[~~(i)~~] Scoring at or above the benchmark score as determined by the Council on Postsecondary Education (CPE) on the college admissions examination; or

b.[~~(ii)~~] Completing six (6)[~~or more~~] hours of Kentucky Department of Education approved dual credit and receiving a grade of C [~~B~~] or higher in each course; or

c.[~~(iii)~~] Completing two (2)[~~or more~~] advanced placement (AP) courses and receiving a score of three (3) or higher on each AP assessment; or

d.[~~(iv)~~] Receiving a score of five (5) or higher on two (2) examinations for international baccalaureate courses; or

e.[~~(v)~~] Scoring at or above the benchmark on two (2)[~~or more~~] Cambridge Advanced International examinations; or

f.[~~(vi)~~] Completing a combination of academic readiness indicators listed above.

g.[~~(vii)~~] Demonstration of academic readiness listed in paragraph **5[6]** (b)1[~~2.a.~~] of this section shall include one (1) quantitative reasoning or natural sciences and one (1) written or oral communication**;[**~~,~~**]** or **visual and performing** arts**; or[~~and~~]** humanities**;[**~~,~~**]** or social and behavioral sciences learning outcomes.

2.[~~b.~~] A school shall receive credit for each student demonstrating career readiness by:

a.[~~(i)~~] Scoring at or above the benchmark on industry certifications as approved by the Kentucky Workforce Innovation Board on an annual basis; or

b.[~~(ii)~~] Scoring at or above the benchmark on the career and technical education end-of-program assessment for articulated credit; or

c.[~~(iii)~~] Completing six (6)[~~or more~~] hours of Kentucky Department of Education approved CTE dual credit, and receiving a grade of C[~~B~~] or higher in each course; or

d.[~~(iv)~~] Completing a Kentucky Department of Education approved or labor cabinet-approved apprenticeship; or

e.[~~(v)~~] Completing a Kentucky Department of Education approved alternate process to verify exceptional work experience.

3.[~~c.~~] For students who qualify as English learners in high school: Meeting criteria for English language proficiency to be English language ready.

4.[~~d.~~] Students participating in the alternate assessment program shall meet criteria based on academic or career alternate assessment requirements.

(6)[(7)] The graduation rate indicator shall be measured for each high school using the four (4)-year and extended five (5)-year cohort rate. The graduation rate shall be reported for all students and student groups.

Section 3. Classification of Schools and LEAs in the State Accountability System. (1) Data shall be included in the overall rating for schools and LEAs for the following indicators:

(a) Proficiency (reading and mathematics);

(b) Separate academic indicator (science, social studies, and writing);

(c) Growth (elementary and middle school);

(d) Transition readiness (high school); **[(e) ~~Achievement gap closure;~~]**

(e)[(f)] Quality of school climate and safety[~~Opportunity and access (school quality/student success)~~]; and

(f)[(g)] Graduation rate (high school).

(2) Data from individual student performance on state assessments administered as required in KRS 158.6451 and KRS 158.6453 shall be included in the overall rating of each school and LEA. This data shall include students with disabilities with IEPs who participate in the alternate assessment program.

(3) Data in the overall rating shall be attributed to grade level spans for schools and LEA as established in this subsection.

(a) Elementary schools shall include data from: proficiency; separate academic indicator for science, social studies, and writing; growth;**[~~achievement gap closure;~~]** quality of school climate and safety[~~transition readiness; opportunity and access~~]; and federal student group designation.

(b) Middle schools shall include data from: proficiency; separate academic indicator for science, social studies, and writing; growth; **[~~achievement gap closure;~~]** quality of school climate and safety [~~transition readiness; opportunity and access~~]; and federal student group designation.

(c) High schools shall include data from: proficiency; separate academic indicator for science, social studies, and writing; **[~~achievement gap closure;~~]** transition readiness; graduation rate; quality of school climate and safety [~~opportunity and access;~~] and federal student group designation.

(d) LEAs shall include data from: school proficiency; separate academic indicator for science, social studies, and writing, growth; **[~~achievement gap closure;~~]** transition readiness; graduation rate; and quality of school climate and safety[~~opportunity and access~~].

Section 4. Calculations for Reporting Categories. (1) Proficiency for reading and mathematics shall be rated equally in elementary, middle and high schools and LEAs by awarding points as described in paragraph 2(b) of this section.

(2) The separate academic indicator for science, social studies, and writing shall be rated in elementary, middle and high schools**,** and in LEAs by awarding points as described in paragraph 2(b) of this section. The highest proportion shall be attributed to science and social studies.

(a) For any content area (reading, mathematics, science, social studies, and writing) where data are not available, the data of the remaining content areas shall be redistributed proportionally across proficiency and separate academic indicator.

(b) The following chart shall be used to calculate the points for proficiency and the separate academic indicator:

Proficiency Levels	Points Awarded for Each Percent of Students
Novice	0
Apprentice	.5
Proficient	1
Distinguished	1.25

[~~(3) The achievement gap closure indicator that includes gap to group and gap to proficiency shall be calculated as established in this subsection.~~

~~(a) School achievement gap closure between student demographic comparison groups and reference groups shall be determined by:~~

~~1. Determining the student demographic groups to be included in this subsection, which shall include the following student demographic groups that have at least ten (10) students: African American, Hispanic, Asian, Native Hawaiian or other Pacific Islander, American Indian or Alaska Native, two (2) or more races, and White.~~

~~a. Comparing African American, Hispanic, Asian, Native Hawaiian or other Pacific Islander, American Indian or Alaska Native, two (2) or more races, and White to a reference group. The reference group shall be the highest performing racial~~] [~~/~~] **~~[ethnic student group that has at least ten (10) students and constitutes at least ten (10) percent of the students enrolled in the school;~~**

~~b. Free/reduced-price meal eligible students compared to non-free/reduced-price meal eligible students;~~

~~c. Students with disabilities who have an IEP compared to students without IEPs; and~~

~~d. English learners compared to non-English learner~~

~~students.~~

~~2. Combining scores for reading and mathematics~~] [~~each tested~~] **[~~content area assessment using points in accordance with paragraph 2(b) of Section 4 of this administrative regulation for each student demographic group.~~**

~~3. Using a statistical analysis for each pair of comparison-reference groups, the department shall determine if a significant gap has been sufficiently reduced between the comparison group and reference group and is both statistically and practically significant. If so, the gap closure for the student demographic group will be considered "significant" and the school will receive one (1) gap closure point. If the gap between groups is not significantly reduced, the gap will be considered "not significant" and the school will receive zero gap closure points.~~

~~(b) School achievement gap closure between student demographic groups and proficiency shall be determined as follows:~~

~~1. Determine which student demographic groups have at least ten (10) students that are to be included in this subsection. Student demographic groups included in the subsection shall include:~~

~~a. White;~~

~~b. African American;~~

~~c. Hispanic or Latino;~~

~~d. Asian;~~

~~e. Native Hawaiian or other Pacific Islander;~~

~~f. American Indian or Alaska Native;~~

~~g. Two (2) or more races~~] [*/*] [~~ethnicities;~~

~~h. Students in poverty based on eligibility for free and~~] [*/*] **[~~reduced-price meals;~~**

~~i. Students with disabilities who have an IEP;~~

~~j. English learners; and~~

~~k. A consolidated student group.~~

~~2. Combining scores for reading and mathematics~~] [~~all~~] **[~~content area assessments into an index using points in accordance with paragraph 2(b) of Section 4 of this administrative regulation for each student demographic group.~~**

~~3. Compare the index to the current year's annual target developed by the Kentucky Department of Education for each student demographic group in the combined content areas of reading and~~] [~~,~~] **[~~mathematics~~]** [~~, science, social studies, and writing~~]**[~~,~~**

~~4. If the current year index is equal to or greater than the current year's annual target for each student demographic group in the combined content areas of reading and~~] [~~,~~] **[~~mathematics~~]**[~~, science, social studies, and writing~~]**[~~, the student demographic group gap shall be considered "reduced" and the school shall receive two (2) gap closure points.~~**

~~5. If the current year index is equal to or greater than the current year's annual target for each student demographic group in the combined content areas of reading and~~] [~~,~~] **[~~mathematics~~]**[~~, science, social studies, and writing~~] **[~~minus a sufficient percentage point, the student demographic group gap is considered "partially reduced" and the school shall receive one (1) gap closure point.~~**

~~6. If the current year index is less than the current year's annual target for each student demographic group in the combined content areas of reading and~~] [~~,~~] **[~~mathematics~~]**[~~, science, social studies, and writing~~] **[~~minus a sufficient percentage point, the student demographic group gap is considered "not reduced" and the school shall receive zero gap closure points.~~**

~~(c) Sum the total achievement gap closure points across all student demographic groups and divide by the number of student demographic groups for gap to group and gap to proficiency.~~

~~(d) Based on total achievement gap closure points, the Kentucky Department of Education shall conduct a standards setting process involving Kentucky educators and advised by technical experts shall place the school and LEA into categories of very low, low, medium, high, or very high.~~

~~(e) Each student demographic group shall have a minimum of ten (10) students per content area in the school or LEA in order to include gap data in accountability.~~][~~(f) In calculating the achievement gap closure indicator, the reduction of achievement gap between student demographic groups shall be weighted thirty-three (33) percent and the reduction of the gap to proficiency shall be weighted sixty-seven (67) percent.~~]

(3)[~~(4)~~] Growth shall be rated for elementary and middle schools as established in this subsection.

(a) Novice and apprentice performance levels for growth calculations shall be subdivided into novice high, novice low; and apprentice high, apprentice low. [~~(b) Based on prior and current year performance, points for student performance level shall be assigned from a growth value table based on a projection of student performance and reported using the following terms: less than catch up, catch up, keep up, and move up.~~]

(b)[~~(c)~~] The school calculation for mathematics shall be the sum of the total points from the growth value table for all students divided by the total number of scores.

(c)[~~(d)~~] The values in the growth value table below shall be used in calculating growth in this subsection.

Growth Value Table (Points for student performance in Year 2, given Performance in Year 1)						
[~~Projected~~]	Novice		Apprentice		Proficient	Distinguished
[~~Current~~] Year 1 Student Performance	Low	High	Low	High		
Distinguished	0 [~~-1.50 (L)~~]	0 [~~-1.25 (L)~~]	0 [~~-1.00 (L)~~]	0 [~~-0.75 (L)~~]	0 [~~0.00 (K)~~]	50 [~~0.25 (K)~~]
Proficient	0 [~~-1.00 (L)~~]	0 [~~-0.75 (L)~~]	0 [~~-0.50 (L)~~]	0 [~~-0.25 (L)~~]	50 [~~0.25 (K)~~]	100 [~~0.50 (M)~~]
Apprentice High	0 [~~-0.75 (L)~~]	0 [~~-0.50 (L)~~]	0 [~~-0.25 (L)~~]	50 [~~0 (L)~~]	100 [~~0.25 (C)~~]	150 [~~0.75 (M)~~]
Apprentice Low	0 [~~-0.50 (L)~~]	0 [~~-0.25 (L)~~]	50 [~~0 (L)~~]	100 [~~0.25 (L)~~]	150 [~~0.50 (C)~~]	200 [~~1.00 (M)~~]
Novice High	0 [~~-0.25 (L)~~]	50 [~~0 (L)~~]	100 [~~0.25 (L)~~]	150 [~~0.50 (C)~~]	200 [~~0.75 (C)~~]	250 [~~1.25 (M)~~]
Novice Low	0 [~~(L)~~]	100 [~~0.25 (L)~~]	150 [~~0.50 (C)~~]	200 [~~0.75 (C)~~]	250 [~~1.00 (C)~~]	300 [~~1.50 (M)~~]

[~~Less than Catch Up (L)~~]

[~~Moving Up (M)~~]

[~~Catching Up (C)~~]

[~~Keeping Up (K)~~]

(d)[~~(e)~~] The school calculation for reading shall be the sum of the total points for all students from the growth value table plus growth for English language proficiency as described in Section 4**(3)(e)[~~(4)(f)~~]**[~~(g)~~] of this administrative regulation divided by the total number of scores.

(e)[~~(f)~~] Progress toward achieving English proficiency by English learners shall be calculated as follows:

1. Individual growth shall be compared to prior year performance on an English proficiency exam.

2. The exit benchmark and English learner growth value table created involving Kentucky educators and advised by technical experts shall be utilized.

3. Points for each English learner based on the English learner growth value table shall be summed.

a. Depending on further analysis, Kentucky may modify the value table and its use to reflect factors that may impact English learners' progress toward language proficiency, including age upon

entry to U.S. schools, initial English language proficiency level, and degree of interrupted schooling.

b. The values in the growth value table below shall be used in calculating growth in this subsection.

WIDA ACCESS score previous year	WIDA ACCESS score current year							
	1	1.5	2.0	2.5	3.0	3.5	4.0	4.5
4.0	0 [-1.5]	0 [-1.25]	0 [-1.0]	0 [-.75]	0 [-.50]	0 [-.25]	50 [0]	100 [.25]
3.5	0 [-1.25]	0 [-1.0]	0 [-.75]	0 [-.50]	0 [-.25]	50 [0]	100 [.25]	150 [.5]
3.0	0 [-1.0]	0 [-.75]	0 [-.50]	0 [-.25]	50 [0]	100 [.25]	150 [.50]	200 [.75]
2.5	0 [-.75]	0 [-.50]	0 [-.25]	50 [0]	100 [.25]	150 [.50]	200 [.75]	250 [1.0]
2.0	0 [-.50]	0 [-.25]	50 [0]	100 [.25]	150 [.50]	200 [.75]	250 [1.0]	300 [1.25]
1.5	0 [-.25]	50 [0]	100 [.25]	150 [.50]	200 [.75]	250 [1.0]	300 [1.25]	300 [1.5]
1.0	0	100 [.25]	150 [.50]	200 [.75]	250 [1.0]	300 [1.25]	300 [1.5]	300 [1.5]

4. Total points for English learners shall be added to the sum of the reading growth points for all students in reading as described in Section 4**(3)(e)[(4)(f)]**[(g)] of this administrative regulation.

(f)[(g)] For an overall school growth score, an average of reading scores that includes growth for English learners on an English proficiency exam and mathematics growth scores shall be calculated.

(4)[(5)] The quality of school climate and safety[opportunity and access] indicator shall be rated for elementary, middle, high schools, and LEAs as established in this subsection.[(a) Opportunity and access school calculation shall sum the total number of points for the categories for rich curricula, equitable access, and school quality based on data collected from Kentucky's student information system and other statewide systems for individual students.] **[(a)]**[(b)] The Kentucky Board of Education shall approve the measures of **quality of** school climate and safety[opportunity and access]**[including the accumulation of credit]**. **[(b)]**[(c)] **[A standard setting process shall be conducted involving Kentucky educators and advised by technical experts to determine very low to very high performance levels][within quality of school climate and safety]**[opportunity and access]**[.]**

(5)[(6)] Transition readiness shall be[rated as established by this subsection.

(a) A transition readiness percentage shall be] calculated by dividing the number of high school graduates who have met measures of transition readiness plus the number of English learners who have achieved English language proficiency by the total number of graduates plus the number of graduates who have received English language services during high school. Credit for students obtaining an industry-recognized certification, licensure, or credential in specialized career pathways in state and regional high demand sectors as approved by Kentucky's Workforce Innovation Board is one and one-quarter (1.25) points. Credit for students obtaining all other readiness indicators is one (1.0) point. [(b) A transition readiness percentage shall be calculated for elementary and middle schools by dividing the number of students who have met a benchmark on a composite score that combines student performance on state-required tests in reading, mathematics, science, social studies, and writing for transition readiness by the total number of accountable students.]

(6)[(7)] Graduation rate is the percentage of students completing the requirements for a Kentucky high school diploma compared to the cohort of students beginning in grade nine. **The accountability system[Kentucky]** shall include a four (4) year cohort rate and an extended five (5) year cohort rate. Each rate shall be weighted equally.

(7)[(8)] The overall rating shall be assigned as follows:

(a) The indicators for each school and LEA as identified in Section 3 of this administrative regulation shall contribute to the overall rating of schools and LEAs.

(b) Indicators identified in Section 3 shall have a rating of very low, low, medium, high, or very high by school and LEA level.

(c) A standard setting process shall be conducted involving Kentucky educators and advised by technical experts to determine very low to very high performance levels for each indicator including proficiency, separate academic indicator, growth, transition readiness, graduation rate, and quality of school climate and safety.[(9) An overall rating based upon performance on the set of indicators for elementary and middle schools, high schools, and LEAs shall be assigned during a standards setting process. The tables below illustrate some of the combinations of performance for each star rating:]

(8)[(a) Overall ratings] **An overall star rating for elementary, middle, and high schools** shall be reported using a five (5) star rating system to communicate performance of schools,**[LEAs, and the state]** with one (1) star being the lowest rating and five (5) stars being the highest rating. **Performance of schools, LEAs, and state will be reported by level (elementary, middle, and high) as applicable. The School Report Card shall display the star ratings earned for each school, LEA, and state (by level) and the total five (5) stars available.**

[Elementary/Middle Schools								
Overall Rating	**Proficiency (Reading & Mathematics)**	**Separate Academic Indicator (Science, Social Studies, and Writing)**	**Growth (including English Language Learners)**	**Achievement Gap Closure**	**Quality of School Climate and Safety [Opportunity & Access]**	**[Transition Readiness (Composite scores at grades 5 and 8)]**	**Federal Student Group Designation**	**Notes**
	Note: Standard setting will confirm level of indicator performance necessary for the Star ratings.							**Can receive no higher than a 3-Star rating if Achievement Gap Closure is "Low (L)," "Very Low (VL)" or if identified for**
5 Stars	**Very High High**	**Very High High**	**Very High Low**	**Very High High**	**Very High High**	**[Very High High]**	**No designation**	
4 Stars	**Any 5-star combination except Achievement Gap Closure is Medium**						**No**	

	One Medium, three [four] High Two [Three] Medium, two High	[High Medium]	designation	Targeted Support and Improvement (TSI).
3 Stars	Any 4- or 5-Star combination except Achievement Gap Closure is Low Or Any 4- or 5-Star combination		No designation TSI	*Schools identified for Comprehensive Support and Improvement (CSI) are classified with a 1 Star rating.
	Three [Four] Medium, one High Three [Four] Medium, one Low	[High Medium High Low]	No designation or TSI	
2 Stars	Two [Three] Medium, two Low One Medium, three [four] Low	[Medium Low]	No designation or TSI	
1 Star	Five [Six Low] or Very Low Or bottom 5%*		CSI or TSI]	

[High Schools								
Overall Rating	Proficiency (Reading & Mathematics)	Separate Academic Indicator (Science, Social Studies, & Writing)	Other Academic Indicator Transition Readiness (including English Language Learners)	Achieve-ment Gap Closure	Quality of School Climate and Safety [Oppor-tunity & Access]	Graduation Rate	Federal Student Group Designation	Notes
	Note: Standard setting will confirm level of indicator performance necessary for the Star ratings.							Can receive no higher than a 3-Star rating if Achievement Gap Closure is "Low (L)," "Very Low (VL)" or if identified for Targeted Support and Improvement (TSI).
5 Stars	Very High High	Very High High	Very High High	Very High High	Very High Very High	Very High Very High	No designation	
4 Stars	Any 5-star combination except Achievement Gap Closure is Medium						No designation	
	One Medium, four High Three Medium, two High					High Medium	No designation	
3 Stars	Any 4- or 5-Star combination except Achievement Gap Closure is Low Or Any 4- or 5-Star combination						No designation TSI	*Schools identified for Comprehensive Support and Improvement (CSI) are classified with a 1 Star rating.
	Four Medium, one High Four Medium, one Low					High Medium High Low	No designation or TSI	
2 Stars	Three Medium, two Low One Medium, four Low					Medium Low	No designation or TSI	
1 Star	Six Low or Very Low Or bottom 5%*						CSI or TSI]	

[LEA								
Overall Rating	Proficiency (Reading & Mathematics)	Separate Academic Indicator (Science, Social Studies, & Writing)	Growth (including English Language Learners)	Achieve-ment Gap Closure	Quality of School Climate and Safety [Opportunity & Access]	Transition Readiness [(Composite at grades 5 and 8,] (High school includes English language learners)	Graduation Rate (4 and 5 year cohort)	Notes
–	Note: Standard setting will confirm level of indicator performance necessary for the Star ratings.							Can receive no higher than a 3-Star rating if Achievement Gap Closure is "Low (L)," "Very Low (VL)"
5 Stars	Very High High	Very High High	Very High Low	Very High High	Very High Very High	Very High High	Very High High	
4 Stars	Any 5-star combination except Achievement Gap Closure is Medium							

	~~One Medium, five High~~ ~~Three Medium, three High~~	~~High Medium~~	~~or there is a significant number of schools identified as CSI or TSI.~~
~~3 Stars~~	~~Any 4- or 5-Star combination except Achievement Gap Closure is Low~~ ~~Or Any 4- or 5-Star combination~~	~~High Medium~~	
	~~Five Medium, one High~~ ~~Five Medium, one Low~~	~~High Low~~	
~~2 Stars~~	~~Four Medium, two Low~~ ~~Two Medium, four Low~~	~~Medium Low~~	
~~1 Star~~	~~Six Low or Very Low~~	~~Low~~]	

(a)[~~(b)~~] Each star rating reflects **grade span**[~~a combination of school~~] performance on **the indicators and weights in the table below**.[~~The range of performance in the tables elementary, [/] middle schools, high schools and LEAs as shown below indicate the upper bound and the lower bound of performance described as very low, low, medium, high, and very high.~~]

Overall Accountability Weights						
	Proficiency (Reading and Mathematics)	**Separate Academic Indicator (Science, Social Studies, and Writing)**	**Growth (including English Language Learners)**	**Quality of School Climate and Safety**	**Transition Readiness (High school includes English language) learners)**	**Graduation Rate (4 and 5 year cohort)**
Elementary/ Middle Schools	**35**	**26**	**35**	**4**	**--**	**---**
High Schools	**45**	**15**	**---**	**4**	**30**	**6**

[~~(c) The relationship between each category and the approximate weight of proficiency, a separate academic indicator for science, social studies, and writing, achievement gap closure, growth, transition readiness, quality of school climate and safety~~] [~~opportunity and access~~][~~, and graduation rate shall be included in the overall rating.~~]

(b)[~~(d) The individual indicators and the overall rating shall be developed through a standard setting process involving Kentucky educators and advised by technical experts.~~] **The performance on indicators that contribute to the overall star ratings shall be determined by a standards setting process involving Kentucky educators.**[~~During the standard setting process, the approximate weights in the following table shall be considered. The proposed ranges in the table indicate the relative emphasis between indicators. The ranges are set to guide Kentucky educators to determine the combination of performance from very high to very low within the indicator during standard setting.~~

~~Overall Accountability Weights~~							
	~~Proficiency (Reading and Mathematics)~~	~~Separate Academic Indicator (Science, Social Studies, and Writing)~~	~~Growth (including English Language Learners)~~	~~Achievement Gap Closure~~	~~Quality of School Climate and Safety [Opportunity & Access]~~	~~Transition Readiness [(Composite at grades 5 & 8)] (High school includes English language) learners)~~	~~Graduation Rate (4 and 5 year cohort)~~
~~Elementary/ Middle Schools~~	~~15-25~~	~~15-25~~	~~20-30~~	~~15-25~~	~~10-20~~	~~---- [5-10]~~	~~---~~
~~High Schools~~	~~10-40~~	~~10-20~~	~~---~~	~~10-25~~	~~10-20~~	~~15-30~~	~~5-15~~
~~Districts~~	~~10-20~~	~~10-20~~	~~10-20~~	~~10-20~~	~~10-20~~	~~10-20~~	~~5-15~~

[~~(e) A school shall receive a federal student group designation for statistically significant achievement gaps or low-performing students and shall not be rated above three (3) stars.~~]

(c)[~~(f)~~] **If achievement gaps are found in schools and LEAs earning a four (4) or five (5) star rating, the star rating will be reduced by one (1) star.**

1. Achievement gap shall be calculated between student demographic comparison groups and reference groups for reading and mathematics combined by:

a. Determining the student demographic groups to be included in this subsection, which shall include the following student demographic groups that have at least ten (10) students: African American, Hispanic, Asian, Native Hawaiian or other Pacific Islander, American Indian or Alaska Native, two (2) or more races, and White.

(i) Comparing African American, Hispanic, Asian, Native Hawaiian or other Pacific Islander, American Indian or Alaska Native, two (2) or more races, and White to a reference group. The reference group shall be the highest performing racial and ethnic student group that has at least ten (10) students and constitutes at least ten (10) percent of the students enrolled in the school;

(ii) Free and reduced price meal eligible students compared to non-free and reduced price meal eligible students;

(iii) Students with disabilities who have an IEP compared to students without IEPs; and

(iv) English learners compared to non-English learner students.

b. Using a statistical analysis for each pair of comparison and reference groups, the department shall determine if a gap between the comparison group and reference group is both statistically and practically significant.[~~Schools and LEAs shall not be rated above three (3) stars if they:~~

~~1. Have an achievement gap closure indicator of low (L) or very low (VL), or~~

~~2. Are identified for targeted support and improvement (TSI), or~~

~~3. Have statistically significant achievement gaps.~~]

(d)[~~(g)~~] Kentucky will identify schools to determine bottom five (5) percent and ten (10) percent based on the indicators of the

(five) 5-star system.

(e)[(h)] If data cannot be calculated for an indicator, the weights shall be redistributed proportionally to remaining indicators that shall be reported for the school or LEA.

(9) [(10)] School accountability indicators shall be assigned as follows:

(a) Students enrolled for a full academic year shall be included in the calculations for proficiency, a separate academic indicator for science, social studies, and writing,**[achievement gap closure]**, growth, quality of school climate and safety, and transition readiness for a school and LEA.[(b) Opportunity and access calculations shall be based on the students' enrollment.]

(b)[(c)] Graduation rate calculations shall be based on the students' final enrollment.

(c)[(d)] Student demographic groups shall have a minimum of ten (10) students to be included in school rating calculations.

(d)[(e)] In accordance with KRS 158.6455, schools and districts shall be placed into one (1) of five (5) star ratings established by a standards-setting process utilizing results from the first operational administration of assessments in 2018-19. The process shall:

1. Be advised by the National Technical Advisory Panel on Assessment and Accountability; the School Curriculum, Assessment and Accountability Council; and the Office of Education Accountability; and

2. Use accepted technical procedures and involve Kentucky school and district administrators and teachers.

Section 5. Public reporting requirements. (1) The Kentucky Department of Education shall report disaggregated data for each indicator of the state assessment and accountability system.

(2) Progress on long-term and interim goals shall be reported publicly as required by the federal Every Student Succeeds Act. Goals shall be developed for every student group, including all students, for academic achievement in each content area of reading, mathematics, science, social studies, and writing, and the content areas combined; graduation rate based on four (4) year and five (5) year adjusted cohorts; and progress on English proficiency for English learners.

(3) The goal for academic achievement operationalizes both the improvement of proficient and distinguished performance for all students and each student group and the reduction of gaps in student group performance by fifty (50) percent by 2030. Each student group of ten (10) or more students shall be compared to the reference group of the highest performing student group that is at least ten (10) percent of the student population.

(4) Goals for graduation rate shall be generated for a four (4) year adjusted cohort to ninety-five (95) percent for all students and an extended five (5) year cohort to ninety-six (96) percent for all students. The goal for progress on English language proficiency shall be based on the percent of students making progress toward attainment of the English language.

(5) Performance levels of each indicator (proficiency for reading and mathematics, a separate academic indicator for science, social studies, and writing, growth, transition readiness, quality of school climate and safety, and graduation rate) from very low to very high on each indicator will be determined by Kentucky educators with a standards setting process.

(6) Federal designations and statistically and practically significant achievement gaps will be reported for each school, LEA, and state.

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: February 14, 2019

FILED WITH LRC: February 15, 2019 at 10 a.m.

CONTACT PERSON: Deanna L. 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 administrative regulation establishes state accountability requirements for Kentucky's public local education agencies (LEAs) and schools.

(b) The necessity of this administrative regulation: KRS 158.6453 requires the Kentucky Board of Education to create and implement a balanced statewide assessment program that measures the achievement of students, schools and districts, complies with the federal Every Student Succeeds Act of 2015, 20 U.S.C. secs. 6301 et seq., or its successor, and ensures accountability.

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation provides specific details for establishing the indicators and measures of the state-required accountability system for Kentucky public LEAs and schools.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides specific details for establishing the statewide accountability program that rates LEAs and schools based on performance of multiple indicators: proficiency (reading and mathematics), separate academic indicator (science, social studies and writing), growth (elementary and middle schools only), graduation rate (high school only), transition readiness, and quality of school climate and safety. The multiple indicators incorporate the student test results and school quality measures. The regulations complies with state statute and the federal Every Student Succeeds Act of 2015, 20 U.S.C. secs. 6301 et seq., or its successor, and ensures accountability.

(2) If 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 establishes state accountability requirements for Kentucky's public local education agencies (LEAs) and schools. The amendments to this regulation will change certain accountability indicators and measures in the system. The amendments will change the letter grade requirement for dual credit in Transition Readiness at the high school from a "B" to a "C", and eliminate the Transition Readiness Indicator at the elementary and middle school levels. In addition, the way growth is measured will be changed at the elementary and middle school levels. The projection of growth has been removed and new value tables for both Growth and English Learners is included in the amendments. Another amendment to the regulation involves simplifying Achievement Gap Closure and focusing on reading and mathematics instead of all content areas and how it will be calculated. In addition, Achievement Gap will be measured by Gap to Group instead of both Gap to Group and Gap to Proficiency. The last amendment will remove the Opportunity and Access Indicator and remove all those measures. The agency will add a Quality of School Climate and Safety Indicator that will be based on surveys that will be added to the state accountability system.

(b) The necessity of the amendment to this administrative regulation: After feedback from first year implementation of the accountability indicators from review of federal and state law and comments from various stakeholders, additional regulatory changes are proposed to simplify the accountability system and to continue complying with legal requirements.

(c) How the amendment conforms to the content of the authorizing statute: This administrative regulation provides specific details for establishing the indicators and measures of the state-required accountability system for Kentucky public LEAs and schools.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation provides specific details for establishing the statewide accountability program that rates LEAs and schools based on performance of multiple indicators: proficiency

(reading and mathematics), separate academic indicator (science, social studies and writing), growth (elementary and middle schools only), graduation rate (high school only), transition readiness, and quality of school climate and safety. The multiple indicators incorporate the student test results and school quality measures. The regulations amendments complies with state statute and the federal Every Student Succeeds Act of 2015, 20 U.S.C. secs. 6301 et seq., or its successor, and ensures accountability.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All public LEAs and schools in Kentucky with schools grade 3 or higher and supporting staff in the Kentucky Department of Education (KDE).

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

(a) List 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, LEAs and schools shall implement the specific details of the assessment and accountability system. The regulation defines the indicators and measures to be included in the accountability system used to evaluate and rate the performance of Kentucky's public LEAs and schools. The system is a multi-dimensional model that uses student- and school-based data to differentiate performance. The Kentucky Department of Education implements and manages the accountability system, as established and promulgated in regulation by the Kentucky Board of Education. LEAs and schools implement the required assessments and processes that generate data reported annually in the accountability system. The data reported help schools and districts improve student achievement and growth, close the achievement gap among groups, ensure students are ready to transition to the next step of education or life, and provide quality school climate and safety for students.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The accountability system requires no additional direct costs to the LEAs and schools. LEA's and schools may choose to implement new programs or services in response to the new accountability system that may result in additional costs for LEA's and schools, however, this would be a locally determined decision. KDE anticipates additional indirect cost to implement new accountability system. Additional costs are expected to implement new assessments and reporting requirements codified in Senate Bill 1 (2017 Kentucky General Assembly).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The accountability system has several key goals: promote higher levels of student learning and achievement, reduce achievement gaps and ensure equity, establish opportunity and access for students to receive a quality education, build a culture of high expectation and continuous improvement, and communicate a clear and honest understanding of strengths and opportunities for improvement in LEAs and schools.

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

(a) Initially: The transition to the new accountability system will require KDE to implement activities such as standard setting, additional staff time, and the support of experts, each with associated costs. The accountability system requires no additional cost to the LEAs and schools. KDE anticipates additional costs to implement new assessments and reporting requirements codified in Senate Bill 1 (2017 Kentucky General Assembly). The results of these assessments are used to rate schools in the accountability system established by this regulation.

(b) On a continuing basis: Senate Bill 1 requires continual reviews of standards and assessments. There will be ongoing costs to implement new assessments and meet reporting requirements, particularly the release of some assessment items annually. These activities directly support the accountability system established in this regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State general 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: No increased fees or funding are anticipated as a result of this regulation, however activities related to this regulation as required by SB 1 (2017) may require additional funding as described above.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: Regulation does not establish or increase fees.

(9) TIERING: Is tiering applied? (Explain why or why not) Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all schools and LEAs.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Public Local Education Agencies (LEAs) and schools.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 158.6453; 158.6455; 20 U.S.C. secs. 6301 et seq.

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

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

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

(c) How much will it cost to administer this program for the first year? The transition to the new accountability system will require the Kentucky Department of Education (KDE) to implement activities such as standard setting, additional staff time, and the support of experts, each with associated costs. The accountability system requires no additional cost to the LEAs and schools. KDE anticipates additional costs to implement new assessments and reporting requirements codified in Senate Bill 1 (2017 Kentucky General Assembly). The results of these assessments are used to rate schools in the accountability system established by this regulation.

(d) How much will it cost to administer this program for subsequent years? Senate Bill 1 requires continual reviews of standards and assessments. There will be ongoing costs to implement new assessments and meet reporting requirements, particularly the release of some assessment items annually. These activities directly support the accountability system established in this 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 (+/-):The transition to the new accountability system will require KDE to implement activities such as standard setting, additional staff time, and the support of experts, each with associated costs. The accountability system requires no additional cost to the LEAs and schools. KDE anticipates additional costs to implement new assessments and reporting requirements codified in Senate Bill 1 (2017 Kentucky General Assembly). The results of these assessments are used to rate schools in the accountability system. Senate Bill 1 requires continual reviews of standards and assessments. There will be ongoing costs to implement new assessments and meet reporting requirements, particularly the release of some assessment items annually. These activities directly support the accountability system established in this regulation.

Other Explanation: N/A

PUBLIC PROTECTION CABINET
Department of Insurance
(Amended After Comments)

806 KAR 10:030. Surplus lines reporting[~~requirement for broker's statement~~] and[~~surplus lines~~] tax payment structure.

RELATES TO: KRS 304.1-070, 304.10-030, 304.10-050, 304.10-170, 304.10-180, 304.99-085

STATUTORY AUTHORITY: KRS 304.2-110, 304.10-050, 304.10-170, 304.10-210, [~~EO 2009-535~~]

NECESSITY, FUNCTION, AND CONFORMITY:[~~EO 2009-535, signed June 12, 2009, created the Department of Insurance, headed by the Commissioner of Insurance.~~] KRS 304.2-110 authorizes the commissioner[~~Executive Director of Insurance~~] to make reasonable rules and administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code[~~, as defined in KRS 304.1-010~~]. KRS 304.10-050 requires a surplus lines broker to file an affidavit setting forth facts from which it can be determined whether such insurance was eligible for export under KRS 304.10-040. KRS 304.10-170 requires the commissioner[~~executive director~~] to prescribe the form of the verified statement of all surplus lines transactions for a preceding calendar quarter. KRS 340.10-210 requires the commissioner[~~executive director~~] to promulgate administrative regulations to effectuate the surplus lines law. This administrative regulation provides for the reporting procedures to be used by surplus lines brokers for the reporting and payment of surplus lines tax pursuant to[~~in accordance with~~] KRS 304.10-170 and 304.10-180.

Section 1. Affidavit Reporting[~~Definitions~~].

(1) A licensed surplus broker shall file an affidavit of eligibility for export with the department within fifteen (15) days after the **invoice date or** effective date of each premium bearing surplus lines transaction, **whichever occurs later**[~~"Alien insurer" is defined in KRS 304.1-070(3)~~].

(2) The affidavit shall be filed electronically through the department of insurance secure website, http://insurance.ky.gov/kentucky/secured/Eservices/default.aspx.

[~~"Broker" or "surplus lines broker" is defined in KRS 304.10-030(1).~~

~~(3) "Commissioner" means the Commissioner of the Department of Insurance.~~

~~(4) "Department" means the Department of Insurance.~~

~~(5) "Export" is defined in KRS 304.10-030(2).~~

~~(6) "Foreign insurer" is defined in KRS 304.1-070(2).~~

~~(7) "Premium charged" means the premium billed and collected during the preceding calendar quarter.~~]

Section 2. Quarterly Reporting and Payment of Surplus Lines Premium Taxes for Insurance Transactions.

(1) The department shall generate a quarterly report of all surplus lines transactions **reported in[~~for~~]** a preceding calendar quarter, for each surplus lines broker based on the affidavits filed in accordance with section 1 of this administrative regulation[~~806 KAR 10:050~~].

(2) The department shall make the quarterly report available to a licensed surplus lines broker on its secure website[~~Web site~~], https://insurance.ky.gov/kentucky/secured/Eservices/default.aspx, thirty (30) [~~at least sixty (60)~~] days following the end of each calendar quarter.

(3) Each licensed surplus lines broker shall:

(a) Reconcile the surplus lines taxes owed on the quarterly report with the broker's own records;[~~Retrieve his or her quarterly report from the department's secure Web site, http://insurance.ky.gov/kentucky/secured/Eservices/default.aspx; and~~]

(b) Notify the department of any discrepancy in surplus lines taxes owed; and

(c) Pay all[~~Remit a signed copy of the quarterly report, along with the~~] surplus lines premium tax and any applicable penalties owed pursuant to[~~in accordance with~~] KRS 304.99-085[~~,~~] within thirty (30) days of the date of the quarterly report[~~end of each calendar quarter~~].

(4) Surplus lines premium tax shall be:

(a) Computed at the rate of three (3) percent on the premiums, assessments, fees, charges, or other consideration deemed part of the premium as shown on the quarterly report;

(b) Payable to the Kentucky State Treasurer; and

(c) Remitted to the Kentucky Department of Insurance[~~,~~] electronically through the department's secure website, http://insurance.ky.gov/kentucky/secured/Eservices/default.aspx[~~along with the quarterly report, within thirty (30) days of the end of each calendar quarter for all surplus lines transactions during the preceding calendar quarter~~].

(5) Agencies paying a surplus lines premium tax on behalf of a broker shall submit payment electronically through the broker's Eservices account using the department's secure website, http://insurance.ky.gov/kentucky/secured/Eservices/default.aspx[~~The quarterly report shall be submitted quarterly by all licensed brokers even if no insurance transactions were completed during the period~~].

(6) Payment of the surplus lines premium tax and any applicable penalty shall be deemed the submission of the broker's quarterly report and verified statement of transactions.

Section 3. Effective Date. The administrative regulation shall be effective beginning with the calendar quarter **beginning July 1, 2019[~~ending June 30, 2019~~]**[~~quarterly report due July 1, 2010~~].

NANCY G. ATKINS, Commissioner
K. GAIL RUSSELL, Actin Secretary
APPROVED BY AGENCY: February 14, 2019
FILED WITH LRC: February 15, 2019 at 11 a.m.
CONTACT PERSON: Patrick O'Connor II, Deputy Commissioner, Policy, P.O. Box 517, 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 procedures required for the payment of premium taxes owed on surplus lines transactions. Surplus lines brokers are required to file affidavits with the Department of Insurance, which are used to calculate the amount of surplus lines premium taxes owed by each broker every quarter. The brokers are required to file the affidavits within 15 days of the invoice date for the policy or the policy's effective date, whichever occurs later. The Department of Insurance invoices brokers, subject to their confirmation or contest, for the quarterly taxes owed. The broker is required to remit the applicable quarterly surplus lines premium taxes to the Department within thirty days of receipt of the quarterly report. Agencies paying surplus lines premium taxes on behalf of brokers must submit payment electronically through the broker's account to ensure an accurate accounting. Those agents that do not have any business in a quarter are required to acknowledge the quarterly report and invoice generated by the Department for each quarter.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement the required surplus lines premium tax payment procedures required by KRS 304.10-180.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation provides the procedure necessary for the assessment and collection of the statutorily required surplus lines premium tax. It also provides necessary guidance on the filing of surplus lines affidavits required by KRS 304.10-050.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides clear procedural guidance for filing affidavits of eligibility for export with the Department of Insurance. This administrative regulation also requires the

electronic filing of affidavits and payment of premium taxes owed to assist in the Department's internal accounting and reconciliation process of taxes owed.

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

(a) How the amendment will change this existing administrative regulation: This amendment to the administrative regulation provides a more efficient framework for the calculation, assessment, and collection of surplus lines premium taxes by using the department's online services. The current system allows individuals to pay in various manners causing internal accounting reconciliation difficulties. These issues necessitate the use of Department resources to submit requests to various brokers and agencies to confirm tax payments or seek additional amounts. This amendment eliminates these issues by streamlining the current system. First, the time to file affidavits required under KRS 304.10-050 is shortened from 60 and 90 days, respectively based on the domicile of the insurer, to fifteen (15) days from the invoice date or effective date, whichever occurs later. The period is shortened because the affidavit requires very simple information about the transaction and can be entered into the current system immediately after a transaction is concluded. The additional time included in the previous version caused overlaps in the quarterly premium tax reporting leading to various discrepancies in the amounts owed and paid. The shortened period will eliminate these issues. Secondly, this amendment retains the Department's generation of a quarterly report establishing the amount of taxes owed based on the affidavits filed. The broker will be required to review and reconcile the report with their records. Thirdly, all surplus lines premium taxes will be due within thirty days of the quarterly report, which will shorten the overall period for payment of taxes that currently stands at 120 days following the end of the quarter. This shortened period will assist in the prompt payment of taxes owed, and relieve accounting burdens on the Department and brokers. Lastly, agencies can still pay taxes on behalf of brokers. However, in order to assist with the Department's accounting, they will have to pay electronically through the broker's account. Currently, agencies pay taxes in a lump sum without any indication as to the applicable broker. Taxes are assessed on the individual broker, so it is often impossible, without substantial follow-up, to determine the parties having paid taxes. These changes will shorten the overall time frame, simplify the entire system, and allow all parties involved to realize gains from a more efficient and expedient system.

(b) The necessity of the amendment to this administrative regulation: This amendment to the administrative regulation is necessary to correct current deficiencies in the surplus lines premium tax payment system. These deficiencies cause an unnecessary and prolonged delay in the payment of surplus lines premium taxes, general confusion in reporting obligations, and require substantial follow-up to reconcile tax payments for all parties involved. The new system will comply with the statutory requirements and reduce the amount of Department resources necessary to oversee the system.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the authorizing statutes by establishing a process that more efficiently requires the filing of affidavits, the quarterly payment of surplus premium taxes, and the submission of verified statements with the tax payments.

(d) How the amendment will assist in the effective administration of the statutes: This amendment requires electronic filing and eliminates any paper filings. The paper filings are difficult to read and lead to human errors in processing. The electronic submissions will take advantage of an information technology system built and currently used that automatically processes affidavits and calculates the premium taxes owed. Secondly, the shortening of the periods to submit affidavits and pay the taxes will lead to less chances of errors on transactions to be included within the quarter, and provides a more efficient, timely payment of taxes owed. Lastly, the changes for agency payments confirms the authority to submit such payments but ensures an accurate accounting occurs through the use of the individual broker account. All of these changes will improve the overall functionality of the system leading to reduced expenditures from the Department for collection, processing, and reconciliation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Registered surplus lines brokers and their agencies will be primarily impacted by the changes.

(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: Registered surplus lines brokers and agencies will be required to use the online process for submission of affidavits and payment of taxes. They will no longer be permitted to submit paper forms. Because all brokers are required to have an online account with the Department, the brokers will realize efficiencies in the submission of affidavits and payment of taxes. Brokers will be required to submit affidavits on a shorter period. Since the affidavits require the provision of information directly related to the transaction, they can be completed online contemporaneously with the transaction. This will essentially be the final step in the transaction process.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: Registered surplus lines brokers will not be required to undertake any expenditures to comply with the changes in the process. Brokers already are required to obtain and use the Department's online system. In fact, brokers and agents may save money based on efficiencies gained, and the easier accounting for premium taxes owed on such transactions.

(c) As a result of compliance, what benefits will accrue to the entities: Registered surplus lines brokers and agencies will be permitted to submit all information online in the affidavit process. The Department will calculate the taxes owed, and submit a statement to the brokers of the taxes owed. The brokers will not be required to file any separate statements but simply pay or acknowledge, if no taxes are owed, the quarterly report of taxes owed generated by the Department. Additionally, the new process will eliminate all paper filings currently generated by the brokers and agencies, and any necessary subsequent communication regarding proper accounting and payment.

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

(a) Initially: The system relied upon by the Department in the amendment is already built. The Department plans to fully utilize the system's capabilities. Therefore, the Department does not anticipate any initial costs for the system. The Department intends to expend some very limited resources on outreach to inform broker's of the new requirements and proactively answer questions or concerns.

(b) On a continuing basis: The Department does not anticipate any continuing costs to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Department will use general budget funds for any costs associated with the implementation 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: An increase in fees or funding is not necessary to implement this amended administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering is not applied because the requirements apply equally to all surplus lines brokers.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What 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 304.10-050, KRS 304.10-170, KRS 304.10-180, and KRS 304.10-210 all require the actions included within 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? The amended administrative regulation will not generate any additional revenue. The surplus lines premium tax considered in the administrative regulation generated $6,584,126.74 in 2017.

(b) How 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 amended administrative regulation will not generate any additional revenue in subsequent years.

(c) How much will it cost to administer this program for the first year? The Department does not anticipate any administration costs due to the amended administrative regulation.

(d) How much will it cost to administer this program for subsequent years? The Department does not anticipate any administration costs in subsequent years due to the amended 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 (+/-): Decrease.

Other Explanation: Reduction in staff time consumed by review of surplus lines filing will be significant, but no specific numbers will be available until implementation has been effective for some time.

PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
(Amended After Comments)

810 KAR 2:001. Definitions.

RELATES TO: 810 KAR Chapter 2

STATUTORY AUTHORITY: KRS 230.215, 230.260(8)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) grants the commission the authority to regulate conditions under which thoroughbred racing shall be conducted in Kentucky. KRS 230.260(8) grants the commission the authority to prescribe necessary and reasonable administrative regulations and conditions under which horse racing at a horse race meeting shall be conducted in this state. This administrative regulation defines the terms used in 810 KAR Chapter 2.

Section 1. Definitions.

(1) "Age" means the number of years since a horse was foaled, reckoned as if the horse was foaled on January 1 of the year in which the horse was foaled.

(2) "Arrears" means all sums due by a licensee as reflected by his or her account with the horsemen's bookkeeper, including subscriptions, jockey fees, driver fees, forfeitures, and any default incident to KAR Title 810.

(3) "Association" is defined by KRS 230.210(1).

(4) "Authorized agent" means in flat racing any person currently licensed as an agent for a licensed owner, jockey, or jockey apprentice by virtue of notarized appointment of agency filed with the commission.

(5) "Claiming race" means a race in which ownership of a horse participating in the race may be transferred in conformity with 811 KAR 4:050 and 810 KAR 5:030

(6) "Closing" means the time published by the association after which entries for a race will not be accepted by the racing secretary.

(7) "Commission" means:

(a) The Kentucky Horse Racing Commission (formerly known as the Kentucky Horse Racing Authority and defined in KRS 230.210(2)) if used in the context of the administrative agency governing horse racing and pari-mutuel wagering; and

(b) The amount an association is authorized to withhold from a pari-mutuel wager pursuant to KRS 230.3615, if used in the context of pari-mutuel wagering.

(8) "Conditions" means qualifications that determine a horse's eligibility to be entered in a race.

(9) "Dash" means in standardbred racing a race in a single trial or in a series of two (2) or three (3) races governed by one (1) entry fee for the series, in which a horse starts in all dashes with positions drawn for each dash and the number of purse distributions or payouts awarded does exceed the number of starters in the dash.

(10) "Day" means any twenty-four (24) hour period beginning at 12:01 a.m. and ending at midnight.

(11) "Declaration" means:

(a) In flat racing, the withdrawal of a horse entered in a race prior to time of closing of entries for the race in conformance with Title 810 KAR.

(b) In standardbred racing, the naming of a particular horse as a starter in a particular race.

(12) "Disciplinary action" means action taken by the stewards or the commission for a violation of KRS Chapter 230 or KAR Title 810 and can include:

(a) Refusal to issue or renew a license;

(b) Revocation or suspension of a license;

(c) Imposition of probationary conditions on a license;

(d) Issuance of a written reprimand or admonishment;

(e) Imposition of fines or penalties;

(f) Denial of purse money;

(g) Forfeiture of purse money; or

(h) Any combination of paragraphs (a) through (g) of this subsection.

(13) "Disqualification" means a ruling of the stewards, judges, or the commission revising the order of finish of a race.

(14) "Draw" means the process of determining post positions by lot. .

(15) "Driver" means in standardbred racing a person who is licensed to drive a horse in a race.

(16) "Electronic eligibilty" means a computer-generated eligibility certificate that records a horse's racing statistics.

(17) "Entry" means the act of nominating a horse for a race in conformance with KAR Title 810.

(18) "Equipment" means in flat racing accoutrements other than ordinary saddle, girth, pad, saddle cloth, and bridle carried by a horse, and includes **riding crop**[~~whip~~], blinkers, tongue strap, muzzle, hood, noseband, bit, shadow roll, martingale, breast plate, bandages, boots, and racing plates or shoes.

(19) "Extended pari-mutuel meeting" means in standardbred racing a meeting or series of meetings, at which no agriculture fair is in progress, with an annual total of more than six (6) days duration and during which pari-mutuel wagering is permitted.

(20) "Field" or "mutuel field" means a single betting interest involving more than one (1) horse which is not a mutuel entry.

(21) "Foul" means any action by any jockey or driver that tends to hinder another jockey or any horse in the proper running of the race.

(22) "Handicap" means in standardbred racing a race in which allowances are made according to a horse's:

(a) Age;

(b) Sex;

(c) Claiming price; or

(d) Performance.

(23) "Handicap race" means in flat racing a race in which the weights to be carried by the horses are assigned by the

association handicapper with the intent of equalizing the chances of winning for all horses entered in the race.

(24) "Handle" means the aggregate of all pari-mutuel pools, excluding refundable wagers.

(25) "Horse" means any equine irrespective of age or sex designation and registered for racing with the applicable breed registry.

(26) "Ineligible" means a horse or person not qualified under KAR Title 810 or conditions of a race to participate in a specified racing activity.

(27) "Inquiry" means an investigation by the stewards or judges of a contest prior to declaring the result of the contest official.

(28) "Jockey" means a rider currently licensed to ride in races as a jockey, apprentice jockey, amateur jockey, or a provisional jockey permitted by the stewards to ride in three (3) races prior to applying for a license.

(29) "Judge" means a duly appointed racing official with powers and duties specified in 810 KAR 2:050 serving at a current meeting in the Commonwealth.

(30) "Licensed premises" means the location and physical plant described in response to question R of the "Commonwealth of Kentucky Initial/Renewal Application for License to Conduct Live Horse Racing, Simulcasting, and Pari-Mutuel Wagering" filed for racing to be conducted in the following year. Licensed premises may also include real property of an association, if the association receives approval from the commission for a new location at which live racing will be conducted.

(31) "Licensee" means an individual, firm, association, partnership, corporation, trustee, or legal representative that has been duly issued a currently valid license to participate in racing in the Commonwealth.

(32) "Meeting" means the entire period of consecutive days, exclusive of dark days, granted by the commission to a licensed association for the conduct of live horse racing. A meeting shall begin at 10 a.m. of the first racing day and extend through a period ending one (1) hour after the last scheduled race of the last day.

(33) "Month" means calendar month.

(34) "Nomination" means a subscription or entry of a horse in a stakes or early closing race.

(35) "Nominator" means the person in whose name a horse is entered for a stakes race.

(36) "Objection" means a verbal claim of foul in a race lodged by the horse's jockey, driver, trainer, or owner before the race is declared official.

(37) "Official order of finish" means the order of finish of the horses in a contest as declared official by the stewards or judges.

(38) "Official time" means the elapsed time from the moment the first horse crosses the timing beam until the first horse crosses the finish line.

(39) "Owner" means any person who holds, in whole or in part, any right, title, or interest in a horse, or any lessee of a horse, who has been duly issued a currently valid owner's license as a person responsible for the horse.

(40) "Pari-mutuel wagering", "mutuel wagering", or "pari-mutuel system of wagering" each means a system or method of wagering approved by the commission in which patrons are wagering among themselves and not against the association and amounts wagered are placed in one or more designated wagering pools and the net pool is returned to the winning patrons.

(41) "Patron" means an individual present at a track or a simulcast facility who observes or wagers on a live or historical horse race.

(42) "Post" means the starting point of a race.

(43) "Post position" means the relative place assigned to each horse, numbered from the inner rail across the track at the starting line, from which each horse is to start a race.

(44) "Post time" means the advertised moment scheduled for the arrival of all horses at the starting point for a race.

(45) "Protest" means a written objection charging that a horse is ineligible to race, alleging improper entry procedures, or citing any act of an owner, trainer, driver, or official prohibited by rules, which, if true, would exclude that horse or driver from racing.

(46) "Prize" means the combined total of any cash, premium, trophy, and object of value awarded to the owners of horses according to order of finish in a race.

(47) "Purse" means the gross cash portion of the prize for which a race is run.

(48) "Race" means a running contest between horses, ridden by jockeys or driven by drivers at a recognized meeting, during regular racing hours, for a prize.

(49) "Race day" means any period of twenty-four (24) hours beginning at 12:01 a.m. and ending at midnight in which live racing is conducted by an association.

(50) "Racing official" means a racing commission member, commission staff as duties require, and all association racing department employees, as duties require.

(51) "Registration certificate" means the document, racing permit, or virtual certificate issued by the appropriate breed registry identifying the horse for racing.

(52) "Result" means the part of the official order of finish in a race used to determine the pari-mutuel payoff of pools.

(53) "Rulings" means all determinations, decisions, or orders of the stewards or of the commission duly issued in writing and posted.

(54) "Scratch" means the withdrawal of a horse entered for a race after the time of closing of entries for the race in conformance with KAR Title 810.

(55) "Scratch time" means the time set by the racing secretary as a deadline for horsemen to indicate their desire to scratch out of a race.

(56) "Simulcasting" is defined by KRS 230.210(11).

(57) "Starter" means either:

(a) An official who dispatches the horses from the starting gate; or

(b) A horse in a race when the starting gate doors open in front of it at the moment the starter dispatches the horses for the race.

(58) "Steward" means a duly appointed racing official with powers and duties specified in 810 KAR 2:040 serving at a current meeting in the Commonwealth.

(59) "Subscription" means nomination or entry of a horse in a stakes race.

(60) "Suspended" means withdrawal by the steward or commission of racing privileges.

(61) "Thoroughbred racing" is defined by KRS 230.210(3).

(62) "Totalizator" means the system, including hardware, software, communications equipment, and electronic devices that accepts and processes the cashing of wagers, calculates the odds and prices of the wagers, and records, displays, and stores pari-mutuel wagering information.

(63) "Year" means twelve (12) consecutive months beginning with January and ending with December.

FRANKLIN S. KLING, JR., Chairman
K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: February 14, 2019

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REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: John L. Forgy

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes definitions for terms used in 810 KAR Chapter 2.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure that various terms used in 810 KAR Chapter 2 are defined properly and precisely.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) and 230.260(8) authorize the Commission to promulgate administrative regulations prescribing the conditions under which racing shall be conducted in Kentucky. This regulation sets forth defines terms that are used in

the regulations in 810 KAR Chapter 2.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation fulfills the Commission's statutory mandate to prescribe the conditions under which horse racing is conducted in the Commonwealth by defining terms used in 810 KAR Chapter 2.

(2) If 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 regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statute: 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's licensed race tracks and all individual licensed participants in horse racing are potentially affected by this administrative regulation's establishment of definitions pertaining to the conduct of racing. In the year 2017, the Commission licensed over 22,000 individuals to participate in horse racing. This number is consistent from year to 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: Licensed racing associations and individual participants in horse racing will be required to adhere to the requirements and rules set forth in the regulations in Title 810 KAR pertaining to horse racing. This administrative regulation defines terms that appear in 810 KAR Chapter 2.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3)? Participants in racing will benefit from clearly defined rules that enhance the integrity of racing.

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

(a) Initially: There is no initial administrative cost to implement this administrative regulation.

(b) On a continuing basis: There is no continuing 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: No significant funding will be necessary to implement and enforce this administrative regulation. Any minimal costs will be funded from the budget of the Commission.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any new fees or increase any current fees to participate.

(9) TIERING: Is tiering applied? Tiering was not applied because this amended regulation will apply to all similarly situated entities in an equal manner.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Horse Racing Commission 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 230.215, 230.260.

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

(a) How much 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? No funds will be required to administer this regulation for the first year.

(d) How much will it cost to administer this program for subsequent years? No funds will be required to administer this regulation for subsequent years.

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

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: None

PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
(Amended After Comments)

810 KAR 4:001. Definitions.

RELATES TO: 810 KAR Chapter 4

STATUTORY AUTHORITY: KRS 230.215, 230.260(8)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) grants the commission the authority to regulate conditions under which thoroughbred racing shall be conducted in Kentucky. KRS 230.260(8) grants the commission the authority to prescribe necessary and reasonable administrative regulations and conditions under which horse racing at a horse race meeting shall be conducted in this state. This administrative regulation defines the terms used in 810 KAR Chapter 4.

Section 1. Definitions.

(1) "Added money" means the amount of money, exclusive of trophy, added into a stakes race by an association, a sponsor, a state-bred program, or other fund, and which is in addition to stakes fees paid by subscribers.

(2) "Age" means the number of years since a horse was foaled, reckoned as if the horse was foaled on January 1 of the year in which the horse was foaled.

(3) "Allowance race" means a race in which contestants receive weight allowance based on performance or winnings as stipulated in the conditions of the race.

(4) "Also eligible" means in flat racing an eligible horse, properly entered, which is not drawn for inclusion in a race, but which becomes eligible according to preference or lot if another horse is scratched prior to the scratch time deadline.

(5) "Appeal" means a request for the commission to investigate, consider, and review any decision or ruling of a steward or judge or official of a meeting.

(6) "Arrears" means all sums due by a licensee as reflected by his or her account with the horsemen's bookkeeper, including subscriptions, jockey fees, driver fees, forfeitures, and any default incident to KAR Title 810.

(7) "Association" is defined by KRS 230.210(1).

(8) "Authorized agent" means in flat racing any person currently licensed as an agent for a licensed owner, jockey, or jockey apprentice by virtue of notarized appointment of agency filed with the commission.

(9) "Calendar days" means consecutive days counted irrespective of number of racing days.

(10) "Claiming race" means a race in which ownership of a horse participating in the race may be transferred in conformity with 811 KAR 4:050.

(11) "Closing" means the time published by the association after which entries for a race will not be accepted by the racing secretary.

(12) "Coggins test" means a blood test used to determine if a horse is positive for Equine Infectious Anemia.

(13) "Commission" means:

(a) The Kentucky Horse Racing Commission (formerly known as the Kentucky Horse Racing Authority and defined in KRS 230.210(2)) if used in the context of the administrative agency governing horse racing and pari-mutuel wagering; and

(b) The amount an association is authorized to withhold from a pari-mutuel wager pursuant to KRS 230.3615, if used in the context of pari-mutuel wagering.

(14) "Conditions" means qualifications that determine a horse's eligibility to be entered in a race.

(15) "Coupled entry" means two (2) or more horses in a race that are treated as a single betting interest for pari-mutuel wagering purposes.

(16) "Day" means any twenty-four (24) hour period beginning at 12:01 a.m. and ending at midnight.

(17) "Declaration" means in flat racing the withdrawal of a horse entered in a race prior to time of closing of entries for the race in conformance with 810 KAR 4:030.

(18) "Directive" means an official order issued by the commission or the executive director.

(19) "Disciplinary action" means action taken by the stewards or the commission for a violation of KRS Chapter 230 or KAR Title 810 and can include:

(a) Refusal to issue or renew a license;

(b) Revocation or suspension of a license;

(c) Imposition of probationary conditions on a license;

(d) Issuance of a written reprimand or admonishment;

(e) Imposition of fines or penalties;

(f) Denial of purse money;

(g) Forfeiture of purse money; or

(h) Any combination of paragraphs (a) through (g) of this subsection.

(20) "Disqualification" means a ruling of the stewards, judges, or the commission revising the order of finish of a race.

(21) "Draw" means the process of determining post positions by lot.

(22) "Entry" means the act of nominating a horse for a race in conformance with KAR Title 810.

(23) "Equipment" means in flat racing accoutrements other than ordinary saddle, girth, pad, saddle cloth, and bridle carried by a horse, and includes **riding crop**[~~whip~~]], blinkers, tongue strap, muzzle, hood, noseband, bit, shadow roll, martingale, breast plate, bandages, boots, and racing plates or shoes.

(24) "Field" or "mutuel field" means a single betting interest involving more than one (1) horse which is not a mutuel entry.

(25) "Forfeit" means money due by a licensee because of an error, fault, neglect of duty, breach of contract, or alternative ruling of the stewards, judges, or the commission.

(26) "Foul" means any action by any jockey or driver that tends to hinder another jockey or any horse in the proper running of the race.

(27) "Handicap race" means in flat racing a race in which the weights to be carried by the horses are assigned by the association handicapper with the intent of equalizing the chances of winning for all horses entered in the race.

(28) "Horse" means any equine irrespective of age or sex designation and registered for racing with the applicable breed registry.

(29) "Ineligible" means a horse or person not qualified under Title 810 KAR or conditions of a race to participate in a specified racing activity.

(30) "Inquiry" means an investigation by the stewards or judges of a contest prior to declaring the result of the contest official.

(31) "Jockey" means a rider currently licensed to ride in races as a jockey, apprentice jockey, amateur jockey, or a provisional jockey permitted by the stewards to ride in three (3) races prior to applying for a license.

(32) "Lessee" means a licensed owner whose interest in a horse is a leasehold.

(33) "Licensee" means an individual, firm, association, partnership, corporation, trustee, or legal representative that has been duly issued a currently valid license to participate in racing in the Commonwealth.

(34) "Maiden" means in flat racing a horse which has never won a race at a recognized meeting in any country.

(35) "Meeting" means the entire period of consecutive days, exclusive of dark days, granted by the commission to a licensed association for the conduct of live horse racing. A meeting shall begin at 10 a.m. of the first racing day and extend through a period ending one (1) hour after the last scheduled race of the last day.

(36) "Month" means calendar month.

(37) "Mutuel entry" means a single betting interest involving two (2) or more horses entered in the same race and joined for pari-mutuel purposes because of common ties as to ownership or training so that a wager on one (1) horse joined in a mutuel entry is a wager on all horses joined in the same mutuel entry.

(38) "Nominator" means the person in whose name a horse is entered for a stakes race.

(39) "Objection" means a verbal claim of foul in a race lodged by the horse's jockey, driver, trainer, or owner before the race is declared official.

(40) "Official order of finish" means the order of finish of the horses in a contest as declared official by the stewards or judges.

(41) "Official time" means the elapsed time from the moment the first horse crosses the timing beam until the first horse crosses the finish line.

(42) "Owner" means any person who holds, in whole or in part, any right, title, or interest in a horse, or any lessee of a horse, who has been duly issued a currently valid owner's license as a person responsible for the horse.

(43) "Pari-mutuel wagering", "mutuel wagering", or "pari-mutuel system of wagering" each means a system or method of wagering approved by the commission in which patrons are wagering among themselves and not against the association and amounts wagered are placed in one or more designated wagering pools and the net pool is returned to the winning patrons.

(44) "Post" means the starting point of a race.

(45) "Post position" means the relative place assigned to each horse, numbered from the inner rail across the track at the starting line, from which each horse is to start a race.

(46) "Post time" means the advertised moment scheduled for the arrival of all horses at the starting point for a race.

(47) "Protest" means a written objection charging that a horse is ineligible to race, alleging improper entry procedures, or citing any act of an owner, trainer, driver, or official prohibited by rules, which, if true, would exclude that horse or driver from racing.

(48) "Purse" means the gross cash portion of the prize for which a race is run.

(49) "Purse race" means any race for which entries close at a time designated by the racing secretary, and for which owners of horses entered are not required by its conditions to contribute money toward its purse.

(50) "Race" means a running contest between horses,,, ridden by jockeys or driven by drivers at a recognized meeting, during regular racing hours, for a prize.

(51) "Race day" means any period of twenty-four (24) hours beginning at 12:01 a.m. and ending at midnight in which live racing is conducted by an association.

(52) "Racing official" means a racing commission member, commission staff, as duties require, and all association racing department employees, as duties require.

(53) "Recognized meeting" means any meeting with regularly

scheduled live horse races, licensed by and conducted under administrative regulations promulgated by a governmental regulatory body, and conducted with the applicable breed registry.

(54) "Registration certificate" means the document, racing permit, or virtual certificate issued by the appropriate breed registry identifying the horse for racing.

(55) "Result" means the part of the official order of finish in a race used to determine the pari-mutuel payoff of pools.

(56) "Rulings" means all determinations, decisions, or orders of the stewards or of the commission duly issued in writing and posted.

(57) "Scratch" means the withdrawal of a horse entered for a race after the time of closing of entries for the race.

(58) "Scratch time" means the time set by the racing secretary as a deadline for horsemen to indicate their desire to scratch out of a race.

(59) "Specimen" means a sample of blood, urine, or other biologic sample taken or drawn from a horse for chemical testing.

(60) "Stakes" mean all fees paid by subscribers to an added-money or stakes race for nominating, eligibility, entrance, or starting, as may be required by the conditions of the race, with the fees to be included in the purse.

(61) "Stakes race" means a race which closes more than seventy-two (72) hours in advance of its running and for which subscribers contribute money towards its purse

(62) "Starter" means either:

(a) An official who dispatches the horses from the starting gate; or

(b) A horse in a race when the starting gate doors open in front of it at the moment the starter dispatches the horses for the race.

(63) "Steward" means a duly appointed racing official with powers and duties specified in 810 KAR 2:040 serving at a current meeting in the Commonwealth.

(64) "Subscription" means nomination or entry of a horse in a stakes race.

(65) ""Suspended" means withdrawal of racing privileges by the stewards or commission.

(66) "Thoroughbred racing" is defined by KRS 230.210(3).

(67) "Tote" or "tote board" means the totalizator.

(68) "Unplaced" means a horse that finishes a race outside the pari-mutuel payoff.

(69) "Walkover" means a race in which the only starter or all starters represent single ownership.

(70) "Weigh in" means in flat racing the presentation of a jockey to the clerk of scales for weighing after a race.

(71) "Weigh out" means in flat racing the presentation of a jockey to the clerk of scales for weighing prior to a race.

FRANKLIN S. KLING, Jr., Chairman
K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: February 15, 2019

FILED WITH LRC: February 15, 2019 at 11 a.m.

CONTACT PERSON: John L. Forgy, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039, email John.Forgy@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: John L. Forgy, General Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes definitions for terms used in 810 KAR Chapter 4.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure that various terms used in 810 KAR Chapter 4 are defined properly and precisely.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) and 230.260(8) authorize the Commission to promulgate administrative regulations prescribing the conditions under which racing shall be conducted in Kentucky. This regulation sets forth defined terms that are used in the regulations in 810 KAR Chapter 4.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation fulfills the Commission's statutory mandate to prescribe the conditions under which horse racing is conducted in the Commonwealth by defining terms used in 810 KAR Chapter 4.

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

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to this regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statute: 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's licensed race tracks and all individual licensed participants in horse racing are potentially affected by this administrative regulation's establishment of definitions pertaining to the conduct of racing. In the year 2017, the Commission licensed over 22,000 individuals to participate in horse racing. This number is consistent from year to 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: Licensed racing associations and individual participants in horse racing will be required to adhere to the requirements and rules set forth in the regulations in KAR Title 810 pertaining to horse racing. This administrative regulation defines terms that appear in 810 KAR Chapter 3.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3)? Participants in racing will benefit from clearly defined rules that enhance the integrity of racing.

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

(a) Initially: There is no initial administrative cost to implement this administrative regulation.

(b) On a continuing basis: There is no continuing 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: No significant funding will be necessary to implement and enforce this administrative regulation. Any minimal costs will be funded from the budget of the Commission.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any new fees or increase any current fees to participate.

(9) TIERING: Is tiering applied? (Explain why tiering was or was not used.) Tiering was not applied because this amended regulation will apply to all similarly situated entities in an equal manner.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Horse

Racing Commission 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 230.215, 230.260.

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

(a) How much 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? No funds will be required to administer this regulation for the first year.

(d) How much will it cost to administer this program for subsequent years? No funds will be required to administer this regulation for subsequent years.

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

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: None

PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
(Amended After Comments)

810 KAR 4:020. Weights.

RELATES TO: KRS 230.215, 230.260

STATUTORY AUTHORITY: KRS 230.215(2), 230.260

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) authorizes the commission to promulgate administrative regulations prescribing conditions under which all horse racing is conducted in the Commonwealth. This administrative regulation provides the requirements for assigning weights to a horse in a race.

Section 1. Weight Assignments for Horses.

(1) Weight allowance shall be claimed at time of entry and shall not be waived after the posting of entries, except by consent of the stewards.

(2) A horse shall start with only the weight allowance to which it is entitled at the time of starting, regardless of its allowance at time of entry.

(3) Weight penalties shall be mandatory. A horse incurring a weight penalty for a race shall not be entitled to any weight allowance for that race. A horse not entitled to the first weight allowance in a race condition shall not be entitled to any subsequent allowance specified in the race conditions.

(4) Claim of weight allowance to which a horse is not entitled shall not disqualify the horse, unless protest is made in writing and lodged with the stewards at least one (1) hour before post time.

(5) A horse shall not incur a weight penalty or be barred from any race for having been placed second or lower in any race. A horse shall not be given a weight allowance for failure to finish second or lower in any race.

(6)(a) Except as provided in paragraph (b) of this subsection, a horse shall not receive weight allowance and shall not be relieved of extra weight for having been beaten in one (1) or more races.

(b) A horse may receive weight allowances if it has not won a race within a specified period or a race of a specified value as set forth in the race conditions.

(7) Penalties incurred and allowances due in steeplechase or hurdle races shall not apply to races on the flat, and vice versa.

(8) In determining eligibility, allowances, and penalties, the reports, records, and statistics as recorded in racing publications shall be considered official, but may be corrected by the publisher up to forty-five (45) minutes prior to post time of the race.

(9) A maiden winning at an unrecognized meeting shall lose the maiden condition. All other horses winning at unrecognized meetings shall not be considered winners for weight allowance or eligibility in races run thereafter under the jurisdiction of the commission.

(10) A thoroughbred horse shall not be assigned a weight of less than 118 pounds, unless:

(a) Apprentice allowance is claimed;

(b) The horse is assigned a weight of less than 118 pounds in a handicap race by the racing secretary;

(c) The horse is a three (3) year old entered to run in a race against horses four (4) years old and older from January 1st through September 1st in which case the horse shall not be assigned a weight less than 116 pounds; or

(d) The filly and mare weight allowance in subsection (11) applies.

(11) Except in handicaps, thoroughbred fillies two (2) years old shall be allowed three (3) pounds, and thoroughbred fillies and mares three (3) years old and older shall be allowed five (5) pounds before September 1, and three (3) pounds thereafter in a race that includes horses of the opposite sex.

(12) **[~~Thoroughbred and~~]**Arabian minimum scale weights shall be 120 pounds for two (2) year-olds, 122 pounds for three (3) year-olds, and 124 pounds for four (4) year-olds and older.

(13) Quarter Horse, Appaloosa, and Paint Horse minimum scale weights shall be **124**[~~one hundred twenty-two (122)~~] pounds for two-year-olds, **126**[~~one hundred twenty-four (124)~~] pounds for three-year-olds, and **128**[~~one hundred twenty-six (126)~~] pounds for four-year-olds and older.

(14) Five (5) pounds shall be the limit of overweight any horse is permitted to carry.

Section 2. Jockey Weight Procedures and Requirements.

(1) Jockeys shall be weighed out for their respective mounts by the clerk of scales not less than fifteen (15) minutes before post time. Only valets furnished by the association shall assist a jockey in weighing out.

(2) A jockey's weight shall include:

(a) Clothing;

(b) Boots;

(c) Saddle and its attachments; and

(d) Any other equipment except as specified in this subsection.

(3) A jockey's weight shall not include:

(a) Riding crop;

(b) Bridle;

(c) Bit;

(d) Reins;

(e) Safety helmet;

(f) Safety vest;

(g) Blinkers;

(h) Goggles;

(i) Over-girth;

(j) Breast collar; and

(k) Number cloth.

(3) After a race has been run, the jockey shall ride promptly to the finish line, dismount, and present himself to the clerk of scales to be weighed in. The jockey shall carry to the clerk of scales all pieces of equipment with which he or she weighed out. The post-race weighing of a jockey shall include any sweat, dirt, and mud that have accumulated on the jockey, jockey's clothing, jockey's safety helmet, jockey's safety vest, and over-girth.

(4) Each jockey shall weigh in at no less than the weight at which he or she weighed out. If short, the stewards shall investigate and if warranted take disciplinary action against the individual or individuals responsible for the violation, including disqualification of the horse from receiving what would otherwise be its share of the purse.

(5) If a jockey is prevented from riding his mount to the finish line because of an accident or illness either to himself or his mount, the jockey may walk or be carried to the scales, or the jockey may be excused by the stewards from weighing in.

(6) A notice shall be included in the daily program that:

(a) Each jockey shall carry approximately three (3) pounds more than the published weight to account for safety helmets and safety vests not included in required weighing out procedures; and

(b) Upon approval of the stewards, a jockey may be allowed up to three (3) pounds additional clothing and equipment for inclement weather or track conditions.

FRANKLIN S. KLING, JR., Chairman
K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: February 14, 2019

FILED WITH LRC: February 15, 2019 at 11 a.m.

CONTACT PERSON: John L. Forgy, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039, email John.Forgy@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: John L. Forgy

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes weight requirements and procedures for jockeys and horses.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide specific rules concerning the weights requirements and procedures for horses and jockeys in thoroughbred and other flat racing.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) and 230.260(8) authorize the Commission to promulgate administrative regulations prescribing the conditions under which racing shall be conducted in Kentucky. This administrative regulation establishes the rules pertaining to weight requirements and procedures for jockeys and horses in thoroughbred and other flat racing.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets forth requirements and rules concerning the weight requirements and procedures for jockeys and horses in thoroughbred and other flat racing that enhance the integrity of racing.

(2) If 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 regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statute: 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's five licensed thoroughbred race tracks, and all individual participants in horse racing, are potentially affected by this administrative regulation's establishment of fundamental rules pertaining to the conduct of racing. In the year 2017, the Commission licensed over 22,000 individuals to participate in horse racing. This number is consistent from year to 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: Participants in horse racing, and especially owners, trainers and jockeys, will be required to adhere to the requirements and rules set forth in this administrative regulation pertaining to the running of the race in thoroughbred and other flat racing.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3)? Participants in racing will benefit from clearly defined rules that enhance the integrity of racing.

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

(a) Initially: There is no initial cost to implement this administrative regulation.

(b) On a continuing basis: There is no continuing 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: No funding will be necessary to implement and enforce this administrative regulation.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any new fees or increase any current fees to participate.

(9) TIERING: Is tiering applied? Tiering was not applied because this regulation will apply to all similarly situated entities in an equal manner.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Horse Racing Commission 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 230.215(2) and 230.260(8).

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

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

(b) How 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? There will be no cost to administer this program for the first year.

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

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

Revenues (+/-): Neutral.

Expenditures (+/-): Neutral.

Other Explanation: None.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Policy and Operations
(Amended After Comments)

907 KAR 1:560. Medicaid hearings and appeals regarding eligibility.

RELATES TO: KRS Chapter 13B, 205.231, 205.237, 205.520, 205.531, 211.461, 211.466, 42 C.F.R. 431 subpart E, 42 C.F.R. 431.233, 42 C.F.R. part 456, 42 U.S.C. 1396

STATUTORY AUTHORITY: KRS 194A.025(1), 194A.030(2), 194A.050(1), 205.531[~~, 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 has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes provisions relating to the Medicaid grievance, hearing and appeal process regarding Medicaid eligibility issues.

Section 1. Definitions.

(1) "Appeal board" means the secretary, or entity or individual designated by the secretary of the Cabinet for Health and Family Services to hear appeals following a **recommended order[~~decision~~]** by a designated hearing agency.

(2) "Applicant" means an individual applying for Medicaid.

(3)[~~(2)~~] "Authorized representative" means an individual acting on behalf of an applicant or recipient.

(4)[~~(3)~~] "Department" means the Department for Medicaid Services or its designee.

(5)[~~(4)~~] "Designated hearing agency" means the entity designated by the secretary of the Cabinet for Health and Family Services to adjudicate administrative hearings[~~Department for Social Insurance~~].

(6)[~~(5)~~] "Recipient" means an individual who receives Medicaid.

(7) "Secretary" means the secretary of the Cabinet for Health and Family Services.

Section 2. Informing the Applicant or Recipient of His Rights. With the exception of a dispute resolution regarding a utilization review denial, which shall be processed in accordance with 42 C.F.R. Part 456[~~906 KAR 1:080~~], the following provisions shall apply:

(1) Each[~~An~~] applicant or recipient shall be informed of his or her right to a hearing:

(a) Verbally and in writing when application is made; and

(b) In writing if an action is taken affecting the applicant's or recipient's[~~his~~] eligibility in accordance with KRS 13B.050.

(2) Each[~~An~~] applicant or recipient shall be informed of the method by which the applicant or recipient[~~he~~] may obtain a hearing and that the applicant or recipient[~~he~~] may be represented by:

(a) Legal counsel;

(b) A relative;

(c) A friend;

(d) Other spokesperson; or

(e) The applicant or recipient may elect to self-represent[~~Himself~~].

Section 3. Request for a Hearing. With the exception of a dispute resolution regarding a utilization review denial, which shall be processed in accordance with 42 C.F.R. Part 456[~~906 KAR 1:080~~], the following provisions shall apply:

(1) An applicant, recipient, or an authorized representative may request a hearing by filing a request with the designated hearing agency at the local office or central office of the Department for Community Based Services.

(2) The applicant, recipient, or authorized representative shall clearly indicate a desire for a hearing by submitting a statement:

(a) In written form; or

(b) Verbally and followed up in writing.[~~(3) An applicant, recipient or authorized representative may use Form PAFS-78, Request for Hearing, Appeal, or Withdrawal, to submit the written request.~~]

Section 4. Time Limitation for Request.

(1) To be considered timely, a hearing request relating to a Medicaid eligibility action or delay in taking a timely action[~~written or verbal (with appropriate follow-up in writing) request~~] from an applicant, recipient, or authorized representative [~~with regard to an action or a delay in taking a timely action by the Department for Medicaid Services or its designee regarding Medicaid eligibility~~] shall be **postmarked or** received by the designated hearing agency within:

(a) Thirty (30) days of the notice of:

1. Denial of an application;

2. Discontinuance of an active case; or

3. Increase in patient liability; or

(b) A time period equal to the delay in action by the agency.

(2) An additional thirty (30) days for requesting a hearing shall be granted if it is determined by the representative of the designated hearing agency[~~hearing officer~~] that the delay was for good cause in accordance with the following criteria:

(a) The applicant or recipient was away from home during the entire filing period;

(b) The applicant or recipient is unable to read or to comprehend the right to request a hearing on the notice of:

1. Adverse action;

2. Discontinuance of Medicaid eligibility; or

3. Increase in patient liability;

(c) The applicant or recipient moved resulting in delay in receiving or failure to receive the notice of:

1. Adverse action;

2. Discontinuance of the Medicaid eligibility; or

3. Increase in patient liability;

(d) Serious illness of the applicant or recipient; or

(e) The delay was no fault of the applicant or recipient.

Section 5. Continuation of Medicaid.

(1) Except as provided in subsection (3) or (4) of this section, Medicaid eligibility shall be continued at the level prior to the adverse action through the month in which the **final order[~~representative of the designated hearing agency's~~]** [~~hearing officer's~~]**[~~decision~~]** is:

(a) Rendered if the request results from dissatisfaction regarding a:

1. Proposed discontinuance; or

2. Proposed increase in patient liability; and

(b) Received within ten (10) days of the date of the:

1. Advance notice of adverse action; or

2. Notice of discontinuance from the Department for Medicaid Services or its designee.

(2) Except as provided in subsection (4) of this section, Medicaid shall be reinstated and continued through the month in which the **final order**[~~representative of the designated hearing agency's~~][~~hearing officer's~~]**[~~decision~~]** is rendered if:

(a) The request is received within twenty (20) days of the date of the advance notice of:

1. Adverse action;

2. Discontinuance of Medicaid eligibility; or

3. Increase in patient liability; and

(b) The reason for delay meets the good cause criteria established in Section 4(2) of this administrative regulation.

(3) Subsection (1) of this section shall not apply if the applicant, recipient or authorized representative requests the discontinuance or increase in patient liability to be in effect pending the **final order[~~hearing decision~~]**.

(4) Subsections (1) and (2) of this section shall not apply if the program benefit has been reduced or discontinued as a result of a change in law or administrative regulation.

(5) A continued or reinstated benefit shall be considered an overpayment if the agency decision is upheld.

(6) A time limited benefit shall not be extended based on a request for an appeal or hearing.

Section 6. Acknowledgement of the Request.

(1) A hearing request shall be acknowledged by the designated hearing agency.

(a) The acknowledgement letter shall contain information regarding:

1. The hearing process;

2. The right to case record review prior to the hearing;

3. The right to representation; and

4. A statement that the local office can provide information regarding the availability of free representation by legal aid or a welfare rights organization within the community.

(b) Subsequent notification shall comply with the requirements of KRS 13B.050.

(2)(a) A party to the hearing shall be provided at least twenty (20) days timely notice of the hearing to permit adequate preparation of the case.

(b) Less timely notice may be requested by the applicant, recipient or authorized representative to expedite the scheduling of the hearing.

(3)(a) A hearing complying with the requirements of KRS Chapter 13B shall be scheduled on a timely basis to assure no more than ninety (90) days shall elapse from the date of the request to the date of the **recommended order[~~decision~~]**.[~~,~~]

(b) A[~~with the exception that a~~] hearing determination shall be held within thirty (30) days of the hearing request date if it is regarding a:

1. Community[~~community~~] spouse income; or

2. Resource[~~resource~~] allowance[~~ shall be held within thirty (30) days of the hearing request date~~].

Section 7. Withdrawal or Abandonment of Request.

(1) The applicant, recipient or authorized representative:

(a) May withdraw a[~~his~~] request for a hearing prior to release of the representative of the designated hearing agency's **recommended order**[~~hearing officer's~~]**[~~decision~~]**; and

(b) Shall be granted the opportunity to discuss withdrawal with the applicant's, recipient's, or authorized representative's[~~his~~] legal counsel or representative prior to finalizing the action.

(2)[~~Abandonment of request.~~](a) A hearing request shall be considered abandoned if the applicant, recipient, or authorized representative fails without prior notification to report for the hearing.

(b) A hearing request shall not be considered as abandoned without extending to the applicant or recipient, and, if applicable, his legal counsel or representative, a period of ten (10) days to establish that the failure was for good cause in accordance with the good cause criteria established in Section 4(2) of this administrative regulation.

Section 8. Applicant's or Recipient's Rights Prior to a Hearing.

(1) An applicant or recipient shall receive notice consistent with KRS 13B.050 including the right to:

(a) Legal counsel or other representation;

(b) Review the case record relating to the issue; and

(c) Submit additional information in support of the applicant's or recipient's[~~his~~] claim.

(2) If the hearing involves medical issues:

(a) A medical assessment by an individual other than a person involved in the original decision **or recommended order** shall be obtained, at the department's expense, if the representative of the designated hearing agency[~~hearing officer~~] considers it necessary; and

(b) If a medical assessment, at the department's expense, is requested by the applicant, recipient, or authorized representative and is denied by the representative of the designated hearing agency[~~hearing officer~~], the reason for denial shall be set forth in writing.

Section 9. Postponement of a Hearing.

(1) The applicant, recipient or authorized representative may request and shall be entitled to a postponement of a hearing if the request is made:

(a) Before the hearing; and

(b) In accordance with the good cause criteria established in Section 4(2) of this administrative regulation.

(2) The decision to grant the postponement shall be made by the representative of the designated hearing agency[~~hearing officer~~].

(a) The postponement of the hearing shall not exceed thirty (30) days from the date of the request.

(b) The time limit for action on the **recommended order[~~decision~~]** shall be extended for as many days as the hearing is postponed.

Section 10. Corrective Action for Medicaid.

(1) The department may determine that corrective action to provide or restore eligibility is appropriate if:

(a) A hearing has been requested;

(b) A **recommended order[~~hearing decision~~]** has not been rendered; and

(c) The department's action or proposed action made the applicant or recipient ineligible for benefits to which the applicant or recipient[~~he~~] was entitled.

(2) After corrective action has been taken:

(a) The applicant, recipient, or authorized representative shall be given the opportunity to withdraw the hearing request; and

(b) The hearing process shall continue if the applicant, recipient or authorized representative wishes to pursue the request.

Section 11. Conduct of a Hearing.

(1) The hearing shall be conducted in accordance with the requirements of KRS 13B.080 and 13B.090.

(2) Impartiality. The representative of the designated hearing agency[~~hearing officer~~] shall be impartial and if necessary, the representative shall disqualify himself or herself as required by KRS 13B.040.

(3) The hearing shall be conducted in-state and at a location where the applicant, recipient, or authorized representative may attend without undue inconvenience.

(4) If necessary to receive full information on the issue, the representative of the designated hearing agency[~~hearing officer~~] may examine each party who appears and the party's[~~his~~] witnesses.

(5) The representative of the designated hearing agency[~~hearing officer~~] may schedule a hearing and take additional evidence as is deemed necessary. Evidence shall be taken in accordance with the provisions of KRS 13B.080 and 13B.090.

Section 12. Exceptions to a Recommended Order.

(1) Filing an exception to a recommended order shall be the same as filing a request for review of a local evidentiary hearing decision as established in 42 C.F.R. 431.233.

(2)(a) A party may file an exception to a recommended order in accordance with KRS 13B.110(4).

(b) If a party wishes to file an exception to the recommended order, the exception shall be filed with the Cabinet for Health and Family Services, Division of Administrative Hearings, within fifteen (15) days from the date that the recommended order is mailed.

Section 13. The **Recommended Order[~~Decision~~]**. With the exception of a dispute resolution regarding a utilization review denial, which shall be processed in accordance with 42 C.F.R. Part 456[~~906 KAR 1:080~~], the following provisions shall apply:

(1) After the hearing is concluded, the representative of the designated hearing agency[~~hearing officer~~] shall issue a **recommended order[~~decision~~]** in accordance with the requirements of KRS 13B.110.

(2) A **recommended order[~~decision~~]** with regard to a community spouse's income allowance shall be subject to a downward adjustment as deemed necessary by the agency as

circumstances causing financial duress change or no longer exist.

(a) The resource allowance shall be subject to this adjustment with regard to a resource that is:

1. Attributed to the community spouse; and

2. Not transferred within six (6) months of the Medicaid approval date.

(b) This adjustment shall be appealable pursuant to Section 5 of this administrative regulation.

(3)**(a)** A copy of the **recommended order[~~decision~~]** shall be mailed to the applicant or recipient and his representative**; or**

(b) The applicant, recipient, or authorized representative may elect to receive a copy of the recommended order or the final order by electronic format.

(4) The **recommended order[~~decision~~]**, with respect to the issue considered, shall be **reviewed by the appeal board[~~final unless further appeal is initiated within twenty (20) days from the date of mailing of the decision~~]**.

Section 14[~~13~~]. Appeal from **Recommended Order[~~Decision~~]** of Representative of the Designated Hearing Agency [~~hearing officer~~]for an Applicant and Recipient.

(1) An applicant, recipient**,** or his authorized representative wishing to appeal the **recommended order[~~decision~~]** of a representative of the designated hearing agency[~~hearing officer~~] shall file an appeal to the designated[~~an appointed~~] appeal board.

(2) The appeal request shall be considered timely if it is received in a local office or the central office of the designated hearing agency within twenty (20) days of the date on which the representative of the designated hearing agency's **recommended order**[~~hearing officer's~~]**[~~decision~~]**was **postmarked[~~mailed~~]**.

(3) If the good cause criteria established in Section 4(2) of this administrative regulation is met, an appeal request received **or postmarked** within thirty (30) days of the representative of the designated hearing agency's **recommended order**[~~hearing officer's~~]**[~~decision~~]** shall be considered timely.

(4) The request shall be:

(a) Filed:

1. In writing; or

2. Verbally, if a written request is subsequently sent; and

(b) Considered filed on the day the request is received **or postmarked**.

(5) [~~An applicant, recipient or authorized representative may use Form PAFS-78, Request for Hearing, Appeal or Withdrawal, to submit the written request.~~

~~(6)~~] Medicaid eligibility shall continue to be denied, discontinued, patient liability increased, or Medicaid coverage reduced if the department's action is upheld by the representative of the designated hearing agency[~~hearing officer~~].

Section 15[~~14~~]. Applicant's or Recipient's Rights Prior to an Appeal Board Consideration.

(1) An appeal shall be acknowledged in writing to the applicant or recipient and his authorized representative.

(2) The acknowledgment shall offer the opportunity to file a brief or submit new and additional proof and state the tentative date on which the board shall consider the appeal.

Section 16[~~15~~]. Appeal Board Review.

(1) An appeal to the appeal board shall be considered upon the records of the department and the evidence or exhibits introduced before the representative of the designated hearing agency[~~hearing officer~~] unless the applicant, recipient**,** or authorized representative specifically requests permission to file additional proof or an exception to the recommended order was filed.

(2) If an appeal is being considered on the record, a party may present a written argument and at the appeal board's discretion, be allowed to present an oral argument.

(3) If needed, the appeal board may direct the taking of additional evidence to resolve the appeal.

(4) Evidence shall be taken by the appeal board after seven (7) days notice to the parties, giving them the opportunity to object to the introduction of additional evidence or to rebut or refute the additional evidence.

Section 17[~~16~~]. The Appeal Board **Final Order[~~Decision~~]**. The **final order[~~decision~~]** of the appeal board shall:

(1) Be duly signed by the secretary or members of the appeal board;

(2) Set forth in writing the facts on which the **final order[~~decision~~]** is based; and

(3) Be irrevocable in respect to the issue in the individual case unless the **final order[~~decision~~]** is set aside through the judicial review process pursuant to KRS 13B.140 and 13B.150.

Section 18[~~17~~]. Medicaid Case Actions Following a **Final Order[~~Decision~~]**.

(1) A Medicaid case action following a **final order [~~decision~~]** of a representative of the designated hearing agency's[~~hearing officer~~] or the appeal board shall be made promptly and shall include:

(a) The month of application; or

(b) If it is established that the applicant or recipient was eligible during an entire period, the month in which the incorrect action of the department adversely affected the applicant or recipient.

(2) For a reversal involving an increase in patient liability, action shall be taken to reduce the patient liability within ten (10) days of the receipt of the **final order[~~hearing or appeal board decision~~]**.

Section 19[~~18~~]. Medicaid Managed Care Provision of Services.

(1) A dispute resolution between a recipient and a partnership or managed behavioral health care organization shall be in accordance with KRS 211.461 through 211.466 and 42 C.F.R. part 456[~~906 KAR 1:080~~].

(2) All other hearings or appeals relating to the Medicaid managed care provision of services shall be processed in accordance with 907 KAR 1:563.

Section 20[~~19~~]. Limitation of Fees.

(1) Pursuant to KRS 205.237, the maximum fee that an attorney may charge the applicant or recipient for the representation in all categories of Medicaid shall be:

(a) Seventy-five (75) dollars for preparation and appearance at a hearing before a hearing officer;

(b) Seventy-five (75) dollars for preparation and presentation (brief included) of an appeal to the appeal board;

(c) $175 for preparation and presentation, including a pleading and appearance in court, of an appeal to the circuit court;

(d) $300 for preparatory work and briefs and all other matters incident to an appeal to the Court of Appeals.

(2) Enforcement of payment of the fee shall be a matter entirely between the counsel or agent and the recipient. The fee shall not be deducted from a public assistance payment otherwise due and payable to the recipient.

Section 21[~~20~~]. Burden of Proof. The party bearing the burden of proof shall be determined in accordance with KRS 13B.090(7).[~~Section 21. Incorporation by Reference. (1) Form PAFS-78, May 1996 edition, Department of Medicaid Services, is incorporated by reference.~~

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

CAROL H. STECKEL, Commissioner
ADAM M. MEIER, Secretary

APPROVED BY AGENCY: February 14, 2019

FILED WITH LRC: February 15, 2019 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 CHFSRegs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Jonathan Scott, (502) 564-4321, ext. 2015, jonathant.scott@ky.gov; and Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the cabinet's grievance, hearing, and appeal process for matters related to Medicaid eligibility.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the cabinet's grievance, hearing, and appeal process for matters related to Medicaid eligibility.

(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 cabinet's grievance, hearing, and appeal process for matters related to Medicaid eligibility.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing the cabinet's grievance, hearing, and appeal process for matters related to Medicaid eligibility.

(2) If 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 change this administrative regulation by updating the hearing and appeals process to comply with federal timeline requirements, allow for the cabinet secretary to sign final or recommended orders, allow for exceptions to a recommended order, delete a form that is no longer used, update obsolete language, and make the regulatory language consistent with the terminology of KRS Chapter 13B. The amended after comments version of this administrative regulation will synchronize 907 KAR 1:560 and 1:563 by allowing for the postmark date to serve as the date of receipt for certain appeal deadlines. The amended after comments version also is amended to use the terms "recommended order" or "final order" instead of "decision" to refer to the ruling of the hearing or the ruling of the appeal board. In addition, applicants, recipients, or authorized representatives may also elect to receive copies of the recommended or final order in an electronic format.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to update the appeals process to comply with federal timeline requirements, update obsolete language and make the regulatory language consistent with the terminology of KRS Chapter 13B.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by updating the appeals process to comply with federal timeline requirements, updating obsolete language and making the regulatory language consistent with the terminology of KRS Chapter 13B.

(d) How the amendment will assist in the effective administration of the statutes: This amendment assists in the effective administration of the statutes by updating the appeals process to comply with federal timeline requirements, updating obsolete language and making the regulatory language consistent with the terminology of KRS Chapter 13B.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: This administrative regulation affects all current Medicaid recipients. Currently 1.2 million people within the Commonwealth are Medicaid recipients.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No action will be necessary to comply.

(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 impose a cost on regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). A more timely appeals process will be implemented.

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

(a) Initially: The Department for Medicaid Services (DMS) does not anticipate any additional costs to implement this amendment.

(b) On a continuing basis: DMS does not anticipate any additional costs to implement this amendment.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish 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.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will affect each Medicaid recipient who requests appeal of an action affecting their eligibility for medical assistance.

2. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation is authorized by KRS Chapter 13B, KRS 205.231, 205.237, and 42 C.F.R. 431.200 - 250.

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

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

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

(c) How much will it cost to administer this program for the first year? This amendment will not result in additional costs during the first year of program administration.

(d) How much will it cost to administer this program for subsequent years? This amendment will not result in additional costs during subsequent years of program administration.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: No additional expenditures are necessary to implement this amendment.

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.

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.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Policy and Operations
(Amended After Comments)

907 KAR 1:563. Medicaid covered services appeals and hearings unrelated to managed care.

RELATES TO: KRS Chapter 13B, 194A.025, 205.231, 205.237, 205.520, 205.8451, 210.270 42 C.F.R. 431.233, 431.244, Part 475, 475.101, 483.2, 483.12, 431 Subpart E, 483 Subpart E, 42 U.S.C. 1396n(c)

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(2) and (3), 205.6315, 42 U.S.C. 1396

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services has responsibility to administer the Medicaid Program. 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. This administrative regulation establishes policies and requirements relating to an adverse action, an appeal, or a hearing regarding Medicaid covered services that are not the responsibility of a managed care organization.

Section 1. Definitions.

(1) "1915(c) home and community based waiver service" means a service available or provided via a 1915(c) home and community based waiver services program.

(2) "1915(c) home and community based waiver services program" means a Kentucky Medicaid program established pursuant to and in accordance with 42 U.S.C. 1396n(c).

(3) "Administrative hearing" is defined by KRS 13B.010(2).

(4) "Appeal board" means the entity or individual designated by the secretary of the Cabinet for Health and Family Services to hear appeals of recommended orders or final orders following a decision by a **representative of the** designated hearing agency or hearing officer.

(5) "Applicant" means an individual who has applied for Medicaid covered services.

(6)[~~(5)~~] "Authorized representative" means:

(a) For a recipient or applicant who is authorized by Kentucky law to provide written consent, an individual or entity acting on behalf of, and with written consent from, the recipient or the applicant; or

(b) A legal guardian.

(7)[~~(6)~~] "Cabinet" means the Cabinet for Health and Family Services.

(8)[~~(7)~~] "Department" means the Department for Medicaid Services or its designee.

(9) "Designated hearing agency" means the entity designated by the secretary of the Cabinet for Health and Family Services to adjudicate administrative hearings.

(10)[~~(8)~~] "Enrollee" means a recipient who is enrolled with a managed care organization for the purpose of receiving Medicaid or Kentucky Children's Health Insurance Program covered services.

(11)[~~(9)~~] "Final order" is defined by KRS 13B.010(6).

(12)[~~(10)~~] "Hearing officer" is defined by KRS 13B.010(7), and includes a representative from a designated hearing agency.

(13)[~~(11)~~] "ICF IID" means intermediate care facility for an individual with an intellectual disability.

(14)[~~(12)~~] "Managed care organization" or "MCO" means an entity for which the Department for Medicaid Services has contracted to serve as a managed care organization as defined in 42 C.F.R. 438.2.

(15)[~~(13)~~] "Medicaid covered services" means items or services a Medicaid recipient may receive through the Medicaid Program.

(16)[~~(14)~~] "Party" is defined by KRS 13B.010(3).

(17)[~~(15)~~] "PASRR" means preadmission screening and resident review.

(18)[~~(16)~~] "Patient liability" means the financial obligation of a recipient towards the cost of the recipient's nursing facility services or services provided pursuant to a 1915(c) waiver.

(19)[~~(17)~~] "Provider" is defined by KRS 205.8451(7).

(20)[~~(18)~~] "QIO" or "quality improvement organization" means an entity that meets the requirements established in 42 C.F.R. 475.101.

(21)[~~(19)~~] "Recipient" is defined by KRS 205.8451(9).

(22)[~~(20)~~] "Recommended order" is defined by KRS 13B.010(5).

(23)[~~(21)~~] "Time-limited benefits" means Medicaid coverage which is restricted to a specified period in time.

Section 2. Informing the Recipient of Medicaid Coverage Administrative Hearing Rights.

(1) An applicant, recipient, or authorized representative shall be informed, in writing, of the applicant's or recipient's right to an administrative hearing if an adverse action is taken affecting covered services.

(2) An applicant, recipient, or authorized representative shall be informed of the method by which the applicant or recipient may obtain an administrative hearing and that the applicant or recipient may be represented by:

(a) Legal counsel;

(b) A relative;

(c) A friend;

(d) A spokesperson not listed in paragraph (a), (b), (c), (e), or (f) of this subsection;

(e) An authorized representative; or

(f) Himself or herself.

(3) An adverse action notice shall contain a statement of:

(a) The Medicaid adverse action;

(b) The reason for the action;

(c) The specific federal or state law or administrative regulation that supports the action; and

(d) An explanation of the circumstances under which payment for services shall be continued if an administrative hearing is requested in a timely manner pursuant to Section 5 of this administrative regulation.

Section 3. Notification Process.

(1) An adverse action notice regarding an applicant or a recipient shall be mailed to the applicant, recipient, or authorized representative of the applicant or recipient using:

(a) The United States Postal Service; and

(b) A return receipt requested format.

(2) Refusal by an applicant, a recipient, or an authorized representative to confirm receipt of an adverse action notice shall be considered receipt of the adverse action notice.

Section 4. Request for an Administrative Hearing.

(1) An applicant, recipient, or an authorized representative may request an administrative hearing by filing a written request with the department.

(2) If an applicant, recipient, or authorized representative requests an administrative hearing, the request shall:

(a) Be in writing and clearly specify the reason for the request;

(b) Indicate the date of service or type of service for which payments may be denied; and

(c) Be postmarked within thirty (30) calendar days from the

date of the department's written notice of adverse action of:

1. Discontinuance of services;

2. Adverse determination made with regard to the PASRR requirements of 42 U.S.C. 1396r(e); or

3. Patient liability.

Section 5. Continuation of Medicaid Covered Services.

(1)(a) Except as established in paragraphs (b) or (c) of this subsection or subsections (2), (3), or (4) of this section, if a request for an administrative hearing is postmarked or received within ten (10) days of the advance notice date of denial, the individual shall remain eligible for the care, program participation, or service denied until the date that the final order is rendered in accordance with Section 12[~~11~~] of this administrative regulation.

(b) The individual shall not remain eligible for the care, program participation, or service denied if:

1.a. It is determined at the administrative hearing that the sole issue is one of federal or state law or policy; and

b. The department promptly informs the individual in writing that the services shall be terminated or reduced pending the administrative hearing decision;

2. The individual's eligibility for time-limited benefits has expired; or

3. The individual receives in full the specified amount of care or number of services that were authorized by the department.

(c) Except as established in paragraph (d) of this subsection, a request for an amount of care or number of services subsequent to receiving a previously authorized amount of care or number of services in full shall not be considered a continuation of the previously authorized amount of care or number of services.

(d) The following shall qualify for continuation of services in accordance with paragraph (a) of this subsection if the care, program participation, or service was previously received by the individual within thirty (30) days of the request for continuation:

1. Denial that an individual meets patient status criteria to qualify for nursing facility services pursuant to 907 KAR 1:022;

2. Denial that an individual meets patient status criteria to qualify for ICF IID services pursuant to 907 KAR 1:022;

3. Denial that an individual meets nursing facility level of care criteria, nursing facility patient status criteria, or ICF IID patient status criteria pursuant to 907 KAR 1:022 to qualify for 1915(c) home and community based waiver services; or

4. Denial of a 1915(c) home and community based waiver service.

(2) Subsection (1) of this section shall not apply if the Medicaid Program service has been reduced or discontinued as a result of a change in law or administrative regulation.

(3) Time-limited benefits shall not be extended based on a request for an administrative hearing.

(4) If a request for an administrative hearing is postmarked or received from a recipient within ten (10) days of the advance notice of an adverse PASRR determination made in the context of a resident review, the department shall continue to reimburse for nursing facility services until the date that the final order is rendered.

Section 6. Notice of Scheduled Hearing.

(1) A scheduled administrative hearing notice shall contain:

(a) The date, time, and place of the scheduled administrative hearing; and

(b) A statement that the local Department for Community Based Services office provides information regarding the availability of free representation by legal aid or a welfare rights organization within the community.

(2) An administrative hearing shall be conducted within thirty (30) days of the date of the request for an administrative hearing unless otherwise authorized by the **representative of the** designated hearing agency[~~hearing officer~~].

(3) An applicant or recipient shall receive notice consistent with KRS 13B.050 including the right to:

(a) Legal counsel or other representation;

(b) Review the case record relating to the issue; and

(c) Submit additional information in support of the applicant's or recipient's claim.

(4)(a) If an administrative hearing involves medical issues, a medical assessment by an independent physician participating in the Medicaid Program shall be obtained at the department's expense if the hearing officer considers it necessary based on case record review.

(b) If an independent physician assessment at the department's expense is requested by the recipient or authorized representative and is denied by the hearing officer, notification of the reason for denial shall be established in writing.

Section 7. Conduct of an Administrative Hearing.

(1) An administrative hearing shall be conducted in accordance with the requirements of KRS Chapter 13B.

(2) A hearing officer shall be impartial and shall disqualify himself or herself as required by KRS 13B.040.

(3) An administrative hearing shall be conducted in-state where the recipient or authorized representative may attend without undue inconvenience.

(4) A **representative of the** designated hearing agency [~~hearing officer~~] shall offer to transmit a recommended order by electronic format.

(5) If necessary to receive full information on the issue, a **representative of the** designated hearing agency[~~hearing officer~~] may examine each party who appears and the party's witnesses.

(6)(a) A **representative of the** designated hearing agency [~~hearing officer~~] may reopen the administrative hearing and take additional evidence as is deemed necessary.

(b) Evidence shall be taken in accordance with the provisions of KRS 13B.080 and 13B.090.

Section 8. Designation of Alternative Hearing Agency and Appeal Board.

(1) The secretary of the cabinet may:

(a) Select a designated hearing agency; or

(b) Create a designated hearing agency.

(2) A designated hearing agency shall:

(a) Be composed of cabinet employees who shall serve as hearing officers; and

(b) Follow all requirements established pursuant to KRS Chapter 13B.

(3) The secretary of the cabinet may:

(a) Select an appeals board; or

(b) Create an appeals board.

(4) An appeals board shall follow all requirements established pursuant to KRS Chapter 13B and KRS 194A.025.

Section 9. Withdrawal or Abandonment of Request.

(1) A recipient or authorized representative:

(a) May withdraw the appeal for an administrative hearing prior to the release of the hearing officer's decision; and

(b) Shall be granted the opportunity to discuss withdrawal with the recipient's legal counsel or authorized representative prior to finalizing the action.

(2) An administrative hearing request shall be considered abandoned if the recipient or authorized representative fails without prior notification to report for the administrative hearing.

Section 10[~~9~~]. Recommended Order.

(1) After an administrative hearing is concluded, the hearing officer shall issue a recommended order in accordance with KRS 13B.110.

(2)(a) A recommended order shall be issued within thirty (30) days of the administrative hearing date, except for a recommended order regarding:

1. A nursing facility level of care or patient status decision;

2. An ICF IID patient status decision;

3. A nursing facility level of care, nursing facility patient status, or ICF IID patient status decision related to 1915(c) home and community based waiver program participation; or

4. A 1915(c) home and community based waiver service.

(b) A recommended order regarding an item listed in paragraph (a) of this subsection shall be issued within fifteen (15)

calendar days of the administrative hearing date.

(3)(a) A copy of the recommended order shall be:

1. Mailed to each party in accordance with KRS 13B.110(4); or

2. Sent by electronic means to any party which requests, during the administrative hearing, that the order be sent by electronic means.

(b) If requested during the administrative hearing, a copy of the recommended order shall be electronically transmitted to a site specified by the applicant or recipient on the date the recommended order is rendered.

Section 11[~~10~~]. Exceptions to a Recommended Order.

(1) Filing an exception to a recommended order shall be the same as filing a request for review of a local evidentiary hearing decision as established in 42 C.F.R. 431.233.

(2)(a) A party may file an exception to a recommended order in accordance with KRS 13B.110(4).

(b) If a party wishes to file an exception to the recommended order, the exception shall be filed with the Cabinet for Health and Family Services, Division of Administrative Hearings within fifteen (15) days from the date that the recommended order is mailed.

Section 12[~~11~~]. Final Order or Review of Recommended Order.

(1) The secretary of the Cabinet for Health and Family Services or other party authorized by KRS 13B.010 shall issue a final order:

(a) Within ninety (90) days from the date of the request for an administrative hearing; or

(b) As established in 42 C.F.R. 431.244(f).

(2) In accordance with 42 C.F.R. 431.233, unless a recipient requests a de novo hearing, the review of a recommended order shall consist of a cabinet level review of the record of the administrative hearing.

(b) If an exception to a recommended order was not filed, the information in the record considered in the cabinet level review or final order shall be limited to the information considered at the administrative hearing.

(c) If a recipient requests a de novo hearing, at the de novo hearing either party may offer:

1. Evidence not presented at the hearing below; and

2. The evidentiary record of the fair hearing.

Section 13[~~12~~]. Judicial Review of a Final Order.

(1) A further appeal at the circuit court level may be initiated within thirty (30) days from the date of mailing of the final order in accordance with KRS 13B.140 and 13B.150.

(2) Information regarding free legal aid and welfare rights organizations may be obtained in accordance with Section 6(1)(b) of this administrative regulation.

Section 14[~~13~~]. Medicaid Case Actions Following Circuit Court Level Appeal Decision.

(1) For a reversal involving a reduction of Medicaid coverage, action shall be taken to restore services within ten (10) days of the receipt of the circuit court decision.

(2) If a recipient continues to:

(a) Remain in a nursing facility or an ICF IID during the circuit court appeal process, the department shall reimburse for the nursing facility services or ICF IID services which occurred during the circuit court appeal process; or

(b) Receive a 1915(c) home and community based waiver service during the circuit court appeal process, the department shall reimburse for the service which occurred during the circuit court appeal process.

Section 15[~~14~~]. Special Procedures Relating to a Managed Care Participant.

(1) For an adverse action toward an enrollee regarding a service that is within the scope of managed care, the requirements governing the MCO internal appeal process and the department's hearing process for the enrollee shall be as established in 907 KAR 17:010.

(2) For an adverse action by the department toward an enrollee regarding a service that is not within the scope of managed care, the appeals policies and requirements established in this administrative regulation shall apply.

Section 16[~~15~~]. Limitation of Fees.

(1) Pursuant to KRS 205.237, the maximum fee that an attorney may charge the applicant or recipient for the representation in all categories of Medicaid shall be:

(a) Seventy-five (75) dollars for preparation and appearance at a hearing before a hearing officer;

(b) $175 for preparation and presentation, including a pleading and appearance in court, of an appeal to the circuit court; or

(c) $300 for preparatory work and briefs and all other matters incident to an appeal to the:

(a) Court of Appeals; or

(b) Supreme Court of Kentucky.

(2)(a) Enforcement of payment of a fee shall:

1. Not be a matter for the department or the cabinet; and

2. Be a matter between the counsel or agent and the recipient.

(b) The fee shall not be deducted from a public assistance payment otherwise due and payable to the recipient.

(3)(a) The fee limitations stated in subsection (1) of this section shall:

1. Apply to the amount an attorney may charge a recipient or applicant; and

2. Not apply to the amount an attorney may collect from another entity or person who represents the recipient or applicant in all categories of Medicaid.

(b) The amount an attorney may collect from an entity or person who is not a recipient or applicant for representing the recipient or applicant in all categories of Medicaid shall:

1. Be a matter between the attorney and other entity or person; and

2. Not be a matter that involves the department or cabinet.

Section 17[~~16~~]. A hearing or an appeal relating to a decision to reclassify or transfer a person with an intellectual disability in a state institution shall be in accordance with the requirements of KRS 210.270 and 907 KAR 1:075.

Section 18[~~17~~]. Burden of Proof. The party bearing the burden of proof shall be determined in accordance with KRS 13B.090(7).

CAROL H. STECKEL, Commissioner
ADAM M. MEIER, Secretary

APPROVED BY AGENCY: February 14, 2019

FILED WITH LRC: February 15, 2019 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; CHFSRegs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Jonathan Scott, (502) 564-4321, ext. 2015, jonathant.scott@ky.gov; and Chase Coffey

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes Medicaid program policies and requirements regarding covered services hearings and appeals for the Medicaid population.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish Medicaid program policies and requirements regarding covered services hearings and appeals for the Medicaid population.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of authorizing statutes by establishing Medicaid program policies and requirements regarding covered services hearings and appeals for the Medicaid population.

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

the authorizing statutes by establishing Medicaid program policies and requirements regarding covered services hearings and appeals for the Medicaid population.

(2) If 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 change this administrative regulation by updating the hearing and appeals process to comply with federal timeline requirements, allow for the cabinet secretary to sign final or recommended orders, update obsolete language, and to make the regulatory language consistent with the terminology of KRS Chapter 13B. The amendments after comments to this administrative regulation add the phrase "representative of the" to various places within the administrative regulation in order to more clearly synchronize the terms "hearing officer" and "representative of the designated hearing agency".

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to update the appeals process to comply with federal timeline requirements, update obsolete language and make the regulatory language consistent with the terminology of KRS Chapter 13B.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by clarifying policy and revising language and formatting to ensure that it complies with KRS Chapter 13A standards.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the authorizing statues by clarifying policy and revising language and formatting to ensure that it complies with KRS Chapter 13A standards.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: This administrative regulation affects recipients of Medicaid services. Currently, more than 145,000 Kentuckians receive Medicaid Fee for Service services.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: A recipient who wishes to appeal a Medicaid service denial shall comply with the appeal provisions established 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): DMS anticipates no cost imposed by the amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The clarifications should benefit recipients in being able to better understand the appeals policies and requirements.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
Initially: DMS anticipates that the amendment to this administrative regulation will not result in additional costs to the department. On a continuing basis: DMS anticipates that the amendment to this administrative regulation will not result in additional costs to the department.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Sources of funding to be used for the implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX and Title XXI of the Social Security Act, and state matching funds of general and agency appropriations.

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

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

(9) Tiering: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administration 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 Department for Medicaid Services will be impacted by this administrative regulation.

2. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS Chapter 13B, KRS 194A.030(2), 194A.050(1), 205.231, 205.237, 205.520(3), 42 C.F.R. 431 Subpart E and 42 C.F.R. 483 Subpart E.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The Department for Medicaid Services (DMS) anticipates no revenue for state or local government will result from the amendment.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? DMS anticipates no revenue for state or local government will result from the amendment.

(c) How much will it cost to administer this program for the first year? DMS anticipates no cost as a result of the amendment.

(d) How much will it cost to administer this program for subsequent years? DMS anticipates no cost as a result of 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.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 C.F.R. 431 Subpart E and 42 C.F.R. 483 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 194A.050(1) requires the cabinet secretary to "formulate, promote, establish, and execute policies, plans, and programs and shall adopt, administer, and enforce throughout the Commonwealth all applicable state laws and all administrative regulations necessary under applicable state laws to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the Commonwealth and necessary to operate the programs and fulfill the responsibilities vested in the cabinet. The secretary shall 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 205.237 establishes that "any individual claiming public assistance in any proceeding before the appeal board or a court may be represented by counsel; but no counsel shall either charge or receive for such service more than an amount established by the secretary by administrative regulation." KRS 205.231 establishes appeals, hearing officer and related provisions. KRS 205.531 requires the Medicaid program to comply with KRS Chapter 13B.

3. Minimum or uniform standards contained in the federal

mandate. 42 C.F.R. 431, Subpart E requires the Medicaid program's hearing system to provide for a hearing before the agency or an evidentiary hearing at the local level, with a right of appeal to a state agency hearing and the hearing system must meet the due process standards established in *Goldberg v. Kelly,* 397 U.S. 254 (1970), and any additional standards specified in 42 C.F.R. 431, Subpart E. Additionally, the Medicaid program must satisfy various notice requirements, as well as hearing conduct requirements, among other related requirements. 42 C.F.R. 483, Subpart E requires the Medicaid program to provide a system for a resident of a skilled nursing facility (SNF) or a nursing facility (NF) to appeal a notice from the SNF or NF of intent to discharge or transfer the resident, and for an individual adversely affected by any pre-admission screening resident review (PASRR) determination made by the state in the context of either a preadmission screening or an annual resident review under subpart C of part 483 to appeal that determination. Additionally, the Medicaid program must provide an appeals system that meets the requirements of this 42 C.F.R. 483, Subpart E and 42 C.F.R. 431, Subpart E.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This amendment does not impose stricter, than federal, requirements.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Aging and Independent Living
Division of Operations and Support
(Amended After Comments)

910 KAR 1:240. Certification of assisted-living communities.

RELATES TO: KRS Chapter 13B, 17.165(1), (2), 194A.060(1), 194A.700-729, 209.030, 216.300(1), 216.595, 216.789, 216.793

STATUTORY AUTHORITY: KRS 194A.050(1), (9), 194A.707(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary under applicable state laws to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the commonwealth. KRS 194A.707(1) requires the cabinet to promulgate an administrative regulation establishing an initial and annual certification review process for assisted-living communities that shall include an on-site visit and procedures related to applying for, reviewing, and approving, denying, or revoking certification, as well as the conduct of hearings upon appeals as governed by KRS Chapter 13B. This administrative regulation establishes the certification process for assisted-living communities.

Section 1. Definitions.

(1) "Activities of daily living" is defined by KRS 194A.700(1).

(2) "Ambulatory" means the ability to walk without assistance.

(3) "Applicant" means the owner or manager who represents a business seeking initial or annual certification as an assisted-living community.

(4) "Assisted-living community" is defined by KRS 194A.700(4).

(5) "Certification review" means the process of reviewing applications and issuing certification for an assisted-living community.

(6) "Client", "resident", or "tenant" is defined by KRS 194A.700(5).

(7) "Client's designated representative" means a person identified in a document signed and dated by the client, client's guardian, or attorney-in-fact identifying a representative authorized to prepare or direct medication pursuant to KRS 194A.700(3).

(8) "Danger" is defined by KRS 194A.700(6).

(9) "Functional needs assessment" means the client data required by KRS 194A.705(5)(a) and (b).

(10) "Instrumental activities of daily living" is defined by 194A.700(9).

(11) "Licensed healthcare professional" is defined by KRS 216.300(1).

(12) "Living unit" is defined by KRS 194A.700(10).

(13) "Mobile non-ambulatory" is defined by KRS 194A.700(11).

(14) "Plan of correction" is defined by KRS 194A.700(12).

(15) "Statement of danger" is defined by KRS 194A.700(13).

(16) "Statement of noncompliance" is defined by KRS 194A.700(14).

(17) "Temporary condition" means a condition that affects a client as follows:

(a) The client loses mobility either before or after entering a lease agreement with the assisted-living community but is expected to regain mobility within six (6) months of loss of ambulation or mobile nonambulation; is documented by a licensed healthcare professional who is not the owner, manager, or employee of the assisted-living community; and the assisted-living community has a written plan in place to ensure that the client is not a danger; or

(b)1. The client loses mobility after entering a lease agreement;

2. The client is not expected to regain mobility;

3. Hospice or similar end-of-life services are provided in accordance with KRS 194A.705(2) documented by hospice or a licensed health care professional; and

4. The assisted-living community has a written plan in place to ensure that the client is not a danger.

Section 2. Application and Fees for Initial Certification Review.

(1) For initial certification an applicant shall, at least sixty (60) days prior to a planned opening, file with the department:

(a) A completed DAIL-ALC-1, Assisted-Living Community Certification Application;

(b) A copy of a blank lease agreement and any documentation incorporated by reference into the lease agreement;

(c) A copy of written material used to market the proposed assisted-living community, including material that markets offered special programming, staffing, or training in accordance with KRS 194A.713(11);

(d) The floor plan of the proposed assisted-living community identifying the:

1. Living units, including features that meet the requirements of KRS 194A.703(1);

2. Central dining area;

3. Laundry facility; and

4. Central living room; and

(e) A nonrefundable application[~~certification~~] fee **for applications submitted for certification beginning July 1, 2019 shall be**:

1. **Forty (40)[~~In the amount of $1,000 plus sixty (60)~~]** dollars per unit requested to be certified, according to the DAIL-ALC-1, Assisted-Living Community Certification Application, **in addition to the following fee schedule:**

a. 100 or more units $2,000;

b. 75–99 units $1,750;

c. 50–74 units $1,500;

d. 25–49 units $1,000;

e. < 25 units $500[~~for applications submitted for certification beginning July 1, 2019~~][~~Assessed by the department in accordance with KRS 194A.707(8)~~];

2. Made payable to the Kentucky State Treasurer; and

3. Mailed to the Department for Aging and Independent Living, 275 East Main Street, Frankfort, Kentucky 40621.

(2) The applicant shall notify the department upon occupancy of five (5) residents in the assisted-living community.

Section 3. Application and Fees for Annual Certification Review. The department shall renew a certification if an assisted-living community:

(1) Has obtained its initial certification in accordance with Section 5 of this administrative regulation; and

(2) Submits to the department annually by July 1:

(a) A completed DAIL-ALC-1, Assisted-Living Community Certification Application;

(b) The documentation required by Section 2(1)(a) through (d) of this administrative regulation, if changes have occurred since the previous certification; and

(c) The nonrefundable annual application and certification fee**,** beginning July 1, 2019, in the amount of **forty (40)[~~$500 plus sixty (60)~~]** dollars per certified unit **in addition to the following fee schedule:**

1. 100 or more units $2,000;

2. 75–99 units $1,750;

3. 30–74 units $1,500;

4. 25–49 units $1,000;

5. < 25 units $500 that shall be:

a.[~~1.~~] Made payable to the Kentucky State Treasurer; and

b.[~~2.~~] Mailed to the Department for Aging and Independent Living, 275 East Main Street, Frankfort, Kentucky 40621[~~required by Section 2(1)(e) of this administrative regulation~~].

Section 4. Change in an Assisted-Living Community.

(1) If there is an increase in the number of living units, an assisted-living community shall reapply for certification with the department:

(a) In accordance with Section 2(1) of this administrative regulation; and

(b) Not less than sixty (60) days prior to the increase.

(2) If the increase in units occurs before or after the required annual certification date, the certification fee shall be sixty (60)[~~twenty (20)~~] dollars per each additional unit.

(3) If there is a decrease in the number of living units, an assisted-living community shall notify the department within sixty (60) days of the decrease.

(4) If there is a change of more than fifty (50) percent interest in ownership of an assisted-living community, the new owner shall apply for certification:

(a) By following the procedures in Section 3 of this administrative regulation; and

(b) Within thirty (30) days of the change of owners.

(5) An assisted-living community shall:

(a) Notify the department in writing:

1. Within thirty (30) days of a name or mailing address change for the assisted-living community or the applicant; or

2. At least sixty (60) days prior to termination of operation; and

(b) Notify a client of termination of operation sixty (60) days prior to closure unless there is sudden termination due to:

1. Fire;

2. Natural disaster; or

3. Closure by a local, state, or federal agency.

Section 5. Initial Certification of an Assisted-Living Community. If department staff determines that an applicant for initial certification meets the application requirements specified in Section 2(1) of this administrative regulation, the department shall:

(1) Consider the application process complete;

(2) Notify the applicant of operation status within ten (10) business days of receipt of the completed DAIL-ALC-1, Assisted-Living Community Certification Application; and

(3) Conduct an announced on-site review.

Section 6. Annual Certification of an Assisted-Living Community. If department staff determines that an applicant for annual certification meets the application requirements specified in Section 3 of this administrative regulation, the department shall:

(1) Consider the application process complete; and

(2) Conduct an unannounced on-site review pursuant to KRS 194A.707(2)(b) or (c).

Section 7. On-Site Review of an Assisted-Living Community.

(1)(a) A representative of the department conducting a certification review shall not disclose information made confidential by KRS 194A.060(1).

(b) A confidential interview with a client or access to a client's living unit shall be subject to the client's oral or written consent.

(2) The on-site review shall consist of:

(a) Review of staffing pursuant to KRS 194A.717(1);

(b) Review of employment records in accordance with subsection (3) of this section;

(c) Verification that an employee reads and agrees to the policy and procedures of the assisted-living community regarding communicable disease pursuant to KRS 194A.717(4);

(d) Documentation of:

1. Completion of employee orientation:

a. Pursuant to KRS 194A.719(1); and

b. Within ninety (90) days of the date of hire; and

2. Annual in-service education pursuant to KRS 194.719(2);

(e) Verification of compliance with the applicable building and life safety codes in accordance with KRS 194A.703(3);

(f) Review of client records in accordance with subsection (4) of this section;

(g) Review of an assisted-living community's policies and procedures for compliance with KRS 194A.700 through 194A.729 using a DAIL-ALC-2, Assisted-Living Community Certification Checklist;

(h) Review of an assisted-living community's written service provision and practices in accordance with subsection (5) of this section; and

(i) Review of any documentation or records to ensure compliance pursuant to KRS 194A.707(10).

(3) Review of Employment Records.

(a) During the on-site review, the following employment records shall be reviewed, except as provided in paragraph (b) of this subsection:

1. An employment application that shall contain a criminal record check notice pursuant to KRS 216.793(1);

2. A criminal record check that shall:

a. Be requested in accordance with KRS 216.789(3);

b. Be applied for no sooner than forty-five (45) days prior to but no later than seven (7) days following an employee's first day of work;

c. Be checked every other year through the Kentucky Justice and Public Safety Cabinet or Administrative Office of the Courts;

d. Include a criminal record check upon hire from any state in which the employee lived outside of Kentucky in the last three (3) years; and

e. Include a criminal record check at least every other year from the state in which the employee resides if the employee maintains residency outside of Kentucky; and

3. A check of the central registry, the adult protective services caregiver misconduct registry, and nurse aide [~~Abuse~~] registry that shall:

a. Be performed on an employee upon the initial date of hire and at least annually thereafter; and

b. Show that the employee was not found on the registries.

(b) An assisted living community may use Kentucky's national background check program established by 906 KAR 1:190 to satisfy the background check requirements of this subsection.

(4) Review of Client Records. During the on-site review, the following client records shall be reviewed:

(a) A completed client functional needs assessment that shall:

1. Be completed:

a. Upon move in;

b. Once every twelve (12) months thereafter; and

c. As needed due to a change in function or condition;

2. Be administered by a person with at least:

a. A bachelor's degree in health or human services[~~service~~] or a related field;

b. An associate's degree in health or human services or a related field and at least one (1) year of experience working with the elderly or conducting assessments; or

c. A high school diploma or its equivalency and two (2) years of experience working with the elderly or conducting assessments;

3. Assess to ensure the client meets the eligibility requirements for assisted-living pursuant to KRS 194A.711 and 194A.700(2);

4. Reflect the client's ability to perform activities of daily living and instrumental activities of daily living pursuant to KRS 194A.700(2)[~~194A.705(5)~~]; and

5. Be provided to the client pursuant to KRS 194A.705(5)[~~(a)~~];

(b) Personal preferences and social factors that shall be updated at least every two (2) years;

(c) A signed lease with all attachments;

(d) Documentation of a client's designated representative, if applicable; and

(e) Documentation that the client received a copy of the assisted-living community's cardiopulmonary resuscitation policies pursuant to KRS 194A.719(1)(d).

(5) Review of Written Service Provision and Practices. The on-site review shall review an assisted-living community's written service provision and practices related to:

(a) Assistance with self-administration of medication in accordance with KRS 194A.705(1)(d), which, for medications not preset in a medication organizer or single dose unit container as described in KRS 194A.700(3)(a), may include but shall not exceed the following staff actions if the client requests assistance:

1. Providing the client with a medication reminder;

2. Reading the medication's label to the client, and confirming that the medication is being taken by the client for whom it is prescribed; and

3. Opening the medication container or dosage package, but not handling or removing the medication;

(b) Health services, delivered by assisted-living staff, which shall be reported in compliance with KRS 194A.709(1);

(c) Documentation in a client's file:

1. From a licensed health care professional defined by KRS 216.300(1) or entity providing the health service to the client:

a. Requested of the client by the assisted-living community; and

b. That states the client has a temporary condition pursuant to KRS 194A.711(1); and

2. From the assisted-living community to ensure that the client is not a danger, including if hospice or similar end-of-life services are provided;

(d) Compliance with KRS 194A.713(11), 194A.719(1)(j), and 216.595 regarding special programming, staffing, or training that may be provided to a client of an assisted-living community if the assisted-living community:

1. Ensures a client's functional needs assessment that:

a. Reflects the client's abilities as specified in subsection (4)(a)4 of this section; and

b. Shall be updated at least annually; and

2. Complies with the requirements of KRS 216.595; and

(e) Compliance with a department approved waiver request in accordance with Section 8 of this administrative regulation.

(6) The department may, pursuant to KRS 194A.707(10), request additional information to ensure an assisted-living community complies with KRS 194A.700-729 and 216.789(1).

(7) Prior to completion of the on-site visit at the assisted-living community, a department representative shall hold a meeting with the assisted-living community manager or designee to discuss the preliminary results of the on-site visit.

Section 8. Waiver of Building Requirements.

(1) Pursuant to KRS 216.595(3), an assisted-living community may request a waiver from the department regarding building requirements to address the specialized needs of individuals with Alzheimer's disease or other brain disorders.

(2) The department shall:

(a) Review the waiver request for approval; and

(b) Not waive the building and life safety codes established in KRS 194A.703(3).

(3) An assisted-living community shall not alter the building requirements established in KRS 194A.703(1) and (2) without department approval.

Section 9. Assisted-living On-Site Review Findings.

(1) The department shall:

(a) Document any noncompliance with KRS 194A.700 through 194A.729 or this administrative regulation found during an on-site review on the DAIL-ALC-2, Assisted-Living Community Certification Checklist; and

(b) Submit the finding of noncompliance to the applicant:

1. On a statement of noncompliance located on the DAIL-ALC-3, Assisted-Living Community Statement of Noncompliance and Plan of Correction; and

2. Unless the finding is due to a client being a danger pursuant to Subsection (9) of this section, within fifteen (15) business days upon completion of the on-site review.

(2)(a) The assisted-living community shall complete a plan of correction on the DAIL-ALC-3, Assisted-Living Community Statement of Noncompliance and Plan of Correction and submit the form to the department within fifteen (15) business days of receipt of the notice of noncompliance.

(b) The assisted-living community shall specify in the plan the dates by which the noncompliance shall be corrected.

(3) The department shall notify the applicant in writing within fifteen (15) business days of receipt of the plan of correction:

(a) Whether the plan of correction is approved or not approved; and

(b) The reasons for the department's decision.

(4)(a) If the plan of correction is approved and the department determines a follow-up on-site review is unnecessary, the department shall issue a certification certificate.

(b) The assisted-living community shall post the certificate in a public area.

(5) If the plan of correction is not approved, the applicant shall submit to the department an amended plan of correction within fifteen (15) business days of receipt of notice the plan was not approved.

(6) If the department determines after reviewing the amended plan of correction that certification may be denied or revoked, the department shall notify the assisted-living community within ten (10) business days of the determination and of the following rights[~~with the~~]:

(a) The opportunity for an informal dispute resolution meeting:

1. Between the department and the assisted-living community;

2. To be held within fifteen (15) days of the assisted-living community's receipt of the notice; and

3. To address a dispute, including the provision of additional documentation or support materials; and

(b) Appeal rights as specified in Section 12 of this administrative regulation if:

1. An informal dispute is not requested; or

2. A dispute is not resolved with the informal dispute resolution.

(7) If an applicant meets all the requirements on the DAIL-ALC-2, Assisted-Living Community Certification Checklist, the department shall issue a certification certificate verifying its status.

(8) The assisted-living community shall post the certification certificate in a public area.

(9) If the department finds during a complaint or certification review that a client is a danger, the department shall:

(a) Immediately notify the assisted-living community as established in Section 7(7) of this administrative regulation; and

(b) Provide the DAIL-ALC-4, Statement of Danger to the assisted-living community.

(10) Within forty-eight (48) hours, unless issued on a Friday and then by 4:30 p.m. eastern standard time of the next business day, of receiving the DAIL-ALC-4, Statement of Danger, the assisted-living community shall begin to implement a plan to correct the danger in accordance with Section 10(2)(e)1 or 2 of this administrative regulation.

(11) The department shall make a report of suspected abuse, neglect, or exploitation to Adult Protective Services in accordance with KRS 209.030(3).

(12) The department may conduct additional on-site visits pursuant to KRS 194A.707(10).

Section 10. Denial and Revocation of Certification.

(1) Certification shall be denied or revoked if:

(a)1. The department determines upon a complaint or certification review that an assisted-living community knowingly

employs any individual convicted of an offense prohibited by KRS 216.789(1) or 216.789(2) as disclosed by the individual's employment application or a criminal records check and if the assisted-living community fails to immediately terminate the employment upon the department's finding; or

2. The same repeat violation of subparagraph 1 of this paragraph is found by the department within a three (3) year period; or

(b) An assisted-living community or applicant fails to submit a plan of correction to the department as specified in Section 9(2) through (7) of this administrative regulation.

(2) Certification may be denied or revoked if an assisted-living community:

(a) Fails to apply for certification as specified in Sections 2(1), 3(1), or 4(1) of this administrative regulation;

(b) Submits a completed DAIL-ALC-1, Assisted-Living Community Certification Application more than fifteen (15) days late for two (2) consecutive years;

(c) Fails to submit a completed DAIL-ALC-1, Assisted-Living Community Certification Application within thirty (30) days of July 1 annually;

(d) Fails to implement its most recent approved plan of correction:

1. Under current ownership; and

2. Within the plan of correction's specified timeframe on the DAIL-ALC-3, Assisted-Living Community Statement of Noncompliance and Plan of Correction;

(e) Fails to comply with one (1) of the following requirements if the department finds that a client is a danger and the department initially verifies those findings in writing pursuant to Section 9(9) of this administrative regulation:

1. Within forty-eight (48) hours, unless issued on a Friday and then by 4:30 p.m. eastern standard time of the next business day, of receiving the DAIL-ALC-4, Statement of Danger, the assisted-living community shall submit a written response to the department that confirms how the danger has been eliminated or why the danger is disputed, with submission occurring via:

a. Email;

b. Facsimile transmission;

c. Delivery to the department by hand;

d. United States mail; or

e. Courier service; or

2. Within forty-eight (48) hours, unless issued on a Friday and then by 4:30 p.m. eastern standard time of the next business day, of receiving the DAIL-ALC-4, Statement of Danger, the assisted-living community shall:

a. Initiate a move-out notice and begin the process of assisting the client to find appropriate living arrangements pursuant to KRS 194A.705(4); and

b. Submit a written response to the department that confirms the assisted-living community took the required action, with submission occurring via:

(i) Email;

(ii) Facsimile transmission;

(iii) Delivery to the department by hand;

(iv) United States mail; or

(v) Courier service; or

(f) Except as provided in subsection (3) of this section, fails to initiate the requirements of paragraph (e)2 of this subsection, if the department:

1. Notifies the assisted-living community in writing that the client remains a danger; and

2. Does not accept the assisted-living community's written response pursuant to paragraph (e)1 of this subsection.

(3) If, after reviewing the assisted-living community's written response pursuant to subsection (2)(e)1 of this section, the department determines the client remains a danger, the department shall notify the assisted-living community in writing that:

(a) Certification may be denied or revoked;

(b) The assisted-living community has the right to an informal dispute resolution meeting:

1. Between the department and the assisted-living community;

2. For the purpose of attempting to resolve a dispute, including the provision of additional documentation or support materials; and

3. To be requested by the assisted-living community in writing within three (3) business days of receiving the department's written notice; and

(c) It has appeal rights pursuant to Section 12 of this administrative regulation if:

1. An informal dispute resolution meeting is not requested; or

2. A dispute is not resolved with the informal dispute resolution meeting.

(4) The department shall issue a written notice to the assisted-living community if the department determines:

(a)1. A danger is unsubstantiated; or

2. The danger has been eliminated; or

(b) To deny or revoke certification following an informal dispute resolution meeting pursuant to subsection (3)(b) of this section.

(5)(a) If an assisted-living community continues to operate after its certification is revoked and fails to request an informal dispute resolution meeting or an administrative hearing pursuant to Section 12 of this administrative regulation to resolve a danger dispute, the assisted-living community may be fined in accordance with KRS 194A.723.

(b) The fine shall be paid as specified in Section 11(1) of this administrative regulation.

Section 11. Collection of Fees and Fines.

(1) An entity or business found to be in violation of KRS 194A.723 and[~~pursuant to KRS 194A.724~~] assessed a penalty pursuant to KRS 194A.724 shall make a check payable to the Kentucky State Treasurer and mail it to the Department for Aging and Independent Living, 275 East Main Street, Frankfort, Kentucky 40621.

(2) A party aggrieved by a determination of the department may appeal the determination or the fine in accordance with KRS Chapter 13B.

(3) The fee established for the notification of conditional compliance to a lender after review of the architectural drawings and lease agreement, pursuant to KRS 194A.729, shall be $250.

Section 12. Right to Appeal Decision and Hearings.

(1) If the department determines that a certification shall be denied or revoked, the applicant shall be notified of the right to appeal the determination:

(a) By certified mail; and

(b) Within ten (10) days of determination.

(2) To request an administrative hearing, an applicant shall send a written request to the department within thirty (30) days of receipt of a written notice of:

(a) Nonapproval of the amended plan of correction; or

(b) Denial or revocation of certification.

(3) After receipt of the request for a hearing, the cabinet shall conduct a hearing pursuant to KRS Chapter 13B.

(4) The denial or revocation of certification shall be effective upon the final decision of the secretary pursuant to KRS Chapter 13B.

(5) If the denial or revocation is upheld by the secretary, the assisted-living community shall cease to operate and the assisted-living community shall:

(a) Assist clients in locating alternate living arrangements pursuant to KRS 194A.705(4); and

(b) Ensure that all clients are relocated within thirty (30) days of final notice of revocation or denial.

(6) The commissioner of the department shall have the authority to extend the time limit specified in subsection (5)(b) of this section, not to exceed an additional fifteen (15) days.

Section 13. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "DAIL-ALC-1, Assisted-Living Community Certification Application", 06/2015;

(b) "DAIL-ALC-2, Assisted-Living Community Certification Check List", 10/2015;

(c) "DAIL-ALC-3, Assisted-Living Community Statement of

Noncompliance and Plan of Correction", 2/09; and

(d) "DAIL-ALC-4, Statement of Danger", 06/2015.

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

SHANNON GADD, Commissioner
ADAM MEIER, Secretary

APPROVED BY AGENCY: February 11, 2019

FILED WITH LRC: February 15, 2019 at noon

CONTACT PERSON: Chase Coffey, Executive Administrative Assistant, 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 Person: Phyllis W. Sosa, email: Phyllis.sosa@ky.gov, Phone: (502) 564-6930; and Chase Coffey

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the initial and annual certification review process for assisted living communities including the on-site visit and procedures related to applying for, reviewing, and approving, denying, or revoking certification, the appeal process, and the application and certification fees.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide the requirements for certification of assisted-living communities including resident eligibility, application, application review, components of the lease agreement, living unit and physical plant requirements, live safety code requirements, employee requirements, services, and the application and certification fees.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation complies with the composition and functions of the assisted-living community certification requirements as specified in KRS 194A.700-729.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets forth the standards of certification for the certification of assisted-living communities.

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

(a) How the amendment will change this existing administrative regulation: This amendment adds the application and certification fees to 910 KAR 1:240 in compliance with 194A.707(9) (effective July 1, 2019), corrects the name of the nurse aid registry and makes technical corrections to the administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to continue to assess fees associated with the application and certification of new and existing assisted living communities. During the 2018 legislative session the fees established in 194A.707(9) were removed, and authority to promulgate administrative regulations to establish the assisted-living community certification fees, not to exceed costs of the program to the cabinet was added.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by establishing application and certification fees in compliance with KRS 194A.707(9).

(d) How the amendment will assist in the effective administration of the statutes: The amendment establishes the application and certification fees for assisted living community certification, and will assist in offsetting the program deficit. The department has been operating the assisted living community certification process since July 2000. The fees have remained the same since the program's inception, and the department operates the program in a deficit. The amendment to this administrative regulation will increase the fees to assist in offsetting most of the deficit. The total cost of operating the assisted living certifications, based on FY 18 budget, is $356,827.89. The fees as amended will generate $355,220.00. The program will still operate at a small deficit of $1,607.89.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects the 126 certified assisted living communities and one (1) community that has applied for initial certification.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities affected by this administrative regulation will not have any additional requirements placed upon them. They will continue to submit the application and certification fees as currently required. They will have an increase in fees due to the deficit that the program currently sustains, as the certification fees have not been increased since the inception of the certification requirements in July 2000.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The fees will be increased. Currently all applicants pay $20 per living unit with a minimum of $300 and a maximum of $1,600. This amendment includes an application fee for initial and annual certification based on the number of units certified and a certification per living unit of $40. The initial proposal was establishing a flat rate application fee for all assisted livings for an initial application of $1000 and for a renewal $500 and all applicants to pay a $60 per unit fee. Based on the comments received through the public review period the Department has based the application fee on the number of certified units and reduced the per unit fee to $40. The increase of the application and unit fees are based upon the costs to operate the application and certification process for assisted living communities statewide.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance with this amended administrative regulation, assisted living communities will be able to continue to apply for certification as an assisted-living community in Kentucky and have an initial review and annual review, to ensure compliance with the requirements of 194A.700-729 and this administrative regulation. Compliance with the requirements allows the business entity to continue to market, advertise, and operate as an assisted living community.

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

(a) Initially: The cost to implement the amendment to this administrative regulation is $356,827.89 annually and may fluctuate dependent upon new applications for certification and where they are located within the state.

(b) On a continuing basis: The cost to implement the amendment to this administrative regulation is $356,827.89 annually and may fluctuate dependent upon new applications for certification and where they are located within the state.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sole funding source for the implementation and ongoing enforcement of this administrative regulation is the initial and annual application and certification fees obtained from the assisted living communities.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This amendment is solely to establish the application and certification fees in this administrative regulation, due to the change in KRS 194A.707(9) giving the cabinet authority to establish the fees by administrative regulation, not to exceed the cost of the program.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This amendment is solely to establish the application and certification fees in this administrative regulation, due to the change in KRS 194A.707(9) giving authority to establish the fees by regulatory authority, not to exceed the cost of the program. The fees have been increased from what had been allowed in

194A.707(9) as established in 2000 due to the department having operated this process and sustaining a deficit since its inception. The proposed fee structure will off set the department deficit obtaining in operating the certification program, but the department will continue to have a small deficit in this program.

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. The statutes that authorize the action taken by this administrative regulation are KRS 194A.050(1); 194A.707(1) and (9).

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will generate an estimated $355,220.00 for CHFS in the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will generate an estimated $355,220.00 for CHFS in subsequent years. This is dependent upon the total number of assisted living communities that apply for initial or annual certification.

(c) How much will it cost to administer this program for the first year? The department currently operates the assisted living community certification application and review process at a cost of $356,827.89.

(d) How much will it cost to administer this program for subsequent years? The cost to operate in subsequent years is dependent upon the number of applicants, the number of units to be certified, and the location of the assisted living community applying. If the number remains constant, the cost to operate will remain at $356,827.89.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Family Support
(Amended After Comments)

921 KAR 2:055. Hearings and appeals.

RELATES TO: KRS Chapter 13B, 23A.010, 45.237, 199.892, 205.211, 205.231, 205.237, 45 C.F.R. 205.10, 30 U.S.C. 901-944, 38 U.S.C. 1101-1163, 1501-1525, 42 U.S.C. 401-434, 601-619, 1381-1383f, 8621-8630, 9857-9858q, 45 U.S.C. 231-231v

STATUTORY AUTHORITY: KRS 13B.170, 194A.010(2), 194A.050(1), 199.8994, 205.231(5), 42 U.S.C. 602, 8624

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.010(2) requires the Cabinet for Health and Family Services to administer income-supplement programs that protect, develop, preserve, and maintain families and children in the Commonwealth. 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. 42 U.S.C. 602 and 42 U.S.C. 8624 require states receiving Temporary Assistance for Needy Families (TANF) and Low Income Home Energy Assistance Program (LIHEAP) grants, respectively, to provide a grievance procedure for participants and outline this procedure in the applicable state plan. KRS 199.8994(1) requires the cabinet to administer all child care funds to the extent allowable under federal law or regulation and in a manner that[~~which~~] is in the best interest of the clients to be served. KRS Chapter 13B establishes the hearing process to be followed in the Commonwealth, and KRS 205.231(5) requires the cabinet to promulgate administrative regulations for the hearing process. This administrative regulation establishes the requirements to be followed in conducting a hearing related to the Kentucky Transitional Assistance Program (K-TAP), the Low-Income Home Energy Assistance Program (LIHEAP), the State Supplementation Program (SSP), or an applicant or a recipient of the Child Care Assistance Program (CCAP).

Section 1. Hearing Information.

(1) A participant shall be informed of:

(a) The right to a hearing;

(b) The procedures for requesting a hearing, as established in Section 3 of this administrative regulation; and

(c) Who may represent the participant in a hearing, as established in Section 2 of this administrative regulation.

(2) When the participant files an application, the cabinet shall inform the participant of the right to hearing both orally and in writing.

(3) When an action is taken that[~~which~~] affects the benefits of the participant, the cabinet shall inform the participant of the right to hearing in writing.

Section 2. Request for a Hearing.

(1) An individual shall request a hearing by:

(a)[~~Completing and submitting a PAFS-78, Request for Hearing or Withdrawal;~~

~~(b)~~] Submitting a written request; or

(b)[~~(c)~~] Making an oral request.

(2) The hearing request may be:

(a) Submitted to the local Department for Community Based Services office; or

(b) Sent to the Cabinet for Health and Family Services, Division of Administrative Hearings, Families and Children Administrative Hearings Branch, 105 Sea Hero Road, Suite 2, Frankfort, Kentucky 40601.

(3) The reason for the hearing shall be included in the hearing request.

Section 3. Timeframe for Hearing Request.

(1) A written or oral request for a hearing shall be considered timely if received by the cabinet within:

(a) Forty (40) days of the date of the advance notice of adverse action;

(b) Thirty (30) days of the notice of:

1. Denial of an application; or

2. Decrease or discontinuance of an active case; or

(c) The time period the action is pending if the hearing issue is a delay in action.

(2) If a hearing officer determines an appellant meets good cause criteria in accordance with subsection (3) of this section, the appellant may be granted up to an additional thirty (30) days to submit a hearing request.

(3) An appellant may be granted good cause by the cabinet:

(a) For:

1. A delay in requesting a hearing;

2. A delay in requesting a continuation of benefits;

3. Failure to appear for a hearing; or

4. Postponement of a scheduled hearing; and

(b) If the appellant:

1. Was away from home during the entire filing period;

2. Is unable to read or to comprehend the right to request a hearing on an adverse action notice;

3. Moved, resulting in delay in receiving or failure to receive the adverse action notice;

4. Had a household member who was seriously ill;[~~or~~]

5. Was not at fault for the delay of the request, as determined by the hearing officer; or

6. Did not receive the notice.

Section 4. Continuation of Assistance Program Benefits.

(1) If a hearing is requested, benefits shall remain inactive or reduced pending the issuance of a final order unless the appellant requests a continuation of benefits.

(2) Benefits shall be reinstated to the benefit level that was received prior to the adverse action being taken if the request for a continuation of benefits is received within:

(a) Ten (10) days of the date on the notice of adverse action; or

(b) Twenty (20) days of the date on the notice of adverse action or notice if the reason for delay meets the good cause criteria contained in Section 3(3) of this administrative regulation.

(3) If the program benefit has been reduced or discontinued as a result of a change in law or administrative regulation, subsection (2) of this section shall not apply.

(4) If the action taken by the agency is upheld, continued or reinstated benefits shall be:

(a) Considered overpayments as defined in KRS 205.211; and

(b) Collected in accordance with KRS 45.237.

Section 5. Hearing Notification.

(1) The Division of Administrative Hearings, Families and Children Administrative Hearings Branch, shall acknowledge a hearing request.

(2) In accordance with KRS 13B.050, the notice of the hearing shall contain information regarding the:

(a) Hearing process, including the right to case record review prior to the hearing;

(b) Right to representation;

(c) Availability of free representation by legal aid or assistance from other organizations within the community; and

(d) Time and location of the hearing.

(3) The cabinet may deny or dismiss a hearing request in accordance with 45 C.F.R. 205.10(a)(5)(v).

Section 6. Withdrawal or Abandonment of Request.

(1) The appellant may withdraw a hearing request prior to the:

(a) Hearing; or

(b) Final order being issued if the hearing has already been conducted.

(2) The cabinet shall consider a hearing request abandoned if the appellant or authorized representative fails to:

(a) Appear for the scheduled hearing without notifying the cabinet prior to the hearing; and

(b) Establish good cause for failure to appear, in accordance with the criteria specified in Section 3(3) of this administrative regulation, within ten (10) days of the scheduled hearing date.

Section 7. Appellant's Hearing Rights.

(1) In addition to the rights described in Section 5 of this administrative regulation, the appellant shall have the right to submit additional information in support of the claim.

(2) The appellant shall have the right to a medical assessment or professional evaluation at the expense of the cabinet by a source:

(a) Not associated with the original action; and

(b) Agreeable to both the appellant and the cabinet if:

1. The hearing involves medical issues; and

2. The hearing officer considers it necessary.

(3) If a request for a medical assessment at cabinet expense is received and denied by the hearing officer, the denial shall:

(a) Be in writing; and

(b) Specify the reason for the denial.

Section 8. Postponement of a Hearing.

(1) An appellant shall be entitled to a postponement of a hearing if the:

(a) Request for the postponement is made prior to the hearing; and

(b) Need for the delay is due to an essential reason beyond the control of the appellant in accordance with good cause criteria contained in Section 3(3) of this administrative regulation.

(2) The hearing officer shall decide if a hearing is postponed.

(3) The postponement of a hearing shall not exceed thirty (30) days from the date of the request for postponement.

Section 9. Conduct of a Hearing.

(1) A hearing shall be:

(a) Scheduled by the hearing officer; and

(b) Conducted in accordance with KRS 13B.080 and 13B.090.

(2) A hearing officer shall make an effort to conduct a hearing at a location within the state that is convenient for the appellant and other parties involved.

(3) To secure all pertinent information on the issue, the hearing officer may:

(a) Examine each party or witness who appears; and

(b) If necessary, collect additional evidence from a party.

(4)(a) If consent is obtained from each party to the appeal and from each party required to testify under oath, a telephonic hearing may be conducted.

(b) Parties to a telephonic hearing shall:

1. Submit all available documentary evidence to be used during the hearing to the hearing officer and the opposing party prior to the hearing being convened; and

2. Within the timeframe specified by the hearing officer, mail the hearing officer and opposing party any documents or written materials that:

a. Are introduced as evidence into the hearing record; and

b. Have not been supplied to the opposing party prior to the hearing.

(5) If evidence addressed in subsection (4)(b) of this section is not provided to the hearing officer and the opposing party, the evidence may be excluded from the hearing record.

Section 10. A **Recommended [~~Hearing Officer's~~]** [~~Recommended~~] Order.

(1) After the hearing has concluded, the hearing officer shall draft **a recommended [an]** [~~a recommended~~] order in accordance with KRS 13B.110 that[~~, which~~]:

(a) Summarizes the facts of the case;

(b) Specifies the:

1. Reasons for the **recommended**[~~recommended~~] order; and

2. Address to which a party in the hearing may send an exception to the **recommended**[~~recommended~~] order;[~~and~~]

(c) Identifies the:

1. Findings of fact;

2. Conclusions of law;

3. Supporting evidence; and

4. Applicable state and federal regulations; and

(d) Addresses the parties' arguments.

(2) A copy of the **recommended[~~hearing officer's~~]** [~~recommended~~] order shall be sent simultaneously to the:

(a) Appellant or representative; and

(b)[~~Appeal Board for Public Assistance established in accordance with KRS 205.231; and~~

~~(c)~~] Department for Community Based Services,[~~'~~] Division of Family Support.

(3) A **recommended[~~hearing officer's~~]** order shall become a final order for an administrative hearing **upon review and acceptance by the agency head,** in accordance with KRS 13B.120**(2),[~~and 205.231 sixteen (16) days from the issuance of the order~~]** unless a written exception is filed pursuant to Section 11 of this administrative regulation.

Section 11. Written Exceptions and Rebuttals.

(1) If a party to a hearing disagrees with the **recommended [hearing officer's]**[recommended] order, the party may file a written exception in accordance with KRS 13B.110(4) with the secretary or the secretary's designee[Appeal Board for Public Assistance].

(2) A written exception or rebuttal shall:

(a) Be filed within fifteen (15) days of the date the **recommended[hearing officer's]**[recommended] order was mailed;

(b) Be based on facts and evidence presented at the hearing;

(c) Not refer to evidence that was not introduced at the hearing; and

(d) Be sent to each other party involved in the hearing.

Section 12. Final Order.

(1)**[Unless Section 10(3) of this administrative regulation applies,]** The secretary or the secretary's designee shall issue a final order in accordance with KRS 13B.120**[and 205.231]**.[Appeal Board Review. (1) In accordance with KRS 13B.120 and 205.231, the Appeal Board for Public Assistance shall send a written acknowledgement of the exception to the recommended order and subsequent appeal to the:

(a) Parties to the hearing; and

(b) Commissioner of the Department for Community Based Services.

(2) The acknowledgement shall:

(a) Offer the opportunity to:

1. File a brief; or

2. Request permission to submit new or additional evidence; and

(b) State the tentative date on which:

1. A brief, new evidence, or new exhibit are to be received by the Appeal Board for Public Assistance for consideration; and

2. The Appeal Board for Public Assistance shall consider the appeal.

(3) The Appeal Board for Public Assistance shall consider:

(a) The records of the hearing; and

(b) New evidence or exhibits introduced before the Appeal Board for Public Assistance in accordance with this section.

(4) If an appeal is being considered on the record, the parties may:

(a) Submit written arguments; and

(b) Present oral arguments at the Appeal Board for Public Assistance's discretion. Telecommunications may be utilized for the presentation of oral arguments.

(5) If needed, the Appeal Board for Public Assistance may request additional evidence to resolve the appeal.

Section 13. The Appeal Board Decision. (1) The decision of the Appeal Board for Public Assistance shall be in accordance with KRS 13B.120 and 205.231.]

(2) The secretary or the secretary's designee[Appeal Board for Public Assistance] may reverse the decision in subsection (1) of this section if the following criteria are met:

(a) The correct determination of eligibility based on incapacity or disability is the only issue being considered in the **secretary or the secretary's designee[appeal board]** decision; and

(b) Within twenty (20) days of the hearing officer's[Appeal Board for Public Assistance's] decision, the appellant, or household member whose incapacity or disability is the issue of the hearing, receives and provides to the **secretary or the secretary's designee[appeal board]** an award letter for benefits based on disability including:

1. Supplemental Security Income pursuant to 42 U.S.C. 1381-1383f;

2. Retirement, Survivors, and Disability Insurance, pursuant to 42 U.S.C. 401-434;

3. Federal Black Lung Benefits pursuant to 30 U.S.C. 901-944;

4. Railroad Retirement Benefits pursuant to 45 U.S.C. 231-231v; or

5. Veterans Administration Benefits based on 100 percent disability pursuant to 38 U.S.C. 1101-1163 or 1501-1525.

(3) A party aggrieved by the[Appeal Board for Public Assistance's] decision of the secretary or the secretary's designee may pursue judicial review of the decision in accordance with**[:**

(a)] KRS 13B.140 to 13B.160**[; or**

(b) KRS 23A.010][and 13B.150].

Section 13[14]. Payments of Assistance.

(1) Payments of assistance shall be made within ten (10) days of the receipt of a final order[issued by the Appeal Board for Public Assistance] and shall include:

(a) The month of application; or

(b) If it is established that the appellant was eligible during the entire period in which assistance was withheld, a month in which incorrect action of the cabinet adversely affected the appellant.

(2) For reversals involving reduction of benefits, action shall be taken to restore benefits within ten (10) days of the receipt of a final order[issued by the Appeal Board for Public Assistance].

Section 14[15]. Limitation of Fees.

(1) The cabinet shall not be responsible for payment of attorney fees.

(2) Pursuant to KRS 205.237, an attorney representing an appellant shall not charge more than the following amounts for his services:

(a) Seventy-five (75) dollars for preparation and appearance at a hearing before a hearing officer;

(b) Seventy-five (75) dollars for preparation and presentation, including any briefs, of appeals to the secretary or the secretary's designee[appeal board];

(c) $175 for preparation and presentation, including pleadings and appearance in court, of appeals to the circuit court; or

(d) $300 for preparatory work, briefs, and other materials related to an appeal to the Court of Appeals.

(3) The cabinet shall approve the amount of a fee, if the:

(a) Appellant and legal counsel agree to the fee; and

(b) Fee is within the maximums specified in subsection (2) of this section.

(4) Collection of an attorney fee shall:

(a) Be the responsibility of the counsel or agent; and

(b) Not be deducted from the benefits provided to an appellant.[Section 16. Incorporation by Reference. (1) The form, "PAFS-78, Request for Hearing or Withdrawal", 12/28/15, is incorporated by reference.

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

ERIC T. CLARK, Commissioner
ADAM M. MEIER, Secretary

APPROVED BY AGENCY: February 14, 2019

FILED WITH LRC: February 15, 2019 at noon

CONTACT PERSON: Chase Coffey, Executive Administrative Assistant, 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: Laura Begin, Phone Number: (502) 564-3703, Email: Laura.Begin@ky.gov; and Chase Coffey

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements to be followed in conducting a hearing related to the Kentucky Transitional Assistance Program (K-TAP), the Low-Income Home Energy Assistance Program (LIHEAP), the State Supplementation Program (SSP), or an applicant or a recipient of the Child Care Assistance Program (CCAP).

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the hearing requirements for multiple public assistance programs.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation conforms

to the content of the authorizing statutes through its establishment of hearing requirements for K-TAP, LIHEAP, SSP, and CCAP applicants and recipients.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation currently assists in the effective administration of the statutes through its establishment of hearing requirements for multiple public assistance programs.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation improves the timeliness of these hearings through the allowance of a hearing officer's order to become a final order if there is no exception or rebuttal and through the transition of the final order process from the Appeal Board for Public Assistance to the cabinet secretary or the secretary's designee. The amendment also removes a required form providing additional flexibility on the part of an individual to file a request for hearing. In addition, the administrative regulation makes technical corrections in accordance with KRS Chapter 13A. This administrative regulation is being further amended in response to comment received to clarify that the recommended order becomes a final order upon review and acceptance by the agency head, as required by KRS 13B.120(2). The terminology of recommended versus hearing officer's order was also corrected in response to comment and legal guidance.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to improve the timeliness of hearings, thereby preserving federal funding through the avoidance of federally imposed corrective action or federal financial penalty. In addition, the amendment is necessary to align hearing processes across public assistance programs administered by the department.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statute through its enhancement of hearings' timeliness and consistency in hearing procedures across public assistance programs administered by the department.

(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 enhancements to hearing procedures for improved timeliness and consistency.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There is an average of 2,300 hearings for all public assistance programs, including the Supplemental Nutrition Assistance Program (SNAP), 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 is no new action required on the part of individuals seeking appeals or appellants.

(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 cost for individuals seeking appeals or appellants.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Individuals seeking appeals and appellants will have greater flexibility in the means by which they can request a hearing and will benefit from enhanced timeliness and consistency across public assistance programs administered by the department.

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

(a) Initially: There is no anticipated new cost for the administrative body to implement the regulatory amendment.

(b) On a continuing basis: There is no anticipated new cost for the administrative body to implement the regulatory amendment. The amendment is anticipated to preserve the state's federal funding for public assistance programming.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal funding under the Temporary Assistance for Needy Families Block Grant, the Low-Income Home Energy Assistance Block Grant, and the Child Care and Development Fund Block Grant, along with state general funds, are used for the implementation and enforcement of this administrative regulation.

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

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

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

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.
45 C.F.R. 205.10, 30 U.S.C. 901-944, 38 U.S.C. 1101-1163, 1501-1525, 42 U.S.C. 401-434, 601-619, 1381-1383f, 8621-8630, 9857-9858q, 45 U.S.C. 231-231v

2. State compliance standards. KRS 13B.170, 194A.010, 194A.050, 199.8994, 205.231

3. Minimum or uniform standards contained in the federal mandate. 45 C.F.R. 205.10, 30 U.S.C. 901-944, 38 U.S.C. 1101-1163, 1501-1525, 42 U.S.C. 401-434, 601-619, 1381-1383f, 8621-8630, 9857-9858q, 45 U.S.C. 231-231v

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 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 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 13B.170, 194A.010, 194A.050, 199.8994, 205.231, 45 C.F.R. 205.10, 30 U.S.C. 901-944, 38 U.S.C. 1101-1163, 1501-1525, 42 U.S.C. 401-434, 601-619, 1381-1383f, 8621-8630, 9857-9858q, 45 U.S.C. 231-231v

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

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

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

(c) How much will it cost to administer this program for the first year? The administrative regulation is anticipated to preserve federal funding and help the state avoid absorbing new costs associated with federal finding or financial penalty.

(d) How much will it cost to administer this program for subsequent years? The administrative regulation is anticipated to preserve federal funding and help the state avoid absorbing new costs associated with federal finding or financial penalty.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

PROPOSED AMENDMENTS

DEPARTMENT OF MILITARY AFFAIRS
Division of Emergency Management
(Amendment)

106 KAR 1:081. Kentucky Emergency Response Commission (KERC) Tier II[2] reporting and fee schedule requirements; Extremely Hazardous Substance (EHS) facility planning participation requirements.

RELATES TO: KRS 39E.020, 39E.030, 29 C.F.R. 1910.1200, 40 C.F.R. Part 355, Appendix A, Appendix B, Part 370, 39E.040, 39E.050, 39E.110, 39E.120, 39E.130, 39E.140, 39E.150, 39E.160, 39E.170, 39E.190, 39E.220, 39E.230, 42 U.S.C. 11001-11050

STATUTORY AUTHORITY: KRS 39E.010, 39E.040, 39E.050, 39E.120, 39E.130, 39E.210, 42 U.S.C. 11002(c), 11003(c), (d)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 39E.040(3) requires the KERC[Kentucky Emergency Response Commission] to develop reporting requirements and procedures for individuals, businesses, and governmental agencies that manufacture, use, store, or transport hazardous substances. KRS 39E.040(6) requires the commission to recommend administrative regulations to the director for issuance by the Division of Emergency Management to implement KRS Chapter 39E. This administrative regulation establishes the Tier II[2] reporting and facility planning participation requirements for facilities subject to 42 U.S.C. 11001 through 42 U.S.C. 11050.

Section 1. Definitions. (1) "Category" means the five (5) types of facilities and applicable category numbers, defined by[in] paragraphs (a) through (e) of this subsection, describing individuals, businesses, and governmental agencies that manufacture, use, store, or transport hazardous substances.

(a) "Category One Facility" means any facility owned or operated by local, state, or federal government that is:

1. Exempted from paying any fee in accordance with KRS 39E.050; and

2. Not exempt from reporting requirements pursuant to KRS 39E.020, 39E.030, 39E.040, 39E.050, 39E.110, 39E.120, 39E.190, 39E.220, and 39E.230.

(b) "Category Two Facility" means any facility that has not less than 10,000 pounds and not more than 499,999 pounds of each of ten (10) or fewer hazardous substances, with the combined total of all hazardous substances not exceeding 499,999 pounds.

(c) "Category Three Facility" means any facility that has 10,000 pounds or more of each of eleven (11) or more hazardous substances, with the combined total of all hazardous substances not exceeding 499,999 pounds.

(d) Category Four Facility" means any facility that has a total inventory of over 499,999 pounds of hazardous substances.

(e) "Category Five Facility" means any facility that has an Extremely Hazardous Substance (EHS) as defined by subsection (5) of this section[in excess of the threshold planning quantity (TPQ)].

(2) "EHS Facility Emergency Response Plan" means an emergency response plan for a facility subject to SARA Title III (Superfund Amendments and Reauthorization Act of 1986), 42 U.S.C. 11001 et seq., that:

(a) Has in its inventory an[extremely hazardous substance (]EHS[)] above Threshold Planning Quantity (TPQ); and

(b) Meets all required planning elements of SARA Title III, 42 U.S.C. 11003[,]; KRS 39E.110, [KRS] 39E.130, 39E.140, 39E.150, 39E.160, 39E.170[,] and 39E.220, and the KERC's[Kentucky Emergency Response Commission's] planning requirements found in the Responsibilities of the LEPC[Emergency Response Planning Guide for EHS Facilities: Self-Study] Course Manual[,] (KERC Document[:] 715-RL)[730-PGSS].

(3) "EPCRA How to Comply Packet" or "KERC Document: 700-CP" means the packet published by Kentucky Emergency Management (KYEM) that describes the steps required to be compliant with all Emergency Planning and Community Right-to-Know (EPCRA), KRS, and KAR requirements (106 KAR 1:091. Kentucky Emergency Response Commission fee account grant requirements for Local Emergency Planning Committees)[for the current calendar year].

(4)["Emergency Response Planning Guide for EHS Facilities: Self-Study Manual" or "KERC Document: 730-PGSS" means the packet published by Kentucky Emergency Management, which provides instructions for the completion of each section of an EHS facility emergency response plan required to be compliant with all EPCRA, 42 U.S.C. 11001 through 11050, KRS Chapter 39E, and Title 106 KAR requirements for the current calendar year.

(5)] "Extremely Hazardous Substance" or "EHS" means any chemical listed on the EHS List[of Extremely Hazardous Substance] and their TPQs[Threshold Planning Quantities], codified as 40 C.F.R. Part 355, Appendix A and Appendix B.

(5)[(6)] "Facility Annual Certification Letter" or "FACL" means the annual letter provided to[by] the Local Emergency Planning Committee (LEPC) by any facility that has an EHS in excess of the TPQ to certify that the current EHS Facility Emergency Response Plan has been reviewed and:

(a) Is correct without changes; or

(b) Has been revised and the revisions are included with the FACL.

(6)[(7)] "Facility Emergency Coordinator" or "FEC" means the EHS facility representative, assigned by the owner or operator of the EHS facility and designated on the annual Tier II[2] report.

(7)[(8)] "Hazardous Chemical" means:

(a) Any chemical that is classified by 29 C.F.R. 1910.1200(d), as a physical hazard or a health hazard; or

(b) A simple asphyxiant, combustible dust, pyrophoric gas;

(c)[Or] A hazard not otherwise classified.

(8)[(9)] "Hazardous Substance" is defined by KRS 39E.020(5).

(9)[(10)] "KERC" means the Kentucky Emergency Response Commission.

(10)[(11)] "Safety Data Sheet" or "SDS" means the Safety Data Sheets required by the Hazard Communication Standard (HCS)[as of June 1, 2015] to be generated by chemical manufacturers, distributors, or importers in order to communicate the hazards of hazardous chemical products.

Section 2. Filing Requirements. (1) A facility shall file a Tier II[2] report and pay all associated fees electronically as established in the EPCRA How to Comply Packet (KERC Document 700-CP). A paper report or check shall not be accepted.

(2)(a) The owner or operator of a facility that is required to prepare or have available a safety data sheet for a hazardous chemical present at the facility shall submit a Tier II[2] Report prepared in accordance with the KERC's Tier II submitting process[U.S. EPA's Tier2Submit 20xx Self-Study Manual, form 720A-T2SSS].

(b) The SDS requirements shall be as established in 29 C.F.R. 1910.1200, Hazard communication Standard.

(c) A facility subject to the annual chemical inventory reporting requirements established in KRS 39E.210 and 42 U.S.C. 11022 shall submit the completed Tier II[2] Report:

1. No later than March 1 each year; and

2. To each of the following organizations:

a. The KERC;

b. The LEPC[local emergency planning committee]; and

c. The fire department with jurisdiction over the facility.

(3) A facility shall report hazardous chemicals that were present at the facility at any time during the previous calendar year at a level equal to or in exceedance of the reporting threshold.

(a) The minimum reporting thresholds shall be as[are] established at 40 C.F.R. Part 370.

(b) The EPCRA chemical exemptions shall be those exemptions established in 40 C.F.R. Part 370.

(c) The exemptions established in 29 C.F.R. 1910.1200(b)(5) and (6) shall govern the preparation and availability of a Safety Data Sheet.

Section 3. Fees. (1) Except as established[provided] in

subsection (2) of this section, a facility that is not exempt shall pay the applicable fee established in this subsection.

(a) There shall not be a fee for a Category One Facility.

(b) The fee for a Category Two Facility shall be forty (40) dollars.

(c) The fee for a Category Three Facility shall be $250.

(d) The fee for a Category Four Facility shall be $250.

(e) The fee for a Category Five Facility shall be $250.

(f) Maintenance and access fees, late fees, and fines shall be utilized for the administration of the KERC program.

(2) If the same owner or owners have two (2) or more facilities in a single county subject to paying a fee, the owner or owners shall pay the fees as established in subsection (1) of this section, not to exceed a total of $250 for all those facilities in that county.

(3) An owner or operator who violates this administrative regulation shall be subject to the penalties established in KRS 39E.990.

Section 4. EHS Facility Planning Participation Requirements. (1) In accordance with the planning requirements of KRS 39E.120 and KRS 39E.130, 42 U.S.C. 11002(c) and 11003(c)(d), no later than sixty (60) days after a facility notifies the KERC[~~Kentucky Emergency Response Commission~~] that it is subject to the requirements of this section, the facility shall:

(a) Provide emergency response planning information to the LEPC[~~local emergency planning committee~~]; and

(b) Assist the LEPC[~~local emergency planning committee~~] in developing an EHS Facility Emergency Response Plan for all EHS[~~extremely hazardous substances~~] in accordance with the Responsibilities of the LEPC [~~Emergency Response Planning Guide for EHS Facilities~~: Self-Study] Course Manual.

(2) After initial submission and approval of the EHS Facility Emergency Response Plan in accordance with subsection (1) of this section, each March 1 any facility that has an EHS[~~extremely hazardous substance~~] in excess of the [~~threshold planning quantity (~~]TPQ[~~)~~] shall review the EHS Facility Emergency Response Plan and send a FACL[~~facility annual certification letter~~] to the LEPC[~~local emergency planning committee~~].

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

(a) "Responsibilities of the LEPC[~~Emergency Response Planning Guide for EHS Facilities: Self-Study~~] Course Manual[~~",~~] (KERC Document[~~;~~] 715-RL), 2018 edition[~~ 730-PGSS, 2017~~];

(b) "EPCRA How to Comply Packet", KERC Document; 700-CP, 2017; and

(c) "The EPA's Tier II[~~2~~]Submit 20xx Self-Study Manual", 720A-T2SSS Course Manual, 2016.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Military Affairs, 100 Minuteman Parkway, Frankfort, Kentucky 40601-6168, Monday through Friday, 8:00 a.m. to 4:30 p.m.

STEVEN P. BULLARD, Directo

APPROVED BY AGENCY: February 4, 2019

FILED WITH LRC: February 13, 2019 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 21, 2019, at 1:00 p.m., at 100 Minuteman Parkway, Boone National Guard Center, Frankfort, Kentucky 40601-6168 at the Emergency Operations Center in Room 202. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. This hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until March 31, 2019. 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: Mr. Steven P. Bullard, Director of Administrative Services, Office of Management and Administration, Department of Military Affairs, phone 502-607-1738, fax 502-607-1240, email steven.p.bullard.nfg@mail.mil.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Mr. Steven P. Bullard

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation guides the Kentucky Emergency Response Commission in developing reporting requirements and procedures for individuals, businesses, and governmental agencies that manufacture, use, store, or transport hazardous substances. This administrative regulation establishes the Tier 2 reporting and facility planning participation requirements for facilities subject to U.S. Public Health laws.

(b) The necessity of this administrative regulation: This regulation is critical to provide guidance in the execution of this program pursuant to the basic law.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 39E.040(3) requires the Kentucky Emergency Response Commission to develop reporting requirements and procedures for individuals, businesses, and governmental agencies that manufacture, use, store, or transport hazardous substances. KRS 39E.040(6) requires the commission to recommend administrative regulations to the director for issuance by the Division of Emergency Management to implement KRS Chapter 39E. This administrative regulation establishes the Tier 2 reporting and facility planning participation requirements for facilities subject to U.S. Public Health laws, 42 U.S.C. 11001 through 42 U.S.C. 11050.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation codifies how the Kentucky Emergency Response Commission and Division of Emergency Management are to assist affected facilities in complying with federal requirements.

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

(a) How the amendment will change this existing administrative regulation: This amendment streamlines the administration regulation by clarifying acronyms and processes and noting that maintenance and access fees, late fees, and fines shall be utilized for the administration of the KERC program.

(b) The necessity of the amendment to this administrative regulation: This amendment was necessary to keep the administrative regulation up to date with current compliance practices. The members of the Kentucky Emergency Response Commission's (KERC) legislative committee now conducts an annual review of their related administrative regulations, including this administrative regulation, and developed these updates, approved by the full KERC membership, to keep them in compliance with current desired practices for implementation of programs under KERC oversight.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment keeps the administrative regulation up to date with current compliance practices.

(d) How the amendment will assist in the effective administration of the statues: This amendment keeps the administrative regulation up to date with current compliance practices in preparing required reports.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: KRS 39E.040(3) requires the Kentucky Emergency Response Commission to develop reporting requirements and procedures for individuals, businesses, and governmental agencies that manufacture, use, store, or transport hazardous substances.

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

(a) List the actions that each of the regulated entities identified

in question (3) will have to take to comply with this administrative regulation or amendment: There is no associated requirement for action required of any affected individual or organization. This update properly reflects currently mandated practices, correcting outdated references in the existing administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no additional cost for any entity because there is no change in requirements.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The administrative regulation will accurately reflect statutory guidance, simplifying compliance.

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

(a) Initially: There is no additional cost for any entity.

(b) On a continuing basis: There is no additional cost for any entity.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding source is required.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees or fee increases are established.

(9) TIERING: Is tiering applied? Tiering was not used. The regulations will not reduce or modify substantive regulatory requirements, eliminate some requirements entirely, simplify or reduce reporting and recordkeeping requirements, reduce the frequency of inspections, provide exemptions from inspections or other compliance activities, or delay compliance timetables.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Emergency Planning and Community Right-to-Know Act 42 U.S.C. 11002(c), 11003(c), (d)

2. State compliance standards. KRS 39E.010, 39E.040, 39E.050, 39E.120, 39E.130, 39E.210

3. Minimum or uniform standards contained in the federal mandate. Affected facilities shall file a Tier 2 report and pay all associated fees electronically as specified in the Emergency Planning and Community Right-to-Know Act (EPCRA) How to Comply Packet. Affected facilities shall report hazardous chemicals that were present at the facility at any time during the previous calendar year at levels that equal or exceed reporting thresholds. KRS 39E.040(3) requires the Kentucky Emergency Response Commission to develop reporting requirements and procedures for individuals, businesses, and governmental agencies that manufacture, use, store, or transport hazardous substances. KRS 39E.040(6) requires the commission to recommend administrative regulations to the director for issuance by the Division of Emergency Management to implement KRS Chapter 39E. This administrative regulation establishes the Tier 2 reporting and facility planning participation requirements for facilities subject to U.S. Public Health laws, 42 U.S.C. 11001 through 42 U.S.C. 11050.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This administrative regulation simply codifies how the Kentucky Emergency Response Commission and Division of Emergency Management are to assist affected facilities in complying with federal requirements.

5. Justification or the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? There is no impact to state or local government.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 39E.010, 39E.040, 39E.050, 39E.120, 39E.130, 39E.210, Emergency Planning and Community Right-to-Know Act 42 U.S.C. 11002(c), 11003(c), (d)

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There is no cost for any entity. There will be no impact on expenditures or revenues.

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

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

(c) How much will it cost to administer this program for the first year? There is no cost for any entity

(d) How much will it cost to administer this program for subsequent years? There is no cost for any entity

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: There is no fiscal impact.

DEPARTMENT OF MILITARY AFFAIRS
Division of Emergency Management
(Amendment)

106 KAR 1:091. Kentucky Emergency Response Commission (KERC) fee account grant requirements for Local Emergency Planning Committees (LEPCs).

RELATES TO: KRS 39E.040, 39E.050, 39E.110, 39E.130, 39E.140, 39E.150, 39E.160, 39E.170, 39E.220, 39E.230, 61.800, 61.805, 61.810, 61.820, 61.823, 61.826, 61.835, Chapter 424, 40 C.F.R. Part 355, Appendix A, Appendix B, 42 U.S.C. 11001-11050

STATUTORY AUTHORITY: KRS 39E.040, 39E.050

NECESSITY, FUNCTION, AND CONFORMITY: KRS 39E.040(3) requires the KERC[~~Kentucky Emergency Response Commission~~] to develop reporting requirements and procedures for individuals, businesses, and governmental agencies that manufacture, use, store, or transport hazardous substances. KRS 39E.040(6) requires the KERC[~~commission~~]to recommend administrative regulations to the director for issuance by the Division of Emergency Management to implement KRS Chapter 39E. This administrative regulation establishes criteria and procedures to be met by LEPCs[~~local emergency planning committees~~] requesting funds generated by KRS 39E.050.

Section 1. Definitions. (1) "Extremely Hazardous Substance, or EHS, Facility Emergency Response Plan" means an emergency response plan for a facility subject to SARA Title III (Superfund Amendments and Reauthorization Act of 1986), 42 U.S.C. 11001 et seq., that:

(a) Has in its inventory an[~~extremely hazardous substance (~~]EHS[~~)~~] above Threshold Planning Quantity (TPQ); and

(b) Meets all required planning elements of SARA Title III, 42 U.S.C. 11003, KRS 39E.110, KRS 39E.130, KRS 39E.140, KRS 39E.150, KRS 39E.160, KRS 39E.170,[~~and~~] KRS 39E.220, and the KERC's[~~Kentucky Emergency Response Commission's~~] planning requirements found in the Responsibilities of the LEPC[~~Emergency Response Planning Guide for EHS Facilities:~~] Course[~~Self-Study~~] Manual[~~,~~] (KERC Document[~~:~~] 715-RL)[~~ 730-PGSS~~], incorporated

by reference in 106 KAR 1:081.

(2) "EHS (Extremely Hazardous Substance) Facility Emergency Response Plan Checklist" or "KERC Form: 303-PC" means the checklist completed by all LEPCs and submitted to the KERC EHS Planner[their Kentucky Emergency Management (KYEM) area manager (AM)] for all EHS Facility Emergency Response Plans requiring submission to the KERC for approval and in accordance with the Responsibilities of the LEPC Course[Emergency Response Planning Guide for EHS Facilities: Self-Study] Manual (KERC Document[;] 715-RL)[730-PGSS], incorporated by reference in 106 KAR 1:081.[(3) "Emergency Response Planning Guide for EHS Facilities: Self-Study Manual" or "KERC Document: 730-PGSS" means the packet, incorporated by reference in 106 KAR 1:081, published by Kentucky Emergency Management, which provides instructions for the completion of each section of an EHS Facility Emergency Response Plan required to be compliant with all EPCRA, 42 U.S.C. 11001 through 11050, KRS Chapter 39E, and Title 106 KAR requirements for the current calendar year.]

(3)[(4)] "Grant Ledger" or "KERC Form: 105-GL" means the form LEPCs are required to use to record all of the checks, cash payments, and outlays of cash in the "(Name of Planning District[County]) Emergency Planning Committee Fee Account" during the calendar year, January 1 through December 31.

(4)[(5)] "KERC Document Library" or "KERC Document: 001-LIB" means a compilation of documents[the packet published and annually] continually reviewed and updated by the KERC[Kentucky Emergency Response Commission (KERC)] that contains pertinent information for LEPCs[the complete library of required and optional materials, including all aspects of LEPC planning and grants].

(5)[(6)] "LEPC Annual Certification Letter (ACL)" or "KERC Form 302-ACL" means the letter annually submitted by the LEPC[local emergency planning committee (LEPC)] listing the status of all EHS Facility Emergency Response Plans in the planning district, which includes information that was received from covered facilities by March 1, for the previous calendar year, and in accordance with all ACL requirements found in the Responsibilities of the LEPC[Emergency Response Planning Guide for EHS Facilities:] Course[Self-Study] Manual[,] (KERC Document[:] 715-RL)[730-PGSS].

(6)[(7)] "LEPC Detailed Budget" or "KERC Form: 102-DB" means the form submitted by LEPCs annually identifying by category, all intended purchases and expenses for the upcoming calendar year using, if approved, KERC grant funds[in accordance with the LEPC Grant Applications Manual KERC Document: 710-GASS].

(7)[(8)] "LEPC Grant Application" or "KERC Form: 101-GA" means the form submitted by LEPCs initially requesting KERC grant funds in accordance with the Responsibilities of the LEPC: Course Manual (KERC Document 715-RL)[LEPC Grant Applications Manual KERC Document: 720-GASS].

(8)[(10)] "LEPC Membership Cover Page or "KERC Form 104-MCP" means the cover letter submitted by LEPCs with their annually required submission of an updated membership list that serves as a checklist, ensuring all representatives required by EPCRA, 42 U.S.C. 11001 through 11050, and KRS Chapter 39E are included within each LEPC membership.

(9) "LEPC Supplemental Funds Application: KERC Fee Account Grant (KERC Form 505-SPA)" means the application form used by an LEPC to apply for supplemental funds from the KERC, or used by an LEPC to earmark funds from one (1) grant year to the next for an LEPC Additional Funding Allocation Project.[(9) "LEPC Grant Applications Manual" or "KERC Document: 720-GASS" means the packet, annually updated and published by Kentucky Emergency Management, which provides instructions for the request for assistance through the KERC grant funds, including templates for all forms required for the current calendar year.]

(10)[(11)] "Personal Property Inventory or "KERC Form: 103-PPI" means the form submitted by LEPCs annually listing all property exceeding $500 purchased using KERC grant funds[in accordance with the LEPC Grant Applications Manual KERC Document: 720-GASS].

(11)[(12)] "Public (Legal) Notice Advertisement" means the template established in Section 7 of this administrative regulation and used by LEPCs to meet the EPCRA, 42 U.S.C. 11001 through 11050, requirements found in Section 324, which require that each LEPC annually publish a notice in local newspapers that the emergency response plan, material safety data sheets, and inventory forms have been submitted.

(12) "Responsibilities of the LEPC: Course Manual (KERC Document 715-RL)" means the packet, annually updated and published by KYEM, which provides an introductory look at LEPCs including the laws and regulations that govern them, instructions for the request for assistance through the KERC grant funds, and an understanding of the federal and state requirements for EHS Facility Emergency Response Plans.

Section 2. LEPC Eligibility Requirements. (1) To be eligible for financial assistance, LEPCs[local emergency planning committees] that have[extremely hazardous substances {]EHS[}] as listed in 40 C.F.R. 355, Appendices A and B, in excess of the TPQ present in their community shall meet all the criteria established in this subsection during the preceding calendar year (January 1 through December 31).

(a) The LEPC[local emergency planning committee] shall meet all requirements established[set forth] in KRS 39E.110.

(b) The LEPC[local emergency planning committee] shall have an EHS Facility Emergency Response Plan that has been approved by the KERC pursuant to KRS 39E.110(1)(a), (e)[,] and (f) and 39E.150 as set out in the Responsibilities of the LEPC[Emergency Response Planning Guide for EHS Facilities:] Course[Self-Study] Manual (KERC Document[;] 715-RL)[730-PGSS,] for each facility in the planning district that has an[extremely hazardous substance {]EHS[}] in excess of the TPQ.

1. The LEPC[local emergency planning committee] shall submit a completed EHS Facility Emergency Response Plan Checklist[,] (KERC Form: 303-PC)[,] with all EHS Facility Emergency Response Plans submitted for KERC approval.

2. The LEPC [local emergency planning committee] shall submit new EHS Facility Emergency Response Plans to the KERC EHS Planner[Kentucky Emergency Management (KYEM) area manager (AM)] within sixty (60) days of notification that the facility has an[extremely hazardous substance {]EHS[}] in excess of the [threshold planning quantity {]TPQ[}].

3. The KERC EHS Planner[KYEM AM] shall review new EHS Facility Emergency Response Plans and their accompanying checklists for completeness.

a. Complete plans shall be forwarded to the Chairman of the KERC[Kentucky Emergency Response Commission], or designee, within thirty (30) days of receipt from the LEPC[local emergency planning committee].

b. Incomplete plans shall be returned to the LEPC[local emergency planning committee] with recommendations.

(c) The LEPC[local emergency planning committee] shall meet at least twice during each calendar year (January 1 through December 31) to conduct its business, and a quorum shall be required. A copy of the minutes shall be provided to the chairman of the KERC [Kentucky Emergency Response Commission], or designee, within thirty (30) days of the date of the meeting pursuant to KRS 39E.110(2).

(d)1. No later than November 30[January 31] each calendar year (January 1 through December 31) in accordance with KRS Chapter 424, Legal Notices, the LEPC[local emergency planning committee] shall publish public information on LEPC[committee] activities in the following year as established[set out] in Section 7 of this administrative regulation.

2. No later than December 31[February 28], each LEPC[local emergency planning committees] shall provide the Chairman of the KERC[chairman], or designee, with a photocopy of the legal notice published established in Section 7 of this administrative regulation clearly showing the name of the newspaper and the date of publication.

(e) No later than February 28, the LEPC shall submit the LEPC Grant Application (KERC Form 101-GA) to the KERC LEPC Coordinator. The KERC LEPC Coordinator shall review the grant request form for completeness and conformance to KRS Chapter

39E and Title 106 KAR.

(f) No later than November 30 each year, the LEPC shall submit an updated membership list and LEPC Membership Cover Page (KERC Form 104-MCP) to the chairman of the KERC or designee.

(g) No later than November 30 each year, the bylaws of each LEPC shall be provided to the chairman of the KERC or designee, with certification stating that:

1. There were no changes; the bylaws are identical to last year; or

2. The bylaws have been revised and the revisions are included.

(h) The bylaws shall identify the position or person who shall be responsible for accountability for the funds and who shall be listed as the authorized applicant as shown on the Grant Application (KERC Form: 101-GA).

(i) No later than November 30, LEPCs shall submit a Personal Property Inventory (KERC Form: 103-PPI) identifying all property items valued in excess of $500 purchased using KERC grant funds.

(j)[~~After new equivalent plans are submitted, n~~]No later than April 1 each year, the LEPC[~~local emergency planning committee~~] shall review all existing EHS Facility Emergency Response Plans and send an Annual Certification Letter (ACL) to the KERC EHS Planner [~~Kentucky Emergency Management (KYEM) area manager (AM)~~] stating that:

1.[~~a.~~] There were no changes;[~~and therefore~~] the plan is correct as is; or

2.[~~b.~~] The plan has been revised and the revisions are included with the ACL.

(k)[~~2.~~] The KERC EHS Planner[~~KYEM AM~~] shall review the ACL and all EHS Facility Emergency Response Plan revisions received from the LEPC[~~local emergency planning committee~~] for completeness.

1.[~~a.~~] Complete plans shall be forwarded to the[~~KERC~~]chairman of the KERC[~~,~~] or designee[~~,~~] no later than May 1 each year.

2.[~~b.~~] Incomplete plans shall be returned to the LEPC[~~local emergency planning committee~~] with recommendations.[~~(f)1. No later than April 1, the local emergency planning committee shall submit Grant Application, KERC Form: 101-GA, to the KYEM AM.~~

~~2. The KYEM AM shall review the grant request form for completeness and conformance to KRS Chapter 39E and Title 106 KAR.~~

~~a. Complete grant applications shall be forwarded to the KERC chairman, or designee, no later than May 1 each year.~~

~~b. Incomplete grant applications shall be returned to the local emergency planning committee with recommendations.~~]

(l)[~~(g) No later than April 1, the local emergency planning committee shall provide~~] The LEPC shall provide the[~~KERC~~] chairman of the KERC, or designee, documentation of expenditures, including bank statements, canceled checks, invoices, receipts, and a Grant Ledger[~~,~~] (KERC Form: 105-GL)[~~,~~] on a quarterly basis[~~for the preceding year~~]. The final due date for submissions of documents from the final quarter of the preceding year shall be no later than January 31.

(m)[~~(h)~~] No later than June [~~1~~]30, local emergency planning committees shall submit a LEPC Detailed Budget[~~,~~] (KERC Form: 102-DB)[~~,~~] to the chairman of the KERC,[~~Kentucky Emergency Response Commission~~] or designee, identifying how the funds requested on the LEPC Grant Application are to be spent.[~~(i) No later than December 1 each year, the local emergency planning committee shall submit an updated membership list and LEPC Membership Cover Page, KERC Form 104-MCP, to the KERC chairman, or designee.~~

~~(j)1. No later than December 1 each year, the bylaws of each local emergency planning committee shall be provided to the KERC chairman, or designee, with certification stating that:~~

~~a. There were no changes and therefore the bylaws are identical to last year; or~~

~~b. The bylaws have been revised and the revisions are included.~~

~~2. The bylaws shall identify the position or person who will be responsible for accountability for the funds and who will be listed as the authorized applicant as shown on the Grant Application, KERC Form: 101-GA.~~

~~(k) No later than December 1, local emergency planning committees shall submit a Personal Property Inventory, KERC Form: 103-PPI, identifying all property items valued in excess of $500 purchased using KERC grant funds.~~]

(2) To be eligible for financial assistance, LEPCs[~~local emergency planning committees~~] that do not have any EHS[~~extremely hazardous substance as defined in 106 KAR 1:081, Section 1,~~] in excess of the TPQ present in their community shall meet the criteria established in this subsection during the preceding calendar year (January 1 through December 31).

(a) The LEPC[~~local emergency planning committee~~] shall meet criteria established[~~set forth~~] in KRS 39E.110(1)(b), (c), (d), (2), (4), (5), and subsection (1)(c) and (d)[~~, (f), (g), (h), (i), (j), and (k)~~] of this section.

(b) The LEPC[~~local emergency planning committee~~] shall meet at least once during each calendar year (January 1 through December 31) to conduct its business and a quorum shall be required. A copy of the minutes shall be provided to the chairman of the KERC[~~Kentucky Emergency Response Commission~~], or designee, within thirty (30) days of the date of the meeting pursuant to KRS 39E.110(2).

Section 3. KERC Grant Review Procedures. (1) The KERC staff, [~~KYEM AM,~~] the[~~KERC~~] chairman of the KERC or designee, or the Grant Review Committee may request additional information that shall be provided by the LEPC[~~local emergency planning committee~~]. Failure to provide the requested information shall invalidate the LEPC's[~~local emergency planning committee's~~] request for funding.

(a) The[~~KERC~~] chairman of the KERC, or designee, shall annually update, publish, and promulgate all grant requirements in the Responsibilities of the LEPC (KERC Document 715-RL)[~~LEPC Grant Applications Manual (KERC Document #720-GASS)~~].

(b) The [~~KERC~~] chairman of the KERC, or designee, shall annually review, publish, and promulgate, through incorporation by reference in an administrative regulation, all grant required KERC forms in the KERC Document Library (KERC Document {~~#~~}001-LIB).

(2) The schedule of due dates shall be as established in this subsection.

(a) No later than March 30[~~June 1~~], the KERC LEPC Coordinator[~~chairman, or designee,~~] shall review the grant request form for completeness and conformance to[~~statutes and~~] administrative regulations (106 KAR 1:101, Kentucky Emergency Response Commission fee account grant requirements for state agencies; and 106 KAR 1:111, Kentucky Emergency Response Commission Fee Account Grant Review Committee; 106 KAR 1:121, Kentucky Emergency Response Commission fee account grant distribution formula), note any recommendations, and forward it to the Grant Review Committee.

(b) No later than May 30[~~July 1~~], the Grant Review Committee, with a quorum present, shall review all grant requests[~~and LEPC Detailed Budgets, KERC Form: 102-DB,~~] and forward[~~their~~] recommendations to the KERC for final approval.

(c) No later than July 30[~~September 15~~], the KERC shall make the grant awards pursuant to this administrative regulation.

Section 4. Requests for Modifications. (1) A modification of a grant award shall be required if there is a change in the grant request or if an LEPC[~~a local emergency planning committee~~] is unable to expend the funds for the purpose for which the grant was awarded.

(a) A request for modification shall be submitted by the LEPC for approval by the commission.

(b) Unexpended monies shall be returned to the KERC fee account fund.

(2) Requests for modifications of grant awards shall be submitted on an LEPC Detailed Budget, KERC Form[~~:~~] 102-DB, and, except for due dates, shall be processed in accordance with Sections 2 and 3 of this administrative regulation.

(3) Modifications may be submitted throughout the grant period.

Section 5. Supplemental Grant Awards. (1) In the event supplemental money is available, the KERC shall determine the date of the supplemental allocation award and inform the LEPCs[~~local emergency planning committees~~] of that date.

(2) Requests for supplemental money shall be submitted on an LEPC Supplemental Funds Application: KERC Fee Account Grant (KERC Form 505-SPA)[~~a Grant Application, KERC Form #101-GA, and LEPC Detailed Budget, KERC Form: 102-DB,~~] and, except for due dates, shall be processed in accordance with this section and Sections 2 and 3 of this administrative regulation.

(3) If a LEPC[~~local emergency planning committee~~] requests supplemental money, the schedule of due dates shall be as established in this subsection.

(a) Thirty (30) days from notification by the KERC of the availability of supplemental LEPC money, the LEPC[~~local emergency planning committee~~] shall submit the supplemental LEPC Supplemental Funds Application: KERC Fee Account Grant (KERC Form 505-SPA)[~~Grant Application, KERC Form: 101-GA, and LEPC Detailed Budget, KERC Form: 102-DB,~~] to the KERC Program Manager[~~KYEM AM~~].

(b) Thirty (30) days from receipt of the supplemental grant request, the KERC Program Manager[~~KYEM AM~~] shall review the supplemental grant request documents for completeness and conformance to[~~statutes and~~] administrative regulations (106 KAR 1:101. Kentucky Emergency Response Commission fee account grant requirements for state agencies; and 106 KAR 1:111. Kentucky Emergency Response Commission Fee Account Grant Review Committee; 106 KAR 1:121. Kentucky Emergency Response Commission fee account grant distribution formula).

1. Complete fund[~~grant~~] applications shall be forwarded to the Grant Review Committee[~~with the LEPC Detailed Budget, KERC Form: 102-DB, to the KERC chairman, or designee~~].

2. Incomplete fund[~~grant~~] applications shall be returned to[~~with~~] the LEPC[~~Detailed Budget, KERC Form: 102-DB, to the local emergency planning committee~~] with recommendations.

(c)[~~Thirty (30) days from receipt of the supplemental grant request, the KERC chairman, or designee, shall review the supplemental grant request in accordance with Section 3 of this administrative regulation and forward it to the Grant Review Committee.~~

~~(d)~~] Forty-five (45) days from receipt of the supplemental grant request, the Grant Review Committee, with a quorum present, shall review the supplemental grant request in accordance with Section 3 of this administrative regulation and forward their recommendations to the KERC.

(d)[~~(e)~~] Thirty (30) days from receipt of the recommendation of the Grant Review Committee, the KERC shall make the supplemental grant award pursuant to this administrative regulation.

Section 6. Requirements for Funding Accountability. (1) Funds provided by the KERC shall be deposited in a separate "(Name of Planning District[~~County~~]) Emergency Planning Committee Fee Account" and fiscal accountability shall be prescribed by the state auditor of public accounts. All funds shall be subject to audit by the KERC and the state auditor of public accounts.

(2) Grant awards approved by the KERC may be withheld for noncompliance with KRS 39E.050 and this administrative regulation or[~~and~~] for failure to provide required documentation.

(3) All funding allocation decisions shall be made by the KERC and shall be dependent upon availability of fees collected.

(4) Unexpended monies may[~~shall~~] be carried over into the next grant cycle, if the LEPC has submitted an LEPC Supplemental Funds Application: KERC Fee Account Grant (KERC Form 505-SPA) and was approved by the KERC[~~returned to the Kentucky Emergency Response Commission fee account fund~~].

(a) Once funds have been designated for an LEPC Additional Funding Allocation Project, the LEPC shall not reallocate the funds for alternate purpose.

(b) If an LEPC becomes noncompliant and is deemed ineligible for funding, the LEPC shall be allowed one (1) grant cycle in which to regain compliance.

(c) Failure to regain compliance may result in the KERC requiring that LEPC Supplemental Funding be returned to the KERC Fee Account Fund.

Section 7. [~~"~~]Public (Legal) Notice Advertisement[~~"~~] Template. (1) LEPCs shall use the template established in this section to comply with EPCRA, 42 U.S.C. 1101 through 11050, and annual requirements established in Section 324, Title III of the 1986 Federal Superfund Amendments and Reauthorization Act (SARA) of 1986, 42 U.S.C. 11001 et seq.

(2) Template:

PUBLIC (LEGAL) NOTICE ADVERTISEMENT

_____ COUNTY EMERGENCY PLANNING COMMITTEE

Pursuant to Section 324, Title III of the 1986 Federal Superfund Amendments and Reauthorization Act (SARA) of 1986, 42 U.S.C. 11001 et seq., the following information is provided in compliance with the Community Right-to-Know requirements of the SARA Law, and the open meetings and open records provisions of KRS 61.800, 61.805, 61.810, 61.823, 61.826, and 61.835. Members of the public may contact the (name of county) County Emergency Planning Committee by writing (name of chairman), chairman of the (name of county) County Emergency Planning Committee, (working address of chairman or committee), (city), Kentucky (zip code), or contacted by telephone at (area code), (telephone number established by the committee). The (name of county) County Emergency Planning Committee conducts meetings at (name of building), (local address), or at other locations, in accordance with the Kentucky Open Meetings Law. Members of the public may request to be notified of regular or special meetings as provided in KRS 61.820. Records of the Planning Committee, including the county emergency response plan, material safety data sheets, and inventory forms, or any follow-up emergency notices as may subsequently be issued, are open for inspection, and members of the public who wish to review these records may do so (normal hours of business), (Eastern or Central Time), (days of the week), at (location of the office or place where custodian keeps the committee files), as required by the Kentucky Open Records Law. The local 24-hour telephone number for purposes of emergency notification, as required by the SARA Law, is (emergency number adopted by county planning committee).

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

(a) "Grant Ledger[~~",~~] (KERC Form: 105-GL)", January 2017;

(b) "Responsibilities of the LEPC: Course Manual (KERC Document 715-RL), 2018"[~~LEPC Grant Applications Self-Study Manual", KERC Document 720-GASS, 2016~~];

(c) "LEPC Annual Certification Letter (ACL)[~~",~~] (KERC Form 302-ACL)", January 2017;

(d) "LEPC Detailed Budget[~~",~~] (KERC Form: 102-DB)", January 2017;

(e) "LEPC Grant Application[~~",~~] (KERC Form: 101-GA)", January 2017;

(f) "LEPC Membership Cover Page[~~",~~] (KERC Form 104-MCP)", January 2017;

(g) "Personal Property Inventory[~~",~~] (KERC Form: 103-PPI)", January 2017;[~~and~~]

(h) "KERC Document Library[~~",~~] (KERC Document: 001-LIB)", 2016~~.~~; and

(i) "LEPC Supplemental Funds Application: KERC Fee Account Grant (KERC Form 505-SPA)", January 2019.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Military Affairs, 100 Minuteman Parkway, Frankfort, Kentucky 40601-6168, Monday through Friday, 8:00 a.m. to 4:30 p.m.

STEVEN P. BULLARD, Director, Administrative Services

APPROVED BY AGENCY: February 4, 2019

FILED WITH LRC: February 13, 2019 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 21, 2019, at 1:00 p.m., at 100 Minuteman Parkway, Boone

National Guard Center, Frankfort, Kentucky 40601-6168 at the Emergency Operations Center in Room 202. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. This hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until March 31, 2019. 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: Steven P. Bullard, Director of Administrative Services, Office of Management and Administration, Department of Military Affairs, phone 502-607-1738, fax 502-607-1240, email steven.p.bullard.nfg@mail.mil.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Steven P. Bullard

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes criteria and procedures to be met by local emergency planning committees requesting funds generated by KRS 39E.050.

(b) The necessity of this administrative regulation: This regulation is critical to provide guidance in the execution of this program pursuant to the basic law.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes criteria and procedures to be met by local emergency planning committees requesting funds generated by KRS 39E.050 by outlining definitions; eligibility requirements; plans and grant applications requirements, deadlines and procedures; supplemental funding opportunities and procedures' and public notice requirements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation codifies in detail how the Kentucky Emergency Response Commission and Division of Emergency Management are to assist affected facilities in complying with state and federal requirements.

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

(a) How the amendment will change this existing administrative regulation: Changes include significant updates and clarifications to Local Emergency Planning Committee (LEPC) Eligibility Requirements and updates KERC Grant Review procedures. Establishes "LEPC Supplemental Funds Application: KERC Fee Account Grant (KERC Form 505-SPA)" as the application form used by an LEPC to apply for supplemental funds from the KERC, or used by an LEPC to earmark funds from one (1) grant year to the next for an LEPC Additional Funding Allocation Project. Changes "Area Manager" references to "KERC EHS Planner."

(b) The necessity of the amendment to this administrative regulation: This amendment was necessary to keep the administrative regulation up to date with current compliance practices. The members of the Kentucky Emergency Response Commission's (KERC) legislative committee now conducts an annual review of their related administrative regulations, including this administrative regulation, and developed these updates, approved by the full KERC membership, to keep them in compliance with current desired practices for implementation of programs under KERC oversight.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment keeps the administrative regulation up to date with current Statutory Authority and compliance practices.

(d) How the amendment will assist in the effective administration of the statues: This amendment keeps the administrative regulation up to date with current Statutory Authority and compliance practices, allowing for proper references when researching the applicable Kentucky Revised Statutes and federal statutes and in preparing grant applications.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: KRS 39E.040(3) requires the Kentucky Emergency Response Commission to develop reporting requirements and procedures for individuals, businesses, and governmental agencies that manufacture, use, store, or transport hazardous substances.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There is no associated requirement for action required of any affected individual or organization. This update properly reflects currently mandated practices, correcting outdated references in the existing administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost for any entity because there is no change in requirements.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The administrative regulation will accurately reflect statutory guidance, simplifying compliance.

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

(a) Initially: There is no additional cost for any entity.

(b) On a continuing basis: There is no additional cost for any entity.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding source is required.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees or fee increases are established.

(9) TIERING: Is tiering applied? Tiering was not used. The regulations will not reduce or modify substantive regulatory requirements, eliminate some requirements entirely, simplify or reduce reporting and recordkeeping requirements, reduce the frequency of inspections, provide exemptions from inspections or other compliance activities, or delay compliance timetables.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? There is no impact to state or local government.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 39E.010, 39E.040, 39E.050, 39E.120, 39E.130, 39E.210, 42 U.S.C. 11001-11050

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There is no cost for any entity. There will be no impact on expenditures or revenues.

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

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

(c) How much will it cost to administer this program for the first year? There is no cost for any entity

(d) How much will it cost to administer this program for subsequent years? There is no cost for any entity

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: There is no fiscal impact.

DEPARTMENT OF MILITARY AFFAIRS
Division of Emergency Management
(Amendment)

106 KAR 1:101. Kentucky Emergency Response Commission (KERC) fee account grant requirements for state agencies.

RELATES TO: KRS 39E.050, 39E.230

STATUTORY AUTHORITY: KRS 39E.040(3), (6), 39E.050

NECESSITY, FUNCTION, AND CONFORMITY: KRS 39E.040(3) requires the KERC[~~Kentucky Emergency Response Commission~~] to develop reporting requirements and procedures for individuals, businesses, and governmental agencies that manufacture, use, store, or transport hazardous substances. KRS 39E.040(6) requires the commission to recommend administrative regulations to the director for issuance by the Division of Emergency Management to implement KRS Chapter 39E. This administrative regulation establishes criteria and procedures to be met by state agencies requesting funds generated by KRS 39E.050.

Section 1. Eligibility of State Agencies. State agencies that perform functions to assist the KERC[~~Kentucky Emergency Response Commission~~] in the administration of its programs and activities at the state level shall be eligible to apply for funding.

Section 2. State Agency Procedures. (1) State agencies that apply for financial assistance shall apply by completing an LEPC[~~a~~] Grant Application[~~,~~] (KERC Form: 101-GA, incorporated by reference in 106 KAR 1:091) and shall include an LEPC Detailed Budget[~~,~~] (KERC Form: 102-DB, incorporated by reference in 106 KAR 1:091)[~~,~~] identifying how the requested funds are to be spent.

(2) State agencies may request funding for staff to support the commission in the administration of its programs and activities at the state level. If a request for staff is included in the grant request, the state agencies shall attach a position description detailing job duties and an organization chart defining that position within the agency.

(3) The Grant Application and Detailed Budget shall be submitted to the KERC program manager[~~directly to the Chairman of the Kentucky Emergency Response Commission, or designee,~~] no later than April 30[~~May 1~~].

(4) The KERC program manager[~~The Chairman of the Kentucky Emergency Response Commission, or designee,~~] shall review the Grant Application and Detailed Budget submissions [~~grant request form~~] for completeness and conformance to KRS Chapter 39E and Title 106 KAR, note any recommendations, and forward them[~~it~~] to the Grant Review Committee no later than May 31[~~June 1~~].

(5) The Grant Review Committee, with a quorum present, shall review all grant requests from state agencies and forward committee[~~their~~] recommendations[~~no later than July 1~~] to the KERC[~~Kentucky Emergency Response Commission~~] for final approval.

(6) The KERC[~~Kentucky Emergency Response Commission~~] shall make the grant awards no later than July 30[~~September 15~~].

(7) The chairman of the KERC[~~Kentucky Emergency Response Commission~~], or designee, or the Grant Review Committee may request additional information, which shall be provided by the state agency. Failure to provide the requested information shall invalidate the state agency's request for funding.

Section 3. Requests for Modifications. (1) A request for modification of a grant award shall be[~~is~~] required if there is a change in the grant request or if a state agency is unable to expend the funds for which the grant was awarded.

(a) A request for modification shall be submitted by the state agency for approval or denial by the commission using LEPC Detailed Budget, KERC Form 102-DB (106 KAR 1:091. Kentucky Emergency Response Commission fee account grant requirements for Local Emergency Planning Committees, Section 4. Requests for Modifications.).

(b) Unexpended monies shall be returned to the KERC fee account fund annually at the expiration of the current year grant cycle.

(2) Requests for modifications of grant awards shall be submitted on an LEPC Detailed Budget[~~,~~] (KERC Form: 102-DB, incorporated by reference in 106 KAR 1:091) and, except for due dates, shall be processed in accordance with Sections 2 and 4 of this administrative regulation. Requests for modifications may be submitted throughout the grant period.

Section 4. Requirements for Funding Accountability. (1) Funds provided by the KERC[~~Kentucky Emergency Response Commission~~] shall be subject to fiscal accountability prescribed by the state auditor of public accounts.

(a) A Memorandum of Agreement (MOA) between the state agency making application and the Chairman of the KERC [~~Kentucky Emergency Response Commission~~] shall be executed.

(b) All funds shall be subject to audit by the KERC[~~Kentucky Emergency Response Commission~~] and the state auditor of public accounts.

(2) Grant awards approved by the KERC[~~Kentucky Emergency Response Commission~~] may be withheld for:

(a) Noncompliance with KRS 39E.050; [~~;~~]

(b) Noncompliance with this administrative regulation;[~~;~~] or

(c) Failure to provide required documentation.

(3) All funding allocation decisions shall be made by the KERC[~~Kentucky Emergency Response Commission~~] and shall be dependent upon availability of fees collected.

STEVEN P. BULLARD, Director

APPROVED BY AGENCY: February 4, 2019

FILED WITH LRC: February 13, 2019 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 21, 2019, at 1:00 p.m., at 100 Minuteman Parkway, Boone National Guard Center, Frankfort, Kentucky 40601-6168 at the Emergency Operations Center in Room 202. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. This hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until March 31, 2019. 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: Steven P. Bullard, Director of Administrative Services, Office of Management and Administration, Department of Military Affairs, phone 502-607-1738, fax 502-607-1240, email steven.p.bullard.nfg@mail.mil.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Steven P. Bullard

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes criteria and procedures for the Kentucky Emergency Response Commission to create a grant application program and to institute a fee system to assist in the administration of its programs and activities at both state and local levels, including the establishment and maintenance of the "Kentucky Emergency Response Commission Fee Account."

(b) The necessity of this administrative regulation: This

regulation is critical to provide guidance in the execution of this program pursuant to the basic law.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes criteria and procedures to be met by state agencies that perform functions to assist the Kentucky Emergency Response Commission in the administration of its programs and activities at the state level to apply for grant funding, and establishes criteria and procedures for the Kentucky Emergency Response Commission to institute a fee system to assist in the administration of its programs and activities.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation codifies in detail how the Kentucky Emergency Response Commission and Division of Emergency Management are to assist affected facilities in complying with state and federal requirements.

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

(a) How the amendment will change this existing administrative regulation: This amendment streamlines the administration regulation by clarifying acronyms and processes. It changes the submission of the Grant Application and Detailed Budget from the KERC chair to the KERC program manager and changes the no later than submission date from May 1 to April 30. It changes review responsibilities for the Grant Application and Detailed Budget from the KERC chair to the KERC program manager and changes the associated review recommendations deadline from June 1 to May 31, and changes the grant awards deadline from September 15 to July 30. It establishes the pre-existing LEPC Detailed Budget form (KERC Form 102-DB) for use for requesting modifications and specifies a general date (expiration of the current year grant cycle) for returning unexpended monies shall be returned to the KERC fee account fund where previously no date was specified, only an annual return of unexpended monies.

(b) The necessity of the amendment to this administrative regulation: This amendment was necessary to keep the administrative regulation up to date with current compliance practices. The members of the Kentucky Emergency Response Commission's (KERC) legislative committee now conducts an annual review of their related administrative regulations, including this administrative regulation, and developed these updates, approved by the full KERC membership, to keep them in compliance with current desired practices for implementation of programs under KERC oversight.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment keeps the administrative regulation up to date with current compliance practices.

(d) How the amendment will assist in the effective administration of the statues: This amendment keeps the administrative regulation up to date with current compliance practices in preparing grant applications.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: KRS 39E.040(3) requires the Kentucky Emergency Response Commission to develop reporting requirements and procedures for individuals, businesses, and governmental agencies that manufacture, use, store, or transport hazardous substances.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There is no associated requirement for action required of any affected individual or organization. This update properly reflects currently mandated practices, correcting outdated references in the existing administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost for any entity because there is no change in requirements.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The administrative regulation will accurately reflect statutory guidance, simplifying compliance.

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

(a) Initially: There is no additional cost for any entity.

(b) On a continuing basis: There is no additional cost for any entity.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding source is required.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees or fee increases are established.

(9) TIERING: Is tiering applied? Tiering was not used. The regulations will not reduce or modify substantive regulatory requirements, eliminate some requirements entirely, simplify or reduce reporting and recordkeeping requirements, reduce the frequency of inspections, provide exemptions from inspections or other compliance activities, or delay compliance timetables.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? There is no impact to state or local government.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 39E.050

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There is no cost for any entity. There will be no impact on expenditures or revenues.

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

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

(c) How much will it cost to administer this program for the first year? There is no cost for any entity

(d) How much will it cost to administer this program for subsequent years? There is no cost for any entity

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: There is no fiscal impact.

DEPARTMENT OF MILITARY AFFAIRS
Division of Emergency Management
(Amendment)

106 KAR 1:111. Kentucky Emergency Response Commission (KERC) Fee Account Grant Review Committee.

RELATES TO: KRS 39E.040, 39E.050, 39E.080, 39E.110, 39E.140, 39E.150

STATUTORY AUTHORITY: KRS 39E.040(3), (6), 39E.050, 39E.080

NECESSITY, FUNCTION, AND CONFORMITY: KRS 39E.040(3) requires the KERC[~~Kentucky Emergency Response Commission~~] to develop reporting requirements and procedures for

individuals, businesses, and governmental agencies that manufacture, use, store, or transport hazardous substances. KRS 39E.040(6) requires the KERC[~~commission~~] to recommend administrative regulations to the director for issuance by the Division of Emergency Management to implement KRS Chapter 39E. This administrative regulation establishes the KERC[~~Kentucky Emergency Response Commission~~] Grant Review Committee to review requests for financial assistance.

Section 1. Purpose of the Grant Review Committee. (1) The Grant Review Committee shall review all grant requests from Local Emergency Planning Committees (LEPCs) and state agencies and make recommendations to the KERC[~~Kentucky Emergency Response Commission~~].

(2) The Grant Review Committee shall monitor all grant awards to ensure compliance with KRS Chapter 39E and KAR Title 106.

Section 2. Grant Review Committee Organization. (1) The Grant Review Committee shall consist of not less than five (5) nor more than nine (9) members of the KERC[~~Kentucky Emergency Response Commission~~] who shall be appointed by the chairman of the KERC[~~Kentucky Emergency Response Commission~~] with approval of the KERC[~~commission~~].

(2) The chairman of the Grant Review Committee shall be elected by members of the Grant Review Committee.

(3) Members shall serve for a term of one (1) year and may be reappointed.

(4)[~~Proxy votes or proxy membership shall not be permitted.~~

~~(5)~~] If a member has three (3)[~~misses two (2)~~] consecutive unexcused absences in two (2) consecutive years[~~meetings~~], the position shall be considered vacant and the chairman of the KERC [~~Kentucky Emergency Response Commission~~], with the approval of the KERC[~~Kentucky Emergency Response Commission~~], shall appoint a replacement.

(5)[~~(6)~~] A quorum shall be required for all[~~the~~] Grant Review Committee meetings.

STEVEN P. BULLARD, Director, Administrative Services

APPROVED BY AGENCY: February 4, 2019

FILED WITH LRC: Febuary 13, 2019 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 21, 2019, at 1:00 p.m., at 100 Minuteman Parkway, Boone National Guard Center, Frankfort, Kentucky 40601-6168 at the Emergency Operations Center in Room 202. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. This hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until March 31, 2019. 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: Steven P. Bullard, Director of Administrative Services, Office of Management and Administration, Department of Military Affairs, phone 502-607-1738, fax 502-607-1240, Email steven.p.bullard.nfg@mail.mil.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Steven P. Bullard

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the Kentucky Emergency Response Commission Grant Review Committee to review requests for financial assistance.

(b) The necessity of this administrative regulation: This regulation is critical to provide guidance in the execution of this program pursuant to the basic law.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes the Kentucky Emergency Response Commission Grant Review Committee, including membership composition, selection process and duties related to review/approval of requests for financial assistance.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation ensures the Kentucky Emergency Response Commission Grant Review Committee will monitor all grant awards to ensure compliance with statutes and administrative regulations.

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

(a) How the amendment will change this existing administrative regulation: This amendment streamlines the administration regulation by clarifying acronyms. It deletes the requirement that proxy votes or proxy membership shall not be permitted. It changes the number of consecutive unexcused absences that terminates the member's appointment to the commission from two (2) to three (3) and adds the additional requirement that the unexcused absences must occur in two (2) consecutive years, a more liberal interpretation as intended by the commission members.

(b) The necessity of the amendment to this administrative regulation: This amendment was necessary to keep the administrative regulation up to date with current compliance intent. The members of the Kentucky Emergency Response Commission's (KERC) legislative committee now conducts an annual review of their related administrative regulations, including this administrative regulation, and developed these updates, approved by the full KERC membership, to keep them in compliance with current desired practices for implementation of programs under KERC oversight.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment keeps the administrative regulation up to date with current compliance intent.

(d) How the amendment will assist in the effective administration of the statues: This amendment keeps the administrative regulation up to date with current compliance intent in membership maintenance and commission function.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: KRS 39E.040(3) requires the Kentucky Emergency Response Commission to develop reporting requirements and procedures for individuals, businesses, and governmental agencies that manufacture, use, store, or transport hazardous substances.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There is no associated requirement for action required of any affected individual or organization.

(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 for any entity.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The administrative regulation will accurately reflect statutory guidance, simplifying compliance.

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

(a) Initially: There is no additional cost for any entity.

(b) On a continuing basis: There is no additional cost for any entity.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding source is required.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees or fee increases are established.

(9) TIERING: Is tiering applied? Tiering was not used. The regulations will not reduce or modify substantive regulatory requirements, eliminate some requirements entirely, simplify or reduce reporting and recordkeeping requirements, reduce the frequency of inspections, provide exemptions from inspections or other compliance activities, or delay compliance timetables.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? There is no impact to state or local government.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 39E.040, 39E.050, 39E.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. There is no cost for any entity. There will be no impact on expenditures or revenues.

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

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

(c) How much will it cost to administer this program for the first year? There is no cost for any entity

(d) How much will it cost to administer this program for subsequent years? There is no cost for any entity

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: There is no fiscal impact.

DEPARTMENT OF MILITARY AFFAIRS
Division of Emergency Management
(Amendment)

106 KAR 1:121. Kentucky Emergency Response Commission (KERC) fee account grant distribution formula.

RELATES TO: KRS 39E.050, 42 U.S.C. 11000, et seq.

STATUTORY AUTHORITY: KRS 39E.040(3), (6), 39E.050

NECESSITY, FUNCTION, AND CONFORMITY: KRS 39E.040(3) requires the Kentucky Emergency Response Commission to develop reporting requirements and procedures for individuals, businesses, and governmental agencies that manufacture, use, store, or transport hazardous substances. KRS 39E.040(6) requires the commission to recommend administrative regulations to the director for issuance by the Division of Emergency Management to implement KRS Chapter 39E. This administrative regulation establishes administrative support and the grant distribution formula to be used in awarding grants for funds generated by KRS 39E.050.

Section 1. Local Emergency Planning Committee (LEPC) Grant Distribution Formula. (1) The collection of maintenance and access fees, late fees, and fines shall be required for the administration of the KERC program. At least fifty (50) percent of funds collected annually pursuant to KRS 39E.050 shall be awarded to eligible LEPCs [~~local emergency planning committees~~] that submit grant requests for administration, development, and implementation of the Kentucky Emergency Planning and Community Right-to-Know Program, known as SARA Title III (Superfund Amendments and Reauthorization Act of 1986), 42 U.S.C. 11001, et seq., within the guidelines mandated by 42 U.S.C. 11001(a), (b), and (c), Section 301, and KRS 39E.050.

(2) The grant distribution formula to determine how much money will be available to each LEPC[~~local emergency planning committee~~] shall be:

(a) Ten (10) percent of the total amount (A) collected by March 1 divided by the total number of counties in the state[~~all eligible local emergency planning committees~~].

$$.1 \times \frac{A}{\text{Total Counties}}$$

[~~.1(A)~~
~~Eligible Local Emergency Planning Committees~~]

Hypothetical example:

$$.1 \times \frac{\$500{,}000}{120} = \$416.67$$

[~~.1 × ($200,000)~~
~~120~~ ~~= 167~~]

(b) Plus twenty (20) percent of the total amount (A) collected by March 1[~~statewide~~] times the ratio of KERC[~~Kentucky Emergency Response Commission~~] - required and approved EHS Facility Emergency Response Plans (Qc) in the planning district[~~county~~] to the total KERC[~~Kentucky Emergency Response Commission~~] - approved (Qs) in the state.

$$.2(A)\frac{Qc}{Qs}$$

Hypothetical example:

$$.2 \times (\$500{,}000) \times \left(\frac{4}{1171}\right) = \$341.59$$

[~~.2(200,000)~~ ~~13~~
~~1,000~~ ~~= $520~~]

(c) Plus twenty (20) percent of the total amount (A) collected by March 1[~~statewide~~] times the ratio of Tier II Reports[~~Tiers~~] (Tc) in the planning district[~~county~~] to the total number of Tier II Reports[~~Tiers~~] (Ts) in the state.

$$.2(A)\frac{Tc}{Ts}$$

[~~.2(a)~~ ~~Tc~~
~~Ts~~]

Hypothetical example:

$$.2 \times (\$500{,}000) \times \left(\frac{11}{5{,}541}\right) = \$198.52$$

[~~.2(200,000)~~ ~~30~~
~~1,000~~ ~~= $1,200~~]

(3) The grant (Gr) distribution formula to determine how much money an eligible LEPC[~~local emergency planning committee~~] that submits a grant request form may receive is:

$$Gr = \left(\frac{.1 \times A}{\text{Total[~~Eligible~~] LEPCs}}\right) + .2(A)\frac{Qc}{Qs} + .2(A)\frac{Tc}{Ts}$$

Section 2. Notice of Amount of Availability of Funds to Each LEPC[~~Local Emergency Planning Committee~~]. (1) No later than April 30[~~May 1~~] each year, the KERC[~~Kentucky Emergency Response Commission~~] shall notify the LEPCs[~~local emergency planning committees~~] how much money will be available to each LEPC[~~local emergency planning committee~~] that submits a grant request form. This amount shall be based upon the total amount of funds available in the KERC[~~Kentucky Emergency Response Commission~~] fee account divided pursuant to Section 1 of this administrative regulation.

(2) Notification of money available shall not be construed as an automatic grant award to an LEPC[~~a local emergency planning committee~~]. Each LEPC[~~eligible local emergency planning committee~~] who wants an award shall submit a grant request form and required grant documentation in accordance with 106 KAR

1:091.

(3) LEPCs who do not submit a grant request form and all required documentation in accordance with 106 KAR 1:091 shall not be eligible for grant funds.

(a) Funds allotted for ineligible LEPCs, per the grant distribution formula in Section 1(3) of this administrative regulation, shall be transferred to the KERC Fee Account Fund for use as supplemental grant awards.

(b) The KERC shall award supplemental grant funding to eligible LEPCs in accordance with 106 KAR 1:091, Section 5.

Section 3. State Agency Grant Distribution. No more than fifty (50) percent of funds collected annually by KRS 39E.050 shall be allocated by the KERC[~~Kentucky Emergency Response Commission~~] to state agencies, other than LEPCs[~~local emergency planning committees~~] that submit grant requests for administration, development, and implementation of the Kentucky Emergency Planning and Community Right-to-Know program, known as SARA Title III (as amended through Pub. L. 107–377, December 31, 2002), and KRS 39E.050.

Section 4.[~~Availability of~~] Additional Funds.[~~The Kentucky Emergency Response Commission may set a date and notify all local emergency planning committees and state agencies of the availability of additional~~] Funds collected after March 1, or that were returned to the commission during the year,[~~.~~] shall be carried over into the next grant cycle and[~~Any additional funds~~] shall be distributed in accordance with Sections 1(1) and 3 of this administrative regulation.

Section 5. Administrative support required by KRS 39E.050 shall be provided by the Kentucky Division of Emergency Management.

STEVEN P. BULLARD, Director, Administrative Services

APPROVED BY AGENCY: February 4, 2019

FILED WITH LRC: February 13, 2019 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 21, 2019, at 1:00 p.m., at 100 Minuteman Parkway, Boone National Guard Center, Frankfort, Kentucky 40601-6168 at the Emergency Operations Center in Room 202. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. This hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until March 31, 2019. 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: Steven P. Bullard, Director of Administrative Services, Office of Management and Administration, Department of Military Affairs, phone 502-607-1738, fax 502-607-1240, Email steven.p.bullard.nfg@mail.mil.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Steven P. Bullard

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes administrative support and the grant distribution formula to be used in awarding grants for funds generated by KRS 39E.050.

(b) The necessity of this administrative regulation: This regulation is critical to provide guidance in the execution of this program pursuant to the basic law.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes the Local Emergency Planning Committee Grant Distribution Formula, outlines the notice of amount of availability of funds to each Local Emergency Planning Committee, outlines state agency grant distribution, outlines notices regarding the availability of additional funds and charges administrative support responsibility to the Kentucky Division of Emergency Management.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation codifies in detail how the Kentucky Emergency Response Commission and Division of Emergency Management are to assist affected facilities in complying with state and federal requirements.

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

(a) How the amendment will change this existing administrative regulation: This amendment streamlines the administration regulation by clarifying acronyms and processes. It states that the collection of maintenance and access fees, late fees, and fines shall be required for the administration of the KERC program, a condition agreed to by the full commission membership, per para. (b) below. It updates the grant distribution formulas to reflect current information. It changes the date LEPCs will be notified how much grant funding is available from May 1 to April 30. It adds provisions that LEPCs who do not submit a grant request form and all required documentation in accordance with 106 KAR 1:091 shall not be eligible for grant funds; that funds allotted for ineligible LEPCs, per the grant distribution formula in Section 1(3) of this administrative regulation, shall be transferred to the KERC Fee Account Fund for use as supplemental grant awards; and that the KERC shall award supplemental grant funding to eligible LEPCs in accordance with 106 KAR 1:091, Section 5. It clarifies that the KERC shall carry over funds collected after March 1, or that were returned to the commission during the year, into the next grant cycle.

(b) The necessity of the amendment to this administrative regulation: This amendment was necessary to keep the administrative regulation up to date with current compliance practices. The members of the Kentucky Emergency Response Commission's (KERC) legislative committee now conducts an annual review of their related administrative regulations, including this administrative regulation, and developed these updates, approved by the full KERC membership, to keep them in compliance with current desired practices for implementation of programs under KERC oversight.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment keeps the administrative regulation up to date with current compliance practices and intent.

(d) How the amendment will assist in the effective administration of the statues: This amendment keeps the administrative regulation up to date with current compliance practices and intent.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: KRS 39E.040(3) requires the Kentucky Emergency Response Commission to develop reporting requirements and procedures for individuals, businesses, and governmental agencies that manufacture, use, store, or transport hazardous substances.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There is no associated requirement for action required of any affected individual or organization. This update properly reflects currently mandated practices, correcting outdated references in the existing administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost for any entity because there is no change in requirements.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The administrative regulation will accurately reflect statutory guidance, simplifying compliance.

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

(a) Initially: There is no additional cost for any entity.

(b) On a continuing basis: There is no additional cost for any entity.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding source is required.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees or fee increases are established.

(9) TIERING: Is tiering applied? Tiering was not used. The regulations will not reduce or modify substantive regulatory requirements, eliminate some requirements entirely, simplify or reduce reporting and recordkeeping requirements, reduce the frequency of inspections, provide exemptions from inspections or other compliance activities, or delay compliance timetables.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? There is no impact to state or local government.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 39E.050

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There is no cost for any entity. There will be no impact on expenditures or revenues.

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

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

(c) How much will it cost to administer this program for the first year? There is no cost for any entity.

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

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: There is no fiscal impact.

GENERAL GOVERNMENT
Board of Physical Therapy
(Amendment)

201 KAR 22:020. Eligibility and credentialing procedure.

RELATES TO: KRS 164.772, 327.010, 327.050, 327.060, 327.075, 327.080, 327.310

STATUTORY AUTHORITY: KRS 327.040(1), (11), (13)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 327.040(11) authorizes the Board of Physical Therapy to promulgate and enforce reasonable administrative regulations for the effectuation of the purposes of KRS Chapter 327. KRS 327.040(1) requires the board to determine if physical therapist applicants meet the qualifications and standards required by KRS Chapter 327. KRS 327.040(13) authorizes the board to promulgate administrative regulations regarding the qualifications for physical therapist assistants. This administrative regulation establishes the criteria for eligibility, methods, and procedures of qualifying for a credential to practice physical therapy in Kentucky.

Section 1. An application shall be accepted for credentialing as a physical therapist or physical therapist assistant based on successful completion by the applicant of one (1) of the following processes:

(1) Examination;

(2) Endorsement; or

(3) Reinstatement.

Section 2. Examination Candidate. (1) To be eligible for the examination, the applicant for licensure as a physical therapist shall:

(a) Have successfully completed the academic and clinical requirements of a physical therapy program accredited by CAPTE;

(b) Submit certification of completion by the educational administrator of that program;

(c) Have successfully completed the Jurisprudence Exam;

(d) Submit a complete Application for Credentialing that includes a photo taken within one (1) year;

(e) Submit the correct, nonrefundable fee as required in 201 KAR 22:135;

(f) Effective six (6) months after the board receives an Originating Agency Number from the Federal Bureau of Investigation, submit to the board a completed nationwide criminal background check as required by KRS 327.310 with the background investigation completed no later than six (6) months prior to the date of the filing of the application;

(g) If applicable, submit on an Applicant Special Accommodations Request Form a request for a reasonable accommodation in testing due to a documented disability; and

(h)[~~(g)~~] Register for the NPTE examination.[~~; and~~

~~(h) Effective six (6) months after the board receives an Originating Agency Number from the Federal Bureau of Investigation, submit to the board a completed nationwide criminal background check as required by KRS 327.310 with the background investigation completed no later than six (6) months prior to the date of the filing of the application.~~]

(2) To be eligible for the examination, the applicant for certification as a physical therapist assistant shall:

(a) Have successfully completed the academic and clinical requirements of a physical therapy or physical therapist assistant program accredited by CAPTE; and

(b) Complete the requirements of subsection (1)(b) through (h) of this section.

(3) Effective July 1, 2012, after six (6) failed attempts at either the physical therapist or physical therapist assistant examination, or combination thereof, in any jurisdiction, an applicant shall not be eligible to register for any additional examinations.

Section 3. An applicant for credentialing who is registered for the examination in another jurisdiction shall:

(1) Meet the eligibility requirements of Section 2 of this administrative regulation; and

(2) Register with the FSBPT Score Transfer Service to have results submitted to Kentucky.

Section 4. To be eligible for a temporary permit, the candidate shall:

(1) Meet the qualifications of Section 2 or 3 of this administrative regulation, except for the retake provisions in Section 2(3) of this administrative regulation;

(2) Complete a Supervisory Agreement for Applicant with Temporary Permit with one (1) or more physical therapists; and

(3) Have not failed either the physical therapist or physical therapist assistant examination in any jurisdiction.

Section 5. (1) Upon issuance of a temporary permit, the physical therapist or physical therapist assistant applicant shall practice only under the supervision of a physical therapist currently

engaged in the practice of physical therapy in Kentucky who:

(a) Has practiced in Kentucky for more than one (1) year; and

(b) Has an unrestricted license.

(2) A supervising physical therapist:

(a) Shall be on-site at all times during the practice of the applicant with a temporary permit;

(b) Shall be responsible for the practice of physical therapy by the applicant with a temporary permit;

(c) Shall review, approve, date, and co-sign all physical therapy documentation by the applicant with a temporary permit;

(d) May designate an alternate supervising physical therapist who meets the qualifications of subsection (1)(a) and (b) of this section. The alternate supervising physical therapist shall sign and date written documentation of the acceptance of the responsibility as identified in paragraph (a) through (c) of this subsection; and

(e) Shall notify the board immediately if the supervisory relationship is terminated.

(3) The applicant with a temporary permit shall:

(a) Disclose the applicant's temporary credential status to all patients prior to initiating treatment;

(b) Sign documentation with temporary permit number and designation as defined in 201 KAR 22:053, Section 5(5)(a) or (b); and

(c) Notify the board immediately if the supervisory relationship is terminated.

(4) The temporary permit shall expire the earlier of:

(a) Six (6) months from the date of issuance; or

(b) Notice of exam results by the board.[~~A temporary permit holder who is registered for the examination in another jurisdiction shall register with the FSBPT Score Transfer Service to have results submitted to Kentucky within forty-eight (48) hours of the release of the exam results.~~]

Section 6. A physical therapist applicant who meets the qualifications for physical therapy licensure by examination may become a special candidate for physical therapist assistant certification by examination.

Section 7. To be eligible for credentialing by endorsement, the applicant shall:

(1) Have successfully completed the academic and clinical requirements of a physical therapy or physical therapist assistant program accredited by CAPTE;

(2) Meet the requirements established in Section 2(1)(b) through (f)[~~(e)~~] of this administrative regulation;

(3) Have successfully completed the NPTE or its equivalent, predecessor examination and register with the FSBPT Score Transfer Service to have results submitted to Kentucky:

(a) A passing score in Kentucky for the person who took the NPTE prior to July 1, 1993, shall be at least equal to the national average raw score minus one and five-tenths (1.5) standard deviation set equal to a converted score of seventy-five (75); or

(b) After July 1, 1993, a passing score shall be the criterion referenced passing point recommended by the FSBPT set equal to a scaled score of 600;

(4) Have an active credential in this profession in another jurisdiction; and

(5) Have verification of credentials showing the credential has never been revoked, suspended, placed on probation, or is not under disciplinary review in another jurisdiction upon application.

Section 8. To be eligible for reinstatement, the applicant shall meet the requirements in 201 KAR 22:040.

Section 9. A credential issued by the board shall be in effect until March 31 of the next odd-numbered year.

Section 10. A foreign-educated physical therapist shall comply with the provisions of 201 KAR 22:070.

Section 11. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for Credentialing", December 2011;

(b) "Supervisory Agreement for Applicant with Temporary Permit", January 2017; and

(c) "Applicant Special Accommodations Request Form", December 2012.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Board of Physical Therapy, 312 Whittington Parkway Suite 102, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. to 4:30 p.m.

SCOTT D. MAJORS, Executive Director

APPROVED BY AGENCY: February 15, 2019

FILED WITH LRC: February 15, 2019 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 26, 2019, at 4:00 p.m. (EST) at 312 Whittington Parkway, Suite 102, Louisville, Kentucky 40222. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until March 31, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Scott D. Majors, Executive Director, Board of Physical Therapy, 312 Whittington Parkway, Suite 102, Louisville, Kentucky 40222, phone (502) 429-7140, fax (502) 429-7142, email ScottD.Majors@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Scott D. Majors

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the eligibility and credentialing procedure for physical therapists and physical therapist assistants in Kentucky.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement provisions of KRS 327.050.

(c) How this administrative regulation conforms to the content of the authorizing statutes: It establishes the eligibility and credentialing procedure for physical therapists and physical therapist assistants in Kentucky.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It establishes the eligibility and credentialing procedure for physical therapists and physical therapist assistants in Kentucky.

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

(a) How the amendment will change this existing administrative regulation: The amendment clarifies that the requirement for a nationwide criminal background investigation conducted by the Kentucky State Police and Federal Bureau of Investigation in compliance with KRS 327.310 applies to applicants by both examination and endorsement.

(b) The necessity of the amendment to this administrative regulation: To comply with the provisions of KRS 327.310.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment requires all applicants to submit to a nationwide criminal background investigation conducted by the Kentucky State Police and Federal Bureau of Investigation consistent with the requirements of KRS 327.310.

(d) How the amendment will assist in the effective administration of the statutes: The amendment requires all applicants to submit to a nationwide criminal background investigation conducted by the Kentucky State Police and Federal Bureau of Investigation consistent with the requirements of KRS

327.310.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 6,300 physical therapists and physical therapist assistants.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Applicants will be required to submit to a nationwide criminal background investigation conducted by the Kentucky State Police and Federal Bureau of Investigation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The nationwide criminal background investigation is at the applicant's expense and currently costs approximately $40.00 for all associated fees.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Assuming all other criteria for licensure is met, applicants will be granted a credential to work as a physical therapist or physical therapist assistant in the Commonwealth of Kentucky.

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

(a) Initially: No cost to the board.

(b) On a continuing basis: No cost to the board.

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

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: Applicants will have to pay fees charged by the Kentucky State Police and Federal Bureau of Investigation to perform the background checks.

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Applicants for physical therapist or physical therapist assistant credentials.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 327.040, 327.050, 327.310.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. No effect.

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

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

(c) How much will it cost to administer this program for the first year? None.

(d) How much will it cost to administer this program for subsequent years? None.

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

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

KENTUCKY LOTTERY CORPORATION
(Amendment)

202 KAR 3:040. Internal audit[~~procedures~~].

RELATES TO: KRS 154A.020(1), 154A.030, 154A.050(2)(b), 154A.060(2)(a), (c)

STATUTORY AUTHORITY: KRS 154A.050(1)(d), 154A.060(2)(c)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 154A.020(1) requires[~~provides that~~] the Kentucky Lottery Corporation to[~~shall~~] be accountable to the Governor, the General Assembly, and the people of the Commonwealth through a system of audits, reports, and thorough financial disclosure. As a part of that system of accountability,[~~the corporation is required, pursuant to~~] KRS 154A.060(2)(c) requires the corporation[~~,~~] to promulgate by administrative regulation a system of continuous internal audits. This administrative regulation establishes the system of continuous internal audits for the Kentucky Lottery Corporation.

Section 1. Definitions. (1) "Board" means the Board of Directors of the corporation established by KRS 154A.030.

(2) "Internal audit department" means the department head of internal audit, together with other employees of the corporation who are designated by the president of the corporation and approved by the audit committee.

Section 2. Audit Committee. (1) The audit committee shall consist of:

(a) No less than two (2), nor more than three (3), members of the board; and

(b) The chairman of the board, who shall serve as an ex-officio member.

(2)[~~(c)~~] Members of the audit committee shall be appointed by the chairman of the board and serve until the earliest of:

(a)[~~1.~~] Their resignation or removal from the board;

(b)[~~2.~~] The expiration of their terms as members of the board; or

(c)[~~3.~~] Their resignation or removal from the audit committee by majority vote of the board.

(3)[~~(d)~~] In appointing members to the audit committee, the chairman of the board shall give preference to members of the board who:

(a)[~~1.~~] Are certified public accountants[~~,~~] or certified internal auditors; or

(b)[~~2.~~] Otherwise possess expert knowledge in auditing, accounting, business, or commerce.

(4)[~~(e)~~] The members of the audit committee shall select a chairman from its members.

(5)[~~(2)~~](a) Except as provided by paragraph (b) of this subsection, the chairman of the audit committee shall determine the date, time, and place of a meeting of the audit committee.

(b)[~~No~~]More than two (2) regular meetings of the board shall not have occurred between meetings of the audit committee.

(6)[~~(c)~~] At least one (1) member of the Internal Audit Department shall be present at a meeting of the audit committee.

(7)[~~(d)~~] If requested by the audit committee, a member of the corporation management shall be present at all or a part of the meeting of the audit committee.

Section 3. Duties and Authority of the Audit Committee. (1) The audit committee shall review[~~oversee~~] the operations and financial reporting procedures of the corporation and shall report and make recommendations to the board. It shall:

(a) Review the adequacy of the corporation's system of internal control through review of audit reports and presentations at Audit Committee meetings;

(b) Review at least annually the corporation's system of risk

identification, assessment, and management;

(c)[~~(b)~~] Review the organizational structure of the Internal Audit Department of the corporation and the activities and qualifications of its staff;

(d)[~~(c)~~]Review the findings made by the Internal Audit Department;

(e) Request a department head or other corporation personnel to discuss audit findings or issues with the audit committee, as may be necessary;

(f)[~~(d)~~] Assist the president[~~and members of the Internal Audit Department~~] in the hiring, evaluation,[~~and~~] promotion, and removal of the Chief Audit Executive[~~Internal Audit Department personnel~~];

(g)[~~(e) Conduct a review of the corporation management's monitoring of compliance with:~~

~~1. The corporation's code of conduct;~~

~~2. Applicable statutes, and administrative regulations; and~~

~~3. Opinions governing the ethical behavior of the corporation and its employees;~~

~~(f) Review the policies and procedures in effect for the review of expenses, perquisites, and benefits of corporation officers;~~

~~(g)~~] Review legal matters that could have a significant impact on the corporation's financial statements with the corporation's:

1. Legal counsel;[~~and~~]

2. If deemed appropriate, outside counsel; and

3. Other personnel or entities as necessary;

(h) Review the findings of an examination of the corporation or its operations by a regulatory (or any other outside) agency;

(i) Review audits conducted by the Auditor of Public Accounts or an independent auditor selected by the Auditor of Public Accounts; and

(j)[~~Make recommendations relating to the hiring, evaluation, and promotion of personnel in the Internal Audit Department; and~~

~~(k)~~] Perform other oversight functions at the request of the board.

(2)(a) A member of the audit committee may meet with:

1. Corporation employees;

2. The Auditor of Public Accounts, and designees; and

3. Independent auditors.

(b) An employee of the corporation may request to meet with the chairman of the audit committee.

(c) The audit committee may hold a closed meeting pursuant to KRS 154A.030(7)[~~154A.050(7)~~].

(3) The audit committee shall:

(a) Inform the board of its meetings and actions; and

(b) Discuss[~~Forward~~] its reviews, reports, and recommendations with[~~to~~] the board.

(4)(a) The audit committee may institute a special investigation.

(b) In the conduct of a special investigation, the audit committee may:

1. Hire special outside counsel or experts; or

2. Utilize the services of corporation employees, officers, or directors.

(c) The audit committee shall submit a report of its findings and recommendations to the board for its action.

Section 4. Internal Audit Department. (1) In order to assist the president, the audit committee and the management of the corporation, the internal audit department shall furnish objective analyses, appraisals, recommendations, and information concerning the operations of the corporation, through use of an annual audit plan, as follows:

(a) Review the operations of the corporation to assure compliance with the systems, and policies and procedures established to ensure conformity with the applicable statutes and administrative regulations of the Commonwealth and other applicable governmental entities;

(b) Review the operations of the corporation to assure compliance with the systems, and policies and procedures established by the corporation;

(c) Review the reliability and integrity of financial and operating information;

(d) Review and evaluate the means of safeguarding the assets of the corporation and, as appropriate, verify the existence and ownership of the assets by the corporation;

(e) Appraise the economy and efficiency of the corporation in the use of resources;

(f) Advise the management of the corporation and the board on the accounting, financial, and operational policies, procedures, and systems;

(g) Coordinate, supplement, and evaluate examinations of the corporation's activities by outside auditors, accountants, and other review teams; and

(h) Perform other oversight functions as requested by the audit committee or by the board.

(2) The internal audit department shall report to the president for administrative purposes but shall report the results of its work directly to the audit committee[~~and to the board~~].

Section 5. The internal audit department shall use a risk-based method of developing an annual audit plan[~~perform audits~~] in the following manner:

(1) Prior to the end of each fiscal year, the department head of internal audit shall submit a proposed detailed internal audit plan for the next fiscal year for:

(a) Review[~~The next fiscal year for approval~~] by the president; and

(b) Review and approval by the audit committee[~~; and~~

~~(c) Approval by the board~~].

(2) The audit committee shall forward its recommendations to the board.

(3) The department head shall initiate audits pursuant to the approved plan, as may be revised with the approval of the[~~president or the board, after its review of the recommendations of~~] the audit committee.

(4) Internal audit work shall be performed in accordance with standards established by the Institute of Internal Auditors[~~internal auditors~~] and shall include:

(a) Planning the audit;

(b) Identifying, analyzing,[~~Examining and~~] evaluating, and documenting the information;

(c) Communicating results; and

(d) Monitoring progress[~~Follow-up~~].

Section 6. Communicating Results. The internal audit department shall report on all its activities to the Audit Committee through written audit reports, periodic activity reports, and regular Audit Committee meetings.

(1) Written audit reports shall be completed at the end of each audit engagement and shall be distributed to the Audit Committee members. All applicable internal parties shall receive a copy.

(2) Written reports shall include any deficiencies noted during the engagement and shall include a description of the associated risk.

Section 7[~~6~~]. Procedure on Loss of Assets. (1) The internal audit department shall be notified if assets of the corporation have been, or are thought to have been, lost through defalcation or other[~~security~~] breaches in the security, financial, or operating systems.

(2) Immediately upon receipt of a notification, the department head of internal audit shall:

(a) Request that the department head of security notify the proper authorities of the potential loss; and

(b) Consult with the Corporation's Security Department to coordinate an investigation[~~Proceed with an investigation~~].

(3) If the investigation reveals a loss, the internal audit department shall:

(a) Identify the weakness in financial or operating procedures that[~~which~~] enabled the loss to occur; and

(b) Recommend to the president, the audit committee, and the board improvements to the procedures to correct the weakness.

Section 8[~~7~~]. Internal Audit Department Authority and Limitations. (1) The internal audit department shall have unrestricted access to all activities, records, properties, and

personnel applicable to any area of the corporation under review.

(2) The department head of internal audit shall develop a policy to assure the confidentiality of all matters reviewed, unless disclosure is required by law or internal audit procedures established by this administrative regulation.

(3)(a) The internal audit department and its members shall not have direct authority over, or responsibility for, any of the activities reviewed by it.

(b) The internal audit department and its members shall not develop or install procedures, prepare records, or engage in any other activity that[~~which~~] could be reasonably construed to compromise its independence.

(c) If the internal audit department participates in an activity that might be construed as compromising its independence, the activity shall be reviewed by an independent external auditor, if deemed necessary by the board, or recommended by the audit committee and approved by the board.

(4) The internal audit department shall coordinate its efforts with those of the Auditor of Public Accounts and other external auditors who may be employed to achieve comprehensive, cost-effective audit coverage.

Section 9[8]. Continuing Education. (1) An auditor in the internal audit department shall annually obtain the same continuing education credits required by the Institute of Internal Auditors for certified internal auditors or any other acceptable certifying body including the American Institute of Certified Public Accountants (AICPA), or the Information Systems Audit and Control Association (ISACA).

(2) The head of the Internal Audit Department shall monitor compliance with the continuing education requirements established by this section.

This is to certify that the chief executive officer has reviewed and recommended this administrative regulation which was adopted by the Kentucky Lottery Corporation Board of Directors on December 14, 2018 as required by KRS Chapter 154A.050(d).

THOMAS DELACENSERIE, President & CEO
MARY R. HARVILLE, General Counsel

APPROVED BY AGENCY: February 15, 2019

FILED WITH LRC: February 15, 2019 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 28, 2019, at 10:00 a.m., at the Kentucky Lottery Corporation, 1011 West Main Street, Louisville, Kentucky 40202-2623. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through March 31, 2019. 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: Mary Harville, Senior Vice President and General Counsel, Kentucky Lottery Corporation, 1011 West Main Street, Louisville, Kentucky 40202-2623, phone (502) 560-1576; fax (502) 560-1532, email mary.harville@kylottery.com.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Mary Harville

(1) Provide a brief summary of:

(a) What this administrative regulation does: KRS 154A.060(2)(c) requires the corporation to promulgate by administrative regulation a system of continuous internal audits. This administrative regulation establishes the system of continuous internal audits for the Kentucky Lottery Corporation.

(b) The necessity of this administrative regulation: KRS 154A.060(2)(c) requires the corporation to promulgate by administrative regulation a system of continuous internal audits.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation sets forth the role and responsibility of the Internal Audit Department and the Audit Committee as required by KRS 154A.060(2)(c).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets forth the role and responsibility of the Internal Audit Department and the Audit Committee as required by KRS 154A.060(2)(c).

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

(a) How the amendment will change this existing administrative regulation: The amended regulation contains the following amendments:

- Section 1 - Definitions: No change
- Section 2 – Audit Committee: No change
- Section 3 – Duties and Authority of the Audit Committee:

Clarifies that the committee reviews the operations of the corporation through audit reports and presentations at committee meetings

Adds that the committee will review annually the corporation's assessment of risk and risk management

Adds that the committee may request an employee of the corporation to provide information on audit findings or other audit issues

Clarifies that the members of the audit department do not take part in personnel matters pertaining to the Chief Audit Executive.

Removes sections (e), (f) and (j) as these items typically have not been handled by the audit committee

- Section 4 – Internal Audit Department: Clarifies that the department utilizes an annual audit plan
- Section 5: Clarifies the procedure by which the annual audit plan is reviewed, approved, and executed
- Section 6 – Communicating Results: Adds a section detailing the process by which the audit department will communicate its reports and findings to the audit committee
- Section 7 (formerly 6) – Procedure on Loss of Assets: Clarifies that the audit department works with the security department to coordinate an investigation of any loss of corporation assets
- Section 8 (formerly 7) – Internal Audit Department Authority and Limitations: No material changes
- Section 9 (formerly 8) – Continuing Education: Adds certifying organizations through which members of the audit department may obtain CLEs.

(b) The necessity of the amendment to this administrative regulation: The amendments align the regulation with current operating procedures of the Internal Audit department and the Audit Committee.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation sets forth the role and responsibility of the Internal Audit Department and the Audit Committee as required by KRS 154A.060(2)(c).

(d) How the amendment will assist in the effective administration of the statutes: The amendments align the regulation with current operating procedures of the Internal Audit department and the Audit Committee.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect the Kentucky Lottery Corporation, its Internal Audit department, and the Audit Committee. No other entity will be affected.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: N/A

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in

question (3): N/A

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): N/A

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

(a) Initially: None

(b) On a continuing basis: This regulation will be implemented with existing agency resources and will add no additional implementation costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The administrative regulation will be implemented and enforced with agency funds.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: None

(9) TIERING: Is tiering applied? No

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This regulation will affect the Kentucky Lottery Corporation, its Internal Audit department, and the Audit Committee. No other entity will be affected.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. The state statute which authorizes the action taken by this administrative regulation is KRS 154A.060(2)(c).

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative does not have the effect of directly generating revenues for the state or local government.

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

(c) How much will it cost to administer this program for the first year? This regulation will be implemented with existing agency resources and will add no additional administration costs.

(d) How much will it cost to administer this program for subsequent years? This regulation will be implemented with existing agency resources and will add no additional administration costs.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

KENTUCKY COMMUNITY AND TECHNICAL COLLEGE SYSTEM
Kentucky Board of Emergency Medical Services
(Amendment)

202 KAR 7:520. Allocation of block grant funding assistance for emergency medical services.

RELATES TO: KRS 311A.010, 311A.030(2), 311A.035, 311A.050, 311A.055, 311A.060, 311A.155, 311A.190, 2 C.F.R. 215-225

STATUTORY AUTHORITY: KRS 311A.155(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311A.155(3)[~~311A.115(3)~~] authorizes the Kentucky Board of Emergency Medical Services to promulgate administrative regulations concerning the implementation[~~receiving~~] and operation [~~disposing~~] of the emergency services grant program [~~funds~~]. KRS 311A.155 authorizes the Kentucky Board of Emergency Medical Services to maintain a block grant fund program for the purpose of assisting units of local government in the provision of emergency medical services. This administrative regulation establishes standards and criteria governing the allocation of emergency medical services funding assistance to eligible applicants.

Section 1. Eligibility to Receive EMS Grant Funding. (1) A county in the Commonwealth of Kentucky shall be eligible to apply for and may receive emergency medical services (EMS) grant funding if the applicant county meets the requirements in this administrative regulation.

(2) A merged government shall not lose eligibility pursuant to this administrative regulation and may apply for and receive EMS grant funding if the applicant meets all requirements of this administrative regulation.

(3) This administrative regulation shall not be construed to grant an agency licensed pursuant to 202 KAR 7[~~:501~~] the authority to apply for or receive EMS grant funding independent of the county.

(4) A county or merged government that applies for EMS grant funding shall maintain, within its boundaries and for the benefit of its inhabitants, one (1) or more agencies that provide primary EMS 911 response and transport service.

(5) A county or merged government shall be considered to maintain EMS 911 level of service by:

(a) Holding the license for and operating a county-owned Class I ground ambulance service;

(b) Holding the license for a Class I ground ambulance service but contracting with a licensed service to operate within the county;

(c) Allowing an agency or multiple agencies to operate within the county to provide EMS 911 level of service for the benefit of the inhabitants of that area; or

(d) Not holding the license for, but bearing the responsibility of, operating or allowing the operation of, an agency or multiple agencies within the county to provide EMS 911 level of service for the benefit of the inhabitants of that area.

(6) A county or merged government shall be eligible to receive EMS grant funding only for agencies licensed as Class I. Other classes of service shall not be eligible.

(7) A county or merged government shall not disperse funds to a licensed agency that cannot provide evidence of compliance with KBEMS' data collection requirements pursuant to KRS 311A.190 and 202 KAR 7:540.

(8) An agency that is not compliant with data collection requirements in KRS 311A.190 and 202 KAR 7:540 may submit a plan of correction for approval by the executive director. A plan shall include at least:

(a) A detailed outline of measures that shall be taken to achieve compliance;

(b) Proof of equipment and software necessary to achieve compliance; and

(c)[~~Deadlines that shall be met in achieving compliance that shall not extend beyond two (2) years from the approval of the plan of correction; and~~

~~(d)~~] A stipulation that an agreed percentage of awarded grant funds shall be used in taking measures that shall achieve compliance with data collection requirements in KRS 311A.190 and 202 KAR 7:540.

(9) An agency that is following an approved plan of correction for data collection compliance pursuant to KRS 311A.190 and 202 KAR 7:540 may be eligible to obtain block grant funds from an applicant county or merged government.

(10) An agency undergoing disciplinary action pursuant to KRS 311A.060 shall be eligible to receive funds if in compliance with

board-recommended disciplinary action.

(11)(a) All distributions of grant funding shall be conducted by direct deposit to a bank account of the applicant county or merged government.

(b) The applicant county or merged government shall ensure that an updated W-9 form is submitted to the office of the board upon a change in bank routing information.

Section 2.[~~Eligibility for Authorized Expenditures. (1) A county or merged government eligible to receive EMS grant funding shall be authorized to spend funds based upon a tiered level of compliance with 202 KAR Chapter 7.~~

~~(2) An eligible county or merged government shall meet the requirements for one (1) of the following tiers:~~

~~(a) A Tier I applicant shall be an agency that maintains a primary EMS 911 ground ambulance service that is substantially compliant with 202 KAR 7:501 but has documented violations requiring on-going plans of correction that are addressed and may be eliminated by the award of EMS grant funds;~~

~~(b) A Tier II applicant shall be an agency that maintains a primary EMS 911 ground ambulance service that has operated free of documented violations requiring on-going plans of correction for one (1) inspection cycle;~~

~~(c) A Tier III applicant shall be an agency that maintains a primary EMS 911 ground ambulance service that has operated free of violations for two (2) or more inspection cycles; and~~

~~(d) A Tier IV applicant shall consist of a group of Tier III applicants eligible to combine EMS grant funds for the common good of their primary EMS 911 ground ambulance services.~~

~~(3) A county or merged government may request reconsideration of the tier into which the county or merged government has been placed. Each request shall be acted upon within forty-five (45) days of the office's receipt of the request for reconsideration of the time limits established in this administrative regulation.~~

~~(4)(a) If the office of the board denies the request to change the applicant's tier, the applicant may appeal the decision to the board.~~

~~(b) The board's decision after appeal shall be final.~~]

Section 3. Application Requirements. (1) An applicant for EMS grant funds shall[~~fully~~] complete all portions of the County Application, Kentucky Ambulance Grant, KBEMS-G1[~~G-1~~], and the Agency Application, Kentucky Ambulance Grant, KBEMS-G2. These applications shall be submitted in an electronic format prescribed by the office of the board.

(2) Each electronic application shall be received by January 31 of each year. An applicant shall not receive EMS grant funds if the application is not received by the office of the board[~~filed~~] on or before January 31.

(3) Each electronic application shall include an itemized list of items intended to be purchased with EMS grant funds, price and quantity of said items, and a narrative justification for the purchase of those items. An application that does not include the itemized list or the narrative justification shall be denied[~~returned~~] by the office of the board[~~board office~~] and shall not be approved[~~timely filed~~] if the applicant does not submit a[~~resubmit the~~] revised application by the filing deadline established in subsection (2) of this section.

(4) If an applicant requests to maintain carry-over funds in accordance with KRS 311A.155(5), the applicant shall notate the years that shall be carried forward on the application mandated by statute.

(5)(a) If an applicant does not request to maintain carry-over funds on the initial application, but chooses to select this option at a later time during the fiscal award year, the applicant shall submit the Electronic Ambulance Grant Substitute Item Form, KBEMS-G3, to remove the previously approved items and substitute the request to carry over funds to the next fiscal year.

(b) Carry-over funds that are requested on a KBEMS-G3 shall meet the submission deadlines as established for all KBEMS-G3 submissions in Section 6 of this administrative regulation for the award year.

(6)[~~(4)~~] Each applicant shall identify on the application, which agency or agencies will receive the EMS grant funds sought in the application process.

(7)[~~(5)~~] If the applicant intends for more than one (1) agency to receive funds, the applicant shall specifically identify each[~~every~~] agency to which funds shall be dispersed and the monetary amount to be distributed to each.

(8)[~~(6)~~] The ambulance service agency director or ambulance service board chair of an agency receiving funds from an applicant shall certify that the agency:

(a) Is a licensed Class I ground ambulance service in the state of Kentucky;

(b) Acknowledges, understands, and agrees to comply with the requirements and duties of KRS 311A.155 and this administrative regulation;

(c) Has not made a false statement or misrepresentation on the application and that falsely certifying shall subject the agency to reimbursement of funds to KBEMS and sanctions pursuant to KRS 311A.060;[~~and~~]

(d) Shall not misuse funds and that doing so shall require the agency to reimburse those funds to KBEMS and shall subject the agency to sanctions pursuant to KRS 311A.060;[~~.~~]

(e) Shall expend awarded funds for the fiscal year of award only after written approval of award;

(f) Shall expend all awarded grant funds by June 30 of the fiscal year of award; and

(g) Acknowledges that approved grant funds that are not expended by June 30 of the fiscal year of award shall be returned to the office of the board prior to the award of any future grant funds.

(9)[~~(7)~~] An applicant county or merged government shall submit the County Application, Kentucky Ambulance Grant, KBEMS-G1[~~G-1~~], with the county Judge Executive's[~~judge executive's~~] signature or an agent duly authorized by the applicant. A duly authorized agent may include, for example, a chief administrative officer for the applicant, but shall not include a person unable to legally bind the applicant. The G-1 application shall be scanned with a certifying signature affixed and submitted electronically as a required portion of the Kentucky Ambulance Grant electronic application process.

(10)[~~(8)~~] An applicant shall certify on the County Application, Kentucky Ambulance Grant, KBEMS-G1[~~G-1~~] that the county or merged government:

(a) Acknowledges, understands, and agrees to comply with the requirements and duties of KRS 311A.155 and this administrative regulation;

(b) Has not made a false statement or misrepresentation on the County Application, Kentucky Ambulance Grant, KBEMS-G1[~~G-1~~], and that falsely certifying shall subject the applicant to reimbursement of funds to KBEMS[~~and sanctions pursuant to KRS 311A.060~~];

(c) Shall not misuse funds and that doing so shall subject the applicant to reimbursement of those funds to KBEMS;[~~and sanctions pursuant to KRS 311A.155 (5) and 311A.050; and~~]

(d) Shall be jointly responsible for ensuring that all purchases and expenditures of block grant funds are approved[~~authorized~~] and allowable pursuant to KRS 311A.155 and this administrative regulation;[~~.~~]

(e) Shall expend awarded funds for the fiscal year of award only after written approval of award;

(f) Shall expend all awarded grant funds by June 30 of the fiscal year of award; and

(g) Acknowledges that approved grant funds that are not expended by June 30 of the fiscal year of award shall be returned to KBEMS prior to the award of any future grant funds.[~~(9) The board shall vote to approve or disapprove the County Application, Kentucky Ambulance Grant, KBEMS G-1, for block grant funds if the application designates for receipt of funds an agency that is currently undergoing or is the subject of proposed sanctions pursuant to KRS Chapter 311A.~~]

Section 3[4]. Application for Change of Items. (1) An applicant wishing to expend[~~spend~~] awarded funds on items not previously approved in the Electronic Agency Application, Kentucky

Ambulance Grant, KBEMS-G2, shall submit the Electronic Ambulance Grant Substitute Item Form, KBEMS-G3, to remove the previously approved items and substitute alternative[different] items for purchase.

(2) Approved purchase transactions shall occur by June 30 of the fiscal year of award. If applicable, the Ambulance Grant Substitute Item Electronic Form, KBEMS-G3 shall be submitted and approved by the office of the board by May 31 of the fiscal year of award.

(3)[(2)] A substitute[substituted] item purchased without prior[notification to and] approval from the office of the board[KBEMS] shall be considered misuse of grant funds and shall preclude the applicant from approval of all grant funds during the following application year[subject the applicant to sanctions pursuant to KRS 311A.060].

(4)(a)[(3)] Authorization for substitute items shall not be approved retroactively.

(b) Approval[An approval] for a substitute item shall only be authorized by the office of the board[substitution shall be sought] prior to the purchase date.[(4) The County Application, Kentucky Ambulance Grant, KBEMS G-1, for approval shall contain signatures of the agency to which the funds were dispersed as well as the applicant's authorized agent.

Section 5. Funds Management. (1) Upon award of block grant funds, the applicant, the receiving agencies, and KBEMS shall execute a grant agreement that outlines the relevant statutory and regulatory requirements, duties, and obligations of all parties.

(2) Every grant agreement shall bear the signatures of the applicant's authorized agent, the service director or ambulance board chair of each agency receiving the funds from the applicant, and the executive director of KBEMS.

(3) Funds shall not be dispersed until the grant agreement is signed and dated by the parties required in this section of this administrative regulation.

(4) The grant agreement shall require that the applicant and the receiving agency authorize KBEMS to conduct an audit of records relevant to use of the awarded funds.]

Section 4[6]. Allowable Expenditures. (1) Awarded funds shall only be expended[spent] on authorized purchases.

(2) Authorized purchases shall include:[be determined by the tier for which the receiving agencies are eligible.]

(a) Ambulances, equipment, training services, or other items necessary for the agency or its personnel to meet the minimum requirements of 202 KAR 7:501;

(b) EMS-related educational tools;

(c) EMS-related continuing education registrations; and

(d) Items on the Department of Homeland Security Authorized Equipment List.

(3)(a)[Authorized purchases for the tiers are as follows:

(a) Tier I services shall be authorized to spend awarded funds on items, equipment, and training for personnel only if those purchases are necessary for the agencies to meet the minimum requirements of 202 KAR 7:501;

(b) Tier II services shall be authorized to spend awarded funds on any items, equipment, or training for personnel that fall under Tier I. In addition, Tier II eligible services shall be authorized to spend awarded funds on pre-approved educational tools and items;

(c) Tier III services shall be authorized to spend awarded funds on an item from Tier I or II, plus outside EMS related class registrations, items appearing on the Federal Emergency Management Agency Approved Equipment List, www.fema.gov, and additional items if applied for and approved by the board based on current applicability to EMS standards of medical practice and promotion of public health and safety; or

(d) Tier IV services may organize as a cooperative of agencies consisting of services that qualify for Tier III. Cooperative agencies shall be allowed to pool awarded funds for the purchase of items beneficial to multiple counties within the cooperative.

(4)] If seeking reimbursement for attendance at continuing education courses, conferences, or seminars[the conduct of authorized educational courses], only expenses directly related to courses or training shall be authorized.

(b) Block grant funds shall not be used for reimbursement of participants' travel, food, gas, lodging, or incidental expenses related to EMS continuing education courses, conferences, or seminars[EMS classes].[Section 7. Cooperative of Agencies. (1) A cooperative of agencies shall consist of a minimum of two (2) agencies.

(2) Each agency within a cooperative shall have on file current mutual aid agreements that existed prior to and extend past the current grant award period. An agency that does not have a current and ongoing relationship shall not be allowed to enter into a cooperative agreement.

(3) Items or equipment purchased with the grant funds awarded to an agency within a cooperative shall benefit each member agency of that cooperative.

(4) Each applicant shall agree that the agencies to which they disperse money may enter into the cooperative of agencies for the benefit of the inhabitants within the county or area of the merged government.

(5) Each agency included in a cooperative of agencies shall enter into and submit to KBEMS a cooperative agreement approved by the board that includes, at a minimum:

(a) Where ownership of the equipment shall reside;

(b) Who shall maintain and repair the equipment;

(c) Certification that all parties to the cooperative of agencies shall have access to the equipment;

(d) An agreed and approved protocol for the possession, access, use, and replenishment of items or equipment obtained with grant funds;

(e) A narrative justification for the purchase of the equipment;

(f) A process for discarding the equipment if it becomes obsolete;

(g) An agreed statement of liability distribution; and

(h) The signatures and certifications of truthfulness of each party to the cooperative of agencies, the applicant counties or merged governments, and the chair of KBEMS.

(6) In addition to the agency application, representatives of the cooperative of agencies and the applicant counties or merged governments shall appear at a regular meeting of the board to present an explanation of and justification for the use of combined funds.

(7) Tier IV cooperatives shall not be authorized without affirmative vote of the board.]

Section 5[8]. Accountability. (1) Each applicant that receives funds and each agency to which the applicants disperse funds shall be jointly accountable for use of all funds distributed[the money].

(2) Each applicant and agency shall submit an electronically filed Grant Accountability of Funds, KBEMS-G4 that includes at a minimum:

(a) Itemization of any previously approved purchases [all purchases];

(b) Attached receipts for all purchases; and

(c) Included packing slips or invoices.

(3) Each applicant shall submit an electronically filed Grant Accountability of Funds, KBEMS-G4 each year no later than the deadline established in Section 6 of this administrative regulation that accounts for funds that were distributed from the block grant fund for the application year that occurred two (2) years prior to the forthcoming application year.

(4) If an applicant or agency maintains approved carry-over funds in accordance with KRS 311A.155(5), the applicant or agency shall submit proof of the continued availability of those funds. Proof may include, for example, a bank statement, a letter from the designated county or government official, a budgetary line-item, or other evidence sufficient to account for the unused, carry-over funds.

(5)[(4)] Failure to submit documents accounting for grant funds by the deadline established in Section 6[9] of this administrative regulation shall subject the applicant or agency to being ineligible for further award of block grant funds.

(6)[~~(5)~~] The board may request documentation of purchases and expenditures during the grant cycle. Failure to comply with this request shall make an applicant or agency ineligible for further award of grant funds.

(7)[~~(6)~~] An agency that fails to comply with subsections (5) or (6)[~~(4) or (5)~~] of this section shall also be subject to discipline pursuant to KRS 311A.060.

Section 6[~~9~~]. Time limits and Deadlines for Block Grant Funds Awards. (1) The ambulance block grant funding cycle shall follow a fiscal year of July 1 to June 30 each award year.

(2)(a) All grant funding shall be appropriately expended by the applicant and agency between July 1 and June 30 of the fiscal year of award.

(b) All purchases shall be expressly approved on the Electronic Agency Application, Kentucky Ambulance Grant, KBEMS-G2 for the fiscal year of award.

(3) The office of the board shall ensure availability of electronic county and agency Ambulance Block Grant applications no later than October 1 of the forthcoming application year.

(4) The office of the board shall provide a notification of the availability of applications on its Web site and by email to each Class I licensed agency eligible to submit an application no later than October 1 of the forthcoming application year.

(5) County and agency applications for block grant funds shall be received electronically by the office of the board no later than January 31 of each year.

(6) Each applicant and agency shall submit electronically a Grant Accountability of Funds, KBEMS-G4 no later than January 31 of each year which accounts for funds that were distributed from the block grant fund for the application year that occurred two (2) fiscal years prior to the forthcoming application year.

(7)[~~(1) Agency application for block grant funds shall be postmarked or received by January 31 of each year.~~

~~(2) Accounting required pursuant to Section 8 of this administrative regulation shall be postmarked or received by March 15 of each calendar year.~~

~~(3)~~] The office of the board shall provide[~~supply~~] notification by email to the applicants and agencies of their grant award no later than July 1[~~April 30~~] of each fiscal[~~calendar~~] year of award.

(8)[~~(4)~~] The office of the board shall process[~~make~~] payment of awarded grant funds to applicants no later than August 31 of each fiscal[~~calendar~~] year of award.

(9) Submission and approval of an Electronic Ambulance Grant Substitute Item Form, KBEMS-G3 shall be approved by the office of the board by May 31 of the current fiscal year of award.

(10) An Electronic Ambulance Grant Substitute Item Form, KBEMS-G3 received after the deadline for alternative items not listed on the Electronic Agency Application, Kentucky Ambulance Grant, KBEMS-G2 form for the current fiscal year of award shall be denied by the office of the board.

(11) An Electronic Ambulance Grant Substitute Item Form, KBEMS-G3 received after the deadline for carry-over funds for the current fiscal year of award shall be denied by the office of the board.

Section 7[~~10~~]. Review of Grant Applications. (1) A grant application shall be subject to review by the office of the board and other entities relevant to the award process.

(2) Review of applications shall include:

(a) Level One Review, which shall determine completeness of the application.

1. An incomplete application shall be denied[~~rejected~~], and if still within the deadline for application, an amended application may be submitted[~~the incomplete areas may be cured and resubmitted~~].

2. If outside the application deadline, the amended application shall be denied[~~resubmission shall not be accepted~~]; and

(b) Level Two Review, which shall determine regulatory compliance and appropriateness of expenditures.

(3) The executive director of the office of the board shall have approval[~~Approval~~] authority for grant applications and purchase authorization.[~~shall be the:~~]

(4) Release of ambulance grant funds shall require a majority vote of the board prior to distribution of funds.[~~(a) Executive director for Tier I and II applicants;~~

~~(b) Executive director for Tier III applicants who request purchases or expenditures at the Tier I or II level;~~

~~(c) Board for Tier III applicants with request for purchases or expenditures at the Tier III level; and~~

~~(d) Board for Tier III applicants that fall within the Tier IV Cooperative of Agencies level.~~

~~(4) All Tier I or II purchases shall be consistent with Section 6(3) (c) of this administrative regulation and approved prior to purchase. Exemption from or waiver of pre-approval shall not be permitted.~~

~~(5) Tier III and IV applications and purchase authorizations may be recommended for:~~

~~(a) Full approval;~~

~~(b) Approval with modifications; or~~

~~(c) Denial.~~

~~(6) Tier III and IV applicants may request reconsideration of approval with modifications by submitting new evidence of justification for their request at the next regular board meeting or at a meeting specially called by the chair of the board.~~

~~(7) Tier III and IV applicants may request reconsideration of denial by submitting new evidence of justification for their request at the next regular board meeting or at a specially called meeting.~~

~~(8) New proposals, if applicable, shall be considered during a request for reconsideration.~~

~~(9) A second denial of a Tier III or IV application or authorization for purchases shall be final and shall result in a default to Tier I or II purchases or expenditures that shall meet all requirements of this administrative regulation.~~]

Section 8[~~11~~]. Grant Program Management. (1) Implementation and management of the grant program may include employment of an individual with primary responsibility of managing the block grant fund program.

(2) Other responsibilities shall include:

(a) Research of and application for additional EMS grant sources and funding streams that benefit KBEMS' regulatory obligations to licensed[~~and certified~~] agencies; and

(b) Assistance to licensed EMS agencies in their efforts to locate and obtain other EMS grants.

(3) Employment of the grant management employee shall be dependent upon the availability of budgetary funds.

Section 9[~~12~~]. Statewide Initiatives. (1) The board may[~~shall~~] reserve all or a portion of the block grant funds appropriated to it by the General Assembly[~~legislature~~] if a unanimous vote of the board determines:

(a) That a statewide initiative is necessary to further one (1) or more of the statutory functions of the board in KRS 311A.035; or

(b) A portion of the funds shall be distributed to assist agencies in meeting a federal or state mandate relevant to EMS.

(2) KBEMS shall not reserve funds for statewide initiatives in consecutive years.

(3) Notification of reservation of funds shall be sent to all eligible applicants and agencies by October[~~September~~] 1 of the calendar year prior to the grant cycle.

Section 10[~~13~~]. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "County Application, Kentucky Ambulance Grant", KBEMS-G1, 9/18[~~1/2013~~];

(b) "Agency Application, Kentucky Ambulance Grant", KBEMS-G2, 1/29/2019[~~1/2013~~];

(c) "Ambulance Grant Substitute Item Form", KBEMS-G3, 1/29/2019[~~1/2013~~]; and

(d) "Grant Accountability of Funds", KBEMS-G4, 1/29/2019[~~1/2013~~].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Emergency Medical Services, 118 James Court, Suite 50, Lexington, Kentucky 40505[~~300 North Main Street, Versailles,~~

~~Kentucky 40383, Monday through Friday, 8:30 a.m. to 4:30 p.m.~~], Monday through Friday, 8:30 a.m. to 4:30 p.m.

PHILIP DIETZ, Chairman of the Board

APPROVED BY AGENCY: February 12, 2019

FILED WITH LRC: February 14, 2019 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 25, 2019, at 1:00 PM Eastern Standard Time at the Kentucky Board of Emergency Medical Services, 118 James Court, Lexington, Kentucky 40505. 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 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 March 31, 2019. 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: Jeffrey S. Walther, Legal Counsel, Kentucky Board of Emergency Medical Services, Walther, Gay & Mack, PLC; 163 East Main Street, Suite 200, Lexington, Kentucky 40588, phone (859) 225-4714, fax (859) 225-1493, email jwalther@wgmfirm.com.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jeffrey S. Walther

(1) Provide a brief summary of:

(a) What this administrative regulation does: 202 KAR 7:520 establishes standards and criteria governing the allocation of emergency medical services funding assistance to eligible applicants.

(b) The necessity of this administrative regulation: KRS 311A.155(3) authorizes the Kentucky Board of Emergency Medical Services to promulgate administrative regulations concerning the receiving and disposing of grant funds and specifically requires the board to promulgate an administrative regulation establishing funding criteria necessary for the implementation and operation of the emergency medical services grant program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 311A.155(3) by establishing funding criteria necessary for the implementation and operation of the emergency medical services grant program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 311A.155(3) requires the board to promulgate an administrative regulation establishing funding criteria necessary for the implementation and operation of the emergency medical services grant program, and this administrative regulation establishes standards and criteria governing the allocation of emergency medical services funding assistance to eligible applicants.

(2) If 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 funding criteria for the emergency medical services grant program.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to update the required funding criteria for the emergency medical services grant program.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of KRS 311A.155(3) by establishing funding criteria necessary for the implementation and operation of the emergency medical services grant program.

(d) How the amendment will assist in the effective administration of the statutes: This amendment ensures that applicants are aware of the funding criteria necessary for participation in the emergency medical services grant program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Fire departments which are eligible to participate in the emergency medical services grant program 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: All applicants shall meet applicable funding criteria requirements necessary for participation in the emergency medical services grant program.

(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 any entity identified in question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): All entities will benefit from their eligibility to participate in the emergency medical services grant program.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: The Board shall pay for all administrative costs of reviewing compliance with applicable requirements, which will not change with this amendment.

(a) Initially: The above paragraph is accurate for initial costs.

(b) On a continuing basis: The above paragraph is accurate for continuing costs.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: The Kentucky Board of Emergency Medical Services is a state agency that receives its annual budget from the state government.

(7) Provide an assessment of whether an 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 regulation did not establish any fees.

(9) TIERING: Is tiering applied? Tiering is not applied to this administrative regulation because there are no separate levels of licensure for the provider types included in this administrative regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The administrative regulation will relate to all local governments which maintain emergency medical service programs eligible for participation in the emergency medical services grant program.

(2) Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 311A.155A. No federal statutes necessitate 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? This administrative regulation will generate no revenue for the first year.

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

subsequent years.

(c) How much will it cost to administer this program for the first year? This administrative regulation will not impose any costs on state or local government.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation will not impose any costs on state or local government.

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

Revenues (+/-): This administrative regulation will not generate revenue.

Expenditures (+/-): This administrative regulation will not impose any costs.

Other Explanation:

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

301 KAR 2:178. Deer hunting on Wildlife Management Areas, state parks, other public lands, and federally controlled areas.

RELATES TO: KRS 150.010, 150.170, 150.340, 150.370(1), 150.990

STATUTORY AUTHORITY: 148.029(5), 150.025(1), 150.390(1), 150.620

NECESSITY, FUNCTION, AND CONFORMITY: KRS 148.029(5) authorizes the Department of Parks, in cooperation with the Department of Fish and Wildlife Resources, to implement wildlife management plans on state parks. 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 to make these requirements apply to a limited area. KRS 150.390(1) prohibits the taking of deer in any manner contrary to any provisions of KRS Chapter 150 or KAR Title 301. KRS 150.620 authorizes the department to promulgate administrative regulations for the maintenance and operation of the lands it has acquired for public recreation. This administrative regulation establishes deer hunting seasons, application procedures, and other matters pertaining to deer hunting on Wildlife Management Areas, state parks, other public lands, and federally controlled areas that differ from statewide requirements.

Section 1. Definitions. (1) "Adult" means a person who is at least eighteen (18) years of age.

(2) "Bait" means a substance composed of grains, minerals, salt, fruits, vegetables, hay, or any other food materials, whether natural or manufactured, that may lure, entice, or attract wildlife.

(3) "Centerfire" means a type of gun that detonates a cartridge by the firing pin striking a primer in the middle of the end of the cartridge casing.

(4) "Ground blind" means a structure consisting of a frame and a top that is placed on the ground to completely enclose a hunter while hunting deer.

(5) "In-line muzzleloader" means a gun:

(a) Capable of being loaded only from the discharging end of the barrel or cylinder; and

(b) That is equipped with an enclosed ignition system located directly behind the powder charge.

(6) "Mentor hunt" means a quota youth hunt in which the adult who accompanies a youth may legally take a deer.

(7) "Mobility-impaired" means an individual who meets the requirements of 301 KAR 3:026, Section 2(1).

(8) "Modern gun" means an air gun, rifle, handgun, or shotgun that is loaded from the rear of the barrel.

(9) "Modern gun season" means the[~~ten (10) or~~] sixteen (16) consecutive day period beginning the second Saturday in November during which a modern gun may be used to take deer pursuant to 301 KAR 2:172.

(10) "Muzzleloader" means a rifle, shotgun, or handgun that is loaded from the discharging end of the barrel or discharging end of the cylinder.

(11) "Quota hunt" means a hunt in which a participant is selected by a random drawing.

(12) "Quota youth hunt" means a quota hunt in which a youth is the only person who can legally take a deer.

(13) "Statewide requirements" mean the season dates, zone descriptions, and other requirements for deer hunting as established in 301 KAR 2:172.

(14) "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.

(15) "Youth" means a person under the age of sixteen (16) by the date of the hunt.

(16) "Youth gun seasons" means the October youth gun season and the December free youth weekend, as established in 301 KAR 2:172.

Section 2. General WMA Requirements. (1) Unless established in this administrative regulation, statewide requirements shall apply.

(2) Except as established in Section 6 of this administrative regulation, if a WMA is in two (2) or more deer hunting zones, as established in 301 KAR 2:172, then the WMA shall be regulated by the most liberal zone requirements of the zones in which it lies.

(3) Deer hunting on WMAs listed in Section 6 of this administrative regulation shall be permitted only as established in this administrative regulation, except archery and crossbow hunting shall be allowed pursuant to the statewide requirements established in 301 KAR 2:172, unless otherwise noted.

(4) If a WMA is:

(a) Listed in Section 6 of this administrative regulation, then gun hunting shall be prohibited, unless otherwise noted; and

(b) Not listed in Section 6 of this administrative regulation, then statewide deer hunting requirements shall apply.

(5) An antlerless deer shall not count against a person's statewide or zone bag limit if harvested during:

(a) The Grayson Lake WMA open youth hunt; or

(b) Any WMA or state park either-sex quota hunt.

(6) An open gun deer hunt, beginning on the Wednesday following the third Monday in January for ten (10) consecutive days, shall:

(a) Be limited to members of the United States Armed Forces and the National Guard and reserve component who:

1. Are residents of Kentucky or nonresidents stationed in Kentucky; and

2. Were deployed out-of-country during any portion of the most recent regular statewide deer season;

(b) Only be on a WMA designated as open for this special hunt; and

(c) Be pursuant to statewide requirements established in 301 KAR 2:172.

(7) On all WMAs and Otter Creek Outdoor Recreation Area, a person:

(a) Attaching a tree stand or climbing a tree shall not use a:

1. Nail;

2. Spike;

3. Screw-in device;

4. Wire; or

5. Tree climber;

(b) May use a portable stand or climbing device;

(c) Shall:

1. Not place a portable stand in a tree more than two (2) weeks before opening day; and

2. Remove a portable stand within one (1) week following the last day of each hunting period;

(d) Shall plainly mark the portable stand with the hunter's name and address;

(e) Shall not use an existing permanent tree stand;

(f) Shall not place, distribute, or hunt over bait; and

(g) Shall not hunt in a ground blind, if gun deer hunting is allowed, without first attaching a hat or vest made of solid, unbroken hunter orange material to the blind so that it is visible from all sides.

(8) A person without a valid quota hunt confirmation number shall not enter a WMA during a quota hunt on that area except:

(a) To travel through a WMA on an established road or to use an area designated open by a sign;

(b) To accompany a youth who is hunting in a youth or mentor quota hunt;

(c) That one (1) assistant, who shall not be required to have applied for the quota hunt, may accompany a hunter who was drawn to hunt, but shall check in and out as established in Section 5 of this administrative regulation; or

(d) To participate in small game hunting or the October shotgun segment of the fall turkey season during the archery and crossbow quota hunt on Big Rivers or Higginson-Henry WMA.

(9) Except for waterfowl or dove hunting, or legal hunting at night, a person who is hunting any species, or a person who is accompanying a hunter, shall wear hunter orange clothing pursuant to 301 KAR 2:172 while:

(a) On a WMA or state park if gun deer hunting is allowed;

(b) Hunting within the sixteen (16) county elk zone when a firearms elk season is open, pursuant to 301 KAR 2:132; or

(c) Hunting within the bear zone during a bear firearms season, pursuant to 301 KAR 2:300.

Section 3. General Quota Hunt Procedures. (1) A quota hunt applicant who is not selected and applies to hunt the following year shall be given one (1) preference point for each year the applicant was not selected.

(2) If selected for a quota hunt, a person shall lose all accumulated preference points.

(3) A random selection of hunters with preference points shall be made for each year's quota hunts before those without preference points are chosen.

(4) A person shall forfeit all accumulated preference points if, in a given year, the person does not apply for or is ineligible to apply for:

(a) A deer quota hunt; and

(b) The no-hunt option.

(5) A person who applies for the no-hunt option shall:

(a) Not be drawn for a quota hunt; and

(b) Be given one (1) preference point for each year the no-hunt option is selected.

(6) If applying as a party:

(a) Each applicant's preference points shall be used to calculate an average point total for the party; and

(b) A party with a higher preference point average will be randomly selected before a party with a lower preference point average.

(7) There shall be a maximum of ten (10) percent of nonresidents drawn in each quota hunt pool.

(8) The commissioner shall extend the application deadline if technical difficulties with the automated application system prevent applications from being accepted for one (1) or more days during the application period.

(9) A hunter may take up to two (2) deer on a quota hunt in Zones 2, 3, and 4, only one (1) of which may be an antlered deer, except as established in Section 6 of this administrative regulation.

(10) If a hunter has purchased the appropriate permits, a hunter may take unlimited antlerless deer in:

(a) The West Kentucky WMA gun hunt;

(b) WMA quota hunts in Zone 1; and

(c) State Park quota hunts in Zone 1, except as established in Section 8 of this administrative regulation.

(11) One (1) person shall be drawn from the eligible quota hunt applicants who were not selected in the original drawing, and shall receive one (1) deer permit that carries with it all the privileges of the Special Commission Permit established in 301 KAR 3:100.

Section 4. Quota Hunt Application Process. A person applying for a quota hunt shall:

(1) Complete the quota hunt application process on the department's Web site at fw.ky.gov between September 1 and September 30;

(2) Select:

(a) A first and second choice of hunts; or

(b) The no-hunt option;

(3) Pay a nonrefundable three (3) dollar application fee for each applicant;

(4) Not apply more than one (1) time; and

(5) Not apply as a group of more than five (5) persons.

Section 5. Quota Hunt Participant Requirements. Except as otherwise established in this administrative regulation, a person selected to participate in a quota hunt shall:

(1) Possess, unless exempted pursuant to KRS 150.170:

(a) A valid annual Kentucky hunting license; and

(b) A deer permit that authorizes the taking of deer with the equipment being used and in accordance with the zone restrictions where the hunt will occur;

(2) Hunt on the assigned dates and in assigned areas selected by a random drawing of applicants if applicable;

(3) Comply with hunting equipment restrictions specified by the type of hunt;

(4) Check in at the designated check station prior to hunting:

(a) Either:

1. On the day before the hunt, between noon and 8 p.m. local time; or

2. On the day of the hunt, between 5:30 a.m. and 8 p.m. Eastern time; and

(b) With documentation of the participant's:

1. Proof of identification or draw confirmation number; and

2. Purchase of a current license or permit which allows or includes statewide deer hunting privileges;

(5) Check out at the designated check station:

(a) If finished hunting;

(b) If the hunter's bag limit is reached; or

(c) By 8 p.m. Eastern time on the final day of the hunt;

(6) Take a harvested deer to the designated check station by 8 p.m. Eastern time the day the deer was harvested;

(7) Be declared ineligible to apply for the next year's drawing if the hunter or the hunter's assistant fails to check out properly;[~~and~~]

(8) Telecheck a harvested deer or check a harvested deer on the department's Web site at fw.ky.gov if there is not a designated check station at the quota hunt; and

(9) Comply with all species quota hunt requirements or be ineligible to apply for any quota hunt or no-hunt option for these species the following year.

Section 6. Wildlife Management Area Requirements. (1) Dr. Norman and Martha Adair WMA.

(2) Ballard WMA.

(a) On the main tract, the quota hunt shall be for two (2) consecutive days beginning on the first Saturday in November.

(b) On the main tract, the archery, crossbow, and October youth gun seasons shall be open pursuant to statewide requirements through October 14, except that the two (2) mile driving loop marked by signs shall be closed to all hunting.

(c) The archery, crossbow, modern gun, youth gun, and muzzleloader seasons shall be open pursuant to statewide requirements only on the 400-acre tract south of Sallie Crice Road.

(d) A quota hunt participant shall be given one (1) preference point for each female deer checked in, up to a maximum of four (4) points.

(3) Barren River WMA. The area shall be open pursuant to statewide requirements except that on the Peninsula Unit, including Narrows, Goose, and Grass Islands, a person shall not hunt deer with a modern gun.

(4) Beaver Creek WMA.

(a) The quota hunt shall be for two (2) consecutive days beginning the first Saturday in November.

(b) The limit shall be one (1) antlered deer during the quota hunt.

(c) The youth gun seasons shall be open pursuant to statewide

requirements.

(5) Big Rivers WMA.

(a) The youth gun seasons shall be open pursuant to statewide requirements.

(b) There shall be a quota hunt for two (2) consecutive days beginning the first Saturday in November.

(c) The archery and crossbow quota hunt shall begin the Monday following the third[~~second~~] Saturday in October and continue through November 30, except that it shall be closed during the two (2) day quota hunt as established in paragraph (b) of this subsection.

(d) A person shall:

1. Obtain a vehicle tag from the department prior to participating in the quota hunt as established in paragraph (c) of this subsection; and

2. Display the vehicle tag in the windshield of the vehicle while hunting[~~Pursuant to 301 KAR 2:172, any deer taken in the quota hunt as established in paragraph (c) of this subsection shall be:~~

~~1. Telechecked; or~~

~~2. Checked in on the department's Web site at fw.ky.gov~~].

(6) Boatwright WMA. The area shall be open pursuant to statewide requirements, except that on the Swan Lake Unit the:

(a) Archery, October youth gun, and crossbow seasons shall only be open through October 14; and

(b) December free youth weekend shall be closed.

(7) Cedar Creek Lake WMA.

(8) Clay WMA.

(a) On the main tract, muzzleloader and youth gun seasons shall be open pursuant to statewide requirements, except archery hunting shall be prohibited during the quota fox hunting field trials as established in 301 KAR 2:049.

(b) The remainder of the WMA shall be open pursuant to statewide requirements for the archery, crossbow, muzzleloader, and youth gun seasons, except during the quota deer hunt.

(c) The quota hunt shall be for two (2) consecutive days beginning the first Saturday in November.

(d) A quota hunt participant shall be given one (1) preference point for each female deer checked-in, up to a maximum of four (4) points.

(e) Hunters drawn for the quota hunt may harvest up to four (4) deer, only one (1) of which may be antlered.

(9) Dewey Lake WMA.

(a) The December muzzleloader and youth gun seasons shall be open pursuant to statewide requirements.

(b) Guns shall be prohibited for deer hunting on the:

1. Western side of the lake, north of the Terry Boat Ramp; and

2. Eastern side of the lake, north of the ridge that begins across the lake from the Terry Boat Ramp, and extends eastward to the WMA boundary.

(c) There shall be a quota hunt for two (2) consecutive days beginning the first Saturday in November.

(d) There shall be a one (1) deer limit during the quota hunt.

(10) Dix River WMA. The youth gun and muzzleloader seasons shall be open pursuant to statewide requirements.

(11) Fishtrap Lake WMA.

(a) The quota hunt shall be for two (2) consecutive days beginning on the Saturday before Thanksgiving.

(b) The limit for the quota hunt shall be one (1) deer.

(c) The youth gun and December muzzleloader seasons shall be open pursuant to statewide requirements.

(12) Grayson Lake WMA.

(a) An open youth hunt shall:

1. Be the first Saturday in November for two (2) consecutive days; and

2. Have a two (2) deer bag limit, only one (1) of which may be an antlered deer.

(b) A person who has not checked in shall not enter the Grayson Lake WMA during the open youth hunt, except to:

1. Travel through the WMA on an established public road; or

2. Use an area designated as open by signs.

(c) The property of Camp Webb shall be open for a mobility-impaired deer hunting event during the first weekend of October.

(d) The crossbow season shall be from the first Saturday in September through the third Monday in January, except that the archery and crossbow seasons shall be closed during the November open youth hunt.

(e) The youth gun seasons shall be open pursuant to statewide requirements.

(f) The December muzzleloader season shall be open pursuant to statewide requirements.

(13) Green River Lake WMA and Dennis-Gray WMA.

(a) The youth gun seasons shall be open pursuant to statewide requirements.

(b) The quota hunt shall be for two (2) consecutive days beginning the first Saturday in November.

(c) Fifteen (15) openings shall be reserved in the quota hunt for mobility-impaired persons.

(d) The Green River Lake and Dennis-Gray WMAs shall be considered to be located in the Eastern Time Zone.

(14) Griffith Woods WMA. The December muzzleloader and youth gun seasons shall be open pursuant to statewide requirements.

(15) Higginson-Henry WMA.

(a) The youth gun seasons shall be open pursuant to statewide requirements.

(b) There shall be a quota hunt for two (2) consecutive days beginning the first Saturday in November.

(c) There shall be an archery and crossbow quota hunt beginning the Monday following the third Saturday in October continuing through November 30, except that it shall be closed during the two (2) day quota hunt as established in paragraph (b) of this subsection.

(d) A person shall:

1. Obtain a vehicle tag from the department prior to participating in the quota hunt as established in paragraph (c) of this subsection; and

2. Display the vehicle tag in the windshield of the vehicle while hunting.

(16) J.C. Williams WMA. The December muzzleloader and youth gun seasons shall be open pursuant to statewide requirements.

(17) Kentucky River WMA.

(a) The December muzzleloader and youth gun seasons shall be open pursuant to statewide requirements.

(b) There shall be a quota hunt for two (2) consecutive days beginning on the first Saturday in November.

(18) Kleber WMA.

(a) The quota hunts shall be for:

1. Two (2) consecutive days beginning the first Saturday in November; and

2. Two (2) consecutive days beginning the first Saturday in December.

(b) The youth gun and December muzzleloader seasons shall be open pursuant to statewide requirements.

(19) Knobs State Forest WMA. The December muzzleloader and youth gun seasons shall be open pursuant to statewide requirements.

(20) Lake Barkley WMA shall be open pursuant to statewide requirements except:

(a) The North Refuge shall be closed from November 1 to February 15; and

(b) Duck Island shall be closed from October 15 to March 15, except that it shall be open for the October muzzleloader season, pursuant to statewide requirements.

(21) Livingston County WMA. The youth gun, muzzleloader, and modern gun seasons shall be open pursuant to statewide requirements, except a person shall not hunt deer with a modern gun during the modern gun deer season.

(22) Curtis Gates Lloyd WMA. The December muzzleloader and youth gun seasons shall be open pursuant to statewide requirements.

(23) Mill Creek WMA.

(a) The youth gun seasons shall be open pursuant to statewide requirements.

(b) The modern gun season shall be open pursuant to statewide requirements for two (2) consecutive days beginning the

second Saturday in November.

(24) Miller-Welch Central Kentucky WMA. The archery and crossbow seasons shall be open pursuant to statewide requirements:

(a) On Monday through Thursday, from the first Saturday in September through December 17, except during scheduled field trials as posted on the area bulletin board; and

(b) December 18 through the third Monday in January.

(25) Mud Camp Creek WMA. The youth gun and muzzleloader seasons shall be open pursuant to statewide requirements.

(26) Mullins WMA. The youth gun and December muzzleloader seasons shall be open pursuant to statewide requirements.

(27) Ohio River Islands WMA, Stewart Island Unit.

(a) The muzzleloader season shall be for two (2) consecutive days beginning the third Saturday in October.

(b) The archery season shall be from the first Saturday in September through October 14.

(c) The crossbow season shall be from October 1 through October 14.

(d) The October youth gun season shall be open pursuant to statewide requirements.

(e) The remainder of the WMA shall be open pursuant to statewide requirements.

(28) Paintsville Lake WMA.

(a) The quota hunt shall be for two (2) consecutive days beginning the first Saturday in November.

(b) The December muzzleloader and youth gun seasons shall be open pursuant to statewide requirements.

(c) A person shall not use a gun for deer hunting on:

1. The area extending eastward from the drainage of Glade Branch, along the north edge of the lake, to the No Hunting Area surrounding Rocky Knob Recreation Area and enclosing all property from the WMA boundary downslope to the lake edge; and

2. The islands to the south and that portion of the area extending eastward along the south edge of the lake from the drainage of Shoal Branch to the No Hunting Area surrounding the dam and ranger station, and extending downslope to the edge of the lake.

(29) Peabody WMA.

(a) The youth gun and muzzleloader seasons shall be open pursuant to statewide requirements.

(b) The modern gun season shall be open pursuant to statewide requirements for ten (10) consecutive days beginning the second Saturday in November.

(30) Pennyrile State Forest-Tradewater WMA. The quota hunt shall be for two (2) consecutive days beginning the first Saturday in November.

(31) Ping-Sinking Valley WMA. The December muzzleloader and youth gun seasons shall be open pursuant to statewide requirements.

(32) Pioneer Weapons WMA. Statewide requirements shall apply except that a person:

(a) Shall not use a modern gun;

(b) Shall not use an in-line muzzleloader;

(c) Shall not use a scope;

(d) May use a crossbow during the entire archery season; and

(e) Shall use only open or iron sights on any weapon.

(33) Redbird WMA.

(a) The youth gun seasons shall be open pursuant to statewide requirements.

(b) The modern gun season shall be open pursuant to statewide requirements for two (2) consecutive days beginning the second Saturday in November.

(34) Dr. James R. Rich WMA.

(a) There shall be a quota hunt for two (2) consecutive days beginning on the first Saturday in:

1. November; and

2. December; and

(b) The youth gun and December muzzleloader seasons shall be open pursuant to statewide requirements.

(35) Robinson Forest WMA.

(a) A person shall not hunt deer on the main block of Robinson Forest.

(b) The remainder of the WMA shall be open pursuant to statewide requirements.

(36) Rockcastle River WMA.

(a) The youth gun seasons shall be open pursuant to statewide requirements.

(b) The modern gun season shall be open pursuant to statewide requirements for two (2) consecutive days beginning the second Saturday in November.

(37) Sloughs WMA.

(a) On the Sauerheber Unit, the archery, crossbow, muzzleloader, and youth gun seasons shall be open pursuant to statewide requirements through October 31[~~, except that the Crenshaw and Duncan II Tracts shall be open pursuant to statewide requirements through the end of modern gun season~~].

(b) The remainder of the WMA shall be open pursuant to statewide requirements.

(38) South Shore WMA.

(a) The youth gun, October muzzleloader, and modern gun seasons shall be open pursuant to statewide requirements through November 14, except that the use of centerfire rifles and handguns shall be prohibited.

(b) The archery and crossbow seasons shall be open pursuant to statewide requirements, except that the area shall be closed November 15 through January 15.

(c) The December free youth weekend and December muzzleloader season shall be closed.

(39) T.N. Sullivan WMA. The youth gun and December muzzleloader seasons shall be open pursuant to statewide requirements.

(40) R.F. Tarter WMA. The youth gun and muzzleloader seasons shall be open pursuant to statewide requirements.

(41) Taylorsville Lake WMA.

(a) There shall be a quota hunt for two (2) consecutive days beginning the first Saturday in:

1. November; and

2. December.

(b) Seven (7) openings shall be reserved in each quota hunt for mobility-impaired persons.

(c) A quota hunt participant shall be given one (1) preference point for each female deer checked in, up to a maximum of four (4) points.

(d) The youth gun and December muzzleloader seasons shall be open pursuant to statewide requirements.

(42) Twin Eagle WMA. The youth gun and December muzzleloader seasons shall be open pursuant to statewide requirements.

(43) Paul Van Booven WMA.

(44) Veteran's Memorial WMA.

(a) The December muzzleloader and youth gun seasons shall be open pursuant to statewide requirements.

(b) There shall be a quota hunt for two (2) consecutive days beginning the first Saturday in:

1. November; and

2. December for antlerless deer.

(c) A participant in the December antlerless-only quota hunt shall be given one (1) preference point for each female deer checked in, up to a maximum of four (4) points.

(45) West Kentucky WMA.

(a) All tracts shall be open pursuant to statewide requirements for the archery and crossbow seasons, except that the statewide archery and crossbow seasons shall be closed during department administered quota, mentor, and gun deer hunts.

(b) Tracts 1-6 shall be open to shotgun and muzzleloader hunters participating in the quota and open gun deer hunts.

(c) Tract 7 and "A" tracts shall not be open for department administered quota or gun deer hunts, except as established in paragraph (d) of this subsection.

(d) The "A" tracts shall be open to shotgun hunters participating in the mentor hunt.

(e) The quota hunt shall be for four (4) consecutive days beginning the[~~third~~] Saturday prior to Thanksgiving[~~in December~~].

(f) There shall be a mentor hunt for four (4) consecutive days beginning the[~~third~~] Saturday prior to Thanksgiving[~~in December~~] in

which:

1. There shall be no more than two (2) youths per adult;

2. There shall be no more than one (1) adult per youth; and

3. The adult may take a deer.

(g) The gun hunt shall:

1. Be for three (3) consecutive days beginning the Saturday preceding the third Monday in January;

2. Require a hunter to check-in at a designated check station from 4 p.m. to 8 p.m. Central time on the day before the hunt or between 4:30 a.m. and 7 p.m. Central time on hunt days;

3. Require a hunter to check out at the designated check station:

a. When finished hunting; or

b. By 7 p.m. Central time on the final day of the hunt;

4. Have an unlimited bag limit, only one (1) of which may be an antlered deer; and

5. Require every person to check in during the gun hunt, except for:

a. A person traveling on an established public road; or

b. A person in an area designated as open by signs.

(h) Gun hunters shall not use centerfire rifles or handguns.

(i) All persons shall check in daily at the designated check-in locations before entering the "A" tracts.

(j) A participant in the quota hunt, mentor hunt, or open gun hunt shall:

1. Sign in for the hunting tract of his or her choice at check-in prior to each day's hunt; and

2. Not hunt outside of that tract, except after noon.

(46) Yatesville WMA.

(a) The youth gun and muzzleloader seasons shall be open pursuant to statewide requirements.

(b) The modern gun season shall be open pursuant to statewide requirements for ten (10) consecutive days beginning the second Saturday in November.

(47) Yellowbank WMA. The December muzzleloader and youth gun deer seasons shall be open pursuant to statewide requirements.

Section 7. State Park Deer Seasons. (1) A state park may allow archery and crossbow hunting from the first Saturday in September through the third Monday in January for antlered or antlerless deer.

(2) A state park may allow up to sixteen (16) days of modern gun hunting and up to eleven (11) days of muzzleloader hunting from the first Saturday in September through the third Monday in January for antlered or antlerless deer.

(3) A state park shall be open to deer hunting as established in this subsection and Section 8 of this administrative regulation.

(a)[~~Lake Barkley State Resort Park. Deer hunting shall be allowed beginning on the second Tuesday of January for two (2) consecutive days.~~

~~(b)~~] Greenbo Lake State Resort Park. Archery and crossbow deer hunting shall be allowed beginning on the:

1. First Friday of November for three (3) consecutive days;

2. Second Friday of November for three (3) consecutive days; and

3. Deer hunting shall be allowed beginning on the first[~~Second~~] Tuesday of January for two (2) consecutive days.

(b)[~~(c)~~] Green River Lake State Park.

1. Archery and crossbow deer hunting shall be allowed beginning on the second[~~first~~] Thursday of December for four (4) consecutive days.

2. Archery and crossbow deer hunting shall be allowed beginning on the third[~~second~~] Thursday of December for four (4) consecutive days.

(c)[~~(d)~~] Dale Hollow Lake State Resort Park.

1. Archery and crossbow deer hunting shall be allowed beginning on the first Monday of November for five (5) consecutive days.

2. Youth deer hunting shall be allowed beginning on the second Saturday of December for two (2) consecutive days.

3.[~~2.~~] Deer hunting shall be allowed beginning on the first Saturday of January for two (2) consecutive days.

(d)[~~(e)~~] Kenlake State Resort Park.

1. Archery and crossbow deer hunting shall be allowed beginning on the second Thursday of November for four (4) consecutive days.

2. Archery and crossbow deer hunting shall be allowed beginning on the first Saturday in January for two (2) consecutive days.

(e)[~~(f)~~] Kincaid Lake State Park.

1. Deer[~~Archery and crossbow~~] hunting shall be allowed beginning on the first[~~second~~] Thursday of December for four (4) consecutive days.

2.[~~Archery and crossbow~~] Deer hunting shall be allowed beginning on the second[~~third~~] Thursday of December for four (4) consecutive days.

(f)[~~(g)~~] Yatesville Lake State Park. Muzzleloader, archery, and crossbow deer hunting shall be allowed pursuant to statewide requirements on the [~~second~~] Monday following the second Saturday of December for three (3) consecutive days.

(g)[~~(h)~~] Jenny Wiley State Resort Park.

1. Deer hunting shall be allowed beginning on the first Saturday of January for two (2) consecutive days.

2. The bag limit shall be two (2) deer, only one (1) of which may be antlered.

3. The hunt shall be open to the first fifteen (15) mobility-impaired persons who check in at the park on the day before the hunt.

4. A person who participates in the hunt shall comply with the requirements established in 301 KAR 3:026.

Section 8. State Park Deer Hunt Requirements. (1) A person shall not hunt on a state park unless:

(a) Selected by a random drawing as established in Section 3 of this administrative regulation;

(b) The person is a member of a successful applicant's quota hunt party;

(c) The person is participating in a deer hunt established in Section 7 of this administrative regulation; or

(d) The person successfully registers on a first-come, first-served basis as part of a process administered by the Department of Parks, at an area established in subparagraphs 1. through 6.[~~5.~~] of this paragraph:

1. Blue Licks Battlefield State Resort Park;

2. Carter Caves State Resort Park;

3. John James Audubon State Park;

4. Lake Barkley State Resort Park;

5. My Old Kentucky Home State Park; and

6.[~~5.~~] Taylorsville Lake State Park.

(2) A person participating in a state park quota hunt, except for the quota hunts at Green River Lake State Park and the Yatesville Lake State Park open deer hunt, shall:

(a) Check in and check out as required in Section 5 of this administrative regulation;

(b) Furnish at check-in a driver's license or other form of government-issued identification;

(c) Check in:

1. Between noon and 8 p.m. Eastern time the day before the hunt at the state park campground if hunting in the Yatesville Lake State Park open deer hunt; or

2. At the park the day before the hunt if hunting in the Jenny Wiley State Resort Park deer hunt; and

(d) Not be eligible to apply for a quota hunt the following year if the person does not check out as required in Section 5 of this administrative regulation.

(3) A person participating in a state park deer hunt shall:

(a) Comply with the requirements established in 301 KAR 2:172; and

(b) Check a harvested deer by completing the telecheck or online check-in process as established in 301 KAR 2:172.

(4) A person participating in a state park deer hunt shall not:

(a) Take more than one (1) antlered deer;

(b) Hunt over bait;

(c) Use:

1. A tree stand except a portable stand;

2. Climbing devices that nail or screw to the tree; or

3. Climbing spikes;

(d) Leave a deer stand unattended for more than twenty-four (24) hours;

(e) Discharge a gun within 100 yards of a maintained road or building; or

(f) Hunt:

1. In an area posted as closed by signs;

2. Outside park boundaries; or

3. From a ground blind, if gun deer hunting is allowed, unless first attaching a hat or vest made of solid, unbroken hunter orange material to the blind so that it is visible from all sides.

(5) A person participating in a state park deer hunt, other than the open hunts at Jenny Wiley State Resort Park and Yatesville Lake State Park and any department-administered state park quota hunt, may take up to two (2) bonus deer per hunt that shall not count toward the statewide limit if the person:

(a) Takes no more than one (1) bonus antlered deer per license year; and

(b) Obtains the valid bonus deer tag from the state park hunt administrators.

(6) A person participating in a state park deer hunt or in possession of harvested wildlife on state park property shall comply with all posted state park rules and regulations concerning the possession, storage, or disposal of harvested wildlife.

Section 9. Other Public Lands. (1) On Daniel Boone National Forest, Jefferson National Forest, and Land Between the Lakes, a person shall not use bait.

(2) The areas established in paragraphs (a) through (g) of this subsection may schedule a gun, crossbow, or archery deer hunting season between September 1 and January 31:

(a) Big South Fork National River and Recreation Area;

(b) Clark's River National Wildlife Refuge;

(c) Daniel Boone National Forest;

(d) Jefferson National Forest;

(e) Land Between the Lakes National Recreation Area;

(f) Ohio River Islands National Wildlife Refuge; and

(g) Reelfoot National Wildlife Refuge.

(3) An area listed in subsection (2) of this section may issue a bonus permit for antlered or antlerless deer, which shall:

(a) Not count against a hunter's statewide bag limit; and

(b) Only be issued for a hunt that is open to the general public.

(4) At Land Between the Lakes, a person:

(a) Shall not take more than:

1. Two (2) deer during archery hunts; and

2. One (1) deer during quota hunts;

(b) Who is a quota deer hunter shall:

1. Apply in advance at Land Between the Lakes; and

2. Only hunt from one-half (1/2) hour before sunrise until one-half (1/2) hour after sunset; and

(c) Who harvests a deer shall:

1. Check in the carcass pursuant to U.S. Forest Service requirements; and

2. Affix a game check card pursuant to U.S. Forest Service requirements.

(5) At Reelfoot National Wildlife Refuge:

(a) On the Long Point Unit, a valid hunting license and deer permit from either Kentucky or Tennessee shall be required for deer hunting.

(b) Zone 1 bag limits shall apply during the open archery season and quota youth hunt;

(c)[~~(b)~~] A person shall not take more than two (2) deer by gun during the quota hunt hunt, only one (1) of which shall be antlered;

(d)[~~(c)~~] A quota gun hunt participant shall:

1. Tag deer as instructed[~~with a tag issued~~] by the Refuge; and

2. Comply with the Refuge check-in requirements; and

(e)[~~(d)~~] A person who is archery hunting or in a quota youth hunt shall:

1. Only take deer using the appropriate statewide or additional deer permit; and

2. Check harvested deer through the department's telephone or online check-in systems.

(6) At Otter Creek Outdoor Recreation Area:

(a) The archery and crossbow seasons shall be open pursuant to statewide requirements; and

(b) There shall be a quota hunt for two (2) consecutive days beginning the second Saturday in December.

(7) At Twin Knobs Campground, the area shall be closed to all statewide seasons, except that there shall be a quota hunt on the second Saturday in December during odd-numbered years for mobility-impaired persons.

(8) At Zilpo Campground, the area shall be closed to all statewide seasons, except that there shall be a quota hunt on the second Saturday in December during even-numbered years for mobility-impaired persons.

Section 10. Special Areas under Federal Control. (1) The areas established in paragraphs (a) through (e) of this subsection may schedule a gun, archery, or crossbow deer hunting season between September 1 and January 31:

(a) Bluegrass Army Depot;

(b) Fort Campbell;

(c) Fort Knox;

(d) Hidden Valley Training Center; and

(e) Wendell Ford Regional Training Center.

(2) An area listed in subsection (1) of this section may issue a bonus permit for antlered or antlerless deer, which shall:

(a) Not count against a hunter's statewide bag limit; and

(b) Only be issued for a hunt that is open to the general public.

(3) Except on the Hidden Valley Training area, on the areas listed in subsection (1) of this section, a deer hunter shall:

(a) Obtain a permit from the area before hunting;

(b) Only hunt on assigned dates;

(c) Remain in assigned areas;

(d) Tag deer with tags issued on the area, unless otherwise established in this section;

(e) Keep the area tag attached to the deer until the carcass is processed; and

(f) Check deer at a designated check station before leaving the area.

(4) At Bluegrass Army Depot, a person shall not take an antlered deer whose outside antler spread is less than fifteen (15) inches.

(5) At Fort Knox, a person shall:

(a) Not take an antlered deer whose outside antler spread is less than twelve (12) inches;

(b) Not use bait; and

(c) Record harvested deer on a Fort Knox harvest log and check harvested deer pursuant to area requirements and as established in 301 KAR 2:172.

(6) At Hidden Valley Training Area, a person shall not use a gun to hunt deer.

RICH STORM, Commissioner
DON PARKINSON, Secretary

APPROVED BY AGENCY: February 5, 2019

FILED WITH LRC: February 12, 2019 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 25, 2019 at 9:00 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation through March 31, 2019. 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 deer hunting seasons, application procedures, and other matters pertaining to deer hunting on wildlife management areas (WMAs), state parks, other public lands, and federally controlled areas that differ from statewide requirements.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish deer hunting seasons, limits, and methods of taking deer to control and manage deer populations and hunting pressure on WMAs, state parks, other public lands, and federally controlled areas.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 148.029(5) authorizes the Department of Parks, in cooperation with the Department of Fish and Wildlife Resources, to implement wildlife management plans on state parks. 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 to make these requirements apply to a limited area. KRS 150.390(1) prohibits the taking of deer in any manner contrary to any provisions of KRS Chapter 150 or KAR Title 301. KRS 150.620 authorizes the department to promulgate administrative regulations for the maintenance and operation of the lands it has acquired for public recreation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the administration of the statutes by establishing requirements for effectively managing deer herds on WMAs, state parks, and other public lands, including the establishment of requirements to ensure safe, orderly hunting practices on public lands.

(2) If 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 shortens the archery and crossbow quota hunt at Big Rivers WMA by one week, creates quota archery/crossbow and modern firearm hunts on Higginson-Henry WMA, discontinues deer hunting on a portion of the Sloughs WMA after October 31, establishes preference points to incentivize harvest of female deer during quota hunts on Taylorsville Lake WMA, moves the West Kentucky WMA quota and youth mentor deer hunts from December back to November, makes minor structural changes to deer hunts at three state parks while adding a hunt at two others, and clarifies the public deer hunt management process on the Kentucky portion of Reelfoot National Wildlife Refuge.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to maximize hunter opportunity without harm to the deer resource.

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: For the 2017-18 deer season, there were approximately 257,898 resident and 27,435 non-resident Kentucky deer hunters. Additionally, 7,364 people applied for quota deer hunts administered by the Kentucky Department of Fish and Wildlife Resources.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Those who hunt deer on WMAs and state parks must comply with the individual hunt requirements for those sites, as listed in the fall hunting guide produced by the department.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no direct cost to hunters as a result of this amendment to the administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Deer hunters will benefit because the amendment will improve the quality of the hunting experience on several WMAs and state parks, as well as create additional archery and crossbow deer hunting opportunities at two other state parks. In addition, the deer hunting regulations at Reelfoot Lake NWR will become easier to convey or explain, and this should help to improve hunter compliance.

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

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

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

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

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

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

(9) TIERING: Is tiering applied? No. All persons who hunt deer on WMAs, state parks, or other public lands are required to abide by these requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Fish and Wildlife Resources' Wildlife and Law Enforcement Divisions will be affected 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 148.029(5), 150.025(1), 150.390(1) and 150.620.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Prior to hunting in the 2017-18 deer season, $22,092 was generated through the sale of deer quota hunt application fees. The department expects this to be a fairly stable and similar amount during the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? It is unknown what this amount will be in subsequent years, but the department expects it to be fairly similar to previous totals.

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

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

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

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

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.175 authorizes the types of licenses, permits, and tags. KRS 150.195(4)(f) requires the department to promulgate an administrative regulation establishing the license and permit terms and the expiration date of licenses and permits. KRS 150.225 requires 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) 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; and

(c) Commercial fishing license for Asian carp and scaled rough fish (nonresident), plus ten (10) nonresident gear tags: $150.

(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; and

(c) Commercial fishing gear tags for Asian carp and scaled rough fish (nonresident), block of ten (10) tags: fifteen (15) dollars.

(4) Hunting licenses:

(a) Statewide hunting license (resident): twenty-seven (27) dollars;

(b) Statewide hunting license (nonresident): $150;

(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 either sex archery and crossbow elk permit: $100;

(k) Nonresident either sex archery and crossbow elk permit: $550.

(l) Resident out-of-zone elk permit: thirty (30) dollars;

(m)[~~(k)~~] Nonresident out-of-zone elk permit: $400;

(n)[~~(l)~~] Resident deer permit: thirty-five (35) dollars;

(o)[~~(m)~~] Nonresident deer permit: $185;

(p)[~~(n)~~] Resident youth deer: ten (10) dollars;

(q)[~~(o)~~] Nonresident youth deer: fifteen (15) dollars;

(r)[~~(p)~~] Additional deer permit (resident or nonresident): fifteen (15) dollars;

(s)[~~(q)~~] Resident spring turkey: thirty (30) dollars;

(t)[~~(r)~~] Nonresident spring turkey: eighty-five (85) dollars;

(u)[~~(s)~~] Resident fall turkey: thirty (30) dollars;

(v)[~~(t)~~] Nonresident fall turkey: eighty-five (85) dollars;

(w)[~~(u)~~] Resident youth turkey: ten (10) dollars;

(x)[~~(v)~~] Nonresident youth turkey: fifteen (15) dollars;

(y)[~~(w)~~] Resident youth elk: thirty (30) dollars; and

(z)[~~(x)~~] Nonresident youth elk: $200.

(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, junior deer permit, 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) Pay lakes obtaining all fish from private hatcheries only:

1. Lakes with two (2) acres or less: $250; and

2. Each additional acre or part of an acre: Fifty (50) dollars; and

(b) Pay lakes obtaining all or a portion of catfish from public waters:

1. Lakes with two (2) acres or less: $600; and

2. Each additional acre or part of an acre: fifty (50) dollars[~~First two (2) acres or less: $150; and~~

~~(b) Per additional acre or part of acre: twenty (20) dollars~~].

(9) Commercial captive wildlife permit: $150.

(10) Commercial fish propagation permit: fifty (50) dollars.

(11) Wildlife rehabilitator's permit: twenty-five (25) dollars.

(12) Annual wildlife transportation permit: $250.

(13) Peabody Wildlife Management Area annual event permit: $250.

(14) Fish transportation permit: twenty-five (25) dollars.

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

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

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

(a) One (1) day resident fishing license: seven (7) dollars;

(b) One (1) day nonresident fishing license: fifteen (15) dollars;

(c) Seven (7) day nonresident fishing license: thirty-five (35) dollars;

(d) One (1) day resident hunting license (not valid for deer, elk, or turkey hunting): seven (7) dollars;

(e) One (1) day nonresident hunting license (not valid for deer, elk, or turkey hunting): twenty-five (25) dollars; and

(f) Seven (7) day nonresident hunting license (not valid for deer, elk, or turkey hunting): sixty-five (65) 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) 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.

RICH STORM, Commissioner
DON PARKINSON, Secretary

APPROVED BY AGENCY: February 5, 2019

FILED WITH LRC: February 12, 2019 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 25, 2019 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 March 31, 2019. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Mark Cramer

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes fees and terms for licenses, permits, and tags sold by the Department of Fish and Wildlife Resources.

(b) The necessity of this administrative regulation: This administrative regulation is necessary for the department to establish reasonable license fees, permit terms, and the expiration dates of licenses and permits.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.175 authorizes the types of licenses, permits, and tags that the department can issue. KRS 150.195(4)(f) requires the department to promulgate an administrative regulation establishing the license and permit terms and the expiration date of licenses and permits. KRS 150.225 requires the Department to prescribe reasonable fees for licenses, permits, and registrations authorized by KRS Chapter 150. KRS 150.620 authorizes the department to charge reasonable fees for the use of lands and waters it has acquired for wildlife management and public recreation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation fulfills the requirements and purposes of the statutes identified in (1)(c) by establishing reasonable fees and terms for licenses, permits, and tags issued by the Department.

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

(a) How the amendment will change this existing administrative regulation: This amendment establishes a reduced-fee ($150), non-resident, commercial fishing license for Asian carp and scaled rough fish (reduced from $600 for a standard non-resident commercial fishing license). Non-resident commercial gear tags purchased under this license will also be reduced to $15 per 10 tags (from $100 per 10 tags for a standard non-resident commercial fishing license). In addition, the pay lake license fee is now split into two tiers: $250 for pay lakes obtaining all catfish from private hatcheries only, plus $50 for each additional acre; $600 for pay lakes obtaining all or a portion

of catfish from public waters, plus $50 for each additional acre. This amendment also establishes an either sex elk archery and crossbow permit for both residents and nonresidents.

(b) The necessity of the amendment to this administrative regulation: Commercial fishing is critical for the reduction of Asian carp in Kentucky's waters. The current $600 non-resident commercial fishing license is prohibitive to recruiting non-resident commercial fishermen to Kentucky to target Asian carp. The new $150, non-resident commercial fishing license will be available to those commercial fishermen willing to harvest a minimum ratio of 65% Asian carp to 35% scaled rough on a monthly basis. Harvest of catfish will not be allowed with this license. The department hopes to incentivize non-resident commercial fishermen with this license and increase overall harvest of Asian carp in the state. Pay lake license fees have been increased to provide oversight on the pay lake industry and ensure that overharvest of trophy catfish from public resources for pay lake use is prevented. In order to monitor catfish usage from public resources, it will require approximately $30,000 for two seasonal Fish and Wildlife Technician I positions to monitor and review data provided by the pay lakes. It was also necessary to establish an either sex elk permit for archery and crossbow for both residents and nonresidents since the permit structure recently was modified.

(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: The number of non-resident commercial fishermen that may purchase the reduced-fee license for targeting Asian carp is unknown. However, there are a substantial number of non-resident commercial fishermen that have not fished in Kentucky for Asian carp due to the cost of the current non-resident commercial fishing license. There are approximately 80 pay lakes currently operating in Kentucky. All operating pay lakes owners will be affected by the new pay lake license fees. There are approximately 35,000 to 45,000 people who apply for the elk permit drawing, of which approximately 600 are drawn.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Purchasers of the above licenses will be required to pay the new fees.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): It will depend on the particular license that is purchased. The new fees are listed in (2)(a) above.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Non-resident commercial fishermen willing to harvest a minimum ratio of 65% Asian carp to 35% scaled rough fish on a monthly basis will benefit from the reduced-fee commercial fishing license. Increased pay lake license fees will allow the department to provide better oversight on the pay lake industry and ensure that overharvest of trophy catfish from public resources for pay lake use is prevented. Pay lake operators will also be able to provide the department with fish stocking information that will support their efforts in public resource trophy catfish conservation. Elk hunters should experience a higher harvest success rate with the new permit structure, as it increases opportunity.

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

(a) Initially: There will be minimal cost to the department to implement this administrative regulation.

(b) On a continuing basis: There should be no additional cost to the department on a continuing basis.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Yes, this amendment establishes an increase in pay lake license fees for the reasons listed in (2)(b) above.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: Yes, this administrative regulation directly increased pay lake license fees as listed in (2)(a) above.

(9) TIERING: Is tiering applied? Yes. Tiering is applied for pay lake license fees based on whether or not a pay lake obtains their catfish from public waters. Those pay lakes obtaining catfish from public waters must pay a higher license fee. Although all pay lakes will be monitored by the department through the use of two seasonal employees, a higher level of time and effort will be applied towards those pay lakes obtaining catfish from public waters. This is necessary to determine the impacts to our public resources and to prevent the overharvest of trophy catfish from these waters for use in pay lakes.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department's Division of Administrative Services and Fisheries Division 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 150.175, 150.195, 150.225, and 150.620.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? It is unknown how much revenue will be generated by these license fee changes. Non-resident commercial license fee revenue should increase somewhat with increased non-resident participation. Pay lake license revenue will be dependent on where pay lakes are obtaining their catfish.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This amendment should generate similar revenue in each subsequent year.

(c) How much will it cost to administer this program for the first year? There will be a minimal cost to administer this program for the first year.

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Kentucky Board of Education
Department of Education
(Amendment)

702 KAR 1:160. School health services.

RELATES TO: KRS 156.160(1)(h), (i), (j), 156.501, 156.502, 158.035, 158.160, 158.838, 161.145, 214.034, 214.036, 29 C.F.R. 1910.1030

STATUTORY AUTHORITY: KRS 156.070, 156.160(1), 158.838

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.070(1) requires the Kentucky Board of Education to manage

and control all the common schools and all programs operated in these schools. KRS 156.160(1)(h) requires the board to promulgate administrative regulations governing medical inspection, physical and health education and recreation, and other administrative regulations necessary or advisable for the protection of the physical welfare and safety of the public school children. KRS 156.160(1)(i) and (j) require the board to promulgate administrative regulations governing a required vision examination and a dental screening or examination. This administrative regulation establishes criteria for preventive student health care examinations at the local school district level.

Section 1. School Employee Medical Examinations. (1) Except as provided in subsection (2) of this section, a local board of education shall require a medical examination of each certified or classified employee, including each substitute teacher. The medical examination shall:

(a) Be conducted prior to initial employment; and

(b) Include a tuberculosis (TB) risk assessment.

1. If the individual is identified by that assessment as being at high risk for TB, the individual shall be required to undergo the administration of a tuberculin skin test (TST) or a blood test for Mycobacterium tuberculosis (BAMT).

2. The TB risk assessment shall be performed and reported by a physician, an advanced practice registered nurse, a physician's assistant, or a registered nurse.

(2) The medical examination requirement shall not apply to school bus drivers who are covered by 702 KAR 5:080.

(3) A local board of education may require by policy that a school employee physical examination be conducted no earlier than a ninety (90) day period prior to initial employment.

(4) A medical examination shall be reported on the form Medical Examination of School Employees, KDESHS001, or an electronic medical record that includes all of the data equivalent to that on the Medical Examination of School Employees form.

(5) A person who tests positive for TB shall be required to comply with the directives of the local board of health and the Kentucky Department for Public Health for further evaluation and treatment of the TB infection.

(6)(a) Following the required medical examination for initial employment and any subsequent examinations as may be required for positive tuberculin reactors, a school district employee other than a bus driver shall submit to the local school superintendent the completed Medical Examination of School Employees form or an electronic medical record that includes all of the data equivalent to that on the Medical Examination of School Employees form required by subsection (4) of this section.

(b) The medical examination shall be performed and signed for by a physician, physician's assistant, or an advanced practice registered nurse. Transmission of an electronic medical record to the school district via email from the health care provider's office may be accepted as the official signature.

(7) Documentation of a TST, BAMT, and chest x-ray, if performed, shall include:

(a) The date given;

(b) Type of test;

(c) Millimeters of induration;

(d) Date read and by whom; and

(e) Date x-ray taken and results as related to TB status.

(8)(a)1. A local board of education shall require all school personnel exhibiting symptoms of chronic respiratory disease to undergo a TB risk assessment and examinations as indicated.

2. The evaluation and any recommended treatment for TB infection shall be based upon the directives of the local board of health and the Kentucky Department for Public Health.

(b) An employee exposed to infectious TB shall be tested and, if necessary, treated for TB infection according to the directives of the local board of health.

(c) The school district shall require school district employees to undergo more extensive testing for TB if:

1. The number of active TB cases in the county is equal to or greater than the national average, as established by the Department for Public Health, Division of Epidemiology and Health Planning, Tuberculosis Prevention and Control Program; and

2. The local board of health, with the approval of the Kentucky Department for Public Health, requires more extensive testing for TB of school district employees.

Section 2. Preventive Student Health Care Examinations. (1)(a) A local board of education shall require a preventive health care examination for students within one (1) year prior to initial entry to school.

(b) A second examination shall be required within one (1) year prior to entry into the sixth grade. (c) A third examination may be required by policy of the local board of education within one (1) year prior to entry into the ninth grade.

(2) An out-of-state transfer student shall be required to submit documentation of a preventive health care examination.

(3) A local board of education may extend the deadline by which to obtain a preventive student health care examination, not to exceed two (2) months.

(4) A preventive student health care examination shall be performed and signed for by a physician, an advanced practice registered nurse, a physician's assistant, or by a health care provider in the early periodic screening diagnosis and treatment programs. Transmission of an electronic medical record to the school district via email from the health care provider's office may be accepted as the official signature.

(5) A preventive student health care examination shall be reported on the Preventive Student Health Care Examination Form, KDESHS002, or an electronic medical record that includes all of the data equivalent to that on the Preventive Student Health Care Examination Form, and shall include:

(a) A medical history;

(b) An assessment of growth and development and general appearance;

(c) A physical assessment including hearing and vision screening; and

(d) Recommendations to the school regarding health problems that may require special attention in classroom or physical education activities.

(6)(a) A vision examination shall be reported on the form, Kentucky Eye Examination Form for School Entry, KDESHS004, or other electronic medical record that includes all of the data equivalent to that on the Kentucky Eye Examination Form for School Entry.

(b) A dental screening or examination shall be reported on the form, Kentucky Dental Screening/Examination Form for School Entry, KDESHS005, or other electronic medical record that includes all of the data equivalent to that on the Kentucky Dental Screening/Examination Form for School Entry.

(7) A local school district shall establish a plan for implementation and compliance required for the sixth grade preventive student health care examination.

(8) A current Immunization Certificate, EPID-230, incorporated by reference into 902 KAR 2:060, or an immunization certificate meeting the requirements of 902 KAR 2:060, Section 4, shall be on file within two (2) weeks of the child's enrollment in school.

(9)(a) A board of education shall adopt a program of continuous health supervision for all currently enrolled students.

(b) Supervision shall include scheduled screening tests for vision and hearing.

(c) Supervision shall include the adoption of policies for the implementation of seizure actions plans pursuant to KRS 158.838. "Seizure action plan" shall have the same meaning as in KRS 158.832.

(10) A school shall have emergency care procedures, which shall include:

(a) First aid facilities meeting the requirements of 702 KAR 4:170, including provisions for designated areas for the child to recline;

(b) A requirement that whenever children are present during school hours, there shall be at least one (1) adult present in the school who is certified in a standard first aid course which includes CPR for infants and children;

(c) A requirement that, at all times when enrolled students, for whom documentation under KRS 158.838(2) or (7), including

seizure action plans, has been provided to the school, are present during school hours or participating in school-related activities, there is a school employee who is trained to administer and can administer or assist with the self-administration of glucagon, insulin, or seizure[~~rescue~~] medications approved by the United States Food and Drug Administration or successor agency and administered pursuant to a student's seizure action plan. A student shall be permitted to conduct the actions and possess the supplies and equipment described in KRS 158.838(7) at school-related activities regardless of whether the student is a participant or mere observer of the school-related activity;

(d) A number at which parents can be reached; and

(e) The name of a family physician.

Section 3. Cumulative Health Records. (1) A school shall initiate a cumulative health record for each student entering its school.

(a) The record shall be maintained throughout the student's attendance.

(b) The record shall be uniform and shall be on the form Student's Cumulative Health Record, KDESHS006, or the record shall be maintained electronically in the student information system.

(c) The record shall include screening tests related to growth and development, vision, hearing, and any dental screenings other than the initial dental screening recorded on the Kentucky Dental Screening/Examination Form for School Entry, KDESHS005, and findings and recommendations of a health care provider and a dentist.

(d) A follow-up by the proper health or school authorities shall be made on each abnormality noted, and the result shall be recorded.

(2) A local school district shall report all known or suspected cases of communicable disease immediately to the local health department.

Section 4. School District Health Personnel. (1) A superintendent shall designate a person to serve as school health coordinator for the district. The person designated shall meet the following minimum qualifications:

(a) A valid license to practice as a registered nurse, issued under KRS 314.041 by the Kentucky Board of Nursing, and three (3) years of registered nursing practice, as defined in KRS 314.011(6);

(b) A school psychologist certificate, issued by the Education Professional Standards Board (EPSB) pursuant to 16 KAR 2:090, and a minimum of three (3) years of related work experience in a school setting; or

(c) A school social worker certificate, issued by the EPSB pursuant to 16 KAR 2:070, and a minimum of three (3) years of work experience practicing social work in a school setting.

(2) The school health coordinator shall work in cooperation with all school personnel, the local board of education, the department, the local health department, and family resource and youth services centers, in promoting and implementing a school health services program.

Section 5. Delegation to Perform Medication Administration. A local board of education shall require proof that all unlicensed school personnel who have accepted delegation to perform medication administration in school have completed a training course provided by the department or allowed under KRS 158.838(1)(c). The department's course shall be developed in consultation with the Kentucky Board of Nursing to ensure compliance with 201 KAR 20:400 and KRS 156.502.

Section 6. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Medical Examination of School Employees", KDESHS001, January 1, 2015;

(b) "Preventive Student Health Care Examination Form", KDESHS002, January 1, 2015;

(c) "Student's Cumulative Health Record", KDESHS006, January 2, 2015;

(d) "Kentucky Eye Examination Form for School Entry", KDESHS004, January 1, 2015; and

(e) "Kentucky Dental Screening/Examination Form For School Entry", KDESHS005, January 2, 2015.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of District Support, Department of Education, 300 Sower Boulevard[~~500 Mero Street~~], 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: February14, 2019

FILED WITH LRC: February 15, 2019 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on March 27, 2019, at 10:00 a.m. in the State Board Room, Fifth Floor, 300 Sower Boulevard, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through March 31, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Deanna L. 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 relates to school health services and establishes the rules and policies schools are required to create or follow by the authorizing statutes.

(b) The necessity of this administrative regulation: This regulation is required by KRS 158.838 and KRS 156.160.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The authorizing statutes require the Kentucky Board of Education (KBE) to promulgate administrative regulations for the protection of the physical welfare and safety of public school children as well as procedures for the administration of certain medications and development of seizure action plans.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation contains procedures for: medical examinations of school employees; health, vision, and dental screenings of school students; adopting policies related to seizure action plans; administration of certain medications; required student health records; and required district health personnel.

(2) If 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 requires all school districts to adopt policies establishing seizure action plans and requires trained district staff capable of enacting the plans be present whenever students are on school grounds.

(b) The necessity of the amendment to this administrative regulation: KRS 158.838 as amended by HB 147 (2018) requires the KBE to promulgate administrative regulations establishing

procedures for the implementation of seizure actions plans.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment requires school districts to adopt seizure action plans and provide trained staff to implement student plans whenever students are present on school premises.

(d) How the amendment will assist in the effective administration of the statues: The regulation amendment will require all school districts to adopt seizure action plan policies to ensure students with seizure disorder have plans for care created by their doctors. These plans will provide school district personnel with seizure treatment information in the event the student suffers a seizure at school.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: School districts, schools, school employees, and students will be impacted.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The amendment should have minimal impact on school districts. Most districts already have policies related to seizure action plans.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The costs associated with the amendment should be minimal. As stated above, most districts already have policies related to seizure action plans and have staff trained to administer medication.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment will ensure school districts have adopted policies requiring seizure action plans for all students with known seizure disorders.

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

(a) Initially: The cost will be minimal. Any costs will be related to creating policies and training staff. Most districts already have seizure action plan policies.

(b) On a continuing basis: Minimal.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There was no funding allocated for implementing HB 147 (2018).

(7) Provide an assessment of whether an 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 regulation amendment.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are established or increased by this regulation amendment.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all school districts.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? School districts are impacted.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 156.160 and 158.838.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 impact of the regulation amendment is minimal. As previously stated, most school districts have already adopted the seizure action plans required by the 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? The regulation amendment 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? The regulation amendment will not generate revenue

(c) How much will it cost to administer this program for the first year? The cost should be minimal. District costs are related to adopting seizure action plan policies and providing training for staff. Most districts have already adopted seizure action plan policies and train staff to deliver a variety of medications, not just for seizures.

(d) How much will it cost to administer this program for subsequent years? The cost should be minimal. The cost should be minimal. District costs are related to adopting seizure action plan policies and providing training for staff. Most districts have already adopted seizure action plan policies and train staff to deliver a variety of medications, not just for seizures.

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 (+/-): Unknown

Other Explanation: It is impossible to provide specific dollar estimates for this regulation. However, costs should be minimal. District costs are related to adopting seizure action plan policies and providing training for staff. Most districts have already adopted seizure action plan policies and train staff to deliver a variety of medications, not just for seizures.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Maternal and Child Health
(Amendment)

902 KAR 19:010. Kentucky Birth Surveillance Registry.

RELATES TO: KRS 194A.050, 211.180, 211.651, 211.655, 211.660, 211.670, Chapter 216B

STATUTORY AUTHORITY: KRS 194A.050(1), 211.660(6)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) authorizes the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate the programs and fulfill the responsibilities vested in the cabinet. KRS 211.660(1) requires the department to establish the Kentucky Birth Surveillance Registry based on the need to provide information on the incidence, prevalence, and trends of congenital anomalies, stillbirths and high risk conditions; provide information as to possible causes; and develop preventive strategies to reduce their incidence and the secondary complications associated with them. This administrative regulation establishes uniform procedures for collection of data for the registry.

Section 1. Definitions. (1) "Agent" means an entity with which the department may:

(a) Contract pursuant to carrying out the duties of the registry; and

(b) Designate to act on the behalf of the registry to edit or analyze data from hospitals.

(2) "Cabinet" is defined by KRS 211.651(1)[~~means the Cabinet for Health Services~~].

(3) "Coding and transmission specifications"[~~or "UB-92 Submission Manual"~~] means the required data elements and codes to be included on the UB-04 CMS 1450 Form, revised 03-01-2007[~~technical directives the cabinet issues concerning technical matters subject to frequent change, including codes and data for uniform provider entry into particular character positions and fields of the UB-92 and uniform provider formatting of fields and character positions for purposes of electronic data transmissions pursuant to 902 KAR 17:040 or, where not specified, as are delineated in the UB-92 Training Manual~~].

(4) "Department" is defined by KRS 211.651(3)[~~means the~~

~~Department for Public Health~~].

(5) "Free-standing birthing center" means a non-hospital affiliated alternative birthing center licensed under the provisions of KRS Chapter 216B[~~"Division" means the Division of Adult and Child Health, which is the administrator of the Kentucky Birth Surveillance Registry, and is located within the Department for Public Health~~].

(6) "Hospital" means an acute care hospital licensed under the provisions of KRS Chapter 216B.

(7) "Hospitalization" means the inpatient medical episode identified by a patient's birth, admission date, length of stay and discharge date, and further identified by a provider-assigned patient control number unique to that inpatient episode.

(8) "ICD-10 Code" means the International Classification of Diseases, Tenth Revision, Clinical Modification system used by physicians and other health care providers to classify and code all diagnoses, symptoms and procedures recorded in conjunction with hospital care.

(9)[~~(8)~~] "Laboratory" means a medical laboratory licensed under KRS Chapter 333.[~~(9) "ICD-9 Code" means the diagnosis code specifications under the International Classification of Diseases, in current usage, required for reporting diagnoses and diseases to all U.S. Public Health Service and Health Care Financing Administration programs.~~]

(10) "Medical record" means the patient's actual medical record maintained by a hospital's or free-standing birth center's[~~the hospital's~~] medical record department or by a laboratory.

(11) "Record" means documentation in UB-04 data[~~UB-92~~] format, in paper or electronic submission[~~form~~], of:

(a) A hospitalization;

(b) An outpatient visit; or

(c) A laboratory result.

(12) "Registry" means the Kentucky Birth Surveillance Registry.

(13) "UB-04 data" means the standard claim format used by birthing centers, hospitals and laboratory providers to transmit a healthcare claim[~~"UB-92" means the billing form identified by the Federal Health Care Financing Administration as HCFA Form 1450, as recommended by the National Uniform Billing Committee and adopted by the Kentucky Uniform Billing Committee for use by hospitals and other providers in billing for hospitalizations~~].

Section 2. Data Collection. (1) Hospitalization records. A hospital shall document, in the UB-04 data format[~~on a UB-92 record~~], each inpatient hospitalization[~~it provides for~~ ~~an inpatient~~] of a child up to age five (5) years[~~or under~~] who is diagnosed with a congenital birth anomaly or high-risk condition, as defined by the department in accordance with KRS 211.660(2), and included in Section 5[~~7~~] of this administration regulation. Each hospital shall provide to the registry the data specified in Section 6[~~8~~] of this administrative regulation.

(2) Outpatient and laboratory records.

(a) In accordance with KRS 211.660(3)(b), a laboratory shall maintain medical records for each child up to the age of[~~person tested who is~~] five (5) years[~~of age or younger and~~] who has a primary diagnosis or laboratory test result indicating a congenital anomaly or high-risk condition, as defined by the department and included in Section 5[~~7~~] of this administrative regulation.

(b) A laboratory, and a hospital voluntarily maintaining an outpatient list as described at KRS 211.660(3)(a), shall provide the data specified in Section 6[~~8~~] of this administrative regulation.

(3) Access to medical records. A hospital, free-standing birthing center or laboratory[~~reporting entity~~] shall provide an[~~a requesting~~] agent of the department[~~registry with~~] access to the medical record of:

(a) Patients meeting the criteria in subsections (1) or (2) of this section;

(b) An infant who dies before his or her first birthday;

(c) Any stillborn child; and

(d) Maternal prenatal medical records for a patient meeting the criteria in:

1. Subsections (1) or (2) of this section; and

2. Paragraphs (b) and (c) of this subsection.

(4) Maternal prenatal medical records shall be used to assist in determining the possible causes of congenital anomalies, stillbirths, and high risk conditions, and aid in the development of prevention strategies to reduce their incidence as authorized by KRS 211.655[~~any patient meeting the criteria in subsections (1) or (2) of this section, as authorized by KRS 211.660(4)~~].

Section 3. Data Finalization and Submission. (1) Submission of final data. Data shall be deemed final for purposes of submission to the registry as soon as a record is sufficiently final that the provider could submit it to a payor for billing purposes, whether or not the record has actually been submitted to a payor.

(a) Finalized data shall not be withheld from submission to the registry on grounds that it remains subject to adjudication by a payor; and

(b) Data on a hospitalization shall not be submitted to the registry before the patient is discharged[~~:~~

~~1. The patient is discharged; or~~

~~2. The record is sufficiently final that it could be submitted to a payor for billing~~].

(2) Data editing.

(a) If the registry identifies a record as incomplete or invalid, the submitting hospital shall submit a corrected copy within thirty (30) days of notification.

(b) The date of notification shall be the date postmarked on the registry's mailed notice of required correction.

(c) Resubmission shall be by either electronic transmission or mailing.

(3) Transmission of records.

(a) Data submitted to the registry shall be uniformly completed and formatted according to coding and transmission specifications;

(b) Hospitals, free-standing birthing centers, and laboratories that have the capacity shall submit data on computer-readable electronic media;

(c) Hospitals, free-standing birthing centers, and laboratories shall provide backup security against accidental erasure or loss of the data until any incomplete or inaccurate records identified by the registry have been corrected and resubmitted;

(d) Data submitted by mail shall be by certified mail or other traceable carrier, such as United Parcel Service,[~~;~~] and be postmarked on or before the due date

[~~(e) A hospital or laboratory that submits records in the form of paper copies shall either deliver the copies to the registry's reporting agent, or send them in secure packaging by mail postmarked on or before the due date~~].

Section 4. Data Submission Timetable. Quarterly submission. A hospital, free-standing birthing center, or laboratory shall submit data at least once for each calendar quarter. A quarterly submission shall contain data from records of patients which became final during that quarter, as specified in Section 3(1) of this administrative regulation. The data shall be submitted to the registry not later than forty-five (45) days after the last day of that quarter. (1) If the 45th day falls on a weekend or holiday, the submission due date shall become the next following working day.

(2) Outpatient data[~~and laboratory reports~~] shall be submitted directly to the registry[~~KBSR~~] within thirty (30) days of the written request.

(3) A hospital, free-standing birthing center, or laboratory shall, within thirty (30) days of receipt of a written request from the registry, submit a medical records report for specified ICD-10[~~ICD-9~~] codes for a designated quarter.

Section 5.[~~Data Corrections. (1) Editing. The following UB-92 data fields from Section 9 of this administrative regulation shall be edited by the registry upon receipt, in order to ensure completeness and validity of the data for further processing: patient name, insured's name.~~

~~(2) If the registry identifies a record as incomplete or invalid, the submitting hospital shall submit a corrected copy within thirty (30) days of notification. Date of notification shall be considered to be the date postmarked on the registry's mailed notice of required correction. Submission shall be by either electronic transmission or~~

~~mailing.~~

~~Section 6. Working Contacts. (1) Beginning January 1, 1996 and annually thereafter, each hospital required to submit data shall report, by letter to the registry, the names and telephone numbers of a chief executive officer shall not be designated as a contact or backup, unless no other employee has the required technical expertise.~~

~~(2) If the chief executive officer, designated contact person or back-up person changes during the year, the name of the replacing person shall be reported immediately to the registry.~~

~~Section 7.~~] Required Reporting Conditions. Hospitals, free-standing birthing centers, and laboratories shall submit to the registry the following information with respect to all patients up to the age of five (5) years, diagnosed with the following ICD-10 codes:

(1) All congenital anomalies codes Q00-Q99, and all subcategories;

(2) Metabolic storage disorder codes D80-D82, E70-E72, E74-E83, E88, and all subcategories;

(3) Teratogens (noxious influences) codes P04.0-P04.9, and all subcategories;

(4) Zika virus disease code A92.5; and

(5) Any additional condition deemed necessary for public health surveillance.[~~The data which are submitted from the hospital to the registry shall be at least for those patients, from birth to five (5) years of age, for whom any reported diagnoses includes the following ICD-9 codes:~~

~~(1) All congenital anomalies codes - 740-759. (Examples: microcephaly 742.1; macrocephaly 742.4; upper GI anomalies 750; lower GI anomalies 751; gastroschisis/omphalocele 756.7; chromosome anomalies 758.)~~

~~(2) Dwarfism not elsewhere classified - 259.4.~~

~~(3) Metabolic/storage disorders - 270-279, Excluding codes 274, 276 and 278.~~

~~(4) Hereditary hemolytic anemia - 282.~~

~~(5) Neurologic disorders of brain and spinal cord - 334-335.~~

~~(6) Cerebral palsy - 343.~~

~~(7) Teratogens (noxious influences) - 760.7 and all subcategories, from 760.70 to 760.79.~~

~~(8) Infant of diabetic mother - 775.0.~~

~~(9) Failure to thrive - 783.4.~~

~~(10) Small for gestational age - 764.0.~~]

Section 6[~~8~~]. Required Data Elements. (1) UB-04[~~UB-92~~] data. Hospitals and free-standing birthing centers shall ensure that each copy of UB-04[~~UB-92~~] data submitted to the registry contains[~~at least~~] the following data elements:

UB-04 data FIELD #	ELEMENT NAME
8	Patient Name
9	Patient Address
10	Birth Date
11	Sex
12	Admission Date
50	Payer Name
58	Insured's Name
59	Patient Relationship (P. REL)
60	Insured's Unique ID
66	Diagnosis Codes
67	Principle Diagnosis Code
76	Attending Physician National Provider Identifier

[~~as provided on the UB-92 form. Asterisks identify elements that shall not be blank and shall conform to coding and transmission specifications.~~

~~UB-92 FIELD #~~	~~ELEMENT NAME~~
~~*5~~	~~Federal Tax Number~~
~~*12~~	~~Patient Name~~
~~13~~	~~Patient Address~~
~~*14~~	~~Birth Date~~
~~*15~~	~~Sex~~
~~*17~~	~~Admission/Start of Care Date~~
~~*23~~	~~Medical Record #~~
~~*58~~	~~Insured's Name~~
~~59~~	~~Patient Relationship~~
~~60~~	~~Certificate/SSN/Health Insurance Claim/ID Number~~
~~*67~~	~~Principal Diagnosis Code~~
~~68-75~~	~~Other Diagnosis Codes (Up to 8)~~
~~*82~~	~~Attending Physician Unique Identification Number or Alternate Number~~

] (2) Outpatient and laboratory data. A laboratory and a hospital voluntarily maintaining a list of outpatients, in accordance with KRS 211.660(3)(a), shall ensure that the data submitted to the registry includes the following data elements: patient name, patient address, birth date, sex, principal diagnosis, other diagnoses[~~(up to eight (8))~~], and reporting source.

Section 7[~~9~~]. Incorporation by Reference. (1) "UB-04 CMS 1450 Form", 03-01-2007,[~~"UB-92 Training Manual (August 4, 1993)"~~] is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Birth Surveillance Registry, Division of Maternal[~~Adult~~] and Child Health, Department for Public Health, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

JEFFREY D. HOWARD, JR., M.D., Commissioner
ADAM M. MEIER, Secretary

APPROVED BY AGENCY: February 11, 2019

FILED WITH LRC: February 14, 2019 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on March 25, 2019 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 March 18, 2019 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 March 31, 2019. 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: Chase Coffey, 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: (502) 564-3970: julied.brooks@ky.gov; and Chase Coffey

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes uniform data collection and reporting procedures for hospitals, free standing birthing centers, and laboratories related to the diagnosis of congenital anomalies, stillbirths, and high risk conditions. In addition, this regulation allows access to the medical records of children up to the age of five (5) years who have been identified with a congenital anomaly or high risk condition and the secondary complications associated with these conditions.

(b) The necessity of this administrative regulation: KRS 211.660(1) requires the Cabinet for Health and Family Services to collect data on the incidence, prevalence, and trends of congenital anomalies, stillbirths, and high risk conditions; and to develop

preventive strategies to reduce their incidence.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The statement of intent in KRS 211.655 is to establish a system to collect information on the incidence, prevalence and trends of birth defects, stillbirths, and high risk conditions; to provide information on the causes of these conditions; and to develop prevention strategies to reduce the incidence of these conditions. This administrative regulation provides for uniform data collection and reporting procedures, so that children up to the age of five (5) years diagnosed with a congenital anomaly or high risk condition can be identified.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation grants Kentucky Birth Surveillance Registry (KBSR) staff and agents access to medical records for confirmation of a diagnosed congenital anomaly or high risk condition.

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

(a) How the amendment will change this existing administrative regulation: This amendment adds free standing birthing centers in the reporting requirements, removes references to outdated diagnostic coding procedures, removes outdated material incorporated by reference and updates the list of diagnosed congenital anomalies and high risk conditions monitored by the registry. In addition, allowing access to maternal prenatal care records will assist KBSR staff in determining the possible causes of congenital anomalies, stillbirths, and high risk conditions, and better develop prevention strategies to reduce the incidence of these anomalies, stillbirths, and conditions.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to address the change in diagnosis code reporting from the outdated International Classification of Diseases (ICD) 9 coding procedures to the currently used ICD-10 coding procedures. The National Uniform Billing Committee no longer uses the UB-92 Training Manual currently incorporated by reference in the regulation, and has replaced the UB-92 billing form with the UB-04 CMS 1450 Form. This amendment expands the monitored high risk conditions to include children up to age five (5) years diagnosed with Zika virus disease.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 211.660 authorizes the department to expand the list of congenital anomalies and high risk conditions reported on birth certificates. This statute also gives KBSR staff or agents access to medical records for children up to age five (5) years with a primary diagnosis of a congenital anomaly or high risk condition. The statement of intent in KRS 211.655 is for a system to obtain information as to the incidence of, possible causes of, and prevention strategies to reduce congenital anomalies, stillbirths, and high risk conditions.

(d) How the amendment will assist in the effective administration of the statutes: This amendment allows KBSR staff and agents to collect information on the incidence, prevalence and trends of birth defects, stillbirths, and high risk conditions. This amendment brings the reporting procedures and data collection methods in line with national standards currently being used in other states.

(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 124 hospitals listed with the Kentucky Hospital Association, and ninety-eight (98) laboratories. Currently there are no registered free-standing birthing centers in the state.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, 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 affected hospitals and laboratories will be required to include the updated data elements listed in Section 6 of the regulation, and allow KBSR staff and agents access to available maternal prenatal care records. These entities will also begin reporting children up to age five (5) years diagnosed with Zika virus disease.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the identities identified in question (3): There will be no additional cost to the reporting entities as a result of this amended administrative regulation as they are currently required to report the necessary data.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The affected entities will no longer be required to include data that is not currently used by KBSR, thus reducing the burden of data collection and reporting. Children identified as being diagnosed with one (1) of the listed conditions will be referred for appropriate follow up services in a timely manner.

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

(a) Initially: The department maintains a contract with the Kentucky Hospital Association (KHA) for the collection of the required data from hospitals registered with the association. The department pays KHA $18,000 per year for this data collection. In addition, the department pays $30,000 for maintenance of a database used to collect the data necessary to operate the program. There will be no additional cost as a result of the amendment.

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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Kentucky Birth Surveillance Registry is funded through a grant from the Centers for Disease Control and Prevention.

(7) Provide an assessment of whether an 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 with this administrative regulation. An increase in funding 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. There are no fees with this administrative regulation.

(9) TIERING: Is tiering applied? No. All affected entities must meet the data collection and reporting 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? This administrative regulation impacts the Kentucky Birth Surveillance Registry in the Maternal and Child Health division of the Department for Public Health.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. The Kentucky Birth Surveillance Registry is authorized under KRS 211.651 through 211.670.

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

(a) How much 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 will be no change in cost to administer this program.

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Inspector General
Division of Health Care
(Amendment)

902 KAR 20:111. Medically managed intensive inpatient withdrawal management[~~Medical detoxification services~~].

RELATES TO: KRS 216B.015(13), 21 U.S.C. Section 823(g)(2) [~~216B.010-216B.131, 216B.990(1), (2)~~]

STATUTORY AUTHORITY: KRS 216B.042, 222.211(1)(c) [~~216B.040, 216B.105~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.042 requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary for the proper administration of the licensure function, which includes establishing licensure standards and procedures to ensure safe, adequate, and efficient health facilities and health services. KRS 222.211(1)(c) requires the cabinet to be responsible for assuring that services are provided on a twenty-four (24) basis in or near population centers that meet the immediate medical and physical needs of persons intoxicated from the use of alcohol or drugs, or both, including necessary diagnostic and referral services. This administrative regulation establishes standards for medically managed intensive inpatient withdrawal management provided by a chemical dependency treatment program or hospital[~~KRS 216B.040 and 216B.105 mandate that the Cabinet for Human Resources regulate health facilities and health services. This administrative regulation provides for the licensure requirements of medical detoxification services~~].

Section 1. Definitions. (1) "Chemical dependency treatment program" means a freestanding or hospital-based facility licensed in accordance with 902 KAR 20:160.

(2) "Hospital" means a:

(a) General acute care hospital licensed in accordance with 902 KAR 20:009 and 902 KAR 20:016; or

(b) Psychiatric hospital licensed in accordance with 902 KAR 20:170 and 902 KAR 20:180.

Section 2. Services. (1) Medically managed intensive inpatient services shall:

(a) Be delivered twenty-four (24) hours a day in a permanent facility that is a:

1. Chemical dependency treatment program; or

2. Hospital with chemical dependency treatment beds;

(b) Offer medically directed withdrawal management and treatment designed to alleviate acute emotional, behavioral, cognitive, or biomedical distress resulting from, or co-occurring with a patient's use of alcohol or other drugs;

(c) Be provided by a team of interdisciplinary staff under the direction of a licensed physician;

(d) Be provided in accordance with:

1. Physician-approved policies and physician-monitored procedures; or

2. Clinical protocols; and

(e) Include the following features:

1. Availability of specialized clinical consultation, medical evaluation, and supervision for biomedical, emotional, behavioral, and cognitive problems;

2. Ability to arrange for appropriate laboratory and toxicology tests, including human immunodeficiency virus (HIV), hepatitis, and other tests for communicable diseases;

3. Affiliation with other levels of care; and

4. Availability of emergency life support and treatment, either directly or through transfer of the patient to another:

a. Service within the facility; or

b. Health facility equipped to provide emergency care.

(2) Services shall be provided only to patients who meet the:

(a) Diagnostic criteria for substance intoxication or withdrawal disorder as established by the most recent version of the Diagnostic and Statistical Manual of Mental Disorders (DSM) for alcohol, tobacco, and other drug use; and

(b) Dimensional criteria for medically managed intensive inpatient services as established in the most recent version of The American Society of Addiction Medicine (ASAM) Criteria.

Section 3. Staff Requirements and Responsibilities. (1) Physician.

(a) There shall be at least one (1) physician who is:

1. Licensed to practice medicine under KRS Chapter 311; and

2. Responsible for diagnosis, treatment, and treatment plan decisions in collaboration with the patient, including:

a. Whether to admit the patient;

b. Whether to continue the patient in care; and

c. When to transfer or discharge the patient.

(b) If a facility is managing acute opioid withdrawal, there shall be at least one (1) physician with a waiver under 21 U.S.C. Section 823(g)(2) to prescribe drugs approved by the Food and Drug Administration for the treatment of opioid use disorder, as indicated.

(c) The physician shall:

1. Assess the patient within twenty-four (24) hours of admission, or earlier if indicated; and

2. Provide on-site monitoring, medical services, and patient evaluation daily.

(2) Nurse.

(a) There shall be at least one (1) full-time registered nurse.

(b) If the registered nurse is not on duty, a licensed practical nurse shall be responsible for on-site nursing care and a registered nurse shall be on call.

(c) Twenty-four (24) hour nursing services shall include:

1. A comprehensive nursing assessment, conducted at the time of admission; and

2. Monitoring of the patient's progress, which may occur hourly if needed.

(3) Clinical staff. Clinical staff shall:

(a) Be trained and competent to provide physician-directed care and treatment;

(b) Be able to obtain and interpret information regarding the needs of the patients; and

(c) Provide counseling services if authorized under the scope of the clinician's professional license.

(4) There shall be at least one (1) staff person on duty at all times who is trained in cardiopulmonary resuscitation.

Section 4. Medication. A notation shall be made in the patient's record of all medications administered in accordance with physician orders, including:

(1) Date;

(2) Time;

(3) Dosage;

(4) Frequency of administration; and

(5) Name of the individual administering each dose.

Section 5. Therapies. Therapies shall include daily clinical services to assess and address the needs of each patient, including the following:

(1) Medical services as needed, including stabilization of the patient;

(2) Withdrawal rating scale tables and flow sheets that include tabulation of vital signs, if needed;

(3) Individual counseling;

(4) Group counseling;

(5) Withdrawal support;

(6) A range of cognitive, behavioral, medical, mental health, and other therapy as needed to enhance the patient's understanding of:

(a) Addiction;

(b) Completion of the withdrawal management process; and

(c) Referral to an appropriate level of care for continuing treatment;

(7) Interdisciplinary individualized assessment and treatment;

(8) Health education services; and

(9) Services to family members or significant others.

Section 6. Assessment and Treatment Plan. (1) Assessment and treatment planning shall include the following elements:

(a) An individualized treatment plan developed in collaboration with the patient within twenty-four (24) hours of admission, including:

1. Problem identification in dimensions two (2) through six (6) of the most recent version of The ASAM Criteria;

2. Development of treatment goals and measurable treatment objectives; and

3. Activities designed to meet the treatment objectives and management of withdrawal syndrome;

(b) Daily assessment of:

1. Progress during withdrawal management; and

2. Any treatment changes;

(c) Transfer and discharge planning, beginning at the point of admission; and

(d) Referral and linkage arrangements for:

1. Counseling;

2. Medical care;

3. Medication assisted treatment, as indicated;

4. Psychiatric care; and

5. Continuing care.

(2) Physician and nurse progress notes shall:

(a) Be maintained in the patient record;

(b) Reflect implementation of the treatment plan;

(c) Document the client's response to treatment; and

(d) Include each amendment of the treatment plan.

Section 7. Discharge Criteria. (1) A patient shall continue to receive medically managed intensive inpatient withdrawal management until the patient's acute withdrawal signs and symptoms are sufficiently resolved so that the patient can safely transition into continuing services or transfer to a less intensive level of care.

(2) A patient's discharge summary shall be completed within twenty-four (24) hours of discharge and include the following:

(a) The course and progress of the patient with regard to the treatment plan;

(b) General observations of the patient's condition initially, during treatment, and at discharge; and

(c) Recommendations and arrangements for further treatment.

[~~"Detoxification" means the systematic reduction of the amount of a toxic agent in the body or the elimination of a toxic agent from the body.~~

~~(2) "Service" means a medical detoxification service.~~

~~Section 2. Scope of Operation and Services. A facility with a medical detoxification service provides examination, diagnosis, treatment, and referral for intoxicated persons and persons evaluated by a physician to be alcoholics or abusers of other chemical substances in need of detoxification. Medical detoxification services are provided in a facility licensed as a hospital, psychiatric hospital or chemical dependency treatment service and are available on a twenty-four (24) hour basis.~~

~~Section 3. Minimum Standards of Operation. (1) The medical detoxification service shall be provided on the premises of a facility licensed as a hospital, psychiatric hospital or chemical dependency treatment service under the applicable health service and health facility licensure administrative regulations. The service shall have staff, operating procedures and records appropriate to the licensure category of the facility providing the service.~~

~~(2) A psychiatric hospital or chemical dependency treatment service providing medical detoxification shall have provisions for obtaining emergency medical treatment through a licensed hospital with an organized emergency department.~~

~~(3) The facility shall provide extended medical care of the patient within the primary facility or through cooperative arrangement with or referral to another licensed medical care facility if services required for the patient are not available in the primary facility.~~

~~(4) The service shall be operated by licensed staff trained in alcohol and drug treatment procedures who receive regular in-service training relating to their job activities. There shall be at least one (1) person on duty at all times who has received training in cardiopulmonary resuscitation.~~

~~(5) The service shall have twenty-four (24) hour capability, and shall provide examination, diagnosis, treatment, and appropriate referral for all patients.~~

~~(6) A physical examination shall be conducted prior to commencing detoxification or administering medications to determine whether the patient requires transfer to a more appropriate level of care. Admission for inpatient treatment shall be determined by an attending or examining staff physician. The medical care of the patient during detoxification shall be directed by a physician.~~

~~(7) Prior to discharge from the detoxification service an assessment of the patient's condition shall be conducted to determine an appropriate referral for continuing care.~~

~~(8) The facility shall designate the number of beds to be available for detoxification services and assure space is available with reasonable privacy for examination, detoxification, observation, evaluation and treatment of the medical alcohol or drug emergency patient.~~

~~(9) The facility shall have written affiliation with other licensed alcohol and drug services available in the community such as: chemical dependency treatment services and services licensed under 902 KAR Chapter 3 including situation, identification, and disposition (SID) units, thirty (30) day residential units, halfway houses and outpatient services.~~

~~(10) The facility shall have the following equipment immediately available:~~

~~(a) Complete parenteral treatment equipment;~~

~~(b) Appropriate pharmaceutical supplies to include tranquilizers, anticonvulsants, oral and parenteral vitamins;~~

~~(c) Ventilation equipment including masks and cannulae for administration of oxygen and suction equipment; and~~

~~(d) An emergency crash cart.~~

~~(11) The facility shall have twenty-four (24) hour access to physician services on at least an on-call basis.~~]

STEVEN D. DAVIS, Inspector General
ADAM M. MEIER, Secretary

APPROVED BY AGENCY: January 28, 2019

FILED WITH LRC: February 14, 2019 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on March 25, 2019, 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 March 18, 2019, 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 March 31, 2019. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. In accordance with 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: Chase Coffey, Executive Administrative Assistant, 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 Person: Stephanie Brammer-Barnes, email stephanie.brammer@ky.gov, phone 502-564-2888, and Chase Coffey

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes standards for medical detoxification services provided by chemical dependency treatment programs licensed in accordance with 902 KAR 20:160 and licensed general acute care or psychiatric hospitals with chemical dependency treatment beds.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 216B.042, which requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary for the proper administration of the licensure function, including licensure standards and procedures to ensure safe, adequate, and efficient health services. This administrative regulation is also necessary to comply with KRS 222.211(1)(c), which requires the Cabinet to be responsible for assuring that services are provided on a twenty-four (24) hour basis in or near population centers that meet the immediate medical and physical needs of persons intoxicated from the use of alcohol or drugs, or both, including necessary diagnostic and referral services.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 216B.042 and KRS 222.211(1)(c).

(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 standards for medical detoxification services provided by chemical dependency treatment programs and general acute care or psychiatric hospitals with chemical dependency treatment beds.

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

(a) How the amendment will change this existing administrative regulation: This amendment replaces "medical detoxification services" with "medically managed intensive inpatient withdrawal management" to more accurately describe services that assist a patient's withdrawal. The liver detoxifies, but clinicians manage withdrawal as established by this amendment. Additionally, this amendment clarifies that if a facility is managing acute opioid withdrawal, the facility shall have at least one (1) physician with a Drug Enforcement Administration (DEA) waiver to prescribe drugs approved by the Food and Drug Administration for the treatment of opioid use disorder, as indicated.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to more accurately describe inpatient services delivered to patients experiencing acute withdrawal signs and symptoms.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of KRS 216B.042 and KRS 222.211(1)(c).

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the statutes by establishing standards for medically managed intensive inpatient withdrawal.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation impacts licensed chemical dependency treatment programs and hospitals with chemical dependency treatment beds. Currently, there are three (3) chemical dependency treatment programs licensed under 902 KAR 20:160 and seven (7) general acute care or psychiatric hospitals with chemical dependency treatment beds.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Licensed entities that provide medically managed intensive inpatient withdrawal management must:

- Ensure that treatment is designed to alleviate acute emotional, behavioral, cognitive, or biomedical distress resulting from, or co-occurring with a patient's use of alcohol or other drugs;
- Ensure that services are provided by a team of interdisciplinary staff under the direction of a licensed physician;
- Ensure that services are provided only to patients who meet the diagnostic criteria for substance intoxication or withdrawal disorder as established by the most recent version of the DSM and meet the dimensional criteria for medically managed intensive inpatient services as established in the most recent version of the ASAM;
- Provide twenty-four (24) hour nursing services; and
- Ensure that a patient is discharged only if the patient's acute withdrawal signs and symptoms are sufficiently resolved so that the patient can safely transition into continuing services or to a less intensive level of care.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): By updating obsolete language, this amendment more accurately describes the type of inpatient services provided by the licensed entities identified in question (3).

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

(a) Initially: There are no additional costs to the cabinet related to implementation of this amendment.

(b) On a continuing basis: There are no additional costs to the cabinet related to implementation of this amendment on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State general funds and agency monies will be used to implement and enforce this administrative regulation.

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

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

(9) TIERING: Is tiering applied? Tiering is not applicable as compliance with this administrative regulation applies equally to all individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts the Cabinet for Health and Family Services, Office of Inspector General, licensed chemical dependency treatment programs, and hospitals with chemical dependency treatment beds.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216B.042 and 222.211

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

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

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

(c) How much will it cost to administer this program for the first year? This amendment imposes no additional costs on the administrative body.

(d) How much will it cost to administer this program for subsequent years? This amendment imposes no additional costs on the administrative body.

Note: If specific dollar estimates cannot be determined, provide

a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 21 U.S.C. Section 823(g)(2)

(2) State compliance standards. KRS 216B.042 and 222.211

(3) Minimum or uniform standards contained in the federal mandate. On October 17, 2000, Congress passed the Drug Addiction Treatment Act (DATA) which permits qualified physicians to treat narcotic dependence with schedules III-V narcotic controlled substances that have been approved by the Food and Drug Administration (FDA) for that indication. The legislation waives the requirement for obtaining a separate Drug Enforcement Administration (DEA) registration as a Narcotic Treatment Program (NTP) for qualified physicians administering, dispensing, and prescribing these specific FDA approved controlled substances. Physicians registered with the DEA as practitioners who apply and are qualified pursuant to DATA are issued a waiver (DWP) and will be authorized to conduct maintenance and detoxification treatment using specifically approved schedule III, IV, or V narcotic medications. DATA waivers are only granted to qualified physicians.

(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 requirements that are more strict than federal laws or regulations.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

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

907 KAR 1:022. Nursing facility services and intermediate care facility for individuals with an intellectual disability services.

RELATES TO: 42 C.F.R. 431.153, 431.154, 447.280, 482.58[430, 431, 432, 433, 435, 440, 441, 442, 447, 455, 456], 42 U.S.C. 1395tt, 1396l, 1396r[1396a, b, c, d, g, i, l, n, o, p, r, r-2, r-3, r-5, s]

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.558

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds[for the provision of medical assistance to Kentucky's indigent citizenry]. This administrative regulation establishes the provisions relating to nursing facility services and services at an intermediate care facility for individuals with an intellectual disability[services] for which payment shall be made by the Medicaid Program on behalf of both the categorically needy and medically needy recipients.

Section 1. Definitions. (1) "Department" means the Department for Medicaid Services or its designee.

(2) "Department approved system" means a technology system in which:

(a) Providers electronically submit and track level of care (LOC) requests through a self-service portal;

(b) The system triggers LOC tasks as reminders to providers and allows them to submit reassessments electronically; and

(c) Information is exchanged electronically with Kentucky's:

1. Medicaid Enterprise Management Solution (MEMS); and

2. Integrated eligibility and enrollment system.

(3) "High-intensity nursing care services" means care provided:

(a) To a Medicaid-eligible individual who meets high-intensity nursing care patient status criteria in accordance with Section 4 of this administrative regulation; and

(b) By a nursing facility or a nursing facility with Medicaid waiver participating in the Medicaid Program with care provided in beds also participating in the Medicare Program.

(4)[(3)] "High-intensity rehabilitation[rehabilitative] services" means therapy services that[which]:

(a) Are expected to improve an individual's condition while the individual possesses reasonable potential for improvement in functional capability; and

(b) Do not include restorative and maintenance nursing procedures, including routine range of motion exercises and application of splints or braces by nurses and staff.

(5)[(4)] "Intermediate care facility for individuals with an intellectual disability" or "ICF-IID" means a licensed intermediate care facility for individuals with an intellectual disability certified by[to] the Department for Medicaid Services as meeting all standards for an intermediate care facility for individuals with an intellectual disability.

(6)[(5)] "Intermediate care facility for individuals with an intellectual disability services" or "ICF-IID services" means care provided:

(a) To a Medicaid-eligible individual who meets ICF-IID patient status criteria in accordance with Section 4 of this administrative regulation; and

(b) By an ICF-IID participating in the Medicaid Program.

(7)[(6)] "Intermittent high-intensity nursing care services" means services for an individual who requires high-intensity nursing care services at regular or irregular intervals, but not on a twenty-four (24) hour-per-day basis and not less than three (3) calendar days per week.

(8)[(7)] "Low-intensity nursing care services" means care provided:

(a) To a Medicaid-eligible individual who meets low-intensity nursing care patient status criteria in accordance with Section 4 of this administrative regulation; and

(b) By a nursing facility or a nursing facility with Medicaid waiver participating in the Medicaid program.

(9)[(8)] "Medical condition" means a[usually defective] state of health relative to a clinical diagnosis made by a licensed physician, physician assistant,[or] advanced practice registered nurse, or a qualified behavioral health professional[practitioner].

(10)[(9)] "Nursing facility" or "NF" means:

(a) A facility:

1. To which the Cabinet for Health and Family Services, Office of Inspector General[state survey agency] has granted an NF license;

2. For which the Cabinet for Health and Family Services, Office of Inspector General[state survey agency] has recommended to the department certification as a Medicaid provider; and

3. To which the department has granted certification for Medicaid participation; or

(b) A hospital swing bed that provides services in accordance with 42 U.S.C. 1395tt and 1396l, if the swing bed is certified to the department as meeting requirements for the provision of swing bed services in accordance with 42 U.S.C. 1396r(b), (c), (d), 42 C.F.R. 447.280 and 482.58[482.66].

(11)[(10)] "Nursing facility with Medicaid waiver" or "NF-W" means a facility:

(a) To which the Cabinet for Health and Family Services, Office of Inspector General[state survey agency] has granted an NF license;

(b) For which the Cabinet for Health and Family Services, Office of Inspector General[state survey agency] has recommended to the department certification as a Medicaid provider;

(c) To which the department has granted a waiver of the nurse staffing[nursing staff] requirement; and

(d) To which the department has granted certification for Medicaid participation.

(12)[~~(11)~~] "Patient status" means[~~that~~] an individual's level of care[~~individual possesses care needs~~] in accordance with Section 4 of this administrative regulation for treatment in an institutional setting.

(13)[~~(12)~~] "Personal care" means services to help an individual achieve and maintain good personal hygiene, which may include assistance with bathing, shaving, cleaning and trimming of fingernails and toenails, cleaning of the mouth and teeth,[~~and~~] washing, and grooming and cutting of hair.

(14)[~~(13)~~] "Stable medical condition" means a medical condition that[~~which~~] is capable of being maintained in accordance with a planned treatment regimen requiring a minimum amount of medical supervision without significant change or fluctuation in a patient's condition or treatment regimen.

Section 2. Participation Requirements. A facility desiring to participate in the Medicaid program as a nursing facility, nursing facility with Medicaid waiver, or ICF-IID shall meet the requirements established in this section.

(1) An application for participation shall be made in accordance with 907 KAR 1:671 and 907 KAR 1:672.

(2)(a) Except as provided by paragraph (b) of this subsection or for a nursing facility with Medicaid waiver, a nursing facility shall have at least twenty (20) percent of all Medicaid certified beds, but not less than ten (10) beds, also certified to participate in Medicare[~~unless the facility has obtained a Medicaid waiver of the nurse staffing requirement~~].

(b) If a nursing facility has less than ten (10) beds certified for Medicaid, all Medicaid certified beds shall also be certified to participate in Medicare.

(3)(a) Except as provided by paragraph (b) of this subsection, if a nursing facility with Medicaid waiver[~~which has obtained a Medicaid waiver of the nurse staffing requirements~~] chooses to participate in Medicare, the facility shall have at least twenty (20) percent of all Medicaid certified beds, but not less than ten (10) beds, also certified to participate in Medicare.

(b) If a nursing facility with Medicaid waiver has less than ten (10) beds[~~are~~] certified for Medicaid, all Medicaid beds shall also be certified to participate in Medicare.

(4) A nursing facility or a nursing facility with Medicaid waiver shall[~~be required to~~] comply with the preadmission screening and resident review requirements specified in 42 U.S.C. 1396r and 907 KAR 1:755. A facility failing to comply with these requirements shall be subject to disenrollment, with exclusion from participation to be accomplished in accordance with 907 KAR 1:671, 42 C.F.R. 431.153, and 42 C.F.R. 431.154.

(5) A facility shall[~~be required to~~] be certified by the Cabinet for Health and Family Services, Office of Inspector General[~~state survey agency~~] as meeting NF, NF-W, or ICF-IID status.

(6) In order to provide specialized rehabilitation services to an individual with a brain injury in accordance with Section 6 of this administrative regulation, a facility shall be accredited by the Commission on Accreditation of Rehabilitation Facilities (CARF).

(7) A participating nursing facility shall be certified in accordance with standards and conditions specified in this administrative regulation[~~the Medicaid Nursing Facility Services Manual~~] before the facility may operate a unit that provides:

(a) Preauthorized specialized rehabilitation services for a person with a brain injury; or

(b) Care for a person who is ventilator dependent.

(8) A participating nursing facility, nursing facility with Medicaid waiver, or ICF-IID shall enter a resident's discharge date into a department approved system.

(9)(a) A licensed swing bed facility shall contact the department for a new level of care review prior to swinging the bed back to nursing facility status if the bed swings to acute status for three (3) or more consecutive calendar days.

(b) An NF shall not count the day the bed will swing back to nursing facility status in the three (3) consecutive days specified in paragraph (a) of this subsection.

Section 3. Payment Provisions. (1) Payment for high-intensity nursing care, low-intensity nursing care, or ICF-IID services shall be limited to those services meeting the care definitions established in Section 1 of this administrative regulation.

(2) An NF or NF-W shall receive payment for high-intensity nursing care services provided to a Medicaid-eligible individual meeting high-intensity nursing care patient status criteria if the services are provided in a Medicaid participating bed that is also participating in the Medicare Program.

(3) An NF or NF-W shall receive payment for low-intensity nursing care services provided to a Medicaid-eligible individual meeting low-intensity nursing care patient status criteria if the services are provided in a Medicaid participating bed.

(4) An ICF-IID shall receive payments for ICF-IID services only.

Section 4.[~~Determining~~] Patient Status Criteria. A patient status decision shall be based on medical diagnosis, care needs, services and health personnel required to meet these needs, and the feasibility of meeting the needs through alternative institutional or noninstitutional services. (1) For an admission and continued stay, an individual shall qualify under the preadmission screening and resident review criteria specified in 42 U.S.C. 1396r and 907 KAR 1:755.

(2) An individual shall be considered to meet the level of care criteria[~~qualify~~] for high-intensity nursing care if:

(a) On a daily basis:

1. The individual's needs mandate:

a. High-intensity nursing care services; or

b. High-intensity rehabilitation services; and

2. The care can only be provided on an inpatient basis;

(b) The inherent complexity of a service prescribed for an individual exists to the extent that it can be safely or effectively performed only by or under the supervision of technical or professional personnel; or

(c) The individual has an unstable medical condition manifesting a combination of at least two (2) or more care needs in the following areas:

1. Intravenous, intramuscular, or subcutaneous injections and hypodermoclysis or intravenous feeding;

2. Nasogastric or gastrostomy tube feedings;

3. Nasopharyngeal and tracheotomy aspiration;

4. Recent or complicated ostomy requiring extensive care and self-help training;

5. In-dwelling catheter for therapeutic management of a urinary tract condition;

6. Bladder irrigations in relation to previously indicated stipulation;

7. Special vital signs evaluation necessary in the management of related conditions;

8. Sterile dressings;

9. Changes in bed position to maintain proper body alignment;

10. Treatment of extensive decubitus ulcers or other widespread skin disorders;

11. Receiving medication recently initiated, which requires high-intensity observation to determine desired or adverse effects or frequent adjustment of dosage;

12. Initial phases of a regimen involving administration of medical gases; or

13. Receiving services that[~~which~~] would qualify as high-intensity rehabilitation services if provided by or under the supervision of a qualified therapist, for example:

a. Ongoing assessment of rehabilitation needs and potential;

b. Therapeutic exercises;

c. Gait evaluation and training performed by or under the supervision of a qualified physical therapist;

d. Range of motion exercises that[~~which~~] are part of the active treatment of a specific disease state that[~~which~~] has resulted in a loss of, or restriction of, mobility;

e. Maintenance therapy if the specialized knowledge and judgment of a qualified therapist is required to design and establish a maintenance program based on an initial evaluation and periodic reassessment of the patient's needs[~~,~~] and consistent with the patient's capacity and tolerance;

f. Ultrasound, short wave, and microwave therapy treatments;

g. Hot pack, hydrocollator infrared treatments, paraffin baths, and whirlpool (if the patient's condition is complicated by circulatory deficiency, areas of desensitization, open wounds, fractures, or other complications, and the skills, knowledge, and judgment of a qualified therapist are required); or

h. Services by or under the supervision of a speech-language pathologist or audiologist if necessary for the restoration of function in speech or hearing.

(3)(a) An individual shall be considered[determined] to meet the level of care criteria for low-intensity patient status if[the individual requires], unrelated to age appropriate dependencies with respect to a minor, the individual meets the requirements of this paragraph[intermittent high-intensity nursing care, continuous personal care or supervision in an institutional setting. In making the decision as to patient status, the following criteria shall be applicable]:

1.[(a)] An individual with a stable medical condition requiring intermittent high-intensity nursing care services not provided in a personal care home shall be considered to meet low-intensity patient status;

2.[(b)] An individual with a stable medical condition, who has a complicating problem that[which] prevents the individual from caring for himself or herself in an ordinary manner outside the institution, shall be considered to meet low-intensity patient status. For example, an ambulatory cardiac patient with hypertension may be reasonably stable on appropriate medication, but have intellectual deficiencies preventing safe use of self-medication, or other problems requiring frequent nursing appraisal, and thus be considered to meet low-intensity patient status; or

3.[(c)] An individual with a stable medical condition manifesting a significant combination of at least two (2) or more of the following care needs shall be determined to meet low-intensity patient status [if the professional staff determines that the combination of needs can be met satisfactorily only by provision of intermittent high-intensity nursing care, continuous personal care or supervision in an institutional setting]:

a. Assistance with personal care;

b.[1.] Assistance with transferring to or propelling a wheelchair;

c.[2.] Physical or environmental management for confusion and mild agitation;

d.[3.] Must have assistance and be present during the entire meal time[be fed];

e. Physical[4.] assistance with going to the bathroom or using a bedpan for elimination;

f. Existing[5. Old] colostomy care;

g.[6.] Indwelling catheter for dry care;

h.[7.] Changes in bed position;

i.[8.] Administration of stabilized dosages of medication;

j.[9.] Restorative and supportive nursing care to maintain the individual and prevent deterioration of the individual's[his] condition;

k.[10.] Administration of injections during time licensed personnel is available; or

l.[11. Services that could ordinarily be provided or administered by the individual but due to physical or mental condition is not capable of self-care; or

12.] Routine administration of oxygen[medical gases] after a regimen of therapy has been established.

(b)[(d)] An individual shall not be considered to meet low-intensity patient status criteria if care needs are limited to the following:

1. Verbal or gestural[Minimal] assistance with activities of daily living;

2. Independent use of mechanical devices, for example, assistance in mobility by means of a wheelchair, walker, crutch, or cane;

3. A limited diet such as low salt, low residue, reducing or another minor restrictive diet; or

4. Medications that can be self-administered or the individual requires minimal assistance such as set up of medications or simple cuing[supervision].

(4) An individual who meets[with a mental illness, an intellectual disability, or a developmental disability meeting the health status and care needs specified in subsections (2) or (3) of this section shall:

(a) Be considered to meet] patient status criteria shall[; and

(b)] be specifically excluded from coverage[in the following situations:

1.] if the department determines that in the individual case the combination of care needs are beyond the capability of the facility and that placement in the facility is inappropriate due to potential danger to the health and welfare of the individual, other patients in the facility, or staff of the facility[; or

2. If the individual does not meet the preadmission screening and resident review criteria specified in 42 U.S.C. 1396r and 907 KAR 1:755 for entering or remaining in a facility].

(5) An individual shall be considered to meet the level of care criteria for ICF-IID[patient status] if the individual meets criteria for a diagnosis of an intellectual disability as defined by the current Diagnostic and Statistical Manual of Mental Diseases (DSM) with onset of condition prior to age eighteen (18)[requires physical or environmental management or rehabilitation for a moderate to severe intellectual disability] and meets the following criteria:

(a) Requires physical or environmental management or habilitation;

(b) [The individual has significant developmental disabilities or significantly subaverage intellectual functioning and] Requires a planned program of active treatment[to attain or maintain the individual's optimal level of functioning, but does not necessarily require nursing facility or nursing facility with waiver services];

(c)[(b) The individual] Requires a protected environment; and

(d) Unrelated to age appropriate dependencies with respect to a minor, has substantial deficits in adaptive functioning that, without ongoing support, limit functioning in one (1) or more activities of daily life such as communication, social participation, and independent living across multiple environments, such as home, school, work, and community[while overcoming the effects of developmental disabilities and subaverage intellectual functioning while:

1. Learning fundamental living skills;

2. Learning to live happily and safely within his own limitations;

3. Obtaining educational experiences that will be useful in self-supporting activities; or

4. Increasing his awareness of his environment; or

(c) The individual has a psychiatric primary diagnosis or needs if:

1. The individual also has care needs as shown in paragraph (a) or (b) of this subsection;

2. The mental care needs are adequately handled in a supportive environment (i.e., the intermediate care facility for individuals with an intellectual disability); and

3. The individual does not require psychiatric inpatient treatment].

(6) An individual who does not require a planned program of active treatment to attain or maintain the individual's optimal level of functioning shall not meet ICF-IID patient status.

(7) An individual shall not be denied for ICF-IID services solely due to advanced age,[or] length of stay in an institution, or history of previous institutionalization, if the individual qualifies for ICF-IID services on the basis of all other factors.

(8)[Excluding an individual with an intellectual disability, for an individual with a developmental disability to qualify for ICF-IID services, the disability shall have manifested itself prior to the individual's 22nd birthday.

(9)] Transfer trauma criteria. A Medicaid recipient in an NF who does not meet the low-intensity or high-intensity nursing care patient status criteria established in this section shall not be discharged from an NF if:

(a) The recipient has resided in an NF for at least eighteen (18) consecutive months;

(b) The recipient's attending physician determines that the recipient would suffer transfer trauma in that the individual's[his or her] physical, emotional, or mental well-being would be compromised by a discharge action as a result of not meeting patient status criteria; and

(c) The department confirms the recipient's attending physician's assessment regarding the trauma caused by possible discharge from the NF.

(9)[~~(10)~~] A Medicaid recipient who meets transfer trauma criteria in accordance with subsection (8)[~~(9)~~] of this section shall:

(a)[~~Shall~~] Remain in an NF and continue to be covered by the department for provider reimbursement at least until the individual's[~~his or her~~] subsequent transfer trauma assessment; and

(b) Be reassessed for transfer trauma every 180 calendar days[~~six (6) months~~].

(10)[~~(11)~~] The recipient transfer trauma criteria established in subsection (8)[~~(9)~~] of this section shall not apply to an individual who resides in a facility that[~~which~~] experiences closure or a license or certificate revocation.

Section 5. Reevaluation of Need for Service. (1) Nursing facility, nursing facility with Medicaid waiver, or ICF-IID services shall continue to be provided to an individual if the individual's[~~his or her~~] health status and care needs are within the scope of program benefits as described in Sections 3 and 4 of this administrative regulation.

(2) An individual's patient status shall be reevaluated at least once every twelve (12) months[~~six (6) months~~].

(3) Except as provided in Section 4(8) and (9) of this administrative regulation, if a reevaluation of care needs reveals that an individual no longer requires high-intensity nursing care, low-intensity nursing care, or intermediate care for an individual with an intellectual or a developmental disability:

(a) Payment shall continue for ten (10) calendar days to permit orderly discharge or transfer to an appropriate level of care; and

(b) Ten (10) calendar days from the date the reevaluation is finalized, payment shall no longer be appropriate to[~~in~~] the facility.

Section 6. Requirements, Standards, and Preauthorization of Specialized Rehabilitation Services for Individuals with Brain Injuries. An individual who has a brain injury and meets the high-intensity nursing care patient status criteria established in Section 4 of this administrative regulation or is qualified under subsection (5) of this section shall be provided care in a certified unit providing specialized rehabilitation services for persons with brain injuries (i.e., brain injury unit) if the care is preauthorized by the department using criteria specified in this section. For coverage to occur, authorization of coverage shall be granted prior to admission of the individual with the brain injury into the certified brain injury unit, or if previously admitted to the unit with other third party coverage, authorization shall be granted prior to exhaustion of those benefits.

(1) Injuries within the scope of benefits shall be:

(a) Central nervous system injury from physical trauma;

(b) Central nervous system damage from anoxia or hypoxic episodes; or

(c) Central nervous system damage from an allergic condition, toxic substance, or another acute medical or clinical incident.

(2) The following items shall be indicators for admission and continued stay:

(a) The individual sustained a traumatic brain injury with structural, nondegenerative brain damage and is medically stable;

(b) The individual shall not be in a persistent vegetative state;

(c) The individual demonstrates physical, behavioral, and cognitive rehabilitation potential;

(d) The individual requires coma management; or

(e) The individual has sustained diffuse brain damage caused by anoxia, toxic poisoning, or encephalitis.

(3) The determination as to whether preauthorization is appropriate shall be made taking into consideration the following:

(a) The presenting problem;

(b) The goals and expected benefits of the admission;

(c) The initial estimated time frames for goal accomplishment; and

(d) The services needed.

(4) The following list of conditions shall not be considered brain injuries requiring specialized rehabilitation under this section:

(a) A stroke treatable in a nursing facility providing routine rehabilitation services;

(b) A spinal cord injury in which there is no known or obvious injury to the intercranial central nervous system;

(c) Progressive dementia or other mentally impairing condition;

(d) Depression or psychiatric disorder in which there is no known or obvious central nervous system damage;

(e) An intellectual disability or birth defect related disorder of long standing; or

(f) Neurological degenerative, metabolic or other medical condition of a chronic, degenerative nature.

(5) An individual may qualify for coverage under the brain injury program if:

(a) The individual[~~He or she~~] has a stable medical condition with complicating care needs that[~~which~~] prevent the individual from caring for himself[~~him~~] or herself in an ordinary manner outside an institution;

(b) The individual has sufficient neurobehavioral sequelae resulting from the brain injury that,[~~which~~] when taken in combination, require specialized rehabilitation services; and

(c) The following criteria are met:

1. The individual shall not have previously received specialized rehabilitation services (an individual discharged for the purpose of transfer to another brain injury facility shall not be considered to have "previously received specialized rehabilitation services") as established in this section;

2. The individual shall have the potential for rehabilitation;

3. The care shall be prior authorized on an individual basis by the department; and

4. No more than 180 calendar days shall be approved per authorization[~~The care shall be authorized for no more than six (6) months at any one (1) time~~].

Section 7. Requirements, Standards, and Preauthorization of Certified Distinct-part Nursing Facility Ventilator Services. An individual who is ventilator dependent and meets the high-intensity nursing care patient status criteria established in Section 4(2) of this administrative regulation shall be provided care in a certified distinct-part ventilator nursing facility unit providing specialized ventilator services if the care is preauthorized using criteria specified in this section[~~and the Medicaid Nursing Facility Services Manual~~]. (1) To participate in the Medicaid Program as a distinct-part nursing facility ventilator service provider:

(a) A nursing facility shall operate a program of ventilator care within a certified distinct-part nursing facility unit that[~~which~~] meets the needs of all ventilator patients admitted to the unit; and

(b) A certified distinct-part nursing facility unit shall:

1. Not have less than twenty (20) beds certified for the provision of ventilator care;

2. Have had[~~Be required to have~~] an average patient census of not less than fifteen (15) patients during the calendar quarter preceding the beginning of the facility's rate year or the quarter for which certification is being granted in order to qualify as a distinct-part ventilator nursing facility unit;

3. Have a ventilator machine owned by the facility for each certified bed with an additional backup ventilator machine required for every ten (10) beds; and

4. Have a[~~an appropriate~~] program for discharge planning and weaning from the ventilator.

(2) This subsection shall constitute[~~The following items shall be~~] the patient criteria and treatment characteristics for a distinct-part ventilator nursing facility.[~~:~~]

(a) An individual shall be considered ventilator[~~(or respiration stimulating mechanism)~~] dependent if the individual:

1. Requires:

a. This mechanical support for twelve (12) or more hours per day; and

b. Twenty-four (24) hours per day high-intensity[~~specialty~~] nursing care services; or

2. Is in an active weaning program ordered by and under the management of a physician and reviewed and approved by the department; and

a. The goal of the active weaning program is to attain the least mechanical support in the least invasive manner that is consistent

with the maximal function of the individual and ultimately no mechanical respiratory support;

b. The individual demonstrates steady progress in decreasing the number of hours and dependence upon the ventilator[~~(or respiration stimulating mechanism)~~] as documented in the individual's physician and nursing progress notes; and

c. The individual requires twenty-four (24) hours per day high-intensity[~~specialty~~] nursing care services.

(b) An individual shall not be considered ventilator dependent due to being in an active weaning program if:

1. The individual is no longer demonstrating steady progress in decreasing the number of hours and dependence upon the ventilator[~~(or respiration stimulating mechanism)~~]; or

2. The individual has been off the ventilator[~~(or respiration stimulating mechanism)~~] for seventy-two (72) consecutive hours.

(c) An admission from hospitalization or other location shall demonstrate two (2) weeks clinical and physiologic stability including applicable weaning attempts prior to transfer from the hospital or other location.

(d) A physician's order shall specify that the services shall not be provided in an alternative setting due to the medical stability and safety needs of the individual.

(3) A patient status determination shall be made taking into consideration the following factors[~~and those defined in the Medicaid Nursing Facility Services Manual, Section IV-B, C and D~~]:

(a) Alternative care possibilities;

(b) Goals for patient care;

(c) Primary hypoventilation, restrictive lung, ventilatory muscular dysfunction, or obstructive airway disorders needs that[~~which~~] may necessitate mechanical ventilator and related care;

(d)[~~Nonhospital management factors and needs;~~

~~(e)~~] Patient treatment characteristics;

(e)[~~(f)~~] Home care potential;

(f)[~~(g)~~] Suitability of transfer to the ventilator care unit; and

(g)[~~(h)~~] Provision of an appropriate place of care[~~; and~~

~~(i) Other facility admission indicators as established in the Medicaid Nursing Facility Services Manual~~].

Section 8. Denial of Patient Status. If an individual does not meet Medicaid criteria for admission or continued stay in a nursing facility, nursing facility with Medicaid waiver, or ICF-IID, the individual may appeal the denial in accordance with 907 KAR 1:563.

Section 9. Reserved Bed Days. The department shall cover and reimburse for reserved bed days as established in this section.[~~follows:~~] (1) In accordance with subsection (3) of this section, reserved bed days, per resident, for an NF or an NF-W shall be:

(a) Covered for a maximum of fourteen (14) days per calendar year due to hospitalization. Accumulated bed reserve days shall follow a resident if the resident relocates to another facility within a calendar year rather than starting over at zero due to the relocation;

(b) Covered for a maximum of ten (10) days per calendar year for leaves of absence other than hospitalization. Accumulated bed reserve days shall follow a resident if the resident relocates to another facility within a calendar year rather than starting over at zero due to the relocation;

(c) Reimbursed at seventy-five (75) percent of a facility's rate if the facility's occupancy percentage[~~percent~~] is ninety-five (95) percent or greater; and

(d) Reimbursed at fifty (50) percent of a facility's rate if the facility's occupancy percentage[~~percent~~] is less than ninety-five (95) percent.

(2) In accordance with subsection (3) of this section, for an ICF-IID:

(a) Reserved bed days, per resident, for an ICF-IID shall:

1. Be covered for a maximum of forty-five (45) days within a calendar quarter; and

2. Not exceed fifteen (15) calendar days per stay due to hospitalization; and

(b) More than thirty (30) consecutive reserved bed days due to hospitalization plus leave of absence or due to leave of absence shall not be approved for coverage.

(3) Coverage during an individual's absence due to hospitalization or due to leave of absence shall be contingent upon the following conditions being met:

(a) The individual shall:

1. Be in Medicaid payment status in the level of care the individual[~~he or she~~] is authorized to receive; and

2. Have been a resident of the facility at least overnight;

(b) An individual for whom Medicaid is making Medicare coinsurance payments shall not be considered to be in Medicaid payment status for purposes of this policy;

(c) The individual shall be reasonably expected to return to the same level of care;

(d) Due to demand at the facility for beds at that level, there shall be a likelihood that the bed would be occupied by another patient were it not reserved;

(e) The hospitalization shall be for treatment of an acute condition, and not for testing, brace-fitting, or another noncovered service;

(f) For a leave of absence other than for hospitalization, the individual's plan of care shall include a physician's order providing for leave; and

(g) A leave of absence shall include a visit with a relative or friend, or a leave to participate in a state-approved therapeutic or rehabilitative program.

(4) Bed reservation days shall not be available for an individual admitted to a psychiatric hospital or ICF-IID.

(5) An NF shall advise a resident prior to the resident's departure from the facility if the NF chooses not to reserve a bed for the resident.

Section 10. Determination of Patient Care Status[~~Preadmission Screening and Resident Review~~]. (1) Prior to or on the date of admission of an individual, an NF shall complete a level of care application in a department approved system, which consists of a:

(a)[~~conduct a~~] Level I PASRR in accordance with 907 KAR 1:755, Section 4; and

(b) A level of care request for admission in a department approved system, except for an individual requesting institutionalized hospice.

(2) Compliance with 907 KAR 1:755 shall be required in order for an individual to be admitted to an NF.

(3)(a) The department shall:

1. Approve the level of care application;

2. Deny the level of care application; or

3. Request more information from the facility if all required information was not previously provided.

(b) Notification of denial shall be sent to the:

1. Patient or their responsible party; and

2. NF.

(c) If the admission is approved, the department shall:

1. Except as provided by paragraph (d) of this subsection, perform an onsite continuing stay review within thirty (30) calendar days of the admission to ensure the resident continues to meet the nursing facility level of care criteria in accordance with this administrative regulation; and

2. Re-certify the resident every 180 calendar days.

(d) There shall not be a review pursuant to paragraph (c)1. of this subsection for an individual who has a Level II PASRR.

(4) Prior to or on the date of admission of an individual to an ICF-IID, the facility shall complete a level of care request for admission in a department approved system[~~Section 11. Incorporation by Reference. (1) Medicaid Nursing Facility Services Manual", Department for Medicaid Services, April 2006 edition, is incorporated by reference.~~

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

CAROL H. STECKEL, Commissioner
ADAM M. MEIER, Secretary

APPROVED BY AGENCY: February 11, 2019

FILED WITH LRC: February 14, 2019 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on March 25, 2019, 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 March 18, 2019, 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 March 31, 2019. 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: Chase Coffey, Executive Administrative Assistant, 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 Chase Coffey

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the provisions relating to nursing facility (NF) services and intermediate care facility for individuals with an intellectual disability (ICF-IID) services for which payment shall be made by the Medicaid Program on behalf of both the categorically needy and medically needy recipients.

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to establish the provisions relating to NF and ICF-IID services for which payment shall be made by the Medicaid Program on behalf of both the categorically needy and medically needy recipients.

(c) How this administrative regulation 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 this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing the provisions relating to NF and ICF-IID services for which payment shall be made by the Medicaid Program on behalf of both the categorically needy and medically needy recipients.

(2) If 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 907 KAR 1:022 updates citations and makes other changes to comply with the drafting and formatting requirements of KRS Chapter 13A; establishes a definition for "department approved system"; requires a participating nursing facility, nursing facility with Medicaid waiver, or ICF-IID to enter a resident's discharge date into a department approved system; requires a licensed swing bed facility to contact the department for review prior to swinging the bed back to nursing facility status if the bed swings to acute status for three (3) or more calendar days; changes references from "six (6) months" to "180 calendar days"; removes the Medicaid Nursing Facility Services Manual; specifies that bed reservation days shall not be available for an individual admitted to a psychiatric hospital or ICF-IID; requires a nursing facility to advise a resident prior to the resident's departure from the facility if the facility chooses not to reserve a bed for the patient; and establishes the requirements governing determinations of patient care status.

(b) The necessity of the amendment to this administrative regulation: The amendments to this administrative regulation are necessary to update the level of care requirements for nursing facilities and intermediate care facilities for individuals with an intellectual disability, including changes necessary to transition paper level of care processes to a new electronic self-service portal.

(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: This administrative regulation assists in the effective administration of the statutes by updating the level of care requirements for nursing facilities and intermediate care facilities for individuals with an intellectual disability, including changes necessary to transition paper level of care processes to a new electronic self-service portal.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 321 nursing facilities serving over 22,525 Medicaid recipients currently participate in the Medicaid nursing facility program and approximately 115 home and community based waiver providers serve over 15,000 individuals via the Medicaid home and community based waiver program.

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

(a) List 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 be transitioned from paper level of care processes to a new electronic self-service portal. Facilities will use the department approved system to submit and track level of care requests and to enter a resident's discharge date. A licensed swing bed facility is required to contact the department for a new level of care review prior to swinging the bed back to nursing facility status if the bed swings to acute status for three (3) or more consecutive calendar days. Facilities will need to follow the revised level of care criteria for resident admissions and recertifications.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There should not be any additional costs for complying with this administrative regulation, as it will save NFs and ICF-IIDs money by implementing an electronic self-service portal, rather than continuing the paper level of care processes; additionally, there will be reduced paperwork requirements, more accurate and efficient level of care determination requests, and a reduction in the possibility of data mismanagement or human error in the uploading of information.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The benefits of compliance include saving NFs and ICF-IIDs money by implementing an electronic self-service portal, rather than continuing the paper level of care processes; additionally, there will be reduced paperwork requirements, more accurate and efficient level of care determination requests, and a reduction in the possibility of data mismanagement or human error in the uploading of information.

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

(a) Initially: There are no costs to implementing this administrative regulation either initially or on a continuing basis.

(b) On a continuing basis: There are no costs to implementing this administrative regulation either initially or on a continuing basis.

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

authorized under Title XIX and Title XXI of the Social Security Act, and state matching funds of general and agency appropriations.

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

(9) TIERING: Is tiering applied? Tiering is applied as different levels of care criteria are established based on the resident's care needs and the type of facility.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 C.F.R. 431.153, 431.154, 447.280, 482.58, 42 U.S.C. 1395tt, 1396l, 1396r

2. State compliance standards. KRS 194A.030(2), 194A.050(1), 205.520(3), 205.558

3. Minimum or uniform standards contained in the federal mandate. Pursuant to 42 U.S.C. 1396a et. seq., the Commonwealth of Kentucky has exercised the option to establish a Medicaid Program. Having elected to offer Medicaid coverage, the state must comply with federal requirements contained in 42 U.S.C. 1396 et. seq.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No, this administrative regulation does not impose stricter, additional, or different requirements or responsibilities than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter, additional, or different requirements or responsibilities than those required by the federal mandate.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? 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.030(2), 194A.050(1), 205.520(3), 205.558

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

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

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

(c) How much will it cost to administer this program for the first year? Nothing

(d) How much will it cost to administer this program for subsequent years? Nothing

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

907 KAR 1:330. Hospice services.

RELATES TO: KRS 205.520, 42 C.F.R. 418.3, 418.20-418.30, 42 U.S.C. 1395d, 1395x(dd)(2), 1396d(o)

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 has responsibility to administer the Medicaid Program[~~of medical assistance in accordance with Title XIX of the Social Security Act~~]. KRS 205.520(3) authorizes[~~empowers~~] the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds[~~for the provision of medical assistance to Kentucky's indigent citizenry~~]. This administrative regulation establishes[~~sets forth~~] the terms and conditions under which the Medicaid Program shall[~~cabinet will~~] provide hospice care to both the categorically and medically needy.

Section 1. Definitions[~~Definition of Hospice Care~~]. (1) "Department approved system" means a technology system in which:

(a) Providers electronically submit and track level of care (LOC) requests through a self-service portal;

(b) The system triggers LOC tasks as reminders to providers and allows them to submit reassessments electronically; and

(c) Information is exchanged electronically with Kentucky's:

1. Medicaid Enterprise Management System (MEMS); and

2. Integrated eligibility system.

(2) "Hospice care" means[~~the care described in Section 1905(o) of the Social Security Act. Summarized, hospice care may be described as~~] a package of palliative and supportive services:

(a) Provided by a hospice program to a terminally ill Medicaid recipient and the recipient's[~~his~~] family to:

1. Alleviate the recipient's[~~patient's~~] pain and suffering; and

2. Assist the recipient[~~patient~~] and the recipient's[~~his~~] family to cope with dying and the circumstances surrounding terminal illness; and

(b)[~~. The hospice package of services is~~] Provided in lieu of the[~~certain~~] benefits established in 42 U.S.C. 1395d(d)(2)(A)[~~described in Section 1812(d)(2)(A) of the Social Security Act~~] and services provided by an intermediate care facility for individuals with an intellectual disability[~~services~~].

(3) "Representative" means an individual who:

(a) Has the authority under state law (whether by statute or pursuant to an appointment by a court of law) to authorize or terminate medical care or to elect or revoke the election of hospice care on behalf of a terminally ill recipient who is mentally or physically incapacitated; and

(b) May be the recipient's legal guardian.

(4) "Terminally ill" is defined by 42 C.F.R. 418.3.

Section 2. General Provisions. (1) The recipient or the recipient's representative shall[~~patient must~~] voluntarily elect[~~the~~] hospice care if hospice care is to be provided.

(2) Institutionalized hospice care shall[~~may~~] be provided to an individual in a skilled nursing or intermediate care facility[~~but in that circumstance coverage does not exist under the program for skilled nursing and intermediate care facility services, i.e., a payment may be made for only the hospice care~~].

(3) Non-institutionalized hospice care shall be provided to an individual in a home or hospice facility.

(4) Hospice care shall only[~~must~~] be provided by an appropriately licensed, accredited, and certified hospice program,[~~(~~] as defined by 42 U.S.C. 1395x(dd)(2),[~~in Section~~

~~1861(dd)(2) of the Social Security Act)~~] participating in both Medicare and Medicaid.

(5) Agency staff and participating providers of hospice services may review the federal Medicaid hospice regulations located in 42 C.F.R. part 418 for additional benefit descriptions and operating instructions relating to hospice services care.

Section 3[~~2~~]. Voluntary Election. (1) Any terminally ill Medicaid recipient or recipient's representative may elect hospice coverage if[~~(where~~] hospice care is provided by a participating hospice program in that county[~~his~~] service area[~~) in accordance with procedures and using such forms as may be prescribed by the cabinet~~].

(2) Each recipient shall have the following items completed in the department approved system:

(a) MAP-374, Election of Medicaid Hospice Benefits, to authenticate[~~will be required to make his~~] voluntary selection; and

(b) MAP-377, Physician's Statement for Medicaid Hospice Service, which is[~~in writing, and must present~~] a statement from a physician[~~(or such statement must be available)~~] to show that the recipient's illness is terminal and that death is expected to occur within six (6) months.

Section 4. Covered Services. (1) To be covered, hospice services shall be reasonable and medically necessary for the palliation or management of the terminal illness as well as related conditions.

(2) Covered services shall include:

(a) Nursing care and services by or under the supervision of a registered nurse;

(b) Mental health, nutritional, dietary, and bereavement counseling services for the recipient and the family;

(c) Physical therapy;

(d) Occupational therapy;

(e) Speech language pathology;

(f) Home health aide that performs simple procedures as an extension of:

1. Therapy services;

2. Personal care;

3. Ambulation and exercise;

4. Household services essential to health care at home;

5. Assistance with medications that are ordinarily self-administered;

6. Reporting changes in the patient's condition and needs; and

7. Completing appropriate records;

(g) Medical supplies and appliances;

(h) Short term inpatient care for pain control and symptom management;

(i) Medical social services;

(j) Respite care;

(k) Physician services;

(l) Pharmacy services for drugs related to the recipient's terminal illness;

(m) Room and board if the recipient is residing in a long term care facility; and

(n) Bed reservation days if in a long term care facility.

Section 5[~~3~~]. Duration of Benefits. (1)[~~Effective January 1, 1989,~~] There shall not be a[~~is no~~] limit on the number of days an individual may participate in the hospice program if the[~~so long as such~~] days fall within a covered benefit period as established in subsection (2) of this section.

(2)[~~Effective June 1, 1990,~~] Hospice benefits shall consist of these benefit periods:

(a) Two (2) ninety (90) day periods; and

(b) Additional sixty (60) day periods that[~~, one (1) thirty (30) day period, and additional indefinite periods which~~] last until revocation or termination for other reasons such as ineligibility or death.

Section 6[~~4~~]. Concurrent Medicare Coverage. If[~~When~~] a Medicaid eligible individual with concurrent eligibility for hospice services under Medicare wishes to enroll in a hospice program under Medicaid, the individual[~~he~~] shall,[~~be required~~] as a prerequisite for Medicaid hospice enrollment,[~~to~~] enroll in the Medicare hospice program.

Section 7[~~5~~]. Disenrollment, Reenrollment, and Transfers. (1)(a) A recipient may disenroll from a hospice program at any time.

(b) In accordance with 42 C.F.R. 418.28, a recipient who disenrolls during any benefit period shall lose[~~loses~~] the unused portion of that benefit period[~~but may still be eligible for the remaining benefit period(s), if any. He may reenroll at such time as he may desire (subject only to the usual participation requirements)~~].

(2) If an enrolled individual revokes his or her Medicare enrollment, the Medicaid enrollment shall be revoked simultaneously[~~to the extent possible~~].

(3) If a county is served by two (2) or more hospice programs, or if the recipient moves[~~his~~] county of residence to a county serviced by a different hospice[~~hospice(s)~~], the recipient may transfer between hospice programs.

Section 8. Admission, Reassessment, and Discharge. (1) Prior to or on admission, a hospice provider shall submit on the department approved system the information required by the following forms, either by using the forms listed in paragraphs (a) and (b) of this subsection or by using a document developed by the hospice provider that includes the same information:

(a) MAP-374; and

(b) MAP-377.

(2) For reassessment, a hospice provider shall complete on a department approved system a MAP-377 prior to or on the date of expiration of the current authorization period.

(3) The discharge date shall be entered into a department approved system on or before the date of discharge.

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

(a) MAP-374, "Election of Medicaid Hospice Benefits", 1/18; and

(b) MAP-377, "Physician's Statement for Medicaid Hospice Service", 1/18.

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

(a) At the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky, Monday through Friday, 8:00 a.m. to 4:30 p.m.; or

(b) Online at the department's Web site at https://chfs.ky.gov/agencies/dms/Pages/mapforms.aspx.

CAROL H. STECKEL, Commissioner
ADAM M. MEIER, Secretary

APPROVED BY AGENCY: February 11, 2019

FILED WITH LRC: February 14, 2019 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on March 25, 2019, 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 March 18, 2019, 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 March 31, 2019. 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: Chase Coffey, Executive Administrative Assistant, 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 Chase Coffey

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the terms and conditions under which the Medicaid Program shall provide hospice care to both the categorically and medically needy.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the Medicaid program coverage policies for hospice services.

(c) How this administrative regulation 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. This administrative regulation conforms to the content of the authorizing statutes by establishing the Medicaid program coverage policies for hospice services.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing the Medicaid program coverage policies for hospice services.

(2) If 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 907 KAR 1:330 updates citations and makes other changes to comply with the drafting and formatting requirements of KRS Chapter 13A; establishes a definition for "department approved system" and "representative"; clarifies the difference between institutionalized and non-institutionalized hospice care; requires the completion of forms in the department approved system, rather than using paper forms, to elect hospice care, for admission, and for reassessment; changes the length of the hospice benefit periods to align with 42 C.F.R. 418.21; requires the discharge date to be entered in the department approved system on or before the date of discharge; and incorporates by reference MAP-374, Election of Medicaid Hospice Benefits, and MAP-377, Physician's Statement for Medicaid Hospice Service.

(b) The necessity of the amendment to this administrative regulation: The amendments to this administrative regulation are necessary to update the hospice care requirements, including changes necessary to transition paper forms to a new electronic self-service portal.

(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: This administrative regulation assists in the effective administration of the statutes by updating the requirements for hospice care, including changes necessary to transition paper forms to a new electronic self-service portal.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Medicaid recipients receiving hospice services and hospice providers will be affected by this administrative regulation. According to the 2016 Kentucky Annual Hospice Services Report published by the CHFS Office of Health Policy, in 2016, there were 33 hospice agencies operating in Kentucky. Those agencies admitted 19,382 patients.

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

(a) List 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 be transitioned from paper forms to a new electronic self-service portal. Facilities will use the department approved system to submit and track level of care requests and the recipient's discharge date. Hospice providers are provided with the citations to review the federal Medicaid hospice regulations located in 42 C.F.R. part 418 for additional benefit descriptions and operation instructions relating to hospice services care. Recipients are required to use the forms incorporated by reference to authenticate voluntary selection of hospice benefits and to provide a statement from a physician.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There should not be any additional costs for complying with this administrative regulation, as it will save hospice providers money by implementing an electronic self-service portal, rather than continuing the paper processes; additionally, there will be reduced paperwork requirements and a reduction in the possibility of data mismanagement or human error in the uploading of information.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The benefits of compliance include saving hospice providers money by implementing an electronic self-service portal, rather than continuing the paper forms; additionally, there will be reduced paperwork requirements and a reduction in the possibility of data mismanagement or human error in the uploading of information.

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

(a) Initially: There are no costs to implementing this administrative regulation either initially or on a continuing basis.

(b) On a continuing basis: There are no costs to implementing this administrative regulation either initially or on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Sources of funding to be used for the implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX and Title XXI of the Social Security Act, and state matching funds of general and agency appropriations.

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

(9) TIERING: Is tiering applied? Tiering is not applied because this administrative regulation 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 C.F.R. 418.3, 418.20-418.30, 42 U.S.C. 1395d, 1395x(dd)(2), 1396d(o)

2. State compliance standards. KRS 194A.030(2), 194A.050(1), 205.520(3)

3. Minimum or uniform standards contained in the federal mandate. Hospice services are an optional rather than mandatory Medicaid benefit; however, if a Medicaid program elects to cover hospice services, the reimbursement must equal the Medicare rate for hospice services and the requirements established in 42 C.F.R. Part 418 must be met.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No, this administrative regulation does not impose stricter, additional, or different requirements or responsibilities than those required by the

federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter, additional, or different requirements or responsibilities than those required by the federal mandate.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? 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.030(2), 194A.050(1), 205.520(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? None

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

(c) How much will it cost to administer this program for the first year? Nothing

(d) How much will it cost to administer this program for subsequent years? Nothing

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

907 KAR 1:340. Reimbursement for hospice services.

RELATES TO: 42 C.F.R. 418.302, 418.306, 42 U.S.C. 1396a, 1396b, 1396c, 1396d[~~-d~~]

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 has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds[~~for the provision of medical assistance to Kentucky's indigent citizenry~~]. This administrative regulation establishes the requirements for reimbursements for hospice services.

Section 1. Definitions. (1) "Department" means the Department for Medicaid Services or its designee.

(2) "Home" means:

(a) A primary residence that[~~which~~] is based on a recipient's county of Medicaid eligibility; or

(b) A nursing facility licensed in accordance with 902 KAR 20:300[~~20:026~~].

(3) "Hospice provider" means an agency that is:

(a) Licensed in accordance with 902 KAR 20:140; and

(b) Medicare- and Medicaid-certified.

(4) "Hospice recipient" means an individual who:

(a) Is eligible for Medicaid;

(b) Is certified by a physician as terminally ill with a medical prognosis that life expectancy is six (6) months or less in accordance with 907 KAR 1:330; and

(c) Elects to receive hospice services.

Section 2. Coverage. The department shall reimburse a participating hospice provider for a service rendered to a hospice recipient in accordance with 907 KAR 1:330.

Section 3. Reimbursement Rates for a Covered Hospice Service. (1) The reimbursement rate for a hospice service shall:

(a) Be annually established in accordance with 42 C.F.R. 418.306; and

(b)1. For routine home care or continuous home care, be based on the geographic location of the hospice recipient's home; or

2. For general inpatient care or inpatient respite care, be based on the geographic location of where the service is provided.

(2) If a hospice recipient resides in a nursing facility participating in the Medicaid program and occupies a bed that is Medicaid-certified, the department shall reimburse an amount equal to at least ninety-five (95) percent of the nursing facility's per diem to the hospice provider to cover expenses for room and board provided by the nursing facility.

(3) Reimbursement for bed reservation days shall:

(a) Be made by the department if the hospice recipient is residing in a nursing facility and has been in Medicaid reimbursement status for at least one (1) midnight census;

(b) Be limited per hospice recipient as follows:

1. To fourteen (14) consecutive days and a total of forty-five (45) days per lifetime for the purpose of inpatient hospitalization; and

2. To fifteen (15) days per lifetime for the purpose of therapeutic home visits;

(c) Not be made after the date of death of a hospice recipient if the hospice recipient dies while in the hospital or on a home visit; and

(d) Be at the rate established in subsection (2) of this section.

(4) Reimbursement for general inpatient and inpatient respite care shall be:

(a) Limited to twenty (20) percent of the aggregate total number of days hospice care is provided to all Medicaid recipients during a twelve (12) month period, beginning November 1 of each year and ending October 31 of the following year in accordance with 42 C.F.R. 418.302(f); and

(b) Subject to recoupment by the department if in excess of paragraph (a) of this subsection.

Section 4. Limitations on Reimbursement of Covered Hospice Services. (1) A routine home care service unit shall be a day during which a hospice recipient receives routine home care.

(2) Continuous home care shall be:

(a) Reimbursed at an hourly rate, which shall be calculated by dividing the rate established pursuant to Section 3(1) of this administrative regulation by twenty-four (24);

(b) Provided a minimum of eight (8) hours per day;

(c) Reimbursed per unit, which shall equal one (1) hour; and

(d) Predominately nursing care provided by a registered nurse or a licensed practical nurse.

(3) General inpatient care shall be equal to twenty four (24) hours per (1) unit.

(4) Inpatient respite care shall:

(a) Be limited to five (5) consecutive days; and

(b) Not be provided to a hospice recipient who is residing in a nursing facility.

(5) Except for the day on which a hospice recipient is discharged, the inpatient rate, either general or respite, shall be paid for the date of admission and for all subsequent inpatient days.

(6) On the day a hospice recipient is discharged from inpatient

care, either general or respite, a hospice provider shall be reimbursed:

(a) Depending on the care needs of the hospice recipient, either the routine home care rate or the continuous home care rate; or

(b) The inpatient rate, either general or respite, if the hospice recipient is discharged deceased.

Section 5. Copayments. (1) The department shall pay a hospice recipient's Medicare copayment if the individual qualifies for and has elected to receive Medicaid hospice benefits as established in 907 KAR 1:330.

(2) A copayment shall not be applied to a Medicaid reimbursement rate for a hospice service.

Section 6. Coverage of Drugs. (1) A reimbursement rate established in Section 3(1) of this administrative regulation shall include reimbursement for any drug related to the terminal illness of a hospice recipient.

(2) If a drug is not related to the terminal illness of a hospice recipient:

(a) A hospice provider shall complete and submit one (1) copy[~~two (2) copies~~] of the MAP-384 form[~~and one (1) copy of the MAP 374 form~~] to the department; and

(b) The department shall:

1. Update the MAP-384 to[~~Return one (1) copy of the MAP 384 form to the hospice provider which shall~~] indicate the maximum amount allowable for reimbursement, as determined in accordance with 907 KAR 23:020;

2. Return the updated MAP-384 to the hospice provider; and

3.[~~2.~~] Reimburse the hospice provider the lesser of 100 percent of the cost of the drug or the maximum amount allowable, as determined in accordance with 907 KAR 23:020.

Section 7. Appeal Rights. A hospice provider may appeal a department decision as to the application of this administrative regulation in accordance with 907 KAR 1:671.

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

~~(a) "MAP 374, Election of Medicaid Hospice Benefit Form, September 2002 Edition"; and~~

~~(b)~~] "MAP-384, Hospice Drug Form", 1/18, is incorporated by reference[~~September 1992 Edition"~~].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.907 KAR 1:340

CAROL H. STECKEL, Commissioner
ADAM M. MEIER, Secretary

APPROVED BY AGENCY: February 11, 2019

FILED WITH LRC: February 14, 2019 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on March 25, 2019, 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 March 18, 2019, 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 March 31, 2019. 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: Chase Coffey, Executive Administrative Assistant, 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 Chase Coffey

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for reimbursements for hospice services.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the Medicaid program reimbursement requirements for hospice services.

(c) How this administrative regulation 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. This administrative regulation conforms to the content of the authorizing statutes by establishing the Medicaid program reimbursement requirements for hospice services.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing the Medicaid program reimbursement requirements for hospice services.

(2) If 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 907 KAR 1:340 updates citations and makes other changes to comply with the drafting and formatting requirements of KRS Chapter 13A; requires submission of one (1) copy, rather than two (2) copies, of the MAP-384 form; updates the MAP-384, Hospice Drug Form, which was last updated in 1992; and deletes the incorporation by reference of the MAP-374, Election of Medicaid Hospice Benefit Form, as that form is now required by 907 KAR 1:330.

(b) The necessity of the amendment to this administrative regulation: The amendments to this administrative regulation are necessary to update the MAP-384, which was last updated in 1992, and to make other changes to update the administrative regulation to comply with the drafting and formatting requirements established in KRS Chapter 13A.

(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: This administrative regulation assists in the effective administration of the statutes by updating the MAP-384, which was last updated in 1992, and by making other changes to comply with the drafting and formatting requirements established in KRS Chapter 13A.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Medicaid recipients receiving hospice services and hospice providers will be affected by this administrative regulation. According to the 2016 Kentucky Annual Hospice Services Report published by the CHFS Office of Health Policy, in 2016, there were 33 hospice agencies operating in Kentucky. Those agencies admitted 19,382 patients.

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

(a) List 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 1992 form will be replaced with the 2018 form. Additionally, a hospice provider will complete and submit one (1) copy of the required MAP-384 form rather than two

(2) copies of that form. (The other changes made in this amendment are purely drafting items that do not require the regulated entities to take specific action.)

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There should not be any additional costs for complying with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The main benefit of compliance is that a hospice provider will be required to submit one (1) copy of a form, rather than the previously required two (2) copies.

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

(a) Initially: There are no costs to implementing this administrative regulation either initially or on a continuing basis.

(b) On a continuing basis: There are no costs to implementing this administrative regulation either initially or on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Sources of funding to be used for the implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX and Title XXI of the Social Security Act, and state matching funds of general and agency appropriations.

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

(9) TIERING: Is tiering applied? Tiering is not applied because this administrative regulation 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 C.F.R. 418.302, 418.306, 42 U.S.C. 1396a, 1396b, 1396c, 1396d

2. State compliance standards. KRS 194A.030(2), 194A.050(1), 205.520(3)

3. Minimum or uniform standards contained in the federal mandate. Hospice services are an optional rather than mandatory Medicaid benefit; however, if a Medicaid program elects to cover hospice services, the reimbursement must equal the Medicare rate for hospice services and the requirements established in 42 C.F.R. Part 418 must be met.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No, this administrative regulation does not impose stricter, additional, or different requirements or responsibilities than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter, additional, or different requirements or responsibilities than those required by the federal mandate.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? 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.030(2), 194A.050(1), 205.520(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? None

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

(c) How much will it cost to administer this program for the first year? Nothing

(d) How much will it cost to administer this program for subsequent years? Nothing

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

907 KAR 1:755. Preadmission Screening and Resident Review Program.

RELATES TO: KRS 205.558, 42 C.F.R. 431.200-431.250, 435.1009, 483.15, 483.100-483.138, 483.440, 42 U.S.C. 1396r

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.558[~~, 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 the responsibility to administer the Medicaid Program. KRS 205.520 authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law to qualify for federal Medicaid funds[~~for the provision of medical assistance to Kentucky's indigent citizenry~~]. This administrative regulation establishes the program requirements and payment provisions for preadmission screening and resident review (PASRR).

Section 1. Definitions. (1) "Department" means the Department for Medicaid Services or its designee.

(2) "Department approved system" means a technology system in which:

(a) Providers electronically submit and track level of care (LOC) requests through a self-service portal;

(b) The system triggers LOC tasks as reminders to providers and allows them to submit reassessments electronically; and

(c) Information is exchanged electronically with Kentucky's:

1. Medicaid Enterprise Management Solution (MEMS); and

2. Integrated eligibility and enrollment system.

(3)[~~"Appropriate placement" means the admission to a nursing facility of an individual with mental illness, an intellectual disability, or a related condition if:~~

~~(a) Based on the individual's needs, he meets the level of care standards for nursing facility admission as established in 907 KAR 1:022; and~~

~~(b) The individual's needs for treatment may be met by the level of services delivered in the nursing facility alone or, if necessary, through nursing facility services supplemented by specialized services provided by or arranged through the Department for Behavioral Health, Intellectual and Developmental Disabilities as established in Section 5 of this administrative regulation.~~

~~(2)~~] "Department for Behavioral Health, Intellectual and

Developmental Disabilities" or "DBHDID" means the state agency or its designee with the responsibility for both the evaluation and determination functions for individuals with serious mental illness, an intellectual disability, or a related condition as defined by[in] 42 C.F.R.[C.F.R.] 483.106(d) and (e).

(4)[(3)] "Exempted hospital discharge" means[, as it is defined in 42 C.F.R. 483.106(b)(2),] an individual:

(a) Who is admitted to a nursing facility directly from a hospital after receiving acute inpatient care at the hospital;

(b) Who requires nursing facility services for the condition for which the individual[he] received care in the hospital; and

(c) Whose attending physician has certified, prior to admission to the nursing facility, that the individual is likely to require less than thirty (30) days nursing facility services.

(5)[(4)] "Intellectual disability" is[means an individual's condition which has been determined to have a level of intellectual disability (mild, moderate, severe, or profound) as] defined by[in] 42 C.F.R. 483.102(b)(3).

(6)[(5)] "Interfacility transfer" means an individual who is transferred from one (1) nursing facility to another nursing facility, with or without an intervening hospital stay.

(7)[(6)] "Level of care of nursing facility services" means those standards as established by[defined in] 907 KAR 1:022, Section 4[, and in 907 KAR 1:025].

(8)[(7)] "New admission" means an individual who is admitted to a nursing facility (NF) for the first time or who is not a readmission or an exempted hospital discharge.

(9)[(8)] "Nursing facility" or "NF" means a facility meeting the requirements established in 907 KAR 1:022.

(10)[(9)] "Preadmission screening and resident review program" or "PASRR" means the process that[which]:

(a) Screens and identifies an individual with a serious mental illness, an intellectual disability, or a related condition prior to admission to an NF;

(b) Results in a determination, based on a physical and mental evaluation of each individual with a serious mental illness, an intellectual disability, or a related condition, of the appropriateness of the individual's admission to an NF; and

(c) Identifies appropriate services if the individual is admitted to an NF.

[(10) "PRO" means a peer review organization which is under contract with the department.]

(11) "Provisional admission" means an individual:

(a) Is admitted to an NF for fourteen (14) calendar days or less before a PASRR level II is required;

(b) Meets the[NF's] level of care of nursing facility services as established in 907 KAR 1:022; and

(c)1. Has been diagnosed with delirium, which, pursuant to 42 C.F.R.[C.F.R.] 483.130(d)(4),[which] precludes an accurate diagnosis and assessment until the delirium clears; or

2. Is in need of respite for an in-home care giver and to whom the individual with serious mental illness, an intellectual disability, or a related condition is expected to return after fourteen (14) days.

(12) "Readmission" means an individual who is readmitted to an NF from a hospital to which the individual[he] was transferred for the purpose of receiving acute inpatient care.

(13) "Related condition" means[, as it is defined in 42 C.F.R. 435.1009,] a severe, chronic condition[disability] that meets the requirements established in 42 C.F.R. 435.1010[shall meet the following conditions:

(a) Cerebral palsy or epilepsy; or

(b) Any other condition, other than mental illness, found to be closely related to an intellectual disability because it results in impairment of general intellectual functioning or adaptive behavior similar to that of a person with an intellectual disability, and requires treatment or services similar to those required for these persons; and

(c) Is manifested before the person reaches age twenty-two (22);

(d) Is likely to continue indefinitely; and

(e) Results in substantial functional limitations in three (3) or more of the following areas of major life activity:

1. Self-care;

2. Understanding and use of language;

3. Learning;

4. Mobility;

5. Self-direction; and

6. Capacity for independent living].

(14) "Serious mental illness" means an individual's condition that[which] meets the requirements established by[definition in] 42 C.F.R.[C.F.R.] 483.102(b)(1).

(15) "Services of lesser intensity" means services that are:

(a) Within the scope of services provided or arranged by the nursing facility as included in the facility's per diem rate;

(b) Less intensive than specialized services; and

(c) Intended to help residents who have a serious mental illness, intellectual disability, or related condition to:

1. Improve, maintain, or prevent regression of optimal functional status; and

2. Achieve highest possible level of well-being.

(16) "Significant change" means that the individual's condition has had a major decline or improvement[immediate treatment needs] requiring a comprehensive reassessment[and material change in plan of care established by the Long Term Care Resident Assessment Instrument User's Manual.

(16) "Specialized services for mental illness" means, as it is defined in 42 C.F.R. 483.120(a)(1), the implementation of an individualized plan of care that:

(a) Is developed and supervised by a physician;

(b) Is provided by an interdisciplinary team of qualified mental health professionals;

(c) Prescribes specific therapies and activities for the treatment of a person who is experiencing an acute episode of serious mental illness which necessitates continuous supervision by trained mental health personnel; and

(d) Requires the level of intensity provided in a psychiatric inpatient hospital].

(17) "Specialized services for an intellectual disability or a related condition" means[, as it is defined in 42 C.F.R. 483.120(a)(2) and 483.440(a)(1),] the continuous, aggressive, and consistent implementation of a program of specialized and generic training, treatment, and health and related services, which are comparable to services an individual receives in an intermediate care facility for individuals with an intellectual disability (ICF-IID), or in a community based waiver program that[which] provides services to persons with an intellectual disability [or a related condition] in which twenty-four (24) hour supervision is available that is directed toward:

(a) The acquisition of the skills necessary for the person to function with as much self-determination and independence as possible;

(b) The prevention or deceleration of regression or loss of current optimal functional status; and

(c) The coordination and interaction, at all times and in all settings, of all staff and the individual served, in the implementation of the specified individual program plan (IPP) objectives for the individual.

(18) "Specialized services for serious mental illness" means the implementation of an individualized plan of care that:

(a) Is developed in conjunction with and supervised by a physician;

(b) Is provided by an interdisciplinary team of qualified mental health professionals;

(c) Prescribes specific therapies and activities for the treatment of a person who is experiencing an acute episode of serious mental illness that necessitates continuous supervision by trained mental health personnel; and

(d) Requires the level of intensity provided in a psychiatric inpatient hospital.

Section 2. General Applicability. (1) The PASRR process shall comply with the requirements of 42 C.F.R. 483.100 through 483.138.

(2) The provisions of this administrative regulation shall be applicable to an individual applying for admission to, or continued stay in, a nursing facility (NF) participating in the Kentucky

Medicaid Program.

(3)[~~(2)~~] Pursuant to 42 C.F.R.[~~C.F.R.~~] 483.106(d) and (e), DBHDID shall be responsible for PASRR determination and evaluation functions.

(a)[~~The Division of Behavioral Health of~~] DBHDID shall evaluate and determine[~~be responsible for determining and evaluating~~] whether an individual applying for admission to an NF needs NF services and specialized services for a serious mental illness, an intellectual disability, or a related condition if indicated by a positive Level I PASRR screening.

(b) DBHDID[~~The Division of Behavioral Health of DBHDID shall be responsible for determining whether an individual applying for admission to an NF needs NF services and specialized services for mental illness.~~

~~(c) The department may delegate the authority to evaluate whether an individual who is applying for admission to an NF needs NF services and specialized services for mental illness to the Division of Behavioral Health.~~

~~(d) The Division of Behavioral Health~~] may delegate the evaluation and determination functions for which it is[~~they are~~] responsible except that the designee shall not be an NF or an entity that has a direct relationship or indirect affiliation or relationship with an NF.

(4)[~~(3)~~] For nursing facility reimbursement of services by the Medicaid Program, an individual shall be Medicaid eligible and meet the patient care criteria established by[~~specified in~~] 907 KAR 1:022 and 907 KAR 1:025.

Section 3. Deemed Consent for PASRR. An individual applying for admission to, or requesting a continued stay in, a nursing facility participating in Medicaid shall be deemed to have given consent for the department to make the determination of appropriateness for the individual to enter or remain in the facility using the standards established by[~~specified~~] 42 U.S.C. 1396r.

Section 4.[~~Responsibility for Performing the~~] Level I PASRR Screening. (1) Except as provided by subsection (2) of this section, prior to admitting an individual, a nursing facility[~~, prior to admitting an individual, except a readmission or an interfacility transfer,~~] shall conduct a Level I PASRR screening using the department approved system as required by[~~. The Level I PASRR is an identification function, which process shall comply with the requirements of~~] 42 C.F.R.[~~C.F.R.~~] 483.128. If a provider is not enrolled with Kentucky Medicaid, the provider shall use the MAP 409 paper form to conduct a Level I PASRR screening.

(2) A Level I PASRR screening shall not be conducted for:

(a) Readmission;

(b) Interfacility transfer;

(c) Intermediate care facilities for individuals with intellectual disabilities; or

(d) Hospital swing bed facilities.

(3) For a Level I screening that does not indicate a referral for a Level II evaluation, the NF shall submit to the department the Level I screening prior to or simultaneously with a request for certification of level of care for nursing facility services.

Section 5. Level II PASRR Evaluations. (1) If an individual is identified in the Level I PASRR screening as suspected of having a serious mental illness, an intellectual disability, or a related condition[~~(2) If a positive response is noted in the Level I PASRR~~], a Level II PASRR evaluation shall be performed prior to the individual's admission to an NF unless the individual is a provisional admission, readmission, interfacility transfer, or exempted[~~exempt~~] hospital discharge.

(a) The Level II PASRR evaluation shall be used to:

1. Evaluate and determine if an individual meets nursing facility level of care; and

2. Determine if the person requires specialized services or services of lesser intensity[~~needs NF and specialized services~~].

(b) The individual or legal guardian[~~of an individual who is identified in the Level I PASRR as suspected of having a mental illness, an intellectual disability, or a related condition~~] shall be notified by the NF of a referral to the appropriate entity[~~DBHDID~~] for the Level II PASRR evaluation.

(2)[~~(3)~~] If a Level II PASRR evaluation is required, the department approved system shall notify the appropriate entity[~~the nursing facility shall contact DBHDID~~] to perform the Level II PASRR evaluation as required by this subsection.[~~follows:~~]

(a) For a new admission, the appropriate entity[~~an NF~~] shall complete[~~first conduct a Level I PASRR prior to admission, notify DBHDID if~~] a Level II PASRR evaluation[~~is necessary, and complete the Level II PASRR~~] prior to admission.

(b) For an exempted[~~exempt~~] hospital discharge, the appropriate entity[~~an NF shall first conduct a Level I PASRR prior to admission and shall notify DBHDID prior to the end of the exempt thirty (30) days if the individual is found to require more than thirty (30) days of NF care. DBHDID~~] shall conduct a Level II PASRR evaluation and complete the determination within forty (40) calendar days of the date of admission to the NF.

(c) For a provisional admission pending clearing of delirium, the appropriate entity[~~DBHDID~~] shall conduct a Level II PASRR evaluation and complete[~~and make an evaluation and~~] determination of the need for specialized services within nine (9) business[~~working~~] days of the referral[~~to DBHDID. The referral to DBHDID shall be made within the fourteen (14) day provisional admission~~].

(d) If a significant change in the individual's condition occurs, the NF shall complete a significant change request in the department approved system[~~notify DBHDID~~] within fourteen (14) calendar[~~twenty-one (21)~~] days and the appropriate entity[~~DBHDID~~] shall complete the Level II PASRR evaluation within nine (9) business[~~working~~] days.

(3) If a PASRR Level II determination results in a response to referral,[~~(e) The Level II PASRR process shall comply with the requirements of 42 C.F.R. 483.128 through 483.136.~~

~~(4)~~] an NF shall transmit to the department the Level I PASRR screening with a[~~PRO a completed~~] copy of the response to referral[~~an individual's PASRR~~] prior to or simultaneously with a request for certification of level of care for nursing facility services[~~an individual's admission to an NF~~].

(4) DBHDID shall provide notification as required by 42 C.F.R. 483.130(k) and (l)[~~Section 5. Responsibility for Performing the Level II PASRR. DBHDID shall be responsible for:~~

~~(1) Determining whether an individual entering or remaining in an NF is mentally ill, has an intellectual disability, or has a related condition;~~

~~(2) Determining whether the individual requires the level of services provided by an NF in accordance with 42 C.F.R. 483.132;~~

~~(3) If the nursing facility level of service is required, determining if the individual requires specialized services or services of a lesser intensity than specialized services for mental illness, an intellectual disability, or a related condition in accordance with 42 C.F.R. 483.134 and 483.136;~~

~~(4) Contracting with community mental health centers for evaluations and determinations if the individual is mentally ill, has an intellectual disability, has a related condition or requires specialized services;~~

~~(5) Contracting with other agencies, organizations or entities, if necessary, to fulfill DMHMRS' requirements with regard to the PASRR function so long as it retains ultimate control and responsibility for the performance of its obligations under 42 C.F.R. 483.100 – 138 and this administrative regulation; and~~

~~(6) Notifying the individual or his legal guardian of the written findings of the Level II report and explaining the meaning of the report~~].

Section 6. Payments for PASRR Evaluations and Determinations. (1) The department shall reimburse DBHDID [~~DMHMRS~~] for the cost of providing PASRR services under this administrative regulation.

(2) The department's reimbursement to DBHDID[~~DMHMRS~~] for this purpose shall not exceed the actual cost to DBHDID[~~DMHMRS~~], including contract costs, of implementing and operating the PASRR program.

(3) Except as provided in subsection (4) of this section, the department shall reimburse an NF if:

(a) The Level I PASRR screening and, if required, Level II PASRR evaluation are completed prior to a new admission and in a timely fashion as established in Sections 4 and 5 of this administrative regulation; or

(b) A review is required because of a significant change in the individual's condition, and it is performed timely in accordance with Sections 4 and 5 of this administrative regulation.

(4) If a Level I PASRR screening and, if required, a Level II PASRR evaluation are[~~is~~] not timely completed prior to admission or a subsequent review is required but not timely performed in accordance with Section 8 of this administrative regulation, but the required PASRR process is performed at a later date, reimbursement shall be made for NF services provided after the PASRR process is completed if the individual is determined to need the level of care of nursing facility services[~~NF level of care~~].

(5) The department shall not reimburse an NF for specialized services provided to an individual who has a serious mental illness[~~is mentally ill~~], has an intellectual disability, or has a related condition, and is in an NF. Services of a lesser intensity than specialized services shall be provided by an NF to an individual as recommended by the[~~so identified in~~] Level II PASRR evaluation.

Section 7. Admissions Criteria Under PASRR. (1) An admission to an NF shall be in accordance with 42 U.S.C. 1396r.

(2) An individual who has a serious mental illness, has[~~is mentally ill, to have~~] an intellectual disability, or has a related condition shall not[~~may~~] be admitted to an NF unless[~~if~~]:

(a) The Level II PASRR evaluation determines that the individual[~~he~~] requires the level of care of nursing facility services[~~NF level of care~~]; and

(b) A determination of the need for specialized services for serious mental illness, intellectual disability[~~mental retardation~~], or a related condition is made.[~~(3) An individual who is mentally ill, to have an intellectual disability, or has a related condition and who does not require NF level of care shall not be admitted to an NF regardless of whether he requires specialized services for mental illness or an intellectual disability.~~]

Section 8. Criteria for Subsequent Reviews. (1) An individual in an NF shall not be subject to mandatory annual resident review in accordance with 42 U.S.C. 1396r. If an individual experiences a significant change in condition, a Level II PASRR evaluation shall be conducted as established in Section[~~Sections 4 and~~] 5 of this administrative regulation.

(2) An individual who is determined not to have a serious mental illness[~~be mentally ill~~], not to have an intellectual disability, or not to have a related condition shall not be subject to further Level II PASRR activity.

(3) An individual who is determined to have a serious mental illness[~~be mentally ill~~], to have an intellectual disability, or to have a related condition, but who requires the level of care of nursing facility services,[~~provided by an NF~~] may remain in the facility. A determination as specified in Section 5 of this administrative regulation shall be made as to whether specialized services for serious mental illness, intellectual disability, or a related condition are required.

(4)(a) An individual who has a serious mental illness[~~is mentally ill~~], has an intellectual disability, or has a related condition, but who is determined not to require the level of care of nursing facility services but does require specialized services,[~~provided by an NF~~] may remain in the facility if the individual[~~he~~] has continuously resided in an NF for thirty (30) months or more before the date of the determination.

(b) If an individual meets the criteria in paragraph (a) of this subsection and[~~he~~] requires specialized services for serious mental illness, intellectual disability, or a related condition, DBHDID shall be responsible for the cost of those services.

(5) An individual who has a serious mental illness[~~is mentally ill~~], has an intellectual disability, or has a related condition, and who is determined not to require the level of care of nursing facility services[~~provided by an NF~~] but does require specialized services and who has resided in an NF for less than thirty (30) consecutive months, shall be discharged from the NF in accordance with 42 C.F.R. 483.15[~~C.F.R. 483.12~~] to an appropriate setting where specialized services shall be provided or arranged. The individual shall be advised by DBHDID of the individual's[~~his~~] discharge rights in accordance with 42 C.F.R.[~~C.F.R.~~] 431.200 through 431.250[~~431.260~~] and 483.15[~~483.12~~].

(6) An individual who has a serious mental illness[~~is mentally ill~~], has an intellectual disability, or has a related condition, and who is determined not to require the level of care of nursing facility services[~~provided by an NF~~] and does not require specialized services, regardless of length of stay, shall be discharged. The individual shall be advised by DBHDID of the individual's[~~his~~] discharge rights in accordance with 42 C.F.R.[~~C.F.R.~~] 431.200 through 431.250 and 483.15[~~483.12~~].

Section 9. Responsibility of the Department for Inappropriately Placed Persons. (1) The department shall be responsible for the orderly discharge of an individual determined through the PASRR process established in this administrative regulation to be inappropriately placed.

(2) DBHDID shall be responsible for providing, or arranging for the provision of, specialized services to an individual for whom that need has been determined.

Section 10. Appeals. An individual who is determined not to require NF services or specialized services as a result of a PASRR determination by DBHDID may appeal the denial in accordance with 907 KAR 1:563.

Section 11. Incorporation by Reference. (1) MAP 409, "Nursing Facility Identification Screen (Level I PASRR)", February 2018[~~The Manual, Long Term Care Resident Assessment Instrument User's Manual Version 2.0 for use with version 2.0 of the Health Care Financing Administration's Minimum Data Set, Resident Assessment Protocols and Utilization Guidelines, October 1995~~], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Medicaid Services, 275 East Main Street, 6th Floor West, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

CAROL H. STECKEL, Commissioner
ADAM M. MEIER, Secretary

APPROVED BY AGENCY: February 11, 2019

FILED WITH LRC: February 14, 2019 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on March 25, 2019, 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 March 18, 2019, 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 March 31, 2019. 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: Chase Coffey, Executive Administrative Assistant, 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 Chase Coffey

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the program requirements and payment provisions for preadmission screening and resident review (PASRR).

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to establish the program requirements and payment provisions for preadmission screening and resident review (PASRR).

(c) How this administrative regulation 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. 42 C.F.R. 483.102(1) requires a PASRR for all individuals with mental illness or intellectual disability who apply to or reside in Medicaid certified nursing facilities regardless of the source of payment for the nursing facility service and regarding of the individual's or resident's known diagnoses.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing the program requirements and payment provisions for preadmission screening and resident review (PASRR).

(2) If 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 907 KAR 1:755 updates citations and makes other changes to comply with the drafting and formatting requirements of KRS Chapter 13A; establishes a definition for "department" and "department approved system"; amends the definition of "related condition" to align with the definition established in 42 C.F.R. 435.1009; clarifies the responsibility of the Department for Behavioral Health, Intellectual and Developmental Disabilities (DBHDID); specifies that a Level I PASRR shall not be conducted for readmission, interfacility transfer, intermediate care facilities for individuals with intellectual disabilities, or hospital swing beds; requires use of the department approved system for the PASRR, including if there is a significant change in the individual's condition; and deletes the incorporation by reference of the long term care manual.

(b) The necessity of the amendment to this administrative regulation: The amendments to this administrative regulation are necessary to update the requirements for the PASRR, use the defined terms throughout the administrative regulation, comply with the federal regulations (42 C.F.R. 438.100 through 438.138), and make changes necessary to transition paper processes to a new electronic self-service portal.

(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. 42 C.F.R. 438.100 through 438.138 establish the preadmission screening and resident review requirements. These requirements were modified to remove the "annual" requirement following the Balanced Budget Act of 1996, even though the federal regulations still contain the word "annual". The review requirements are established in 42 U.S.C. 1396r(e)(7)(B)(iii).

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by updating the requirements for PASRR, including changes necessary to transition paper processes to a new electronic self-service portal.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 321 nursing facilities serving over 22,525 Medicaid recipients currently participate in the Medicaid nursing facility program and approximately 115 home and community based waiver providers serve over 15,000 individuals via the Medicaid home and community based waiver program.

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

(a) List 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 be transitioned from paper processes to a new electronic self-service portal. Facilities will use the department approved system to submit and track level of care requests and PASRR activities, and to enter a resident's discharge date. Regulated entities are notified that the PASRR process shall comply with 42 C.F.R. 483.100 through 483.139 and they are required to follow the clarified requirements for a Level I screening and Level II PASRR evaluation. The roles of the department and the Department for Behavioral Health, Developmental and Intellectual Disabilities are clarified.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There should not be any additional costs for complying with this administrative regulation, as it will save NFs money by implementing an electronic self-service portal, rather than continuing the paper processes; additionally, there will be reduced paperwork requirements and a reduction in the possibility of data mismanagement or human error in the uploading of information.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The benefits of compliance include saving NFs money by implementing an electronic self-service portal, rather than continuing the paper processes; additionally, there will be reduced paperwork requirements and a reduction in the possibility of data mismanagement or human error in the uploading of information.

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

(a) Initially: There are no costs to implementing this administrative regulation either initially or on a continuing basis.

(b) On a continuing basis: There are no costs to implementing this administrative regulation either initially or on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Sources of funding to be used for the implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX and Title XXI of the Social Security Act, and state matching funds of general and agency appropriations.

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

(9) TIERING: Is tiering applied? Tiering is not applied because this administrative regulation 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 C.F.R. 431.200-431.250, 435.1009, 483.15, 483.100-483.138, 483.440, 42 U.S.C. 1396r

2. State compliance standards. KRS 194A.030(2), 194A.050(1), 205.520(3), 205.558

3. Minimum or uniform standards contained in the federal mandate. Pursuant to 42 U.S.C. 1396a et. seq., the Commonwealth of Kentucky has exercised the option to establish a Medicaid Program. Having elected to offer Medicaid coverage, the state must comply with federal requirements contained in 42 U.S.C. 1396 et. seq. 42 C.F.R. 438.100 through 438.138 establish the preadmission screening and resident review requirements. These requirements were modified to remove the "annual" requirement following the Balanced Budget Act of 1996, even though the federal regulations still contain the word "annual". The

review requirements are established in 42 U.S.C. 1396r(e)(7)(B)(iii).

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No, this administrative regulation does not impose stricter, additional, or different requirements or responsibilities than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter, additional, or different requirements or responsibilities than those required by the federal mandate.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? 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.030(2), 194A.050(1), 205.520(3), 205.558

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

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

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

(c) How much will it cost to administer this program for the first year? Nothing

(d) How much will it cost to administer this program for subsequent years? Nothing

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

NEW ADMINISTRATIVE REGULATIONS

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Education Professional Standards Board
(Repealer)

16 KAR 3:011. Repeal of 16 KAR 3:010, 16 KAR 3:020, 16 KAR 3:030, 16 KAR 3:040, and 16 KAR 3:050.

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.020 requires that a teacher or other professional school personnel hold a certificate of legal qualification for the respective position to be issued upon completion of a program of preparation prescribed by the Education Professional Standards Board. An educator preparation provider shall be approved for offering the preparation program corresponding to the certificate on the basis of standards and procedures established by the Education Professional Standards Board. KRS 13A.310 allows repeal of administrative regulations if the promulgating body desires. This administrative regulation repeals administrative regulations that are included in the new administrative regulation 16 KAR 3:090.

Section 1. The following administrative regulations are hereby repealed:

(1) 16 KAR 3:010, Certification for school superintendent;

(2) 16 KAR 3:020, Certification for supervisor of instruction;

(3) 16 KAR 3:030, Professional certificate for directors and assistant directors of pupil personnel;

(4) 16 KAR 3:040, Director of special education; and

(5) 16 KAR 3:050, Professional certificate for instructional leadership-school principal, all grades.

SARAH BURNETT, Board Chair

APPROVED BY AGENCY: February 11, 2019

FILED WITH LRC: February 15, 2019 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on March 27, 2019, at 10:00 a.m. in the State Board Room, Fifth Floor, 300 Sower Boulevard, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through March 31, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Deanna L. 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 L. Durrett

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals 16 KAR 3:010-3:050 which establish the requirements for various administrative certificates.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to avoid confusion with the proposed regulation 16 KAR 3:090 which establishes the certifications for Advanced Educational Leaders. When 16 KAR 3:090 becomes effective, it will govern the requirements for preparation and certification previously outlined in 16 KAR 3:010-3:050.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 13A.310 allows the Board to repeal regulations that it wishes to no longer be effective. This regulation repeals 16 KAR 3:010-3:050 because the subject matter of those regulations will be covered by 16 KAR 3:090.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation repeals 16 KAR 3:010-3:050, to avoid confusion with 16 KAR 3:090.

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

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

(b) The necessity of the amendment to this administrative regulation:

(c) How the amendment conforms to the content of the authorizing statutes:

(d) How the amendment will assist in the effective administration of the statutes:

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 173 Kentucky school districts, all applicants seeking certification, and students.

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

(a) List 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 regulation will repeal 16 KAR 3:010-3:050 to avoid confusion. This repealer will not require action from the districts, applicants or students.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no expected cost for students, school districts or applicants.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Repeal of 16 KAR 3:010-3:050, will avoid any confusion regarding the requirements for Advanced Educational Leaders established in 16 KAR 3:090.

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

(a) Initially: None.

(b) On a continuing basis: None.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is needed as it will simply repeal 16 KAR 3:010-3:050.

(7) Provide an assessment of whether an 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 expected to be needed.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: Certification fees are established by 16 KAR 4:040. No additional fees are established by this regulation.

(9) TIERING: Is tiering applied? Tiering is not applicable to the requirements of 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? The Education Professional Standards Board and the 173 public school districts.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 13A.310

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

(a) How much 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 additional revenues created by this repealer.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? There will be no additional revenues created by this repealer.

(c) How much will it cost to administer this program for the first year? There are no costs associated with the repealer.

(d) How much will it cost to administer this program for subsequent years? There are no costs associated with the repealer.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: This is not a fee generating or a cost incurring program but, rather, repeals regulations to avoid confusion with the new regulation 16 KAR 3:090.

GENERAL GOVERNMENT CABINET
Kentucky State Board of Accountancy
(New Administrative Regulation)

201 KAR 1:290. Standards of practice.

RELATES TO: KRS 325.240, 325.340(1)(c)

STATUTORY AUTHORITY: KRS 325.240(2); 15 U.S.C. 98; 29 U.S.C. 18; 31 U.S.C. 75; 31 U.S.C. 330; 2 C.F.R. Subtitle A Chapter II Part 200 Subpart F; 29 C.F.R. Subtitle A Part 99; and 31 C.F.R. Subtitle A, Part 10.

NECESSITY, FUNCTION, AND CONFORMITY: KRS 325.240(2) authorizes the Kentucky State Board of Accountancy to promulgate administrative regulations to establish and maintain a high standard of integrity and dignity in the profession of public accounting. This administrative regulation is necessary to ensure licensees follow specific accounting standards and principles that are nationally and internationally recognized and in some instances required by federal law, when performing a regulated activity. The Single Audit Act Amendments of 1996 31 U.S.C. 75 and 2 C.F.R. Subtitle A Chapter II Part 200 require Generally Accepted Government Auditing Standards be adhered to when performing of audits of state and local governments and nonprofit entities that receive federal awards. 2 C.F.R. Subtitle A Chapter II Part 200 Subpart F of the Office of Management and Budgets Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, provides the government-wide guidelines and policies on conducting audits to comply with the Single Audit Act, and reiterates the requirement to use Generally Accepted Government Auditing Standards. The Sarbanes-Oxley Act of 2002 15 U.S.C. 98 authorizes the Public Company Accounting Oversight Board to establish standards that licensees shall follow when performing audits of U.S. publicly traded companies. 31 U.S.C. 330 authorizes the Secretary of the United States Treasury Department to regulate licensees who practice before the Internal Revenue Service. 31 C.F.R. Subtitle A, Part 10 contains the procedures that licensees shall follow when practicing before the IRS. A CPA shall comply with the reporting requirements in The Employee Retirement Security Act of 1974, 29 U.S.C. 18, when performing an audit of an employee retirement plan created under the act. This administrative regulation establishes the standards of practice for CPAs and public accounting firms.

Section 1. Definitions.

(1) "AICPA" means the American Institute of Certified Public Accountants. (www.aicpa.org)

(2) "Audit" means an engagement performed in accordance with generally accepted auditing standards promulgated by the American Institute of Certified Accountants to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, thereby enabling the licensee to express an opinion on whether the financial statements are presented fairly, in all material respects, in accordance with an applicable financial reporting framework.

(3) "Board" is defined by KRS 325.220(2).

(4) "Client" means a person or entity that retains a licensee to provide a regulated activity as defined in KRS 325.220 (9) (a).

(5) "Compilation" means an engagement to apply accounting and financial reporting expertise to assist management in the presentation of financial statements and report in accordance with the Statements on Standards for Accounting and Review Services without undertaking to obtain or provide any assurance that there are no material modifications that should be made to the financial statements in order for them to be in accordance with the applicable financial reporting framework.

(6) "DOL" means the United States Department of Labor. (www.dol.gov.)

(7) "Financial statement" means a presentation of financial data, including accompanying notes, derived from accounting records and intended to communicate an entity's economic resources and obligations at a point in time, or the changes therein for a period of time, in accordance with generally accepted accounting principles or another financial reporting financial framework. General use financial statements, financial forecasts, projections, and similar presentations are considered financial statements.

(8) "GAAP" means generally accepted accounting principles that describe accepted accounting practices at a particular time and include broad guidelines of general applications and detailed practices and procedures that provide a standard by which to measure financial presentations.

(9) "GAAS" means generally accepted auditing standards.

(10) "GAO" means the Government Accountability Office". (www.gao.gov).

(11) "IAASB" means the International Auditing and Assurance Standards Board. (www.iaasb.org)

(12) "IFAC" means the International Federation of Accountants. (www.ifac.org)

(13) "Licensee" is defined by KRS 325.220(6)

(14) "PCAOB" means the Public Accounting Standards Board. (www.pcaobus.org)

(15) "Regulated activity" is defined by KRS 325.220(9) (a).

(16) "Review" means an engagement to obtain limited assurance as a basis for reporting whether the licensee is aware of any material modifications that should be made to the financial statements for them to be in accordance with generally acceptable accounting principles or other financial reporting framework, primarily through the performance of inquiry and analytical procedures.

(17) "SEC" means the United States Securities and Exchange Commission. (www.sec.gov.)

Section 2. Standards of Practice. When performing a regulated activity, a licensee shall comply with the following appropriate practice standards:

(1) AICPA Professional Standards;

(2) Government Auditing Standards, Yellow Book;

(3) Auditing Standards of the Public Company Accounting Oversight Board;

(4) International Standards on Auditing issued by the IAASB and published on the IFAC web site. (www.ifac.org.); and

(5) The Employee Retirement Security Act of 1974, 29 U.S.C. 18.

Section 3. Accounting Principles.

(1) A licensee who is aware that the financial statement or financial data of any entity contains a departure from the applicable financial reporting framework that has a material effect on the financial statement or financial data taken as a whole shall not:

(a) Express an opinion or state affirmatively that the financial statement or financial data are presented in conformity with the applicable financial reporting framework; or

(b) State that he or she is unaware of any material modifications that should be made to the statements in order for them to be in conformity with the applicable financial reporting framework.

(2) Financial statements may depart from the applicable financial reporting framework, if the licensee:

(a) Demonstrates that due to unusual circumstances the financial statements or data would otherwise be misleading;

(b) Describes the departure;

(c) States the approximate effects, if practicable; and

(d) Explains the reasons why compliance with the applicable financial reporting framework would result in a misleading statement.

Section 4. Generally Accepted Auditing Standards. A licensee engaged to audit financial statements shall comply with following standards:

(1) Generally accepted auditing standards for audits of public companies required to register with the SEC shall use the Auditing Standards of the Public Company Accounting Oversight Board;

(2) Generally accepted auditing standards for federal agencies or entities receiving significant federal financial assistance shall use Government Auditing Standards, Yellow Book issued by the GAO, Comptroller General of the United States;

(3) Generally accepted auditing standards for all entities except those specified in Subsection (1) and (2) of this section known as the AICPA Professional Standards; or

(4) International Standards on Auditing issued by the IAASB and published on the International Federation of Accountants web site (www.ifac.org) in the following cases:

(a) The standards in Subsection (1) or (3) of this section, as applicable to the specific audit engagement, do not prohibit the use of those standards; or

(b) The parent company of the entity being audited is located in a foreign country and requires the use of those standards.

Section 5. Practice before the Internal Revenue Service. A licensee shall comply with the standards contained in the United States Department of Treasury Circular Number 230 (2014) 31 C.F.R. Subtitle A, Part 10, (2014).

Section 6**.** Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "AICPA Professional Standards," December 2015 Edition;

(b) "Government Auditing Standards, Yellow Book", July 2018 Edition;

(c) "Auditing Standards of the Public Company Accounting Oversight Board", December 15, 2017 Edition; and

(d) "International Standards on Auditing," 2017 Edition.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky State Board of Accountancy, 332 W. Broadway, Suite 310, Louisville, Kentucky 40202, Monday through Friday, 8 a.m. to 4:30 p.m.

TONI CARVER SMITH, CPA, President

APPROVED BY AGENCY: February 13, 2019

FILED WITH LRC: February 14, 2019 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 21, 2019 at 2 p.m., EST at the office of the Board located at 332 W. Broadway, Suite 310 Louisville, Kentucky 40202. 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 the 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 the end of the day (11:59 p.m.) March 31, 2019. 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: Richard C. Carroll, Executive Director, Kentucky State Board of Accountancy, 332 W. Broadway, Suite 310, Louisville, Kentucky 40202, Phone (502) 595-3037, fax (502) 595-4281, dick.carroll@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Richard Carroll

(1) Provide a brief summary of:

(a) What this administrative regulation does: Describes the standards to be followed when a CPA performs a regulated activity.

(b) The necessity of this administrative regulation: To ensure that CPAs are aware of the standards that shall be followed when performing a regulated activity.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 325.240(2) authorizes the Board to establish regulations to establish and maintain a high standard of integrity and dignity in the profession of public accounting.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Notifies CPAs of the standards to be followed when performing a regulated activity.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The current number of CPAs licensed in Kentucky is 8300. The different standards and principles listed in the administrative regulation will impact CPAs depending on the type(s) of regulated activities they provide. However, CPAs have already been complying with these standards based upon them being incorporated into a previous 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: Comply with these accounting standards however; CPAs have already been complying with these requirements for decades.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Nothing in addition to what they already been spending since they have already been complying with these standards.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):
Insure compliance with nationally recognized standards and those required by federal law.

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

(a) Initially: No increase in current expenses.

(b) On a continuing basis: No increase in expenses.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Board operates solely on the funds contained its trust and agency account.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: There is no fee imposed by this regulation.

(9) TIERING: Is tiering applied? Tiering is not applied since all CPAs seeking to practice public accounting must satisfy these 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? The State Board of Accountancy and all other state and local government agencies that are required by federal or other state laws to comply with these requirements and have been doing so for decades.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 325.240(2), 31 U.S.C. 75; 2 C.F.R. Subtitle A Chapter II Part 200 Subpart F; 15 U.S.C. 98; 31 U.S.C. §330; 29 C.F.R. Subtitle A Part 99; 31 C.F.R., Subtitle A, Part 10; and 29 U.S.C. 18.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Nothing.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Nothing.

(c) How much will it cost to administer this program for the first year? No increase in current expenses. CPAs have for years been required to follow these requirements in another regulation, 201 KAR 1:300.

(d) How much will it cost to administer this program for subsequent years? No increase in current expenses or for future years. These are standards that CPAs must follow.

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 State Board of Accountancy
(New Administrative Regulation)

201 KAR 1:310. Expungement of minor violation.

RELATES TO: KRS 325.240(2)

STATUTORY AUTHORITY: KRS 325.240(2), 325.340(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 325.240(5) directs the Kentucky State Board of Accountancy to promulgate an administrative regulation to establish a procedure to expunge a minor violation. This administrative regulation describes that procedure.

Section 1. Definition. "Expungement" means that all affected records shall be sealed and that the proceedings to which they refer shall be deemed never to have occurred.

Section 2. A licensee whose record has been expunged may properly reply that disciplinary records do not exist upon inquiry.

Section 3. Any licensee seeking expungement of a minor violation from the licensee's record shall submit to the board a written request that specifically demonstrates satisfaction of each of the elements for expungement identified in KRS 325.340(4).

Section 4. (1) Upon receipt of the written request, the board shall review the request for expungement and shall provide the licensee with a written response granting or denying the request.

(2) If the request is denied, the board shall set forth the basis for its denial.

Section 5. (1) If an applicant for expungement disagrees with the board's determination under this section, he or she may file a written request for a hearing before the board.

(2) The hearing request shall be received by the board within twenty (20) days from the date of the issuance of the decision to deny the request, and shall set forth the grounds upon which the applicant challenges the board's determination.

(3) A hearing held pursuant to the provisions of this subsection shall be conducted in accordance with KRS 325.360.

TONI CARVER SMITH, CPA, President

APPROVED BY AGENCY: February 13, 2019

FILED WITH LRC: February 14, 2019 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 21, 2019 at 2 p.m., EST at the office of the Board located at 332 W. Broadway, Suite 310 Louisville, Kentucky 40202. 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. This hearing is open to the public. Any person who wishes to be heard will be given the 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 until the end of the day (11:59 p.m.) March 31, 2019. 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: Richard C. Carroll, Executive Director, Kentucky State Board of Accountancy, 332 W. Broadway, Suite 310, Louisville, Kentucky 40202, phone (502) 595-3037, fax (502) 595-4281,email dick.carroll@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Richard Carroll

(1) Provide a brief summary of:

(a) What this administrative regulation does: Describes the procedure for CPAs to expunge a former violation from their record.

(b) The necessity of this administrative regulation: To insure that CPAs are aware of the procedure to be must followed when requesting an expungement.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 325.340(5) authorizes the Board to establish a regulation that describes the procedures to be followed when seeking to expunge a prior violation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Notifies CPAs of the procedure to be followed when seeking to expunge a former violation.

(2) If 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 CPAs licensed in Kentucky who had disciplinary action taken against them by 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: Comply with this procedure to seek to have a former violation expunged.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Nothing.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):
CPAs will no longer have to report to other state and federal agencies that they a disciplinary action taken against them by the Kentucky Board of Accountancy.

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

(a) Initially: No increase in current expenses.

(b) On a continuing basis: No increase in expenses.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Board operates solely on the funds contained its trust and agency account.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: There is no fee imposed by this regulation.

(9) TIERING: Is tiering applied? Tiering is not applied since all CPAs seeking to practice public accounting must satisfy these 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? None other than the Board of Accountancy.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 325.340(5).

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Nothing.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Nothing.

(c) How much will it cost to administer this program for the first year? No increase in current expenses.

(d) How much will it cost to administer this program for subsequent years? No increase in current expenses or for future 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:

KENTUCKY COMMUNITY AND TECHNICAL COLLEGE SYSTEM
Kentucky Board of Emergency Medical Services
(New Administrative Regulation)

202 KAR 7:575. Posting of fee schedules of licensed ambulance providers.

RELATES TO: KRS 311A.010, 311A.032, 61.870-61.884
STATUTORY AUTHORITY: KRS 311A.032

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311A.032 authorizes the Kentucky Board of Emergency Medical Services to promulgate administrative regulations concerning the posting of fee schedules of licensed ambulance providers. This administrative regulation establishes standards and criteria governing the mandatory posting of fees, modification of fee schedules, reporting requirements, public posting requirements, and penalties for non-conformity.

Section 1. Fee Schedule Disclosure.

(1) Licensed Ground and Air Ambulance Services, and Medical First Response agencies shall provide a comprehensive fee schedule consistent with KRS 311A.032.

(2) The fee schedule shall be consistent with the Healthcare Common Procedure Coding System (HCPCS). Itemized charges shall be reflected for each of the following:

(a) A0428- Ambulance service, BLS, non-emergency transport;

(b) A0429- Ambulance service, BLS, emergency transport;

(c) A0426- Ambulance service, ALS1, non-emergency transport;

(d) A0427- Ambulance service, ALS1, emergency transport;

(e) A0430- Ambulance service, conventional air services, transport, one way (fixed wing);

(f) A0431- Ambulance service, conventional air services, transport, one way (rotary wing);

(g) A0433- Advanced life support, level 2 (ALS2);

(h) A0434- Specialty Care Transport (SCT);

(i) A0425- Ground mileage, per statute mile;

(j) A0436- Rotary Wing Air Mileage, per statute mile;

(k) A0435- Fixed Wing Air Mileage, per statute mile;

(l) Other charges.

Section 2. Posting Requirements.

(1) Licensed Ground and Air Ambulance Services, and Medical First Response agencies shall post fee schedules as defined in Section 1:

(a) In a conspicuous area of the main office;

(b) Any satellite location, and;

(c) On the company Web site, if the company hosts or otherwise maintains a Web site itself or through contract with another party.

Section 3. Reporting Requirements.

(1) Licensed Ground and Air Ambulance Services, and Medical First Response agencies shall:

(a) Submit an initial fee schedule to the Kentucky Board of Emergency Medical Services through an electronic application in the agency KEMSIS account.

(b) Submit an annual fee schedule to the Kentucky Board of Emergency Medical Services at the time of agency licensure renewal.

(2) Fee schedules that are modified must be updated and posted as prescribed in Section 2, and a modified fee schedule electronic application must be submitted to the Kentucky Board of Emergency Medical Services within fifteen (15) days of fee schedule modification.

Section 4. Accountability and Oversight.

(1) Posting provisions as prescribed in Section 2 shall be evaluated by staff of the Kentucky Board of Emergency Medical Services at least annually as part of the agency annual inspection.

(2) Unannounced inspections may be conducted for a:

(a) Verification of posting requirements;

(b) Complaint allegation;

(c) Follow-up visit; or

(d) Relicensing inspection.

(3) The Kentucky Board of Emergency Medical Services shall:

(a) Assess a licensed ambulance agency a monetary penalty of $150 per occurrence for failure to post or update a modified fee schedule as required under Sections 2 and 3 of this administrative regulation; and

(b) Issue a statement of violation consistent with 202 KAR 7:501.

Section 5. Unethical Conduct.

(1) The following acts shall be considered unethical conduct in the practice of providing emergency medical services and may be subject to the sanctions established in KRS 311A.060:

(a) Failure to submit, amend, or modify a plan of correction in order to eliminate or correct
regulatory violations;

(b) Failure to eliminate or correct regulatory violations;

(c) Falsifying an application for licensing;

(d) Changing a license issued by the board;

(e) Attempting to obtain or obtaining a license by:

1. Fraud;

2. Forgery;

3. Deception;

4. Misrepresentation; or

5. Subterfuge;

(f) Providing false or misleading advertising;

(g) Falsifying, or causing to be falsified reports regarding patient care or other reports provided to the KBEMS office;

(h) Providing an unauthorized level of service;

(i) Failing to provide the board or its representative with information upon request, or obstructing an investigation regarding alleged or confirmed violations of KRS Chapter 311A or 202 KAR Chapter 7;

(j) Issuing a payment on an invalid account or an account with insufficient funds to pay established fees, fines, or charges;

(k) Submitting fraudulent or misleading claims for reimbursement; or

(l) Failure to comply with local ordinances, federal statutes, KRS Chapter 311A, or 202 KAR Chapter 7.

PHILIP DIETZ, Chairman of the Board

APPROVED BY AGENCY: February 12, 2019

FILED WITH LRC: February 14, 2019 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 25, 2019, at 1:00 PM Eastern Standard Time at the Kentucky Board of Emergency Medical Services, 118 James Court, Lexington, Kentucky 40505. 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 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 March 31, 2019. 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: Jeffrey S. Walther, Legal Counsel, Kentucky Board of Emergency Medical Services, Walther, Gay & Mack, PLC, 163 East Main Street, Suite 200, Lexington, Kentucky 40588, phone (859) 225-4714, fax (859) 225-1493, email jwalther@wgmfirm.com.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jeffrey S. Walther

(1) Provide a brief summary of:

(a) What this administrative regulation does: 202 KAR 7:575 establishes standards and criteria governing the mandatory posting of fees, modification of fee schedules, reporting requirements, public posting requirements, and penalties for non-conformity.

(b) The necessity of this administrative regulation: KRS 311A.032 authorizes the Kentucky Board of Emergency Medical Services to promulgate administrative regulations concerning the posting of fee schedules of licensed ambulance providers.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 311A.032 by establishing standards and criteria concerning the posting of fee schedules of licensed ambulance providers.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 311A.032 authorizes the board to promulgate administrative regulations concerning the posting of fee schedules of licensed ambulance providers. This administrative regulation establishes standards and criteria concerning the posting of fee schedules of licensed ambulance providers.

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

(a) How the amendment will change this existing administrative regulation: Not applicable.

(b) The necessity of the amendment to this administrative regulation: Not applicable.

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable.

(d) How the amendment will assist in the effective administration of the statutes: Not applicable.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All Kentucky Licensed Ground and Air Ambulance Services and Kentucky Medical First Response agencies.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: All Kentucky Licensed Ground and Air Ambulance Services and Kentucky Medical First Response agencies will have to provide a comprehensive fee schedule consistent with KRS 311A.032.

(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 any entity identified in question (3), other than administrative costs that may be incurred in compiling, reporting, and publicly posting fee schedules.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities effected will benefit through transparency of fees established and clearly identify customary and reasonable charges for ground and air ambulance response and transport. This transparency will also benefit citizens utilizing these services through establishing a method of transparency prior to choosing specific ground or air ambulance services and an ability of these citizens to compare and contrast ground and air ambulance fees for similar services.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: The Board shall pay for all administrative costs of reviewing compliance with applicable requirements.

(a) Initially: The above paragraph is accurate for initial costs.

(b) On a continuing basis: The above paragraph is accurate for continuing costs.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: The Kentucky Board of Emergency Medical Services is a state agency that receives its annual budget from the state government.

(7) Provide an assessment of whether an 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 regulation did not establish any fees.

(9) TIERING: Is tiering applied? Tiering is not applied to this administrative regulation because there are no separate levels of licensure for the provider types included in this administrative regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The administrative regulation will relate to all Kentucky Licensed Ground and Air Ambulance Services and Kentucky Medical First Response agencies.

(2) Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 311A.032. No federal statutes necessitate 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? This administrative regulation will generate no revenue for the first year.

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

(c) How much will it cost to administer this program for the first year? This administrative regulation will not impose any costs on state or local government.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation will not impose any costs on state or local government.

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

Revenues (+/-): This administrative regulation will not generate revenue.

Expenditures (+/-): This administrative regulation will not impose any costs.

Other Explanation:

GENERAL GOVERNMENT CABINET
Department of Agriculture
Office of the Commissioner
(Repealer)

302 KAR 3:011**. Repeal of 302 KAR 3:010.**

RELATES TO: KRS CHAPTER 41

STATUTORY AUTHORITY: KRS 41.606(7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 41.606(7), in years past, required the Department of Agriculture to promulgate administrative regulations establishing the conditions for eligibility of agribusinesses for loans through the Linked Deposit Investment Program. This administrative regulation established the conditions for eligibility of agribusinesses for loans through the Linked Deposit Investment Program, provided for agency review of the information provided by the lending institution as part of the loan package, and incorporated the form that must be completed and submitted to the Department for an agribusiness to apply for a Linked Deposit Investment Program loan. This administrative regulation repeals KAR 3:010 because changes in the KRS have moved this program to Kentucky Agricultural Finance Corporation, and the Cabinet for Economic Development, and a replacement administrative regulation was promulgated.

Section 1. 302 KAR 3:010, Linked Deposit Investment Program, is hereby repealed.

RYAN F. QUARLES, Commissioner

APPROVED BY AGENCY: January 29, 2019

FILED WITH LRC: February 8, 2019 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 21, 2019 at 10:00 a.m., at the Kentucky Department of Agriculture, 111 Corporate Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through March 31, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 107 Corporate Drive, Frankfort Kentucky 40601, phone (502) 782-0284, fax (502) 564-2133, email clint.quarles@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Clint Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals the duplicate and outdated Linked Deposit Investment Program rules.

(b) The necessity of this administrative regulation: The Linked Deposit Investment Program has moved to another agency, making this repealer necessary to avoid confusion.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 41.606 changes moved the authority for the Linked Deposit Investment Program out of the KDA. This repealer removes an administrative regulation that indicated the KDA still administers that program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This repealer will assist by eliminating a non-needed administrative regulation, helping the KDA comply with the intent of HB 50.

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

(a) How the amendment will change this existing administrative regulation: Not applicable.

(b) The necessity of the amendment to this administrative regulation: Not applicable.

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable.

(d) How the amendment will assist in the effective administration of the statutes: Not applicable.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky Department of Agriculture only.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The KDA will need to do nothing to comply with the repealer.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Nothing

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Administrative ease on behalf of the KDA, and statutory compliance.

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

(a) Initially: No costs.

(b) On a continuing basis: No costs.

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

No source funds are required.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are established in any form.

(9) TIERING: Is tiering applied? No. All regulated entities have the same requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Agriculture.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 41:606

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? There are no anticipated impacts to state or local government associated with this repealer.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? There are no anticipated impacts to state or local government associated with this repealer.

(c) How much will it cost to administer this program for the first year? There are no anticipated impacts to state or local government associated with this repealer.

(d) How much will it cost to administer this program for subsequent years? There are no anticipated impacts to state or local government associated with this repealer.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Kentucky Board of Education
Department of Education
(Repealer)

703 KAR 5:211. Repeal of 703 KAR 5:200.

RELATES TO: KRS 158.6451, 158.6453, 158.6455, 158.860

STATUTORY AUTHORITY: KRS 158.6453, KRS 158.6455

NECESSITY, FUNCTION, AND CONFORMITY: This repeals administrative regulation 703 KAR 5:200, Next Generation Learners, which has been replaced with Kentucky's New Accountability Regulation, 703 KAR 5:270. KRS 158.6453 requires the Kentucky Board of Education to create and implement a balanced statewide assessment program that measures the achievement of students, schools, and districts; complies with the federal Every Student Succeeds Act of 2015, 20 U.S.C. secs. 6301 et seq., or its successor; and ensures accountability. KRS 158.6455 requires the Kentucky Board of Education to create an accountability system to classify schools and districts, including a process for annual summative performance evaluations and goals for improvement. These requirements are satisfied by 703 KAR 5:270 and 703 KAR 5:200 is no longer necessary.

Section 1. 703 KAR 5:200, Next Generation Learners, is hereby repealed.

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: February 14, 2019

FILED WITH LRC: February 15, 2019 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on March 27, 2019, at 10:00 a.m. in the State Board Room, Fifth Floor, 300 Sower Boulevard, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through March 31, 2019. 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: Repeals administrative regulation 703 KAR 5:200, which served as Kentucky's accountability regulation until 703 KAR 5:270 became effective.

(b) The necessity of this administrative regulation: KRS 158.6453 requires the Kentucky Board of Education to create and implement a balanced statewide assessment program that measures the achievement of students, schools, and districts; complies with the federal Every Student Succeeds Act of 2015, 20 U.S.C. secs. 6301 et seq., or its successor; and ensures accountability. KRS 158.6455 requires the Kentucky Board of Education to create an accountability system to classify schools and districts, including a process for annual summative performance evaluations and goals for improvement. This administrative regulation has been replaced with Kentucky's New Accountability System Regulation, 703 KAR 5:270.

(c) How this administrative regulation conforms to the content of the authorizing statute: The regulation conforms to the authority given to the Kentucky Board of Education in KRS 158.6453 and 158.6455.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation would repeal the Next Generation Learners regulation.

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

(a) How the amendment will change this existing administrative regulation: Repeal.

(b) The necessity of the amendment to this administrative regulation: Repeal.

(c) How the amendment conforms to the content of the authorizing statute: Repeal.

(d) How the amendment will assist in the effective administration of the statutes: Repeal.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Those affected by this repeal are: no one

will be affected by repealing this old accountability regulation. Districts and schools will be held accountable by 703 KAR 5:270, Kentucky's New Accountability 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: no actions will be needed as this does not affect any one.

(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 associated with the repeal of this regulation.

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

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

(a) Initially: There will be no initial implementation cost. This is a repeal of an administrative regulation.

(b) On a continuing basis: There will be no implementation cost on a continuing basis. This is a repeal of an administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is necessary for the implementation and enforcement of this repealed regulation.

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

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all schools and districts. Tiering is not applied because this is a repeal of an administrative regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? No one will be impacted by this repeal of an 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 158.6453 and 158.6455.

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

(a) How much 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 repeal of an 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 repeal 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 repeal 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 (+/-): N/A
Expenditures (+/-):N/A
Other Explanation: N/A

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Kentucky Board of Education
Department of Education
(Repealer)

704 KAR 7:081. Repeal of 704 KAR 7:080. Ride to the Center for the Arts Program Fund.

RELATES TO: KRS 156.031, 157.605, 157.606
STATUTORY AUTHORITY: KRS 156.070, 157.606

NECESSITY, FUNCTION, AND CONFORMITY: 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 157.605 and 157.606 establish the "Ride to the Center for the Arts Program Fund" to provide matching funds to local school districts for the cost of transportation of students in grades 6-9 for the purpose of visiting the Kentucky Center for the Arts. This administrative regulation repeals 704 KAR 7:080, Ride to the Center for the Arts Program Fund, because funding to support the program is not available and rules for the distribution of money from the fund are not needed.

Section 1. 704 KAR 7:080, Ride to the Center for the Arts Program Fund, is hereby repealed.

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: February 14, 2019
FILED WITH LRC: February 15, 2019 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on March 27, 2019, at 10:00 a.m. in the State Board Room, Fifth Floor, 300 Sower Boulevard, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through close of business March 31, 2019. 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: Repeals administrative regulation 704 KAR 7:080, which governed the distribution of money in the Ride to the Center for the Arts Program Fund. 704 KAR 7:081 repeals the rules for fund distribution since

no funds are available.

(b) The necessity of this administrative regulation: This regulation will repeal the rules for the distribution of money from the program fund as no funding was established in this fund; therefore, this regulation is unnecessary.

(c) How this administrative regulation conforms to the content of the authorizing statute: The regulation conforms to the authority given to the Kentucky Board of Education in KRS 156.070 and 157.606.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation would repeal the Ride to the Center for the Arts Program Fund.

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

(a) How the amendment will change this existing administrative regulation: Repeal.

(b) The necessity of the amendment to this administrative regulation: Repeal.

(c) How the amendment conforms to the content of the authorizing statute: Repeal.

(d) How the amendment will assist in the effective administration of the statutes: Repeal.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Those affected by this repeal are: no one will be affected as no funding has been available as part of this program fund.

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

(a) List 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 will be needed as this does not affect any one.

(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 associated with the repeal of this regulation.

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

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

(a) Initially: There will be no initial implementation cost. This is a repeal of an administrative regulation.

(b) On a continuing basis: There will be no implementation cost on a continuing basis. This is a repeal of an administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is necessary for the implementation and enforcement of this repealer.

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

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all schools and districts. Tiering is not applied because this is a repeal of an administrative regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? No one 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 156.070 and 157.606.

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

(a) How much 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 (+/-): N/A

Expenditures (+/-):N/A

Other Explanation: N/A

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Kentucky Board of Education
Kentucky Department of Education
(New Administrative Regulation)

704 KAR 8:060. Required Academic Standards for Social Studies.

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 Social Studies, which contain the general courses of study and academic content standards of social studies, 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 Social Studies.

Section 2. Incorporation by Reference.

(1) The "Kentucky Academic Standards for Reading and Social Studies", February 2019, 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, Commissioner
HAL HEINER, Chairperson

APPROVED BY AGENCY: February, 14, 2019

FILED WITH LRC: February 15, 2019 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 27, 2019 at 10:00 am, in the State Board Room, 5th 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 March 31, 2019. 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 Social Studies.

(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 social studies.

(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 social studies.

(2) If 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 Kentucky Department of Education as it will provide support 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 8:060 are the revised standards for social studies. As this regulation also includes the minimum content requirements for graduation related to social studies, all public schools, school districts and school-based decision making councils are required to follow the standards outlined in the document incorporated by reference in 704 KAR 8:060. 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. Kentucky Department of Education: In the revisionary process of social studies standards required by statute, the Department spent $72129.36 as of the date of filing in the development of the standards in addition to staff time. Additional staff time will be needed as the regulation moves through the legislative and implementation 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 social studies. Graduation rates are used as part of each school's accountability model and are 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 $72,129.36 administrative costs for the development of the social studies standards that are incorporated by reference in 704 KAR 8:060 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 the Kentucky Department of Education 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 8:060 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 Kentucky Department of Education.

(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 implement new standards. Kentucky Department of Education: In the revisionary process of social studies standards required by statute, the Department spent $72,129.36 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. The Kentucky Department of Education used state funds to conduct the revision and implementation process. 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:

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Inspector General
Division of Health Care
(Repealer)

902 KAR 20:076. Repeal of 902 KAR 20:073.

RELATES TO: KRS 216B.020(2)(c), (3)(e)

STATUTORY AUTHORITY: KRS 216B.020(2)(c), (3)

NECESSITY, FUNCTION, AND CONFORMITY: 2018 Ky. Acts ch. 143 (HB 444) amended KRS 216B.020(2)(c) and (3) to exempt ambulatory care clinics treating minor illnesses and injuries from licensure under KRS Chapter 216B. In addition, the cabinet amended 902 KAR 20:016, effective August 31, 2018, by adding Section 7, Off-campus, Kentucky Hospital-Owned Freestanding Emergency Department (FSED). As established by 902 KAR 20:016, Section 7, each off-campus, Kentucky hospital-owned ambulatory care clinic providing emergency services was required to convert the clinic's license to an FSED by November 31, 2018. Therefore, because all previously licensed ambulatory care clinics are exempt from licensure in accordance with KRS 216B.020(2)(c) and (3) or have converted to an FSED, this administration regulation repeals 902 KAR 20:073.

Section 1. 902 KAR 20:073, Clinics: ambulatory care, is hereby repealed.

STEVEN D. DAVIS, Inspector General
ADAM M. MEIER, Secretary

APPROVED BY AGENCY: January 28, 2019

FILED WITH LRC: February 14, 2019 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on March 25, 2019, 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 March 18, 2019, 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 March 31, 2019. 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: Chase Coffey, Executive Administrative Assistant, 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 Person: Stephanie Brammer-Barnes, email: stephanie.brammer@ky.gov, Phone 502-564-2888; and Chase Coffey

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals 902 KAR 20:073, Clinics: ambulatory care.

(b) The necessity of this administrative regulation: Because all previously licensed ambulatory care clinics are exempt from licensure in accordance with KRS 216B.020(2)(c) and (3), or have converted the clinic's license to a freestanding emergency department in accordance with 902 KAR 20:016, Section 7, this administration regulation repeals 902 KAR 20:073.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by repealing 902 KAR 20:073 in accordance with the passage of HB 444 from the 2018 legislative session and the adoption of 902 KAR 20:016, Section 7, effective August 31, 2018.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by repealing 902 KAR 20:073.

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

(a) How the amendment will change this existing administrative

regulation: This is not an amendment to an existing administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is not an amendment to an existing administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is not an amendment to an existing administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is not an amendment to an existing administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The repeal of 902 KAR 20:073 removes the licensure requirement for ambulatory care clinics in accordance with HB 444 from the 2018 legislative session. Two facilities previously licensed as ambulatory care clinics now operate as a freestanding emergency department under 902 KAR 20:016, Section 7.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Previously licensed ambulatory care clinics have either relinquished their licensure in accordance with the exemption established by KRS 216B.020(2)(c) and (3) or if applicable, converted to a Kentucky hospital-owned freestanding emergency department.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional costs will be incurred to comply with this repealer, except that the two previously licensed ambulatory care clinics that have converted to a Kentucky hospital-owned freestanding emergency department are subject to the licensure fee established by 902 KAR 20:016, Section 7.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): In accordance with this repealer and HB 444, ambulatory care clinics treating minor illnesses and injuries are no longer be subject to licensure by the Office of Inspector General. Previously licensed off-campus, Kentucky hospital-owned ambulatory care clinics that provide emergency services are now subject to the requirements of 902 KAR 20:016, Section 7.

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

(a) Initially: This repealer imposes no costs on the administrative body.

(b) On a continuing basis: This repealer imposes no costs on the administrative body 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 funding is necessary to implement this repealer.

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

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

(9) TIERING: Is tiering applied? Tiering is not applicable as this administrative regulation repeals 902 KAR 20:073.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The repeal of 902 KAR 20:073 removes the licensure requirement for ambulatory care clinics. This repealer also impacts the Cabinet for Health and Family Services, Office of Inspector General.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216B.020(2)(c), (3)

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

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

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

(c) How much will it cost to administer this program for the first year? This repealer imposes no costs on the administrative body.

(d) How much will it cost to administer this program for subsequent years? This repealer imposes no costs on the administrative body 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 Medicaid Services
Division of Policy and Operations
(Repealer)

907 KAR 1:441. Repeal of 907 KAR 1:436.

RELATES TO: KRS 205.520

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

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program. KRS 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 repeals 907 KAR 1:436, which incorporated by reference the Hospice Services Manual and was last amended in 1990. Hospice services are now governed by 907 KAR 1:330 and 907 KAR 1:340; and the 1989 manual is no longer used.

Section 1. 907 KAR 1:436, Incorporation by reference of the Hospice Services Manual, is hereby repealed.

CAROL H. STECKEL, Commissioner
ADAM M. MEIER, Secretary

APPROVED BY AGENCY: February 11, 2019

FILED WITH LRC: February 14, 2019 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on March 25, 2019, 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 March 18, 2019, 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 March 31, 2019. 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: Chase Coffey, Executive Administrative Assistant, 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 Chase Coffey

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals 907 KAR 1:436, Incorporation by reference of the Hospice Services Manual.

(b) The necessity of this administrative regulation: Hospice services are now governed by 907 KAR 1:330 and 907 KAR 1:340; and the 1989 manual is no longer used. Thus, KRS 13A.310 requires that 907 KAR 1:436 be repealed.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 13A.310 requires that an administrative regulation shall be repealed if the agency desires that it no longer be effective. Because the 1989 manual is no longer used and the current requirements relating to hospice are established in 907 KAR 1:330 and 907 KAR 1:340, this repealer administrative regulation repeals 907 KAR 1:436.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by repealing an administrative regulation that is no longer needed.

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

(a) How the amendment will change this existing administrative regulation: This is a repealer administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is a repealer administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a repealer administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a repealer administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This is a repealer administrative regulation that repeals an outdated administrative regulation. The requirements for hospice are established in 907 KAR 1:330 and 907 KAR 1:340. This repeal will not affect any individuals, businesses, organizations, or governments – other than removing a manual that is outdated and no longer in use.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This is a repealer administrative regulation; regulated entities do not have to take any actions to comply with this administrative regulation.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The benefits of repealing 907 KAR 1:336 is that an outdated manual that is no longer in use will be removed from KAR Title 907.

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

(a) Initially: There are no costs to implementing this administrative regulation either initially or on a continuing basis.

(b) On a continuing basis: There are no costs to implementing this administrative regulation either initially or on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Sources of funding to be used for the implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX and Title XXI of the Social Security Act, and state matching funds of general and agency appropriations.

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

(9) TIERING: Is tiering applied? Tiering is not applied because this administrative regulation repeals an existing administrative regulation and there are no requirements to tier.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What 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.030(2), 194A.050(1), 205.520(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? None

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

(c) How much will it cost to administer this program for the first year? Nothing

(d) How much will it cost to administer this program for subsequent years? Nothing

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Office for Children with Special Health Care Needs
(New Administrative Regulation)

911 KAR 1:010. Application to Office for Children with Special Health Care Needs Clinical Programs.

RELATES TO: KRS 200.460, 200.470, 200.654(13), Chapters 311, 319, 334A, 42 U.S.C. 9902(2), 42 C.F.R. 435.603

STATUTORY AUTHORITY: KRS 194A.030(5), 200.460(1), 200.470(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.030(5) authorizes the Office for Children with Special Health Care Needs to promulgate administrative regulations to implement and administer its responsibilities. KRS 200.460 mandates the Office for Children with Special Health Care Needs to provide services to children with disabilities. KRS 200.470(2) mandates the Office for Children with Special Health Care Needs to determine the ability of a child's parent or guardian to pay for costs of treatment, and provides for families to pay for services

commensurate with their ability. This administrative regulation establishes application forms used for clinical programs, procedures for application and reapplication, eligibility criteria, assignment of pay category, and processes used to determine initial and continuing eligibility for services, as well as a process for reconsideration of an adverse decision.

Section 1. Definitions. (1) "Applicant" means person in need of services offered by the Office for Children with Special Health Care Needs clinical program.

(2) "Clinical program" means an established clinical service by which OCSHCN delivers care to treat conditions listed on the OCSHCN-10g, Medical Eligibility List for Clinical and Case Management Services, through a provider:

(a) Contracted in accordance with 911 KAR 1:060; or

(b) Employed by OCSHCN as an audiologist.

(3) "Financial Eligibility Committee" means an OCSHCN committee that is charged with:

(a) Clarifying financial eligibility questions that arise during:

1. The application review process; and

2. Ongoing eligibility reviews; and

(b) Evaluating appeal requests for reconsideration pursuant to Section 13 of this administrative regulation.

(4) "Income" means money received from:

(a) Statutory benefits (for example, Social Security, Veterans Administration pension, black lung benefits, or railroad retirement benefits);

(b) Military housing;

(c) Clerical housing;

(d) Farm or business operations;

(e) Pensions;

(f) Wages for labor or services;

(g) Royalties;

(h) Alimony, maintenance, or child support;

(i) Miscellaneous income as defined by the Internal Revenue Service at www.irs.gov/form1099misc;

(j) Retirement Survivors Disability Insurance;

(k) Disability benefits;

(l) Unemployment benefits;

(m) Supplemental Security Income;

(n) Workers' compensation;

(o) Annuities; or

(p) Interest and dividends.

(5) "Medical Eligibility Committee" means an OCSHCN committee that is charged with:

(a) Clarifying medical eligibility questions that arise during the application review process; and

(b) Determining whether a diagnosis qualifies for inclusion in the clinical program.

(6) "OCSHCN" means Office for Children with Special Health Care Needs.

(7) "Responsible adult" means a person who is:

(a) Responsible for making decisions about an OCSHCN clinical program applicant or recipient of services; or

(b) Required to provide financial support for an OCSHCN clinical program applicant or recipient of services.

Section 2. Criteria for Application to an OCSHCN Clinical Program. (1) In order to be eligible to apply to an OCSHCN clinical program, an applicant shall:

(a) Be under twenty-one (21) years of age;

(b) Live in a Kentucky dwelling that has an established street mailing address; and

(c) Declare Kentucky as permanent domicile and residency for the purposes of:

1. Paying state taxes;

2. Voter registration; or

3. Driver's license procurement.

(2) A minor's residence shall be considered that of the legal guardian.

(3) An applicant to the OCSHCN Autism Spectrum Disorder Diagnostic Service shall be referred by a:

(a) Physician, licensed in accordance with KRS Chapter 311;

(b) Therapist, licensed in accordance with KRS Chapter 334A;

(c) Qualified service provider with the Kentucky Early Intervention System, as defined by KRS 200.654(13); or

(d) School personnel, based on testing results.

(4) An applicant to the OCSHCN Autism Spectrum Disorder Medical Service shall be:

(a) Referred by a:

1. Physician, licensed in accordance with KRS Chapter 311;

2. Psychologist, licensed in accordance with KRS Chapter 319; or

3. Speech-language pathologist, licensed in accordance with KRS Chapter 334A, if an Autism Diagnostic Observation Schedule assessment tool was used; and

(b) Diagnosed with:

1. Autistic disorder;

2. Other childhood disintegrative disorder;

3. Asperger's syndrome; or

4. Other pervasive developmental disorder.

(5) An applicant to the OCSHCN Hearing Aid Only Service shall be:

(a) Diagnosed to have a permanent childhood hearing loss; and

(b) Under the care of a licensed otorhinolaryngologist.

(6) An applicant to clinical services not described in subsections (3), (4), or (5) of this section may be referred by any person or provider.

(7) An individual shall be ineligible for application to clinical programs if a write-off balance for services is owed to OCSHCN for clinical services delivered to:

(a) The individual; or

(b) A member of the individual's household.

(8) Any balances owed pursuant to subsection (7) of this section shall be paid in accordance with the:

(a) Individual's pay category status; and

(b) Provisions of 911 KAR 1:020.

(9) OCSHCN shall allow up to three (3) reapplications for an applicant if the applicant has been discharged for:

(a) Failure to:

1. Complete financial update in accordance with Section 12 of this administrative regulation;

2. Cooperate with medical care;

3. Make payments on a past due account balance;

4. Pay OCSHCN for services received; or

5. Reimburse OCSHCN if an insurance payment has been received by the applicant; or

(b) Declining treatment or care.

(10) Exceptions to subsections (8) and (9) of this section shall be determined by the OCSHCN request for reconsideration process in accordance with Section 13 of this administrative regulation.

Section 3. Initial Application. (1) If an individual who meets the criteria specified in Section 2 of this administrative regulation expresses interest in submitting an application to OCSHCN's clinical program, designated staff shall provide the application packet indicated for the individual's situation, in accordance with Section 4 of this administrative regulation:

(a) At a scheduled intake appointment with the individual;

(b) By postal mail; or

(c) Electronically.

(2) An application shall be made by:

(a) The parent or other legally appointed guardian, if the individual is:

1. A minor who is not legally emancipated; or

2. An adult who is in custodial care; or

(b) The individual, if the individual is:

1. An adult; and

2. Not in the custodial care of another person or entity.

(3) OCSHCN may require the signature of both the applicant and responsible adult if:

(a) The applicant is over the age of eighteen (18); and

(b) There is a question of the applicant's competence to make decisions regarding self-care.

Section 4. Application Forms. (1) An applicant to an OCSHCN clinical program shall provide to the agency:

(a) A copy of the applicant's insurance card, or documentation thereof, if the applicant is not receiving Medicaid or K-CHIP;

(b) OCSHCN-10b, Consent for Care Agreement;

(c) OCSHCN-10c, Guaranty of Payment Agreement;

(d) OCSHCN-10d, Coordination of Benefits Agreement;

(e) OCSHCN-10a, Application for Service Legal Guardian, if the application is made by a legal guardian on behalf of a child or adult who is:

1. Under the age of twenty-one (21); and

2. Not legally emancipated;

(f) OCSHCN-10e, Application for Service Young Adult, if the application is made by an individual who is:

1. Not legally emancipated; or

2.a. Between 18 and 21; and

b. A full-time student; and

(g) OCSHCN-10f, Application for Service Head of Household, if the application is made by an individual who is:

1. Under the age of eighteen (18) and legally emancipated; or

2. Between the age of eighteen (18) and twenty-one (21) and financially emancipated.

(2) OCSHCN may request that the applicant submit additional information or documentation concerning medical history, based on:

(a) Medical staff request; and

(b) Specific medical need.

Section 5. Limited English Proficiency. (1) OCSHCN shall ensure the availability of foreign language interpretation services in order to assure that families, staff, and providers have an opportunity to communicate effectively.

(2) OCSHCN shall arrange sign language interpreter services for persons who are deaf or hard of hearing, pursuant to 920 KAR 1:070.

Section 6. Proof of Custody for Applicants. (1) OCSHCN shall require a signed and dated legal court filing establishing custody rights of a minor if:

(a) The parents of a minor are divorced;

(b) The minor is adopted or in the legal custody of the commonwealth; or

(c) The legal guardianship of the minor is in question.

(2) OCSHCN shall require a signed and dated legal court filing establishing custody rights of an adult if the adult is said to be in custodial care of another individual.

(3) OCSHCN may require that the application be signed by the responsible adult if:

(a) The applicant is his or her own legal guardian; and

(b) There is a legitimate concern as to the applicant's ability to make decisions regarding self-care.

Section 7. Application Review Process. (1) Upon receipt of an application for the OCSHCN clinical program, designated staff shall review the packet to ensure all materials have been completed in accordance with Sections 3 and 4 of this administrative regulation.

(2) Designated staff shall notify the applicant of:

(a) Missing information or clarification needed; and

(b) The timeframe for submitting requested information.

(3) Complete applications shall be processed in accordance with Sections 8, 9, and 10 of this administrative regulation.

(4) Failure to submit requested information to OCSHCN within the specified timeframe shall result in the application process being closed.

Section 8. Medical Eligibility Determination. (1) In order to be eligible for an OCSHCN clinical program, the applicant shall have a documented condition that is:

(a) Treated by OCSHCN; and

(b) Listed on the OCSHCN-10g, Medical Eligibility List for Clinical and Case Management Services.

(2) An application shall be eligible for expedited review if designated OCSHCN staff determine that recent medical records exist documenting that a contracted provider staffing an OCSHCN clinical program has:

(a) Diagnosed the applicant with a condition on the OCSHCN-10g, Medical Eligibility List for Clinical and Case Management Services; and

(b) Agreed to a treatment plan for the child's condition that is supported by the OCSHCN services offered.

(3) If records specified in subsection (2) of this section are not available for OCSHCN review, designated OCSHCN staff shall schedule an onsite clinical evaluation:

(a) By:

1. A contracted provider staffing an OCSHCN clinical program; or

2. An OCSHCN clinic employee; and

(b) To obtain documentation needed to confirm medical eligibility.

(4) Upon receipt of documentation pursuant to this section, designated staff shall determine medical eligibility for the OCSHCN clinical program.

Section 9. Financial Eligibility Determination and Pay Category Assignment. (1) Each applicant shall undergo a financial review process upon:

(a) Application;

(b) Confirmation of medical eligibility;

(c) Change in income or household size prior to annual financial review; and

(d) Annual financial review.

(2) The OCSHCN process to determine pay category assignment shall:

(a) Be based on the household income of the responsible adult requesting services; and

(b) Include income of:

1. The applicant, if the applicant is:

a. An adult; or

b. Not in the custodial care of another person or entity;

2. Parents, step-parents, or legal guardians, if the applicant is:

a. A minor who is not legally emancipated; or

b. An adult who is in custodial care; and

3. Spouse of the applicant, if the applicant is married.

(3) Designated OCSHCN staff shall establish a household size based on family composition, including:

(a) The applicant;

(b) If the applicant is a minor:

1. Parents;

2. Step-parents;

3. Siblings, including:

a. Half siblings; and

b. Step-siblings; and

4. Any other dependent child claimed by the parent or step-parent on a federal tax return; and

(c) If the applicant is an emancipated minor or adult:

1. Spouse;

2. Children, including:

a. Half children; and

b. Step-children; and

3. Any other dependent child claimed by the parent or step-parent on a federal tax return.

(4) The document required for income verification shall be:

(a) The most recent federal tax return of the applicant or the responsible adult; and

(b) The most recent paycheck statement with year-to-date gross earnings for each currently held job.

(5) An applicant or responsible adult without a paycheck containing the criteria specified in subsection (4)(b) of this section shall provide two (2) consecutive and current pay stubs or a written statement from the employer that shows:

(a) Gross amount earned; and

(b) Frequency of pay.

(6) An applicant who is covered by Kentucky Medicaid shall be:

(a) Exempt from income verification;

(b) Considered financially eligible; and

(c) Placed in the zero percent pay category.

(7) If household income suggests that an applicant is possibly Medicaid- eligible, a Medicaid application shall be completed within the specified timeframe requested by designated OCSHCN staff.

(8) If a Medicaid application completed pursuant to subsection (7) of this section is denied for a reason other than being over income, the applicant shall:

(a) Be considered financially eligible;

(b) Meet medical eligibility criteria pursuant to Section 8 of this administrative regulation; and

(c) Be assigned a pay category in accordance with Section 10 of this administrative regulation.

(9) If a Medicaid application completed pursuant to subsection (7) of this section is denied for being over income, the applicant shall be:

(a) Considered financially eligible; and

(b) Assigned a pay category in accordance with Section 10 of this administrative regulation.

(10) If an application for Medicaid is not completed as requested within the specified timeframe, the application process shall be closed.

Section 10. Family Participation Scale. (1) An eligible applicant shall be assigned a pay category, which is determined based on:

(a) Annual gross income; and

(b) Household size.

(2) OCSHCN shall:

(a) Calculate minimum and maximum annual gross income limits annually, utilizing:

1. The federal poverty level established annually by the United States Department of Health and Human Services pursuant to 42 U.S.C. 9902(2); and

2. Modified adjusted gross income-based methods established in 42 C.F.R. 435.603; and

(b) Post the current Family Participation Scale at https://chfs.ky.gov/agencies/ccshcn.

(3) Pay categories shall:

(a) Represent eligibility requirements at income levels for the Kentucky Children's Health Insurance Program established in 907 KAR 4:030; and

(b) Be established at the following levels:

1. Zero percent;

2. Twenty (20) percent;

3. Forty (40) percent;

4. Sixty (60) percent;

5. Eighty (80) percent; and

6. 100 percent.

(4) In accordance with KRS 200.470(1), an applicant who is placed in the 100 percent pay category shall be eligible for acceptance only if access to adequate care and treatment is limited as evidenced by:

(a) Service needed is not otherwise available within a fifty (50) mile radius of where the patient resides;

(b) Treatment requires a multi-disciplinary team, which may include a physician, RN care coordinator, social worker, nutritionist, and therapist;

(c) Service is needed for the purchase of hearing aids;

(d) The patient is:

1. Uninsured; and

2. A member of a religious sect that is exempt from the requirement to maintain minimum essential coverage as required by the Affordable Care Act;

(e) The patient is:

1. Uninsured;

2. Not eligible for Medicaid or the Kentucky Children's Health Insurance Program (KCHIP); and

3. Is exempt from the requirement to maintain minimum essential coverage as required by the Affordable Care Act; or

(f) The medical care or service ordered by an OCSHCN-contracted specialist as treatment for a qualifying condition:

1. Is a non-covered benefit or excluded under the patient's insurance policy; and

2. The patient would benefit from the OCSHCN negotiated rate.

(5) An exception to subsection (3) of this section shall be determined by the OCSHCN request for reconsideration process in accordance with Section 13 of this administrative regulation.

Section 11. Notice of Eligibility Determination. (1) If an applicant is determined to be eligible in accordance with Sections 8 and 9 of this administrative regulation, designated staff shall notify the applicant in writing of the:

(a) Acceptance into the OCSHCN clinical program;

(b) Effective date of eligibility;

(c) Pay category assigned and a description of family participation fees and responsibilities;

(d) Annual review date;

(e) Name of the OCSHCN contact person assigned to:

1. Manage medical care;

2. Schedule appointments; and

3. Discuss services available; and

(f) Right to request reconsideration of pay category assignment, in accordance with Section 13 of this administrative regulation.

(2) If an applicant is determined to be ineligible for acceptance into the OCSHCN clinical program, designated staff shall notify the following individuals, in writing, of the reason for denial:

(a) The applicant, enumerating a right to request reconsideration of the adverse decision; and

(b) The applicant's primary care or referring physician, if applicable.

Section 12. Continuing Eligibility and Reapplication. (1) A responsible adult shall advise OCSHCN if there is a change in:

(a) Employment;

(b) Contact information;

(c) Insurance coverage; or

(d) Family composition.

(2) An annual financial recertification shall be completed by the last day of the month in which the application was approved.

(3) During the financial recertification, designated OCSHCN staff shall:

(a) Verify continued Medicaid enrollment; or

(b) If the recipient of services is not enrolled in Kentucky Medicaid, send the responsible adult written notice:

1. Requesting completion of:

a. The financial portion of the application form to be completed pursuant to Section 4 of this administrative regulation; and

b. The OCSHCN-10c, Guaranty of Payment Agreement form; and

2. Providing a timeframe for submission of requested forms.

(4) If the forms requested pursuant to subsection (3)(b) of this section are not returned in accordance with the requested timeframe, designated staff shall follow up in writing.

(5) If the requested forms are not returned subsequent to a written follow up pursuant to subsection (4) of this section, designated staff shall:

(a) Initiate discharge of the recipient from the OCSHCN clinical program; and

(b) Notify the responsible adult or person receiving services, providing the:

1. Date of discharge;

2. Referral to primary care physician;

3. Option to reapply for OCSHCN services, and contact phone number; and

5. Courtesy copies of notifications of discharge sent to:

a. Primary care physician;

b. Dental provider, if applicable; and

c. Pharmacy provider, if applicable.

(6) Financial recertification shall occur if there is:

(a) A loss of Medicaid;

(b) Change in circumstances, such as income or household size; or

(c) Change in guardianship.

(7) Upon receipt of documentation related to this section's continuing eligibility and reapplication, designated staff shall notify the responsible adult in writing of the:

(a) Acceptance into the OCSHCN clinical program
(b) Effective date of eligibility;
(c) Pay category assigned and a description of family participation fees and responsibilities;
(d) Annual review date;
(e) Name of OCSHCN contact person assigned to:
1. Manage medical care;
2. Schedule appointments; and
3. Discuss services available; and
(f) Right to request reconsideration of pay category assignment, pursuant to Section 13 of this administrative regulation.

Section 13. Request for Reconsideration. (1) An individual who is aggrieved by an adverse decision regarding initial eligibility, termination of services, and pay category assignment in accordance with the procedures contained in Section 10 of this administrative regulation may request a reconsideration. A request for reconsideration shall be filed within thirty (30) days of receipt of the adverse decision.
(2) A request for reconsideration of pay category assignment shall be directed to the Financial Eligibility Committee for resolution.
(3) When a request for reconsideration of the pay category assigned is received, the applicant shall be provided with an OCSHCN-10h, Medical Expense Worksheet, which shall be completed and returned to OCSHCN within ten (10) working days.
(4) An applicant shall submit with the OCSHCN-10h, Medical Expense Worksheet, and written proof of out of pocket payment for allowable medical expenses as established in subsection (5) of this section and paid for:
(a) By the applicant or a member of the applicant's household; and
(b) Within the last twelve (12) months from the date of the letter of pay category assignment.
(5) Allowable medical expenses shall include:
(a) Insurance premiums;
(b) Medical office or clinic visits;
(c) Medical supplies;
(d) Nutritional supplies;
(e) Prescription medications;
(f) Over the counter medications;
(g) Durable medical equipment;
(h) Hearing aids;
(i) Dental or orthodontia;
(j) Vision or Eye;
(k) Hospitalizations;
(l) Additional expenses for consideration; and
(m) OCSHCN payments in accordance with 911 KAR 1:020.
(6) Upon receipt of the OCSHCN-10h, Medical Expense Worksheet, and documentation specified in subsection (4) of this section, OCSHCN staff shall:
(a) Verify expenses;
(b) Present to the OCSHCN Financial Eligibility Committee for review; and
(c) Notify the applicant in writing of the determination.

Section 14. Request for Hearing. An individual who has received a notice of adverse action following a reconsideration may request an administrative hearing in accordance with KRS Chapter 13B. The request for an administrative hearing shall be received by OCSHCN within thirty (30) days of the notice of adverse action.

Section 15. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "OCSHCN-10a, Application for Service Legal Guardian," 01/2019;
(b) "OCSHCN-10b, Consent for Care Agreement," 01/2019;
(c) "OCSHCN-10c, Guaranty of Payment Agreement," 01/2019;
(d) "OCSHCN-10d, Coordination of Benefits Agreement," 01/2019;
(e) "OCSHCN-10e, Application for Service Young Adult," 01/2019;
(f) "OCSHCN-10f, Application for Service Head of Household," 01/2019;
(g) "OCSHCN-10g, Medical Eligibility List for Clinical and Case Management Services," 01/2019;
(h) "OCSHCN-10h, Medical Expense Worksheet," 01/2019; and
(i) "Family Participation Scale," 04/01/2019.
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office for Children with Special Health Care Needs, 310 Whittington Parkway, Suite 200, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. to 4:30 p.m. or online at the agency's Web site at https://chfs.ky.gov/agencies/ccshcn.

SHELLIE A. MAY, BSN, Executive Director
ADAM M. MEIER, Secretary
APPROVED BY AGENCY: February 11, 2019
FILED WITH LRC: February 14, 2019 at 3 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on March 25, 2019, 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 March 18, 2019, 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 March 31, 2019. 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: Chase Coffey, Executive Administrative Assistant, 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 Borden, 502-429-4430, Jonathan.Borden@ky.gov, and Chase Coffey
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes application forms used for clinical programs, procedures for application and reapplication, eligibility criteria, assignment of pay category, and processes used to determine initial and continuing eligibility for services, as well as a process for reconsideration of an adverse decision. Forms required are incorporated by reference.
(b) The necessity of this administrative regulation: This administrative regulation is needed to formally establish the agency's application and intake policies in administrative regulation.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes processes for application to the clinical programs offered by OCSHCN as mandated by KRS 200.460, and describes the process by which OCSHCN determines ability to pay for services as set forth in KRS 200.470(2).
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation facilitates the Cabinet's compliance with KRS 200.460 and 200.470. This administrative regulation assists in the provision intake and eligibility determination for necessary treatment by the OCSHCN clinical programs.
(2) If this is an amendment to an existing administrative

regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: 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: Individuals seeking enrollment in the OCSHCN clinical program will be affected by this administration regulation. OCSHCN received approximately 2,000 applications in fiscal year 2018 for the various onsite clinical programs and services offered by OCSHCN. Specialty medical services are offered by contracted medical staff and state employees in eleven (11) regional offices and six (6) satellite locations across the state. In fiscal year 2018, there were 5,057 individuals statewide, which were actively enrolled in an OCSHCN clinical program.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: If they choose, individuals under twenty-one (21) or families submitting applications for participation in OCSHCN clinical programs on behalf of children shall pursue the application process described, including the individual forwarding, to the Office for Children with Special Health Care Needs, a packet with required forms and supporting documentation. Impact will be minimal, as individuals have already been following these steps pursuant to OCSHCN intake procedures that predate the promulgation 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): The Office for Children with Special Health Care Needs does not anticipate any additional costs to the entities as a result of this administrative regulation. There is no cost associated with applying for participation in the OCSHCN clinical programs. However, as part of the eligibility determination, families undergo a financial determination process including income verification, and each applicant is assigned a pay category based on annual gross income and family size. These pay categories represent sliding fee scales to be applied to services received in accordance with 911 KAR 1:020.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Individuals applying to OCSHCN clinical programs will be eligible to receive specialty care in OCSHCN clinics, which offer a family-centered, team approach to medical care from pediatric specialists, and care coordination by registered nurses. During each visit, children and families may also receive one (1) or more of the following: nutritional services, social service, and occupational, physical, or speech therapy. Current clinical programs include programs that address conditions on the OCSHCN-10g Medical Eligibility List for Clinical and Case Management Services, such as Autism Spectrum Disorders, Cardiology, Cerebral Palsy, Cleft Lip and Palate and Craniofacial Anomalies, Neurology, Ophthalmology, Orthopedics, Otology, and Scoliosis. Not all clinics are available in all regions of the state.

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

(a) Initially: There are no additional costs necessary to implement this administrative regulation.

(b) On a continuing basis: There are no additional costs necessary 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? Costs of implementation and enforcement will be minimal and absorbed into the existing Office for Children with Special Health Care Needs agency budget. The application procedures in this administrative regulation have been instituted previously through OCSHCN policy, so there are not any additional costs to implementing and enforcing this administrative regulation.

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

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

(9) TIERING: Is tiering applied? Yes. Every individual who applies for the OCSHCN clinical program is assigned a pay category. Pay category placement is determined by applying the individual's household income and family size to a sliding scale that is based on federal poverty levels. The pay categories used by OCSHCN are zero percent, twenty (20) percent, forty (40) percent, sixty (60) percent, eighty (80) percent, and 100 percent.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What 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 Office for Children with Special Health Care Needs, a state government agency within 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.030(5), KRS 194A.050(1), KRS 200.460

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

(a) How much 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 have no administrative costs in the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This new administrative regulation will have no administrative costs in subsequent years.

(c) How much will it cost to administer this program for the first year? This new administrative regulation will have no administrative costs in the first year.

(d) How much will it cost to administer this program for subsequent years? This new administrative regulation will have no administrative costs in subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Office for Children with Special Health Care Needs
(New Administrative Regulation)

911 KAR 1:020. Billing and fees.

RELATES TO: KRS 194A.030(5), 200.470(2)

STATUTORY AUTHORITY: KRS 194A.030(5), 200.470(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.030(5) authorizes the Office for Children with Special Health Care Needs to promulgate administrative regulations to implement and administer its responsibilities. KRS 200.470(2) mandates the collection of full or partial reimbursement by the Office for Children with Special Health Care Needs for the cost of treatment and care from parents or guardians commensurate with their ability to pay.

This administrative regulation establishes minimum monthly payments, procedures for the preparation and transmittal of patient statement of accounts, receipt of payments, clinic participation fees, services provided by contracted providers, authorizations of payment, procedures for failure to provide payments, provisions for discharge, criteria for reapplication, as well as a process for reconsideration of an adverse decision.

Section 1. Definitions. (1) "OCSHCN" means the Office for Children with Special Health Care Needs.

(2) "OCSHCN medical staff" means the staff who meets the requirements established in 911 KAR 1:060.

Section 2. Minimum Monthly Payment. (1) A patient's minimum monthly payment shall be computed as the lesser of:

(a) The amount assigned as the minimum amount due, for the patient's pay category, determined in accordance with 911 KAR 1:010, Section 10; or

(b) The total current balance of the patient's account, including all amounts paid or incurred during the past thirty (30) calendar days, as follows:

Pay Category	Minimum Monthly Payment
0%	$20.00
20%	$40.00
40%	$80.00
60%	$120.00
80%	$160.00
100%	$200.00

(2) An individual shall also pay any unpaid portion of a previously billed amount.

Section 3. Patient Statement of Account. Designated staff shall prepare a statement of account, which shall:

(1) Be mailed to the family on or around the twentieth (20th) day of each calendar month; and

(2) Include the:

(a) Total account balance;

(b) Amount past due calculated in accordance with Section 2 of this administrative regulation;

(c) Required minimum monthly payment;

(d) Amounts paid or incurred during the past thirty (30) calendar days; and

(e) Contact information for any questions concerning billed amounts.

Section 4. Receipt of Payments. A family shall make payments to OCSHCN:

(1) Via mail;

(2) In person at any OCSHCN regional office; or

(3) By telephone using a credit card.

Section 5. OCSHCN Clinic Participation Fees. (1) A patient shall be charged a program participation fee when services are provided at an OCSHCN-managed clinic by:

(a) OCSHCN staff; or

(b) OCSHCN medical staff.

(2) The OCSHCN clinic participation fee shall be determined as follows:

Pay Category	Participation Fee
0%	$5.00
20%	$5.00
40%	$10.00
60%	$10.00
80%	$15.00
100%	$15.00

(3) The OCSHCN clinic participation fee shall not be charged if the patient is enrolled in Kentucky Medicaid at the time service is provided.

(4) Only one (1) OCSHCN clinic participation fee shall be charged per day per person receiving services.

Section 6. OCSHCN Referral for Services Provided by Contracted Providers. (1) If services are provided to a patient by an OCSHCN-contracted provider outside of an OCSHCN-managed clinic, the patient shall be responsible for payment for services, in accordance with the terms and conditions contained in the contractual agreement entered into by OCSHCN and the contracted provider.

(2) Prior to the delivery of services, designated staff shall:

(a) Ensure that the contracted provider is a participant under the patient's insurance plan;

(b) Issue a written referral for services to the contracted provider to identify that the patient is enrolled in an OCSHCN clinical program; and

(c) Provide demographic and insurance information to the contracted provider.

(3) A patient shall contact the contracted provider prior to the delivery of services in order to:

(a) Identify that the patient is enrolled in the OCSHCN clinical program; and

(b) Discuss payment expectations.

(4) A patient may contact the OCSHCN Payments and Provider Relations branch to confirm that the contracted provider is billing the contracted rate after any insurance payments are applied.

Section 7. Authorization of Payment for External Services. (1) OCSHCN shall issue an authorization of payment for outpatient services to an OCSHCN-contracted provider for a patient who:

(a) Has no insurance coverage;

(b)1. Has private insurance; and

2. Is in the zero percentage pay category; or

(c)1. Has private insurance;

2. Is in the twenty (20) percent through 100 percent pay category; and

3. Needs services or benefits that are not covered (excluding co-pays).

(2) Prior to submitting a bill to OCSHCN, the OCSHCN-contracted provider shall bill any third-party insurance payors.

(3) After OCSHCN has paid the contracted provider, OCSHCN shall bill the patient for the portion of the cost as follows:

Pay Category	Amount Owed
0%	$0.00
20%	20% of amount paid by OCSHCN
40%	40% of amount paid by OCSHCN
60%	60% of amount paid by OCSHCN
80%	80% of amount paid by OCSHCN
100%	100% of amount paid by OCSHCN

(4) A patient with insurance coverage in twenty (20) percent through 100 percent pay category status shall be responsible for the payment of any copays or co-insurance for outpatient or inpatient services with an OCSHCN contracted provider.

(5) OCSHCN shall authorize payments for recommended or prescribed durable medical equipment and shall bill the patient for the portion of the cost as follows:

Pay Category	Amount Owed
0%	$0.00
20%	20% of amount paid by OCSHCN
40%	40% of amount paid by OCSHCN
60%	60% of amount paid by OCSHCN
80%	80% of amount paid by OCSHCN
100%	100% of amount paid by OCSHCN

(6) OCSHCN shall authorize payment for recommended or prescribed hearing aids, earmolds, or dispensing and fitting fees, and shall bill the patient for the portion of the cost as follows:

Pay Category	Amount Owed
0%	$0.00, unless patient is covered by Medicaid and hearing instruments have been provided within the past thirty-six (36) months, in which case the Medicaid contract rate shall apply
20%	20% of amount paid by OCSHCN
40%	40% of amount paid by OCSHCN

60%	60% of amount paid by OCSHCN
80%	80% of amount paid by OCSHCN
100%	100% of amount paid by OCSHCN

(7) OCSHCN shall authorize payment for orthodontia or dental services provided by a Medicaid-contracted provider and or in-network provider, and shall bill a patient for the portion of the cost as follows:

Pay Category	Amount Owed
0%	$0.00
20%	20% of amount paid by OCSHCN
40%	40% of amount paid by OCSHCN
60%	60% of amount paid by OCSHCN
80%	80% of amount paid by OCSHCN
100%	100% of amount paid by OCSHCN

(8) If OCSHCN authorizes payments for prescription drugs for a patient, the patient responsibility shall be:

(a) No charge for the family of a patient in the zero percent pay category;

(b) 100 percent of what OCSHCN pays the provider, for a patient in the twenty (20) percent to 100 percent pay category with private insurance under which the drug is a non-covered benefit;

(c) Payment to the provider for a patient in the twenty (20) percent to 100 percent pay category with private insurance under which the drug is a covered benefit; and

(d) As follows for an uninsured patient in the twenty (20) percent to 100 percent pay category:

Pay Category	Amount Owed
20%	100% of amount paid by OCSHCN, not to exceed $20.00 per month
40%	100% of amount paid by OCSHCN, not to exceed $40.00 per month
60%	100% of amount paid by OCSHCN, not to exceed $60.00 per month
80%	100% of amount paid by OCSHCN, not to exceed $80.00 per month
100%	100% of amount paid by OCSHCN, not to exceed $100.00 per month

(9) The schedule for making payment to OCSHCN on an account shall be:

Pay Category	Payment Due on Balance Owed
0%	$20.00 per month, or account balance if balance is less than $20.00
20%	$40.00 per month, or account balance if balance is less than $40.00
40%	$80.00 per month, or account balance if balance is less than $80.00
60%	$120.00 per month, or account balance if balance is less than $120.00
80%	$160.00 per month, or account balance if balance is less than $160.00
100%	$200.00 per month, or account balance if balance is less than $200.00

Section 8. Failure to Provide Payments. (1) If the minimum required payment, calculated in accordance with Section 2 of this administrative regulation, is not received within thirty (30) days following the first billing to the family, OCSHCN shall:

(a) Mail a second statement of account, pursuant to Section 3 of this administrative regulation; and

(b) Request that the assigned OCSHCN care coordinator contact the family to follow up with the family.

(2) If the minimum required payment, calculated in accordance with Section 2 of this administrative regulation, is not received within sixty (60) days following the first billing to the family:

(a) The account shall not be considered in good standing; and

(b) OCSHCN shall:

1. Mail a third statement of account, pursuant to Section 3 of this administrative regulation, indicating that the patient is subject to discharge from the OCSHCN program if all required payments are not received within thirty (30) days from the date of the letter; and

2. Discontinue eligibility for:

a. Services that require an authorization of payment for external services, in accordance with Section 6 of this administrative regulation;

b. Assistance with lodging;

c. Meal reimbursement; and

d. Assistance with transportation.

(3) If the minimum required payment calculated in accordance with Section 2 of this administrative regulation is not received within 120 days following the first billing to the family, OCSHCN shall:

(a) Discharge the patient from the OCSHCN program;

(b) Mail the responsible party a letter, which states that:

1. The patient has been discharged for failure to make required payments; and

2. Reapplication may be made, but readmission to the program is contingent upon the payment of any write-off for bad debt balances for services previously delivered to the patient, and any member of the patient's household, based on the patient's pay category determined in accordance with 911 KAR 1:010, Section 11;

(c) Rescind any outstanding authorizations to the patient's:

1. Medical providers; and

2. Pharmacy providers; and

(d) Write off the balance of the account, adjusting the balance to reflect a zero dollar balance.

Section 9. Reapplication. OCSHCN shall allow no more than three (3) reapplications if the discharge reasons include failure to:

(1) Complete financial update pursuant to 911 KAR 1:010, Section 12;

(2) Cooperate with treatment plan;

(3) Make payments based on the patient's pay category;

(4) Reimburse OCSHCN when insurance payments are received; or

(5) Accept treatment or care.

Section 10. Request for Reconsideration. (1) An individual who is aggrieved may request a reconsideration of:

(a) Discharge due to non-payment of an account balance pursuant to Section 8 of this administrative regulation; or

(b) Dismissal of a reapplication due to reaching the maximum number of reapplications pursuant to Section 9 of this administrative regulations.

(2) An individual requesting reconsideration shall complete the OCSHCN-20a, Request for Reconsideration of Discharge. The request for reconsideration shall:

(a) Be received by OCSHCN within ten (10) business days of the date the individual received notification of discharge or dismissal in accordance with subsection (1) of this section; and

(b) Contain the following information:

1. Name of the individual or legal guardian;

2. Address;

3. Telephone;

4. E-mail address, if available;

5. Justification for reconsideration;

6. The following supporting documentation, if available:

a. Bank statements;

b. Provider statements; or

c. Original receipts showing the amount paid; and

7. Dated signature of individual or legal guardian.

(3) OCSHCN review of the completed form and supporting documentation shall be completed:

(a) Within ten (10) business days; and

(b) By a reconsideration committee consisting of the following individuals:

1. Executive director;

2. Medical director;

3. Director of Administration and Financial Services; and

4. Director of Clinical and Augmentative Services.

(4) OCSHCN's review shall include consideration of:

(a) Whether a change in circumstances exists, to include:

1. A change in amount of earned income;

2. A change in job status; or

3. Excessive out of pocket expenses made throughout the

calendar year for medical expenses, including:

a. Co-payments;

b. Required deductions for insurance;

c. Fees;

d. Prescription costs; or

e. Any other direct costs to the individual or legal guardian for medical expenses; and

(b) The severity of the condition and the need to keep the patient enrolled for services due to:

1. Limitation in access to care; or

2. Costs related to medication needed to treat the patient.

(5) The committee shall vote to approve or deny the request for reconsideration.

(6) The executive director may supersede the final decision within ten (10) business days, unless additional information is requested.

(7) If additional information is requested:

(a) The committee shall request the information within five (5) business days of the review date;

(b) The individual or legal guardian shall return the information to the executive director within ten (10) business days; and

(c) OCSHCN shall approve or deny the request for reconsideration within five (5) business days.

(8) OCSHCN shall communicate to the individual or legal guardian:

(a) Whether the reconsideration request was approved or denied; and

(b) A brief justification of the approval or denial.

(9) An individual who has received a notice of adverse action following a reconsideration may request an administrative hearing in accordance with KRS Chapter 13B. The request for an administrative hearing shall be received by OCSHCN within thirty (30) days of the notice of adverse action.

Section 11. Incorporation by Reference. (1) "OCSHCN-20a, Request for Reconsideration of Discharge," 01/2019, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office for Children with Special Health Care Needs, 310 Whittington Parkway, Suite 200, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. to 4:30 p.m. or online at the agency's Web site at https://chfs.ky.gov/agencies/ccshcn.

SHELLIE A. MAY, BSN, Executive Director
ADAM M. MEIER, Secretary

APPROVED BY AGENCY: February 11, 2019

FILED WITH LRC: February 14, 2019 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on March 25, 2019, 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 March 18, 2019, 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 March 31, 2019. 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: Chase Coffey, Executive Administrative Assistant, 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 Borden, 502-429-4430, Jonathan.Borden@ky.gov, and Chase Coffey

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes minimum monthly payments for families enrolled in Office for Children with Special Health Care Needs programs, procedures for the preparation and transmittal of the patient statement of accounts, receipt of payments, clinic participation fees, services provided by contracted providers, authorizations of payment, failure to provide payments, provisions for discharge, criteria for reapplication, and a process for reconsideration of an adverse decision.

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to describe policies related to the collection of full or partial reimbursement by the Office for Children with Special Health Care Needs for the cost of treatment and care from parents or guardians commensurate with their ability to pay.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 200.470 mandates the collection of full or partial reimbursement by the Office for Children with Special Health Care Needs for the cost of treatment and care from parents or guardians commensurate with their ability to pay.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation facilitates compliance with KRS 200.470 by describing a process for reimbursement to the Office for Children with Special Health Care Needs for the cost of treatment and care as 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: This administrative regulation is not an amendment.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation is not an amendment.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation is not an amendment.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation is not an amendment.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Individuals enrolled in clinical programs operated by the Office for Children with Special Health Care Needs will be affected by this administrative regulation. In fiscal year 2018, there were 5,057 distinct individuals, ages 0-21, who were enrolled statewide in clinical programs operated by the Office for Children with Special Health Care Needs.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Individuals enrolled in clinical programs operated by the Office for Children with Special Health Care Needs shall be required to continue to pay fees and monthly payments representing portions of a cost of treatment, as has been the case for many years. Procedures that have been in place outside of administrative regulation are now being enumerated to bring the agency into compliance with the provisions of KRS Chapter 13A. No fees have changed because 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): Depending on the calculated pay category for the individual family, fees and monthly payments will vary based on the resources available to the family. This is already occurring and therefore not a new process.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Individuals enrolled in clinical

programs operated by the Office for Children with Special Health Care Needs shall be eligible to receive direct medical care services as well as enabling services such as care coordination, which may assist the family in navigating the system of care and support in the community where the family resides. Financial benefits shall include reduced rates of care with OCSHCN-contracted providers.

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

(a) Initially: There are no additional costs necessary to implement this administrative regulation.

(b) On a continuing basis: There are no additional costs necessary 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? Cost will be covered by existing OCSHCN receipts, federal funds, and general funds. Procedures that have been in place outside of administrative regulation are now being enumerated to bring the agency into compliance with the provisions of KRS Chapter 13A. Additional funding is not needed because of this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: There is no anticipated funding impact. Fees are consistent with current practice.

(8) State whether this administrative regulation established any fees or directly or indirectly increased any fees: The fees within this administrative regulation are consistent with current practice. There is not an increase in fees.

(9) TIERING: Is tiering applied? Yes, tiering is applied as the agency collects fees based on a family's pay category, which is determined by using their income. The fees are $5, $10, or $15 based on pay category assignment.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What 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 Office for Children with Special Health Care Needs, a state government agency within 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.030(5), KRS 194A.050(1), KRS 200.460

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Revenue will vary based on the type of claim.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Revenue will remain neutral.

(c) How much will it cost to administer this program for the first year? This new administrative regulation will have no administrative costs in the first year.

(d) How much will it cost to administer this program for subsequent years? This new administrative regulation will have no administrative costs in subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Office for Children with Special Health Care Needs
(New Administrative Regulation)

911 KAR 1:060. Office for Children with Special Health Care Needs Medical Staff.

RELATES TO: KRS 200.460

STATUTORY AUTHORITY: KRS 194A.030(5), 200.460(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.030(5) authorizes the Office for Children with Special Health Care Needs to promulgate administrative regulations to implement and administer its responsibilities. KRS 200.460 mandates the Office for Children with Special Health Care Needs to provide services to children with disabilities, including necessary medical treatment by physicians or surgeons deemed qualified by the agency. This administrative regulation establishes requirements relating to the Office for Children with Special Health Care Needs Medical Staff.

Section 1. Definitions. (1) "Advanced practice registered nurse" is defined by KRS 314.011(7).

(2) "Dentist" is defined by KRS 313.010(10).

(3) "MAC" means the Medical Advisory Committee, which is an internal OCSHCN committee that consists of thirteen (13) members and advises OCSHCN on issues pertaining to medical staff qualification, credentialing, quality, and other related issues.

(4) "OCSHCN" means Office for Children with Special Health Care Needs.

(5) "Physician" is defined by KRS 311.550(12).

(6) "Physician assistant" is defined by KRS 311.840(3).

(7) "Psychologist" is defined by KRS 319.010(9).

Section 2. Qualifications for Acceptance to OCSHCN Active Medical Staff. (1) In order to be eligible for acceptance to the OCSHCN active medical staff, an individual shall be:

(a) Licensed to practice in Kentucky as a:

1. Physician;
2. Dentist;
3. Advanced practice registered nurse;
4. Physician assistant; or
5. Psychologist; and

(b) Able to document:

1. Background, experience, training, and competence;
2. Adherence to the ethics of the individual's profession;
3. Professionalism; and
4. Interpersonal skills.

(2) A physician or dentist shall be:

(a) 1. Eligible for membership in the national medical or dental society; or

2. Enrolled as a member of the national medical or dental society; and

(b) Enrolled as a participating provider in the Kentucky Medicaid program, in accordance with 907 KAR 1:672.

(3) For specific medical specialties, for which there is a generally recognized certification by a board giving examinations in the field, the individual shall be:

(a) Eligible to sit for the examination of the board; or

(b) Board certified.

(4) The executive director, upon advice of the MAC, may exempt an individual from the requirements specified in subsection (3) of this section if the individual:

(a) Agrees to provisional status for twelve (12) months; and

(b) Agrees to provide the MAC at the completion of twelve (12) months, with three (3) references, including:

1. Two (2) peer reference letters that:

a. Are written by Kentucky physicians, dentists, or psychologists as appropriate; and

b. Are completed on the:

(i) OCSHCN-60g, Peer Reference Letter Medical or Dental; or

(ii) OCSHCN-60h, Peer Reference Letter Psychologist; and

2. One (1) reference letter that:

a.(i) Is written by the medical director of a Kentucky children's hospital where the individual is on medical staff; or

(ii) If not on medical staff at a children's hospital, is written by the medical director at the Kentucky hospital where the individual is on medical staff and admits the majority of the individual's patients; and

b. Is completed on the OCSHCN-60j, Facility Recommendation Letter.

(5) For initial appointment to the medical staff in a dental specialty area, the individual shall be licensed in the specialty area, in accordance with KRS 313.035 and 201 KAR 8:532.

Section 3. Categories of Medical Staff. The medical staff shall consist of the following categories:

(1) Temporary active status, pursuant to Section 6 of this administrative regulation;

(2) Active status, pursuant to Sections 2, 4, and 5 of this administrative regulation;

(3) Provisional status, pursuant to Sections 2, 4, 5, and 7 of this administrative regulation; and

(4) Contracted status, pursuant to Section 8 of this administrative regulation.

Section 4. Initial Application Process for Active Medical Staff. (1) An individual seeking initial appointment to the medical staff shall submit to OCSHCN a completed application packet containing:

(a) A completed and signed:

1. a. OCSHCN-60a, Application for Active Medical or Dental Staff, if the individual is a dentist or physician;

b. OCSHCN-60b, Application for Active Medical APRN Staff, if the individual is an advanced practice registered nurse;

c. OCSHCN-60c, Application for Active Psychology Staff, if the individual is a psychologist; or

d. OCSHCN-60d, Application for Active Medical Physician Assistant Staff, if the individual is a physician assistant;

2. OCSHCN-60e, Authorization, Attestation, and Release; and

3. OCSHCN-60f, Anti-Harassment and Discrimination Acknowledgment;

(b) A copy of the individual's current Council for Affordable Quality Healthcare (CAQH) application;

(c) A current curriculum vitae;

(d) A copy of the individual's malpractice insurance endorsement; and

(e) The applicable information required by subsections (2) though (5) of this section.

(2) If the individual is a dentist or physician, the following attachments shall be included:

(a) A copy of the individual's license to practice, issued by the Kentucky:

1. Board of Dentistry; or

2. Board of Medical Licensure; and

(b) If applicable, a copy of the individual's current Form DEA-223, Controlled Substance Registration Certificate issued by the United States Department of Justice, Drug Enforcement Administration.

(3) If the individual is an advanced practice registered nurse, the following attachments shall be included:

(a) A copy of a signed Collaborative Practice Agreement between the physician and the individual, as submitted to the Kentucky Board of Nursing; and

(b) A copy of the individual's current credentialing from the:

1. American Nurses Credentialing Center (ANCC); or

2. American Academy of Nurse Practitioners (AANP).

(4) If the individual is a psychologist, the application packet shall include a copy of the individual's license to practice, issued by the Kentucky Board of Examiners of Psychology.

(5) If the individual is a physician assistant, the following attachments shall be included:

(a) A copy of the individual's license to practice, issued by the Kentucky Board of Medical Licensure;

(b) A copy of the initial and any applicable Supplemental Application for Physician to Supervise Physician Assistant, as submitted to the Kentucky Board of Medical Licensure; and

(c) A copy of the National Commission on Certification of Physician Assistants (NCCPA) certification.

Section 5. Procedures for Application Review and Appointment. (1) Within seven (7) working days of receipt of the application pursuant to Section 4 of this administrative regulation, designated OCSHCN staff shall request that:

(a) Individuals listed as references complete the:

1. OCSHCN 60g, Peer Reference Letter Medical or Dental; or

2. OCSHCN 60h, Peer Reference Letter Psychologist, if the individual is a psychologist; and

(b) An individual submit missing information or other required documents necessary to an evaluation of the individual's qualifications.

(2) If the documentation requested pursuant to subsection (1) of this section is not received by OCSHCN within forty-five (45) working days from the date of the request, designated OCSHCN staff shall notify the individual in writing that:

(a) The individual shall be responsible for following up to obtain missing information and ensuring receipt by OCSHCN within twenty (20) working days of written notice;

(b) Failure to submit the missing information within twenty (20) working days of written notice under paragraph (a) of this subsection shall result in the application being placed in closed status without further review;

(c) Reapplication for staff appointment shall not be considered for a period of six (6) months from the date of the notice that the application has been closed pursuant to paragraph (b) of this subsection; and

(d) Reapplication for staff appointment shall be processed as an initial application.

(3) Upon receipt of documentation requested pursuant to subsection (1) of this section, designated OCSHCN staff shall make the application and other documentation available to the MAC chair, who shall present the application at the next meeting of the MAC.

(4) The MAC shall:

(a) Ensure that all necessary documents and investigations have been validated with objectivity, fairness, and impartiality, and that recommendations are soundly based and compatible with the objectives of OCSHCN;

(b) Determine if the individual meets all necessary qualifications for the category of staff membership and clinical privileges requested;

(c) If the MAC determines that the individual meets all necessary qualifications for the category of staff membership and clinical privileges requested, recommend to designated OCSHCN staff:

1. Appointment to the appropriate staff category; and

2. Granting of privileges according to the specialty to which the individual shall be assigned; and

(d) If the MAC determines that the individual does not meet all necessary qualifications for the category of staff membership and clinical privileges requested:

1. Defer consideration of the application, if clarifying information is needed; or

2. Reject the application.

(5) Upon the MAC approving the individual, designated OCSHCN staff shall add the individual approved in accordance with this section to OCSHCN's active medical staff for a period of three (3) years.

(6) An individual aggrieved by an adverse decision pursuant to subsection (4)(d) of this section may request to address the MAC to seek reconsideration pursuant to Section 13 of this administrative regulation.

Section 6. Temporary Active Medical Staff. (1) The executive director or designee may make a temporary active medical staff appointment if necessary to provide clinical coverage. This type of staff appointment shall be:

(a) Emergency in nature;

(b) Made based on information currently available that may

reasonably be obtained as to the competence and ethical standing of the individual; and

(c) Reviewed by the MAC within six (6) months following the appointment.

(2) A temporary active medical staff appointment shall last no longer than six (6) months, at which time the appointment shall be eligible for conversion to the active medical staff pursuant to the processes established in Sections 4 and 5 of this administrative regulation.

(3) Each appointee to the temporary active medical staff shall have an assigned member of the active medical staff review performance during clinic and make recommendations to the MAC as necessary regarding conversion to the active medical staff.

(4) An appointee to temporary active medical staff status shall be reimbursed in accordance with Section 11 of this administrative regulation.

Section 7. Provisional Staff. (1) In accordance with Section 2(4) of this administrative regulation, the executive director may make a provisional staff appointment if an individual meets the requirements of Sections 2, 4, and 5 of this administrative regulation.

(2) An appointment to provisional status shall be effective for twelve (12) months.

(3) Prior to the end of the twelve (12) months, the MAC shall:

(a) Review reference letters submitted in accordance with Section 2(4) of this administrative regulation; and

(b) Make a recommendation to designated OCSHCN staff at its next meeting as to whether to:

1. Move the appointee to active status; or

2. Terminate provisional status.

(4) An appointee aggrieved by a recommendation to terminate provisional status may be heard by the MAC pursuant to Section 13 of this administrative regulation.

Section 8. Contracted Staff. (1) In accordance with KRS Chapter 45A, OCSHCN may contract with medical or dental specialists to provide services to children outside of OCSHCN offices and clinics.

(2) OCSHCN-enrolled children may be referred to contracted staff by a member of the active medical staff or the medical director.

Section 9. Annual Review and Reappointment Process. (1) OCSHCN shall, on an annual basis, verify for each member of the active medical staff:

(a) Current state license; and

(b) Current malpractice insurance.

(2) Each member of the active medical staff shall undergo a re-credentialing process every three (3) years. Required documents to be submitted to OCSHCN shall include:

(a) OCSHCN-60i, Renewal Application for Active Medical or Dental Staff; and

(b) All documents requested by OCSHCN-60i, Renewal Application for Active Medical or Dental Staff.

(3) The reappointment evaluation shall include the following criteria:

(a) Review of required forms and documents;

(b) Timely completion and preparation of medical and other required patient records;

(c) Satisfactory evidence of compliance with ethics;

(d) Compliance with OCSHCN procedures;

(e) General cooperation and ability to work with others;

(f) Results of quality assurance audits, if conducted; and

(g) Reports of disciplinary action requested, or proceedings initiated against a provider at any institution.

(4) At each regularly scheduled meeting, the MAC shall complete a review of the active medical staff that are due for a three (3) year re-credentialing appraisal. The review shall include:

(a) OCSHCN-60i, Renewal Application for Active Medical or Dental Staff; and

(b) Any other information the MAC deems pertinent to continuation on the medical staff.

(5) After the review, the MAC shall make a determination to re-credential or not re-credential.

Section 10. Duties and Responsibilities of Medical Staff. (1) Each member of the medical staff shall assume the same responsibility for care and treatment of the staff member's assigned patients as in private practice.

(2) A resident physician or dentist in training may assist in the care of patients, if a member of the active medical staff:

(a) Remains entirely responsible for the care of each patient;

(b) Examines and, if indicated, recommends treatment for each new patient under the staff member's care;

(c) Remains present in the surgical suite at all operations and other procedures in which general anesthesia is used;

(d) Directs the examination of all patients assigned to the active staff member for discharge from the hospital and outlines follow-up care; and

(e) Maintains oversight of the resident physician or dentist.

(3) Active medical staff members assigned to OCSHCN clinics shall be present to conduct an assigned clinic. If an active medical staff member cannot be present to conduct an assigned clinic, the staff member shall:

(a) Make arrangements with another member of the OCSHCN medical staff to serve in the staff member's place, if the staff member advises the assigned OCSHCN staff of this change; or

(b) Request that assigned OCSHCN staff reschedule the clinic, if the request is timely enough to allow OCSHCN staff to notify patients of the rescheduling.

(4) For a clinic with more than one (1) provider representing different specialties, if an active medical staff member cannot be present to conduct an assigned clinic, the staff member shall:

(a) Make arrangements with another member of the OCSHCN medical staff to serve in the staff member's place, if the staff member advises the assigned OCSHCN staff of this change; or

(b) Make arrangements with the other active medical staff members assigned to the clinic to reschedule the entire clinic, if the request is timely enough to allow OCSHCN staff to notify patients of the rescheduling.

(5) If an active medical staff member who has responsibility for a clinic fails to attend two (2) clinics during a twelve (12) month period and does not comply with subsection (3) or (4) of this section, the active medical staff member shall be:

(a) Removed from the active medical staff; and

(b) Advised in writing of:

1. The removal; and

2. Right to be heard by the MAC pursuant to Section 13 of this administrative regulation.

(6) Medical staff members participating in OCSHCN onsite clinics shall document a summary of each patient visit. Documentation shall be completed:

(a) On the day of the visit; or

(b) Within seventy-two (72) hours of the visit if it cannot be finished on the day of the visit.

(7) Medical staff members participating in OCSHCN onsite clinics shall:

(a) Not remove patient medical records from OCSHCN premises; and

(b) Authenticate their medical record entries regarding diagnosis, findings, and recommendations for treatment, by:

1. Signature; or

2. Initials.

(8) If a medical staff member elects to initial the medical record pursuant to subsection (7) of this section, OCSHCN shall maintain a legend for purpose of identity, which includes the typed or printed name of the medical staff member, followed by hand signed initials.

(9) A medical staff member may see OCSHCN patients in the staff member's private office, as deemed necessary by the medical staff member. Office visit records shall be:

(a) Completed; and

(b) Forwarded to the assigned OCSHCN office within three (3) working days of the visit.

(10) To the extent possible, total care for the child shall be considered while the specific condition for which treatment is

sought is being cared for. Coexistent diseases, disabilities, or anomalies shall be investigated and treated if:

(a) The referring physician or dentist, if any, approves and consents; and

(b) The services fall within the categories eligible for treatment by OCSHCN in accordance with 911 KAR 1:010.

(11) A program of total care for the child shall be developed by a team approach. There shall be discussion of all phases of the problem of each child by all medical personnel concerned with the child's care, including therapists and other professional personnel. Team care shall be provided within the context of a multidisciplinary clinic.

(12) Contracted staff shall be available for consultation and treatment if indicated. Arrangements for contracts shall be made through the assigned OCSHCN office on an individual basis.

Section 11. Compensation. (1) A member of the medical staff shall be compensated for services provided during onsite OCSHCN clinics in accordance with a contract agreed to pursuant to the provisions of KRS Chapter 45A.

(2) If OCSHCN staff refer patients to a member of the active medical staff for services outside of an OCSHCN clinic, information needed to bill the appropriate insurance carrier shall be included.

Section 12. Corrective Action. (1) The following parties may request corrective action be directed toward a member of the medical staff:

(a) Any member of the medical staff;

(b) The chair of the MAC;

(c) OCSHCN staff; or

(d) A member of the family of an OCSHCN-enrolled child.

(2) The basis for a request for corrective action shall include activities or professional conduct that are considered to be:

(a) Contrary to the standards or aims of the medical staff; or

(b) Disruptive to OCSHCN operations, programs, or clinics.

(3) A request for corrective action shall be:

(a) In writing;

(b) Addressed to the executive director; and

(c) Supported by references to the specific activities or conduct that constitutes grounds for the request.

(4) Within ten (10) working days of receipt of a request for corrective action, the executive director or designee shall:

(a) Initiate an investigation of the facts and circumstances surrounding the grounds for the requested corrective action;

(b) Interview the member of the medical staff against whom the corrective action is requested;

(c) Document the interview in writing; and

(d) Submit a report and recommendation to the MAC for consideration.

(5) Within ninety (90) working days following the receipt of the recommendation by the executive director, the MAC shall make recommendations on the request.

(6) In accordance with the provisions of subsection (5) of this section, the MAC may:

(a) Reject the request for corrective action;

(b) Issue a warning, letter of admonition, or letter of reprimand;

(c) Impose terms of probation or a suspension from the medical staff; or

(d) Recommend that the affected member's medical staff membership be suspended or revoked.

(7) The executive director shall have the authority to summarily suspend or dismiss a member of the medical staff if action is needed immediately in the interest of patient care. Grounds for summary suspension or dismissal from the medical staff shall include:

(a) Action by the governing Board of Medical Licensure, Board of Dentistry, Board of Nursing, or Board of Examiners of Psychology, in which a member's license is revoked or suspended;

(b) Loss of hospital privileges; or

(c) Behavior that creates a risk of harm to children or OCSHCN staff.

Section 13. Request for Reconsideration. (1) A provider may request to appear before the MAC to advocate for reconsideration if the provider:

(a) Was denied appointment to the medical staff pursuant to Section 5 of this administrative regulation;

(b) Had provisional status terminated pursuant to Section 7 of this administrative regulation;

(c) Was removed from the active medical staff pursuant to Section 10(5) of this administrative regulation; or

(d) Has been the subject of corrective action pursuant to Section 12 of this administrative regulation.

(2) A provider who is aggrieved pursuant to subsection (1) of this section shall complete form OCSHCN-60k, Request for Reconsideration by Medical Advisory Committee, to include:

(a) Name of provider;

(b) Specialty;

(c) Address;

(d) Telephone;

(e) Email address, if available;

(f) Justification for reconsideration;

(g) Supporting documentation, if available, including:

1. Verification of training or work history; and

2. Provider statements or recommendations; and

(h) Dated signature of the provider.

(3) The MAC shall review the completed form and supporting documentation.

(4) The MAC may request additional information as needed within five (5) working days of the review date.

(5) The provider shall return the information requested pursuant to subsection (4) of this section within ten (10) working days.

(6) The MAC shall communicate to the provider:

(a) The date to appear before the MAC; and

(b) Within five (5) working days of the receipt of all information requested.

(7) Following the provider's appearance at the MAC, the MAC shall communicate within five (5) working days to the provider:

(a) The decision made; and

(b) A brief explanation.

Section 14. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "OCSHCN-60a, Application for Active Medical or Dental Staff," 01/2019;

(b) "OCSHCN-60b, Application for Active Medical APRN Staff," 01/2019;

(c) "OCSHCN-60c, Application for Active Psychology Staff," 01/2019;

(d) "OCSHCN-60d, Application for Active Medical Physician Assistant Staff," 01/2019;

(e) "OCSHCN-60e, Authorization, Attestation, and Release," 01/2019;

(f) "OCSHCN-60f, Anti-Harassment and Discrimination Acknowledgment," 01/2019;

(g) "OCSHCN-60g, Peer Reference Letter Medical or Dental," 01/2019;

(h) "OCSHCN-60h, Peer Reference Letter Psychologist," 01/2019;

(i) "OCSHCN-60i, Renewal Application for Active Medical or Dental Staff," 01/2019;

(j) "OCSHCN-60j, Facility Recommendation Letter," 01/2019; and

(k) "OCSHCN-60k, Request for Reconsideration by Medical Advisory Committee," 01/2019.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office for Children with Special Health Care Needs, 310 Whittington Parkway, Suite 200, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. to 4:30 p.m. or online at the agency's Web site at https://chfs.ky.gov/agencies/ccshcn.

SHELLIE A. MAY, BSN, Executive Director
ADAM M. MEIER, Secretary
APPROVED BY AGENCY: February 11, 2019

FILED WITH LRC: February 14, 2019 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on March 25, 2019, 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 March 18, 2019, 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 March 31, 2019. 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: Chase Coffey, Executive Administrative Assistant, 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 Borden, 502-429-4430, Jonathan.Borden@ky.gov, and Chase Coffey

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes eligibility criteria for medical staff, application processes, classification of staff categories (active, temporary active, contract, provisional), procedures for application review and appointment, procedures for annual review and reappointment every three (3) years, duties and responsibilities of appointed providers, provisions for compensation, procedures for corrective action, and a process for reconsideration for aggrieved parties. Forms required are incorporated by reference.

(b) The necessity of this administrative regulation: This administrative regulation is needed to formally establish the agency's medical staff policies in administrative regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes standards for medical care providers as mandated by KRS 200.460.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation facilitates the Cabinet's compliance with KRS 200.460(2). This administrative regulation assists in the provision of necessary treatment by physicians or other providers who are qualified, and proper administration of the OCSHCN program.

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

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Entities seeking appointment to the OCSHCN medical staff will be affected by this administration regulation. The current active medical staff includes 118 providers from an array of specialties, including eighty-five (85) medical doctors, fourteen (14) advanced practice registered nurses, fourteen (14) dentists, two (2) physician assistants, two (2) doctors of osteopathy, and two (2) psychologists. Additionally, approximately 1,200 OCSHCN-contracted individuals serve as contracted staff who may provide services to OCSHCN-enrolled children outside of clinics.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: If they choose, individuals seeking appointment to the OCSHCN medical staff shall pursue the application process described, including the individual forwarding, to the Office for Children with Special Health Care Needs, a packet with required forms, references, and supporting documentation. Impact will be minimal, as individuals have already been following these steps pursuant to OCSHCN medical staff procedures that predate the promulgation 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): The Office for Children with Special Health Care Needs does not anticipate any additional costs to the entities as a result of this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Individuals appointed to the OCSHCN medical staff will be eligible to provide, through contractual agreement, direct care services to children eligible for the OCSHCN clinical programs pursuant to KRS 200.460(1).

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

(a) Initially: There are no additional costs necessary to implement this administrative regulation.

(b) On a continuing basis: There are no additional costs necessary 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: Costs of implementation and enforcement will be minimal and absorbed into the existing Office for Children with Special Health Care Needs agency budget. Procedures that have been in place outside of administrative regulation are now being enumerated to bring the agency into compliance with the provisions of KRS Chapter 13A. Additional funding is not needed because of this administrative regulation.

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

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

(9) TIERING: Is tiering applied? Yes. OCSHCN tiers the request for documentation to the medical field in which the provider applies to practice. If a particular form is not relevant to the field of practice, the individual is not required to submit the document.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What 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 Office for Children with Special Health Care Needs, a state government agency within 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.030(5), KRS 200.460

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

(a) How much 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 revenue in the first year.

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

(c) How much will it cost to administer this program for the first year? This new administrative regulation will have no administrative costs in the first year.

(d) How much will it cost to administer this program for subsequent years? This new administrative regulation will have no administrative costs in subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Office for Children with Special Health Care Needs
(Repealer)

911 KAR 1:071. Repeal of 911 KAR 1:070 and 911 KAR 1:080.

RELATES TO: KRS 194A.030(5)

STATUTORY AUTHORITY: KRS 194A.030(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.030(5) authorizes the Office for Children with Special Health Care Needs to promulgate administrative regulations to implement and administer its responsibilities. This administrative regulation repeals 911 KAR 1:070 and 911 KAR 1:080. The provisions contained in 911 KAR 1:070 are to be updated pursuant to KRS Chapter 13A and contained in separate administrative regulations in this chapter. The provisions contained in 911 KAR 1:080 refer to a program no longer operated by the Office for Children with Special Health Care Needs.

Section 1. The following administrative regulations are hereby repealed:

(1) 911 KAR 1:070, Handicapped children's services; and

(2) 911 KAR 1:080, SSI Children's Support Services (SSI/CSS) Program.

SHELLIE A. MAY, BSN, Executive Director
ADAM M. MEIER, Secretary

APPROVED BY AGENCY: February11, 2019

FILED WITH LRC: February 14, 2019 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on March 25, 2019, 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 March 18, 2019, 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 March 31, 2019. 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: Chase Coffey, Executive Administrative Assistant, 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 Borden, 502-429-4430, Jonathan.Borden@ky.gov, and Chase Coffey

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals 911 KAR 1:070 and 911 KAR 1:080.

(b) The necessity of this administrative regulation: This administrative regulation is necessary as a result of the evolution of the Office for Children with Special Health Care Needs (OCSHCN) operations since these administrative regulations were last promulgated. Specifically, practices referenced in 911 KAR 1:070 have changed, and the program that comprises the subject matter of 911 KAR 1:080 is no longer in operation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 194A.030(5) authorizes the OCSHCN to promulgate administrative regulations to implement and administer its responsibilities. This administrative regulation repeals 911 KAR 1:070 and 911 KAR 1:080.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation repeals 911 KAR 1:070 and 911 KAR 1:080. The provisions contained in 911 KAR 1:070 are to be updated pursuant to KRS Chapter 13A and contained in separate administrative regulations in this chapter. The provisions contained in 911 KAR 1:080 refer to a program no longer operated by the OCSHCN.

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

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The only purpose of this administrative regulation is to repeal 911 KAR 1:070 and 911 KAR 1:080 due to the obsolescence of the policies and programs referenced in these administrative 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: The only purpose of this administrative regulation is to repeal 911 KAR 1:070 and 911 KAR 1:080. Service provision to Kentucky's citizenry is unchanged.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The only purpose of this administrative regulation is to repeal 911 KAR 1:070 and 911 KAR 1:080. There are no costs to regulated entities or the promulgating agency.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The only purpose of this administrative regulation is to repeal 911 KAR 1:070 and 911 KAR 1:080. The benefits are that two (2) administrative regulations are being repealed.

(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 911 KAR 1:070 and 911 KAR 1:080.

(b) On a continuing basis: There is no ongoing cost associated with the repeal of 911 KAR 1:070 and 911 KAR 1:080.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: 911 KAR 1:070 and 911 KAR 1:080 pertain to OCSCHN operations in planning, developing, providing, and evaluating the public statewide system of care for Kentucky children and youth with special health care needs. Kentucky's sub-award (through the Department for Public Health) of the federal Maternal and Child Health Block Grant and its uses are not impacted by the repeal of these administrative regulations. There is no funding source associated with the repeal of 911 KAR 1:070 and 911 KAR 1:080.

(7) Provide an assessment of whether an 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 only purpose of this administrative regulation is to repeal 911 KAR 1:070 and 911 KAR 1:080. There is no fee or funding impact.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: There is no fee associated with the repeal of 911 KAR 1:070 and 911 KAR 1:080.

(9) TIERING: Is tiering applied? There is no tiering applied in the repeal of 911 KAR 1:070 and 911 KAR 1:080 as there are no requirements to tier.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What 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, Office for Children with Special Health Care Needs will no longer have these obsolete administrative regulations under its purview.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.030(5)

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

(a) How much 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 only purpose of this administrative regulation is to repeal 911 KAR 1:070 and 911 KAR 1:080. This repealer will generate no new revenue in its 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 repealer creates no new revenue in subsequent years.

(c) How much will it cost to administer this program for the first year? This repealer will create no new costs in the first year.

(d) How much will it cost to administer this program for subsequent years? This repealer will create no new costs in subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of February 11, 2019

Call to Order and Roll Call

The February meeting of the Administrative Regulation Review Subcommittee was held on Monday, February 11, 2019 at 1:00 p.m. In Room 149 of the Capitol Annex. Senator West, Co-Chair, called the meeting to order, the roll call was taken. The minutes of the January 2019.

Present were:
Members: Senators Perry Clark, Alice Forgy Kerr, and Stephen West. Representatives David Hale, Mary Lou Marzian, and Tommy Turner.

LRC Staff: Sarah Amburgey, Stacy Auterson, Emily Caudill, Betsy Cupp, Ange Darnell, Emily Harkenrider, Karen Howard, and Carrie Klaber.

Guests: Todd Renner, Department of Revenue; Larry Hadley, Board of Pharmacy; Beth Gamble, Pam Hagan, Michael West, Board of Nursing; Scott Majors, Keith Poynter, Board of Physical Therapy; Ron Brooks, Daniel Schulman, Karen Waldrop; Department of Fish and Wildlife Resources; Michael Mullins, Zeb Weese, Office of Nature Preserves; Tony Hatton, Jon Maybriar; Department of Environmental Protection; William Codell, Tamra Gormley, Department of Juvenile Justice; Ryan Griffith, Jon Johnson, Brent Kroph, Larisa Plecha, Department of Transportation; Deanna Durrett, Amanda Ellis, Wayne Lewis; Department of Education; Stephen Humphress, Stephen Lee Walters, Department of Alcoholic Beverages; Jim Vicini, Division of Mine Safety; Heather Becker, Mitch Buchanan, Board of Home Inspectors; Denise Beatty, Charlese Blair, Health Information Exchange; Donna Little, Jim Musser, Office of Legislative and Regulatory Affairs; Jonathan Scott, Department for Medicaid Services; Laura Begin, Mary Carpenter, Paula Saenz, Department for Community Based Services; Joan Frey, Steve Hyndman, Galen College of Nursing; Brigette Blom Ramsey, Prichard Committee for Academic Excellence; Steve Keeney, Kentucky Association of Home Inspection Professionals.

The Administrative Regulation Review Subcommittee met on Monday, February 11, 2019, and submits this report:

Administrative Regulations Reviewed by the Subcommittee:

FINANCE AND ADMINISTRATION CABINET: Department of Revenue: Income Tax; Corporations

103 KAR 16:250. Net operating loss computation and deduction for corporations. Todd Renner, executive director, represented the department.

A motion was made and seconded to approve the following amendments: (1) to amend Section 6 to make a technical correction to Figure 2-1; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 2, 4, and 6 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

BOARDS AND COMMISSIONS: Board of Pharmacy

201 KAR 2:370. Pharmacy services in long-term care facility (LTCF). Larry Hadley, executive director, represented the board.

In response to questions by Senator Clark, Mr. Hadley stated that an emergency medication kit was to ensure that medication would be on site for timely administration should the need arise. The kit was able to include prescription medication, over-the-counter medication, or a combination of both. An LTCF was able to have these medications in the amounts limited by this administrative regulation if there was a properly licensed administrator present.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 4 to comply with the drafting and formatting requirements of KRS Chapter 13A; (2) to amend Section 1 to: (a) include definitions for "immediate supervision," "pharmacist-in-charge," and "supervision;" and (b) revise the definition for "long-term care facility" to: 1. reference KRS 216.510(1); and 2. exclude a family care home; and (3) to amend Section 2 to: (a) clarify that the pharmacist-in-charge of the dispensing pharmacy shall also be responsible for the access and administration of all drugs provided to an LTCF; (b) prohibit an emergency medication kit (EMK) from being stocked in a personal care home without personnel lawfully licensed to administer medications; and (c) clarify that LTCF drug stock in a personal care home shall not exceed five (5) individual doses each of thirty (30) non-controlled substances. Without objection, and with agreement of the agency, the amendments were approved.

Board of Nursing

201 KAR 20:056. Advanced practice registered nurse licensure and certification requirements. Dr. Beth Gamble, education consultant; Pam Hagan, acting executive director; and Michael West, general counsel, represented the board. Dr. Joan Frey, academic president, and Steve Hyndman, provost, Galen College of Nursing, appeared in opposition to 201 KAR 20:320.

201 KAR 20:062. Standards for advanced practice registered nurse (APRN) programs of nursing.

A motion was made and seconded to approve the following amendments: to amend Sections 1 through 3 and 5 through 8 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 20:161. Investigation and disposition of complaints.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Sections 1 and 2 to correct statutory citations and to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 20:162. Disciplinary proceedings.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 2 and 7 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 20:215. Continuing competency requirements.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and STATUTORY AUTHORITY paragraphs and Sections 3, 5, and 6 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 20:220. Nursing continuing education provider approval.

201 KAR 20:226. Repeal of 201 KAR 020:235, 201 KAR 020:420, 201 KAR 020:430, 201 KAR 020:440, and 201 KAR 020:460.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 20:240. Fees for applications and for services.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO; 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.

201 KAR 20:260. Organization and administration standards for prelicensure registered nurse or practical nurse programs of nursing.

A motion was made and seconded to approve the following amendments: to amend Sections 2, 3, 5, and 6 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 20:280. Standards for developmental status, initial status, and approval of prelicensure registered nurse and practical nurse programs.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 3, and 4 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 20:310. Faculty for prelicensure registered nurse and practical nurse programs.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to add a definition for a "skills laboratory instructor;" and (2) 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.

201 KAR 20:320. Standards for curriculum of prelicensure registered nurse and practical nurse programs.

In response to a question by Co-Chair West, Dr. Frey stated that it was necessary to prevent the use of a single standardized examination, post-program of study completion, which might prevent the release of a graduate's name to a respected board of nursing for the purposes of sitting for the national licensure examination. This administrative regulation undermined the role of faculty in the determination of curricula, established learning outcomes, and the assessment of student learning through a variety of methods and sources. Other boards of nursing addressed this concern through issue papers, rather than through codified law. Galen College of Nursing respectfully requested that the subcommittee reject this administrative regulation in favor of an amended version that would prevent the use of a single standardized examination, post-program of study completion, which might prevent the release of a graduate's name to a respected board of nursing for the purposes of sitting for the national licensure examination.

In response to a question by Co-Chair West, Mr. Hyndman stated that Galen College of Nursing was by far the largest educator of nursing students in Kentucky. Galen College of Nursing's RN and PN programs both had a ninety-seven (97) percent pass rate for the previous quarter. This administrative regulation prohibited educators from using an externally developed, nationally normed standardized examination as one (1) element of multiple assessments to determine if a student was ready to progress, graduate, and take the national licensure examination. Galen College of Nursing used externally developed, nationally normed standardized examinations, not to determine if a student should sit for the national licensure examination, but to determine if a student needed remedial assistance during progression. A representative from Galen College of Nursing appeared for the board's public hearing on this administrative regulation; however, that hearing was canceled.

In response to a question by Co-Chair West, Mr. West stated that the public hearing for this administrative regulation was canceled because, pursuant to KRS Chapter 13A, the board had not received notice that anyone intended to attend. The board did receive written public comments from Galen College of Nursing and included those in the board's Statement of Consideration. This administrative regulation stated that: "a program of nursing shall not require the completion of an external examination as a determinant of the student's progression or graduation. An external examination may be used to assist in the remediation of a student or as part of a final course grade. If used as part of a final course grade, it shall not count for more than ten (10) percent of the grade." This proposal still authorized the use of external examination in accordance with those requirements. Dr. Gamble stated that external examinations, which were purchased from a vendor and were not customized for individual schools or programs, were proprietary; therefore, nursing schools were unaware of the specific content. An external standardized examination could contain content that had not been covered by the nursing program or by a given course. Over twenty-five (25) percent of nursing programs used external standardized examinations to determine progression. Many nursing programs used external standardized examinations, not as an indicator of readiness to sit for the national licensure examination, but to protect the programs' pass rates.

Representative Marzian stated that this administrative regulation established parameters to protect students from failure to progress. Co-Chair West agreed with Representative Marzian and suggested that the board meet with representatives from Galen College of Nursing prior to this administrative regulation moving on through the House and Senate Standing Committees of jurisdiction.

A motion was made and seconded to approve the following amendments: to amend Sections 2, 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.

201 KAR 20:340. Students in prelicensure registered nurse and practical nurse programs.

201 KAR 20:350. Educational facilities and resources for pre-licensure registered nurse and practical nurse programs.

201 KAR 20:360. Continuing approval and periodic evaluation.

A motion was made and seconded to approve the following amendments: to amend Sections 1 and 5 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 20:362. Fines for programs of nursing.

A motion was made and seconded to approve the following amendments: to amend the TITLE; NECESSITY, FUNCTION, AND CONFORMITY paragraph; and Sections 1 through 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 20:411. Sexual Assault Nurse Examiner Program standards and credential requirements.

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.

Board of Physical Therapy

201 KAR 22:170. Physical Therapy Compact Commission. Scott Majors, executive director, and Keith Poynter, general counsel, represented the board.

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

301 KAR 1:152 & E. Asian Carp and Scaled Rough Fish Harvest Program. Ron Brooks, director, Fisheries Division; Daniel Schulman, staff attorney; and Karen Waldrop, deputy commissioner, represented the department.

In response to questions by Senator Clark, Mr. Brooks stated that Asian Carp encroachment was well controlled in the Ohio River. Western Kentucky had contracted with the Kentucky Fish Center, which brought in 377,000 pounds of Asian Carp last month. The necessary ice machines were now functional.

301 KAR 1:155. Commercial fishing requirements.

ENERGY AND ENVIRONMENT CABINET: Office of Kentucky Nature Preserves

400 KAR 2:060. Definitions. Michael Mullins, regulation coordinator, and Zeb Weese, executive director, represented the office.

In response to a question by Co-Chair West, Mr. Weese stated that provisions for horseback riding were not changing, but horseback riding had been consolidated into the broad category of non-motorized recreation.

In response to a question by Co-Chair Hale, Mr. Weese stated that horseback riding was a subset of the category of non-motorized recreation and the provisions had no practical difference from the previous requirements.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Section 1 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

400 KAR 2:070. The Office of Kentucky Nature Preserves.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 and 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

400 KAR 2:080. Dedication of nature preserves and registration of natural areas.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 3, 5, and 7 to comply with the drafting requirements of KRS Chapter 13A.

400 KAR 2:090. Management, use, and protection of nature preserves and natural areas.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Sections 1, 3, 6 through 8, 10, and 13 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

400 KAR 2:100. Hearings and appeals.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 4 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Rare Plant Recognition

400 KAR 3:010. Definitions for 400 KAR Chapter 3.

400 KAR 3:020. Criteria for identifying and designating endangered or threatened species of plants.

A motion was made and seconded to approve the following amendments: to amend Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

400 KAR 3:030. Procedures for inclusion, removal or change of status of plant species on the state endangered or threatened list.

A motion was made and seconded to approve the following amendments: to amend the TITLE 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.

400 KAR 3:040. Endangered or threatened plant list.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 and 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Wild Rivers

400 KAR 4:110. Definitions for 400 KAR Chapter 4.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 1 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

400 KAR 4:125. Wild rivers administration.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 15 to comply with the drafting requirements of KRS Chapter 13A; and (2) to delete Section 16. Without objection, and with agreement of the agency, the amendments were approved.

400 KAR 4:130. Wild rivers change of use permit procedures.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 2 through 6 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to add Section 7 to incorporate a form by reference. Without objection, and with agreement of the agency, the amendments were approved.

400 KAR 4:140. Wild rivers change of use permit standards.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 2, 4 through 12, and 14 through 19 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Division of Waste Management: Hazardous Waste

401 KAR 39:060. General requirements. Tony Hatton, commissioner, and Jon Maybriar, director, represented the division.

In response to questions by Co-Chair West, Mr. Maybriar stated that 401 KAR 42:005 through 42:330 did not prohibit contractors from requesting an extension. Extension requests would still be processed based upon the reason the extension was necessary. The extension request process would include deadlines. Mr. Hatton stated that underground storage tanks would be regulated along the same lines as they historically had been over the last twelve (12) to thirteen (13) years. Funding availability was determined by the General Assembly's appropriations process, but there was not specific reason to be concerned that adequate funding would not be available.

In response to questions by Co-Chair Hale, Mr. Maybriar stated that a facility in temporary closure was required to maintain less than one (1) inch of water or product in the underground storage tank and to cathodically protect the tank. If those standards were not met, in order to return to service, the tank may need to undergo a line-pressure test to ensure that the tank would

not cause a release to the environment. These facilities tended to be small, rural, and critical to their communities. Mr. Hatton stated that, over time, older tanks tend to have more expensive and complex problems due to technology and regulatory changes. If a release to the environment occurred, the matter would be addressed through funding from the Petroleum Storage Tank Environmental Assurance Fund. If fuel had been left in the underground storage tanks, there were companies who would remove that fuel at little or no cost. The division also had a program to assist with fuel removal or, for small owners, remove the tanks and fund remediation of the area.

A motion was made and seconded to approve the following amendments: to amend Sections 3, 5, and 6 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 39:080. Hazardous waste handlers.

401 KAR 39:090. Hazardous waste permit program.

A motion was made and seconded to approve the following amendments: to amend Sections 7 and 9 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Enforcement and Compliance Monitoring

401 KAR 40:051. Repeal of 401 KAR 040:050.

Underground Storage Tanks

401 KAR 42:005. Definitions for 401 KAR Chapter 042.

A motion was made and seconded to approve the following amendments: to amend Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 42:020. UST system requirements, notification, registration, and annual fees.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 3, 9 through 11, 14 through 16, 18, and 20 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 42:060. UST system release and corrective action requirements.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 4 through 6 and 8 to comply with the drafting requirements of KRS Chapter 13A; and (2) to amend Section 10 to revise material incorporated by reference. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 42:250. Petroleum Storage Tank Environmental Assurance Fund reimbursement.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 2, 7 through 9, 12, 13, 15, and 19 through 21 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 42:330. Small Owners Tank Removal Account.

A motion was made and seconded to approve the following amendments: to amend Sections 1 through 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.

401 KAR 42:341. Repeal of 401 KAR 042:011, 042:030, 042:040, 042:045, 042:050, 042:070, 042:080, 042:090, 042:095, 042:200, 042:290, 042:300, 042:316, 042:320, 042:335, and 042:340.

Office of Kentucky Nature Preserves: General Administrative Procedures

418 KAR 1:010. Definitions for 418 KAR Chapter 1. Michael Mullins, regulation coordinator, and Zeb Weese, executive director, represented the office.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 1 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

418 KAR 1:020. Administrative procedures of the board.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 and 4 through 6 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

418 KAR 1:040. Grant applications.

A motion was made and seconded to approve the following amendments: to amend Section 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

418 KAR 1:050. Procedures for acquisition of land.

A motion was made and seconded to approve the following amendments: to amend Sections 3, 5, and 6 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

418 KAR 1:060. Management.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 3, 4, 6 through 10, and 12 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

418 KAR 1:070. Remedies.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

JUSTICE AND PUBLIC SAFETY CABINET: Department of Juvenile Justice: Child Welfare

505 KAR 1:100. Department of Juvenile Justice Policies and Procedures: Admissions. William Codell, attorney; Tamra Gormley, attorney; and Chris Mann, deputy commissioner of program operations, represented the department.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY paragraph, Section 1, and the material incorporated by reference to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

505 KAR 1:110. Department of Juvenile Justice Policy and Procedures Manual: Program Services.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs to comply with the drafting requirements of KRS Chapter 13A; and (2) to amend Section 1 and the material incorporated by reference to: (a) align restraint provisions for pregnant youth with Senate Bill 133 from the 2018 Regular Session of the General Assembly; and (b) comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

505 KAR 1:180. Department of Juvenile Justice Policy and Procedures Manual: Day Treatment Services.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs to comply with the drafting requirements of KRS Chapter 13A; and (2) to amend Section 1 and the material incorporated by reference to: (a) align restraint provisions for pregnant youth with Senate Bill 133 from the 2018 Regular Session of the General Assembly; (b) standardize procedures with other departmental policies; and (c) comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

505 KAR 1:190. Department of Juvenile Justice Policy and Procedures: Interstate Compact for Juveniles.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY paragraph, Section 1, and the material incorporated by reference to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

TRANSPORTATION CABINET: Department of Highways: Division of Construction Procurement: Preconstruction

603 KAR 2:015. Prequalification for construction, certificate of eligibility, and contract claims dispute. Ryan Griffith, engineering director, and Jon Johnson, assistant general counsel, represented the division.

In response to questions by Co-Chair West, Mr. Griffith stated that the division's current claims process required very little information on the front end, putting the division at a disadvantage later in the process. This revision was intended to assist with planning by including more information earlier in the claims dispute process.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 2 through 5 and 8 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to amend Section 7 to clarify certificate of eligibility suspension, revocation, and alteration provisions. Without objection, and with agreement of the agency, the amendments were approved.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET: Board of Education: Department of Education: Office of Learning Programs Development: Office of Instruction

704 KAR 3:305. Minimum requirements for high school graduation. Deanna Durrett, general counsel; Amanda Ellis, deputy commissioner; and Wayne Lewis, commissioner, represented the office. Dr. Brigitte Ramsey, executive director, Prichard Committee for Academic Excellence, appeared in opposition to this administrative regulation.

In response to questions by Co-Chair West, Mr. Lewis stated that some schools had not lived up to opportunity promises to students because following a school's programs did not necessarily prepare all students for the future, especially minority and low-income students. This administrative regulation represented a first step, but a low bar, toward improvement. This administrative regulation did three (3) things: added flexibility; required basic competence in reading and mathematics, as evidenced by a standardized test that students were already taking or through a portfolio; and required that students meet at least one (1) of eight (8) qualifiers. Only approximately fifteen (15) states required Algebra II for all students for graduation. Kentucky currently required Algebra II for graduation; however, approximately sixty (60) percent of students needed remedial work in mathematics at the post-secondary level. It was unnecessary for all students to successfully complete Algebra II. Basic competence in reading and mathematics was necessary for future success. Assessment examinations were the same as those already given for other purposes.

In response to a question by Co-Chair West, Dr. Ramsey stated that the Prichard Committee for Academic Excellence, like the office, advocated for a more meaningful high school diploma; however, several components of this administrative regulation raised concerns for the committee. The committee was opposed to exit examination requirements for reading and mathematics, requiring students to meet graduation qualifiers, and removing Algebra II as a curriculum requirement. Available research and experience suggested that exit examinations did not have much correlation with future success. The problem was not with determining which students needed assistance, but which strategies would best achieve results. Graduation qualifiers placed responsibility on students, rather than schools, and raised concerns about equitability. Students could be tracked into low-opportunity pathways. Algebra II was necessary as a curriculum requirement. Kentucky should require higher, not lower, levels of mathematics. Regardless of semantics, the assessments constituted exit examinations. Kentucky students routinely scored in the bottom twenty-five (25) percent in the nation regarding mathematics; therefore, Algebra II requirements should not be lowered; higher levels of mathematics should be required. Early childhood learning in mathematics should be emphasized.

At the January 9, 2019, meeting of the subcommittee, a motion was made and seconded to approve the following amendments: to amend Sections 1 through 5, 7, 8, and 10 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

PUBLIC PROTECTION CABINET: Department of Alcoholic Beverage Control: Advertising Distilled Spirits and Wine

804 KAR 1:030. Prohibited alcoholic beverage advertisements. Stephen Humphress, general counsel, and Stephen Walters, counsel, represented the department.

A motion was made and seconded to approve the following amendments: to amend Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Advertising Malt Beverages

804 KAR 2:016. Repeal of 804 KAR 002:015.

ENERGY AND ENVIRONMENT CABINET: Department of Natural Resources: Division of Mine Safety: Miner Training, Education and Certification

805 KAR 7:080. Training, certification, and annual retraining of mine emergency technicians. Michael Mullins, regulation coordinator, and Jim Vicini, division director, represented the division.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Sections 1 through 11 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Real Estate Authority: Board of Home Inspectors

815 KAR 6:001. Definitions for 815 KAR Chapter 6. Heather Becker, general counsel, and Mitch Buchanan, former board chair, represented the board. Steve Keeney, vice president, Kentucky Association of Home Inspection Professionals, appeared in opposition to these administrative regulations.

In response to a question by Co-Chair West, Mr. Keeney stated that the Kentucky Association of Home Inspection Professionals was concerned that these administrative regulations were being amended after the public comment period. The national examination, implicitly established by the amendment, was incongruous with reciprocity goals. This examination should be carefully studied before implementation. Pursuant to statute, forms should be filed electronically, but these administrative regulations did not provide for that. Submitting forms non-electronically was more expensive and time consuming than submitting forms through an electronic filing system. The burdens of these administrative regulations kept Kentucky from having the needed number of home inspectors.

In response to questions by Co-Chair West, Ms. Becker

stated that the amendments filed Friday were the typical, staff-suggested amendments, which were not considered at the public hearing because the amendments had not yet been submitted to the board. The board held a special meeting to approve the staff-suggested amendments. The statute regarding electronic submission authorized, but did not require, an e-filing system. The board was working on an electronic submission system, which was not yet ready. The board believed that the administrative regulations would allow use of the electronic filing system once it was operable. Mr. Buchanan agreed that electronic filing was more efficient, which was the board's goal, but an exact implementation date and details were not yet available. The board contacted numerous states regarding matters of reciprocity, but had generally not received responses.

A motion was made and seconded to approve the following amendments: to amend Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

815 KAR 6:010. Licensing requirements.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO; STATUTORY AUTHORITY; and NECESSITY, FUNCTION, AND CONFORMITY paragraphs; Sections 1, 2, 5, 7 through 9; and the material incorporated by reference to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to amend Section 8 to require the board to comply with KRS Chapter 335B if using an applicant's criminal record as grounds for denial or nonrenewal of a license. Without objection, and with agreement of the agency, the amendments were approved.

815 KAR 6:030. Standards of conduct, complaints, and discipline.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 2 and 11 to comply with the drafting requirements of KRS Chapter 13A; and; (2) to amend Sections 6 through 10 to clarify and reorganize the board's complaint and disciplinary procedures. Without objection, and with agreement of the agency, the amendments were approved.

815 KAR 6:040. Education requirements and providers.

A motion was made and seconded to approve the following amendments: (1) to amend the TITLE, STATUTORY AUTHORITY paragraph, and Sections 1 through 12 to comply with the drafting and formatting requirements of KRS Chapter 13A; (2) to add a new section to establish standards for test provider and examination approval; and (3) to amend Section 1(4) to establish a deadline for prelicensing education providers to request re-approval. Without objection, and with agreement of the agency, the amendments were approved.

815 KAR 6:101. Repeal of 815 KAR 006:020, 815 KAR 006:080, 815 KAR 006:090, and 815 KAR 006:100.

CABINET FOR HEALTH AND FAMILY SERVICES: Office of Health Data and Analytics: Division of Health Information: Kentucky Health Information Exchange

900 KAR 9:010. Kentucky Health Information Exchange participation. Denise Beatty, resource management analyst; Charlese Blair, healthcare data administrator; and Jim Musser, executive director, represented the division.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY paragraph and Section 8 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Department for Medicaid Services

907 KAR 1:270. Podiatry program services. Jim Musser, executive director, and Jonathan Scott, regulatory and legislative advisor, represented the department.

A motion was made and seconded to approve the following amendments: to amend Section 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.

907 KAR 1:280. Payments for podiatry program services.

907 KAR 1:360. Preventative and remedial public health services.

Division of Protection and Permanency: Child Welfare

922 KAR 1:050. State funded adoption assistance. Laura Begin, regulation coordinator; Mary Carpenter, branch manager, Adoption Branch; Jim Musser, executive director; and Paula Saenz, branch manager, Transitional Services Branch, represented the division.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to add a definition for "special needs child;" and (2) to amend Sections 2 and 7 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

922 KAR 1:500. Educational and training vouchers.

922 KAR 1:530. Post-adoption placement stabilization services.

The following administrative regulations were deferred or removed from the February 11, 2019, subcommittee agenda:

EDUCATION AND WORKFORCE DEVELOPMENT CABINET: Education Professional Standards Board: Administrative Certificates

16 KAR 3:090. Certifications for advanced educational leaders.

STATE BOARD OF ELECTIONS: Forms and Procedures

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

FINANCE AND ADMINISTRATION CABINET: Department of Revenue: Income Tax; Corporations

103 KAR 16:151. Repeal of 103 KAR 016:100, 103 KAR 016:110, 103 KAR 016:120, 103 KAR 016:130, 103 KAR 016:145, and 103 KAR 016:150.

103 KAR 16:270. Apportionment; receipts factor.

BOARDS AND COMMISSIONS: Board of Nursing

201 KAR 20:065. Professional standards for prescribing Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone by APRNs for medication assisted treatment for opioid disorder.

Board of Physical Therapy

201 KAR 22:070. Requirements for foreign-educated physical therapists and physical therapist assistants.

Board of Licensure for Marriage and Family Therapists

201 KAR 32:110. Telehealth.

Board of Social Work

201 KAR 23:150. Complaint procedure, disciplinary action, and reconsideration.

DEPARTMENT Of AGRICULTURE: Office of Agricultural Marketing: Industrial Hemp

302 KAR 50:090. Enforcement, corrective action plans, and mandatory reporting to state and federal agencies, department to retain growing site information for at least three (3) years.

JUSTICE AND PUBLIC SAFETY CABINET: Special Law Enforcement Officers

500 KAR 2:020. Filing and processing SLEO commissions.

500 KAR 2:030. Special law enforcement officers: evaluation examination.

LABOR CABINET: Department of Workers' Claims

803 KAR 25:290. Continuation of medical benefits.

PUBLIC PROTECTION CABINET: Department of Insurance: Administration

806 KAR 2:092. Disclosure of local government taxes and collection fee.

806 KAR 2:100. Disclosure of insurance premium surcharge.

806 KAR 2:121. Repeal of 806 KAR 002:120 and 806 KAR 002:150.

Kinds of Insurance; Limits of Risk; Reinsurance

806 KAR 5:011. Repeal of 806 KAR 005:010 and 806 KAR 005:020.

Surplus Lines

806 KAR 10:030. Surplus lines reporting and tax payment structure.

Kentucky Department of Financial Institutions: Administration

808 KAR 1:060. Automated teller machines.

808 KAR 1:140. Fees.

808 KAR 1:161. Repeal of 808 KAR 001:020, 001:050, 001:090, 001:120, 001:130, 001:150, and 001:160.

808 KAR 1:170. Licensing and registration.

808 KAR 1:180. Use of special restricted funds.

Credit Unions

808 KAR 3:050. Conduct of credit unions.

808 KAR 3:061. Repeal of 808 KAR 03:020 and 003:060.

Industrial Loans

808 KAR 5:041. Repeal of 808 KAR 005:040.

Consumer Loans

808 KAR 6:095. Mandatory availability for repayment.

808 KAR 6:121. Repeal of 808 KAR 006:015, 006:105, 006:115, and 006:120.

Check Cashing

808 KAR 9:010. Deferred deposit database compliance.

808 KAR 9:031. Repeal of 808 KAR 009:020 and 009:030.

808 KAR 9:040. Customer account transfers.

808 KAR 9:050. Licensee change of control.

Multibank Companies

808 KAR 11:021. Repeal of 808 KAR 011:020.

Mortgage Loan Companies and Mortgage Loan Brokers

808 KAR 12:050. Processing and closing charges for real estate loans to consumers.

808 KAR 12:055. Uniform standards for mortgage loan processor applicant employee background checks.

808 KAR 12:111. Repeal of 808 KAR 012:002, 012:021, 012:022, 012:023, 012:024, 012:026, 012:030, and 012:110.

Administrative Hearing

808 KAR 14:010. Record retention.

808 KAR 14:20. Annual reporting.

General

808 KAR 15:010. Exceptions to bank lending limits.

808 KAR 15:020. Stay of notice of intention to remove from office.

808 KAR 15:030. Bank branches, offices, and loan production offices.

808 KAR 15:040. Multibank companies.

Horse Racing Commission: Thoroughbred Racing

810 KAR 1:301. Repeal of 810 KAR 001:004, 810 KAR 001:005, 810 KAR 001:007, 810 KAR 001:008, 810 KAR 001:009, 810 KAR 001:010, 810 KAR 001:012, 810 KAR 001:014, 810 KAR 001:015, 810 KAR 001:016, 810 KAR 001:017, 810 KAR 001:018, 810 KAR 001:021, 810 KAR 001:024, 810 KAR 001:026, 810 KAR 001:027, 810 KAR 001:028, 810 KAR 001:029, 810 KAR 001:030, 810 KAR 001:037, 810 KAR 001:040, 810 KAR 001:050, 810 KAR 001:060, 810 KAR 001:070, 810 KAR 001:080, 810 KAR 001:090, 810 KAR 001:100, 810 KAR 001:110, 810 KAR 001:130, 810 KAR 001:140, 810 KAR 001:145, 810 KAR 001:150, and 810 KAR 001:300.

General

810 KAR 2:001. Definitions.

810 KAR 2:010. Racing commission and administrative staff.

810 KAR 2:020. Thoroughbred and flat racing officials.

810 KAR 2:030. Chemical dependency.

810 KAR 2:040. Stewards.

810 KAR 2:050. Judges and Standardbred racing officials.

810 KAR 2:060. Owners' authorized agents and jockey agents.

810 KAR 2:070. Thoroughbred and other flat racing associations.

810 KAR 2:080. Standardbred racing associations.

Licensing

810 KAR 3:001. Definitions.

810 KAR 3:010. Licensing of racing associations.

810 KAR 3:020. Licensing of racing participants.

810 KAR 3:030. Licensing totalizator companies.

810 KAR 3:040. Advance deposit account wagering.

810 KAR 3:050. Simulcast facilities.

Flat and Steeplechase Racing

810 KAR 4:001. Definitions.

810 KAR 4:010. Horses.

810 KAR 4:020. Weights.

810 KAR 4:030. Entries, subscriptions, and declarations.

810 KAR 4:040. Running of the race.

810 KAR 4:050. Claiming races.

810 KAR 4:060. Objections and complaints.

810 KAR 4:070. Jockeys and apprentices.

810 KAR 4:080. Steeplechase racing.

810 KAR 4:090. Owners.

810 KAR 4:100. Trainers.

Standardbred Racing

810 KAR 5:001. Definitions.

810 KAR 5:010. Registration and identification of horses.

810 KAR 5:020. Eligibility and classification.

810 KAR 5:030. Claiming races.

810 KAR 5:040. Farm, corporate, or stable name.

810 KAR 5:050. Stakes and futurities.

810 KAR 5:060. Entries and starters.

810 KAR 5:070. Running of the race.

810 KAR 5:080. Harness racing and county fairs.

Pari-Mutuel Wagering

810 KAR 6:020. Calculation of payouts and distribution of pools.

Incentive and Development Funds

810 KAR 7:010. Backside improvement fund.

810 KAR 7:020. Kentucky thoroughbred breeders' incentive fund.

810 KAR 7:030. Kentucky thoroughbred development fund.

810 KAR 7:040. Kentucky Standardbred development fund and Kentucky Standardbred breeders' incentive fund.

810 KAR 7:060. Kentucky Quarter Horse, Paint Horse, Appaloosa, and Arabian development fund.

810 KAR 7:070. Violations, discipline, disputes, and investigation.

Medication Guidelines

810 KAR 8:010. Medication; testing procedures; prohibited practices.

810 KAR 8:020. Drug, medication, and substance classification schedule and withdrawal guidelines.

810 KAR 8:030. Disciplinary measures and penalties.

810 KAR 8:040. Out-of-competition testing.

810 KAR 8:050. International medication protocol as condition of a race.

810 KAR 8:060. Post-race sampling and testing procedures.

Hearings and Appeals

810 KAR 9:010. Hearings, reviews and appeals.

Harness Racing

811 KAR 1:301. Repeal of 811 KAR 001:010, 811 KAR 001:015, 811 KAR 001:020, 811 KAR 001:025, 811 KAR 001:030, 811 KAR 001:035, 811 KAR 001:037, 811 KAR 001:040, 811 KAR 001:045, 811 KAR 001:050, 811 KAR 001:055, 811 KAR 001:060, 811 KAR 001:065, 811 KAR 001:070, 811 KAR 001:075, 811 KAR 001:080, 811 KAR 001:085, 811 KAR 001:90, 811 KAR 001:093, 811 KAR 001:095, 811 KAR 001:100, 811 KAR 001:105, 811 KAR 001:110, 811 KAR 001:115, 811 KAR 001:120, 811 KAR 001:130, 811 KAR 001:140, 811 KAR 001:150, 811 KAR 001:185, 811 KAR 001:215, 811 KAR 001:220, 811 KAR 001:225, 811 KAR 001:230, 811 KAR 001:260, 811 KAR 001:280, 811 KAR 001:285, 811 KAR 001:290, and 811 KAR 001:300.

Quarter Horse, Paint Horse, Appaloosa, and Arabian Racing

811 KAR 2:301. Repeal of 811 KAR 002:015, 811 KAR 002:020, 811 KAR 002:030, 811 KAR 002:035, 811 KAR 002:040, 811 KAR 002:045, 811 KAR 002:050, 811 KAR 002:056, 811 KAR 002:065, 811 KAR 002:070, 811 KAR 002:075, 811 KAR 002:080, 811 KAR 002:085811 KAR 002:090, 811 KAR 002:093, 811 KAR 002:096, 811 KAR 002:100, 811 KAR 002:105, 811 KAR 002:110, 811 KAR 002:130, 811 KAR 002:140, 811 KAR 002:150, 811 KAR 002:170, 811 KAR 002:180, 811 KAR 002:185, 811 KAR 002:190, 811 KAR 002:200, and 811 KAR 002:300.

CABINET FOR HEALTH AND FAMILY SERVICES: Office of Inspector General: Division of Certificate of Need

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

Department for Medicaid Services

907 KAR 1:560 & E. Medicaid hearings and appeals regarding eligibility.

907 KAR 1:563 & E. Medicaid covered services appeals and hearings unrelated to managed care.

Division of Fiscal Management: Hospital Service Coverage and Reimbursement

907 KAR 10:820 & E. Disproportionate share hospital distributions.

Department for Aging and Independent Living: Division of Operations and Support: Aging Services

910 KAR 1:240. Certification of assisted-living communities.

Department for Community Based Services: Division of Family Support: K-TAP, Kentucky Works, Welfare to Work, State Supplementation

921 KAR 2:055 & E. Hearings and appeals.

Supplemental Nutrition Assistance Program

921 KAR 3:060 & E. Administrative disqualification hearings and penalties.

921 KAR 3:070 & E. Fair hearings.

Division of Protection and Permanency: Child Welfare

922 KAR 1:140. Foster care and adoption permanency services.

922 KAR 1:305. Licensure of child-caring facilities and child-placing agencies.

922 KAR 1:400. Supporting services.

922 KAR 1:565. Service array for a relative or fictive kin caregiver.

Daycare

922 KAR 2:160 & E. Child Care Assistance Program.

The subcommittee adjourned at 3:05 p.m. The next meeting of the subcommittee is tentatively scheduled for March 11, 2019, at 1 p.m.

OTHER COMMITTEE REPORTS

COMPILER'S NOTE: In accordance with KRS 13A.290(10), the following reports were forwarded to the Legislative Research Commission by the appropriate jurisdictional committees and are hereby printed in the Administrative Register. The administrative regulations listed in each report became effective upon adjournment of the committee meeting at which they were considered.

INTERIM JOINT COMMITTEE ON NATURAL RESOURCES AND ENERGY
Meeting of December 14, 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 12/14/18, having been referred to the Committee on 12/05/18, pursuant to KRS 13A.290(6):

301 KAR 003:100 Special Commission Permits

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2):

None

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the December 12, 2018 meeting, which are hereby incorporated by reference.

INTERIM JOINT COMMITTEE ON HEALTH AND WELFARE AND FAMILY SERVICES
Meeting of January 23, 2019

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Health and Welfare and Family Services for its meeting of January 23, 2019, having been referred to the Committee on January 2, 2019, pursuant to KRS 13A.290(6):

201 KAR 021:015
201 KAR 021:045
201 KAR 026:130
201 KAR 026:140
201 KAR 026:171
201 KAR 026:175
201 KAR 026:200
201 KAR 026:211
201 KAR 026:280
902 KAR 008:165
902 KAR 008:170
922 KAR 001:060
922 KAR 001:360 & E

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the January 23, 2019 meeting, which are hereby incorporated by reference.

SENATE STANDING COMMITTEE ON HEALTH AND WELFARE
Meeting of February 20, 2019

The following administrative regulations were available for consideration and placed on the agenda of the Senate Standing Committee on Health and Welfare for its meeting on February 20, 2019, having been referred to the Committee on February 6, 2019, pursuant to KRS 13A.290(6):

900 KAR 2:021
900 KAR 2:040
902 KAR 45:005
902 KAR 45:007
902 KAR 45:090
921 KAR 3:050
922 KAR 1:010
922 KAR 1:100 & E

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the February 20, 2019 meeting, which are hereby incorporated by reference.

HOUSE STANDING COMMITTEE ON HEALTH AND FAMILY SERVICES
Meeting of February 21, 2019

The following administrative regulations were available for consideration and placed on the agenda of the House Standing Committee on Health and Family Services for its meeting of February 21, 2019 having been referred to the Committee on February 6, 2019, pursuant to KRS 13A.290(6):

900 KAR 002:021
900 KAR 002:040
902 KAR 045:005
902 KAR 045:007
902 KAR 045:090
921 KAR 003:050
922 KAR 001:010
922 KAR 001:100

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the February 21, 2019 meeting, which are hereby incorporated by reference.

CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates **I - 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 **I - 18**

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 **I - 36**

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 **I - 48**

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 **I - 49**

The Subject Index is a general index of administrative regulations published in VOLUME 45 of the *Administrative Register of Kentucky*, and is mainly broken down by agency.

VOLUME 44

The administrative regulations listed under VOLUME 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.

* Statement of Consideration not filed by deadline
** Withdrawn, deferred more than twelve months (KRS 13A.300(2)(e) and 13A.315(1)(d))
*** Withdrawn before being printed in Register
IJC Interim Joint Committee
(r) Repealer regulation: KRS 13A.310(3)-on the effective date of an administrative regulation that repeals another, the regulations compiler shall delete the repealed administrative regulation and the repealing administrative regulation.

EMERGENCY ADMINISTRATIVE REGULATIONS:

(Note: Emergency regulations expire 180 days from the date filed; or 180 days from the date filed plus number of days of requested extension, or upon replacement or repeal, whichever occurs first.)

Regulation Number	44 Ky.R. Page No.	Effective Date
201 KAR 12:082E	2303	4-13-2018
Replaced	2364	8-6-2018
201 KAR 22:020E	2180	3-14-2018
Replaced	2486	6-20-2018
201 KAR 22:040E	2182	3-14-2018
Replaced	2487	6-20-2018
201 KAR 22:070E	2184	3-14-2018
Replaced	2487	6-20-2018
921 KAR 2:015E	1799	12-28-2017
Replaced	1899	6-20-2018
922 KAR 2:090E	1916	2-14-2018
Replaced	2513	7-18-2018
922 KAR 2:100E	1925	2-14-2018
Replaced	2522	7-18-2018
922 KAR 2:111E	1936	2-14-2018
Expires		8-13-2018
922 KAR 2:120E	1937	2-14-2018
Replaced	2533	7-18-2018
922 KAR 2:171E*(r)*	2306	4-13-2018
Expires	2308	10-10-2018
922 KAR 2:180E	1946	2-14-2018
Replaced	2138	7-18-2018
922 KAR 2:190E	1952	2-14-2018
Replaced	2144	7-18-2018
922 KAR 2:270E	2308	4-13-2018
Replaced	2459	7-18-2018

ORDINARY ADMINISTRATIVE REGULATIONS:

Regulation Number	44 Ky.R. Page No.	Effective Date
13 KAR 3:060	2702	8-31-2018
16 KAR 2:010		
Amended	1584	
Am Comments	2033	See 44 Ky.R.
16 KAR 5:030		
Amended	1589	
Am Comments	2039	See 44 Ky.R.
101 KAR 1:325		
Amended	2542	8-31-2018
103 KAR 16:360		
Amended	1094	
Withdrawn by agency		12-8-2017
103 KAR 26:120		
As Amended	1494	2-2-2018
103 KAR 41:120		
Amended	1112	
Withdrawn by agency		12-8-2017
201 KAR 3:005		
Repealed	2703	8-31-2018
201 KAR 3:006(r)	2703	8-31-2018
201 KAR 3:025		
Repealed	2703	8-31-2018
201 KAR 3:035		
Repealed	2703	8-31-2018
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 5:130		
Amended	2549	8-31-2018
201 KAR 6:020		
Amended	2552	8-31-2018
201 KAR 6:050		
Amended	2554	See 45 Ky.R.
201 KAR 9:021		
Amended	2361	7-18-2018
201 KAR 9:031		
Amended	2363	
As Amended		See 45 Ky.R.
201 KAR 9:310		
Amended	1871	5-4-2018
201 KAR 9:480	1725	
As Amended	1970	3-15-2018
201 KAR 12:010		
Amended	2556	See 45 Ky.R.
201 KAR 12:030		
Amended	2557	See 45 Ky.R.
201 KAR 12:082		
Amended	2364	
As Amended		See 45 Ky.R.
201 KAR 12:140		
Amended	2561	See 44 Ky.R.
201 KAR 12:190		
Amended	2563	See 44 Ky.R.
201 KAR 12:230		
Amended	2565	See 44 Ky.R.
201 KAR 12:260		
Amended	2368	
As Amended		See 45 Ky.R.
201 KAR 14:180		
Amended	2566	8-24-2018
201 KAR 20:056		
Amended	2237	
As Amended	2473	6-20-2018
201 KAR 20:070		
Amended	2239	
As Amended	2475	6-20-2018
201 KAR 20:110		
Amended	2241	
As Amended	2476	6-20-2018
201 KAR 20:225		
Amended	2244	
As Amended	2477	6-20-2018
201 KAR 20:370		
Amended	2246	
As Amended	2478	6-20-2018
201 KAR 20:411		
Amended	2247	
As Amended	2479	6-20-2018
201 KAR 20:470		
Amended	2250	

Regulation Number	43 Ky.R. Page No.	Effective Date
As Amended	2481	6-20-2018
201 KAR 22:020		
Amended	2255	
As Amended	2486	6-20-2018
201 KAR 22:040		
Amended	2257	
As Amended	2487	6-20-2018
201 KAR 22:070		
Amended	2259	
As Amended	2487	6-20-2018
201 KAR 25:090		
Amended	1623	
Withdrawn by agency		10-26-2018
201 KAR 34:060		
Amended	2568	See 44 Ky.R.
201 KAR 41:100		
Amended	2572	See 44 Ky.R.
301 KAR 1:130		
Amended	2574	8-6-2018
301 KAR 2:049		
Amended	2260	
As Amended	2488	6-7-2018
301 KAR 2:172		
Amended	2370	
As Amended		See 45 Ky.R.
301 KAR 2:176		
Amended	2576	10-5-2018
301 KAR 2:221		
Amended	2374	
As Amended		See 45 Ky.R.
301 KAR 2:222		
Amended	2376	
As Amended		See 45 Ky.R.
301 KAR 2:228		
Amended	2380	See 44 Ky.R.
302 KAR 16:020		
Amended	2265	
As Amended	2492	7-6-2018
302 KAR 16:080		
Repealed	2283	7-6-2018
302 KAR 16:081*(r)*	2283	7-6-2018
302 KAR 16:091		
Amended	2267	
As Amended	2493	7-6-2018
302 KAR 50:050	1768	
Amended	2383	7-20-2018
401 KAR 5:002		
Amended	2578	See 45 Ky.R.
401 KAR 5:005		
Amended	2585	See 45 Ky.R.
401 KAR 5:006		
Amended	2598	See 45 Ky.R.
401 KAR 5:015		
Amended	2602	See 45 Ky.R.
401 KAR 5:035		
Repealed	2707	11-1-2018
401 KAR 5:037		
Amended	2604	See 45 Ky.R.
401 KAR 5:039*(r)*	2707	11-1-2018
401 KAR 5:045		
Amended	2610	See 45 Ky.R.
401 KAR 5:050		
Amended	2612	11-1-2018
401 KAR 5:052		
Amended	2615	11-1-2018
401 KAR 5:055		
Amended	2616	See 45 Ky.R.
401 KAR 5:057		
Repealed	2707	11-1-2018
401 KAR 5:060		
Amended	2620	11-1-2018
401 KAR 5:065		
Amended	2623	11-1-2018
401 KAR 5:070		
Repealed	2707	11-1-2018
401 KAR 5:075		
Amended	2625	See 45 Ky.R.
401 KAR 5:080		
Amended	2628	11-1-2018
401 KAR 5:300		
Repealed	2707	11-1-2018
401 KAR 5:320		
Amended	2631	See 45 Ky.R.
401 KAR 51:240	2284	
Am Comments	2505	7-5-2018
401 KAR 51:250	2286	
Am Comments	2507	7-5-2018
401 KAR 51:260	2288	
Am Comments	2509	7-5-2018
405 KAR 1:005		
Repealed	2708	10-5-2018
405 KAR 1:007		
Repealed	2708	10-5-2018
405 KAR 1:010		
Repealed	2708	10-5-2018
405 KAR 1:011(r)	2708	10-5-2018
405 KAR 1:015		
Repealed	2708	10-5-2018
405 KAR 1:020		
Repealed	2708	10-5-2018
405 KAR 1:030		
Repealed	2708	10-5-2018
405 KAR 1:040		
Repealed	2708	10-5-2018
405 KAR 1:050		
Repealed	2708	10-5-2018
405 KAR 1:051		
Repealed	2708	10-5-2018
405 KAR 1:060		
Repealed	2708	10-5-2018
405 KAR 1:070		
Repealed	2708	10-5-2018
405 KAR 1:080		
Repealed	2708	10-5-2018
405 KAR 1:090		
Repealed	2708	10-5-2018
405 KAR 1:100		
Repealed	2708	10-5-2018
405 KAR 1:110		
Repealed	2708	10-5-2018
405 KAR 1:120		
Repealed	2708	10-5-2018
405 KAR 1:130		
Repealed	2708	10-5-2018
405 KAR 1:130		
Repealed	2708	10-5-2018
405 KAR 1:141		
Repealed	2708	10-5-2018
405 KAR 1:150		
Repealed	2708	10-5-2018
405 KAR 1:160		
Repealed	2708	10-5-2018
405 KAR 1:170		
Repealed	2708	10-5-2018
405 KAR 1:180		
Repealed	2708	10-5-2018
405 KAR 1:190		
Repealed	2708	10-5-2018
405 KAR 1:200		
Repealed	2708	10-5-2018
405 KAR 1:210		
Repealed	2708	10-5-2018

Regulation Number	43 Ky.R. Page No.	Effective Date
405 KAR 1:220		
Repealed	2708	10-5-2018
405 KAR 1:230		
Repealed	2708	10-5-2018
405 KAR 1:240		
Repealed	2708	10-5-2018
405 KAR 1:250		
Repealed	2708	10-5-2018
405 KAR 1:260		
Repealed	2708	10-5-2018
405 KAR 3:005		
Repealed	2709	10-5-2018
405 KAR 3:007		
Repealed	2709	10-5-2018
405 KAR 3:010		
Repealed	2709	10-5-2018
405 KAR 3:011(r)	2709	10-5-2018
405 KAR 3:015		
Repealed	2709	10-5-2018
405 KAR 3:020		
Repealed	2709	10-5-2018
405 KAR 3:030		
Repealed	2709	10-5-2018
405 KAR 3:040		
Repealed	2709	10-5-2018
405 KAR 3:050		
Repealed	2709	10-5-2018
405 KAR 3:060		
Repealed	2709	10-5-2018
405 KAR 3:070		
Repealed	2709	10-5-2018
405 KAR 3:080		
Repealed	2709	10-5-2018
405 KAR 3:090		
Repealed	2709	10-5-2018
405 KAR 3:100		
Repealed	2709	10-5-2018
405 KAR 3:111		
Repealed	2709	10-5-2018
405 KAR 3:120		
Repealed	2709	10-5-2018
405 KAR 3:130		
Repealed	2709	10-5-2018
405 KAR 3:140		
Repealed	2709	10-5-2018
405 KAR 3:150		
Repealed	2709	10-5-2018
405 KAR 3:160		
Repealed	2709	10-5-2018
405 KAR 3:170		
Repealed	2709	10-5-2018
405 KAR 3:180		
Repealed	2709	10-5-2018
405 KAR 3:190		
Repealed	2709	10-5-2018
501 KAR 6:030		
Amended	2269	
AmComments	2511	8-6-2018
501 KAR 6:070		
Amended	2635	See 44 Ky.R.
501 KAR 6:170		
Amended	2270	7-6-2018
501 KAR 6:270		
Amended	2097	
As Amended	2494	7-6-2018
501 KAR 16:290		
Amended	1884	
Am Comments	2337	
As Amended	2494	7-6-2018
501 KAR 16:300		
Amended	1887	
Am Comments	2339	
As Amended	2496	7-6-2018
501 KAR 16:310		
Amended	1891	
Am Comments	2343	
As Amended	2498	7-6-2018
501 KAR 16:330		
Amended	1893	
Am Comments	2345	
As Amended	2499	7-6-2018
501 KAR 16:340		
Amended	1897	
Am Comments	2349	7-6-2018
503 KAR 5:090		
Amended	2637	10-5-2018
505 KAR 1:120		
Amended	2384	
As Amended		See 45 Ky.R.
505 KAR 1:140		
Amended	2386	See 45 Ky.R.
600 KAR 4:010		
Amended	2272	
As Amended	2501	7-6-2018
601 KAR 2:030		
Amended	1651	
Withdrawn by agency		6-13-2018
603 KAR 2:015		
Amended	2640	
Withdrawn by agency		7-24-2018
703 KAR 5:190		
Repealed	2157	8-6-2018
703 KAR 5:191*(r)*	2157	8-6-2018
703 KAR 5:225		
Amended	2101	
As Amended		See 45 Ky.R.
703 KAR 5:260		
Repealed	2157	6-17-2018
703 KAR 5:280	2158	
Am Comments	2351	
As Amended		See 45 Ky.R.
704 KAR 7:090		
Amended	1658	
As Amended	2015	4-6-2018
735 KAR 1:010		
Amended	2388	
As Amended		See 45 Ky.R.
735 KAR 1:020		
Amended	2391	
As Amended		See 45 Ky.R.
735 KAR 2:010		
Amended	2394	
As Amended		See 45 Ky.R.
735 KAR 2:020		
Amended	2396	
As Amended		See 45 Ky.R.
735 KAR 2:030		
Amended	2398	
As Amended		See 45 Ky.R.
735 KAR 2:040		
Amended	2399	
As Amended		See 45 Ky.R.
735 KAR 2:050		
Amended	2401	
As Amended		See 45 Ky.R.
735 KAR 2:060		
Amended	2403	
As Amended		See 45 Ky.R.
804 KAR 9:010		
Repealed	1774	7-6-2018
804 KAR 9:040		
Repealed	1774	7-6-2018

Regulation Number	43 Ky.R. Page No.	Effective Date
804 KAR 9:050		
Repealed	1774	7-6-2018
804 KAR 9:051*(r)*	1774	7-6-2018
807 KAR 5:022		
Amended	2405	See 45 Ky.R.
807 KAR 5:026		
Amended	2436	See 45 Ky.R.
810 KAR 1:111(r)	2711	
Withdrawn		7-18-2018
810 KAR 8:040	2712	
Withdrawn		7-18-2018
811 KAR 1:241*(r)*	2717	
Withdrawn		7-18-2018
811 KAR 2:151*(r)*	2718	
Withdrawn		7-18-2018
815 KAR 7:110		
Amended	2439	See 44 Ky.R.
815 KAR 7:120		
Amended	2442	See 44 Ky.R.
815 KAR 7:125		
Amended	2445	See 44 Ky.R.
815 KAR 8:007		
Repealed	2458	8-22-2018
815 KAR 8:011*(r)*	2458	8-22-2018
815 KAR 8:045		
Repealed	2458	8-22-2018
815 KAR 8:070		
Amended	2446	See 45 Ky.R.
815 KAR 8:080		
Amended	2449	See 45 Ky.R.
815 KAR 8:100		
Amended	2451	See 45 Ky.R.
820 KAR 1:001		
Amended	2646	See 45 Ky.R.
820 KAR 1:005		
Amended	2650	See 45 Ky.R.
820 KAR 1:010		
Repealed	2720	1-4-2019
820 KAR 1:011(r)	2720	1-4-2019
820 KAR 1:015		
Repealed	2720	1-4-2019
820 KAR 1:016		
Repealed	2720	1-4-2019
820 KAR 1:025		
Amended	2654	See 45 Ky.R.
820 KAR 1:026		
Repealed	2720	1-4-2019
820 KAR 1:028		
Repealed	2720	1-4-2019
820 KAR 1:029		
Repealed	2720	1-4-2019
820 KAR 1:032		
Amended	2656	See 45 Ky.R.
820 KAR 1:033		
Repealed	2720	1-4-2019
820 KAR 1:034		
Repealed	2720	1-4-2019
820 KAR 1:036		
Repealed	2720	1-4-2019
820 KAR 1:042		
Amended	2670	See 45 Ky.R.
820 KAR 1:044		
Repealed	2720	1-4-2019
820 KAR 1:046		
Repealed	2720	1-4-2019
820 KAR 1:050		
Amended	2678	See 45 Ky.R.
820 KAR 1:055		
Amended	2681	See 45 Ky.R.
820 KAR 1:056		
Repealed	2720	1-4-2019
820 KAR 1:057		
Amended	2683	See 45 Ky.R.
820 KAR 1:058		
Repealed	2720	1-4-2019
820 KAR 1:060		
Amended	2690	See 45 Ky.R.
820 KAR 1:100		
Repealed	2720	1-4-2019
820 KAR 1:110		
Repealed	2720	1-4-2019
820 KAR 1:120		
Repealed	2720	1-4-2019
820 KAR 1:125		
Amended	2691	1-4-2019
820 KAR 1:130		
Amended	2693	See 45 Ky.R.
820 KAR 1:135	2721	See 45 Ky.R.
902 KAR 2:055		
Amended	2695	See 45 Ky.R.
902 KAR 10:040		
Amended	2277	See 44 Ky.R.
902 KAR 20:016		
Amended	1415	
Am Comments	2054	See 44 Ky.R.
902 KAR 20:058		
Amended	1714	5-4-2018
906 KAR 1:200		
Amended	2454	
As Amended		See 45 Ky.R.
910 KAR 2:030		
Amended	2698	
As Amended		See 45 Ky.R.
910 KAR 2:050		
Repealed	2723	9-19-2018
910 KAR 2:052*(r)*	2723	9-19-2018
921 KAR 2:015		
Amended	1899	6-20-2018
922 KAR 2:090		
Amended	2109	
AmComments	2513	7-18-2018
922 KAR 2:100		
Amended	2118	
AmComments	2522	7-18-2018
922 KAR 2:110		
Repealed	2306	4-13-2018
922 KAR 2:120		
Amended	2129	
AmComments	2533	
As Amended		See 45 Ky.R.
922 KAR 2:170		
Repealed	2308	7-18-2018
922 KAR 2:180		
Amended	2138	
As Amended		See 45 Ky.R.
922 KAR 2:190		
Amended	2144	
As Amended		See 45 Ky.R.
922 KAR 2:210		
Repealed	2308	4-13-2018
922 KAR 2:270	2459	
As Amended		See 45 Ky.R.

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* Statement of Consideration not filed by deadline

** Withdrawn, deferred more than twelve months (KRS 13A.300(2)(e) and 13A.315(1)(d))

*** Withdrawn before being printed in Register

IJC Interim Joint Committee

(r) Repealer regulation: KRS 13A.310(3)-on the effective date of an administrative regulation that repeals another, the regulations compiler shall delete the repealed administrative regulation and the repealing administrative regulation.

VOLUME 45

EMERGENCY ADMINISTRATIVE REGULATIONS

(Note: Emergency regulations expire 180 days from the date filed; or 180 days from the date filed plus number of days of requested extension, or upon replacement or repeal, whichever occurs first.)

Regulation Number	45 Ky.R. Page No.	Effective Date
9 KAR 1:015E	234	7-11-2018
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
Replaced	638	10-5-2018
31 KAR 4:100E	236	6-21-2018
Replaced	1512	1-4-2019
31 KAR 4:120E	239	6-21-2018
Withdrawn	*	10-15-2018
32 KAR 1:030E	906	8-31-2018
Replaced	2055	2-1-2019
32 KAR 1:050E	2301	1-14-2019
32 KAR 1:070E	2302	1-14-2019
40 KAR 2:345E	241	7-2-2018
Replaced	946	11-2-2018
101 KAR 2:210E	908	9-14-2018
Replaced	1055	1-4-2019
103 KAR 18:050E	910	9-10-2018
Replaced	1518	1-4-2019
105 KAR 1:147E	1174	10-5-2018
Replaced	2071	2-1-2019
200 KAR 3:020E	2304	1-4-2019
301 KAR 1:152E	2039	11-19-2018
301 KAR 2:095E	2308	12-17-2018
301 KAR 2:169E	912	8-24-2018
Withdrawn		10-5-2018
301 KAR 2:225E	614	7-20-2018
Replaced	752	12-7-2018
400 KAR 1:001E	243	7-13-2018
Replaced	431	10-5-2018
400 KAR 1:040E	245	7-13-2018
Replaced	958	10-5-2018
400 KAR 1:090E	251	7-13-2018
Replaced	963	10-5-2018
400 KAR 1:100E	260	7-13-2018
Replaced	970	10-5-2018
400 KAR 1:110E	265	7-13-2018
Replaced	974	10-5-2018
501 KAR 5:020E	617	7-19-2018
Replaced	1524	1-4-2019
503 KAR 1:110E	274	6-27-2018
Replaced	1047	12-7-2018
601 KAR 2:030E	9	6-13-2018
Withdrawn by agency		1-8-2019
Resubmitted	2310	1-8-2019
787 KAR 1:010E	915	9-13-2018
Replaced	1528	1-4-2019
803 KAR 25:089E	15	6-11-2018
Replaced	1193	12-7-2018
803 KAR 25:270E	2316	12-27-2018
805 KAR 1:210E	277	7-13-2018
Replaced	560	10-5-2018
895 KAR 1:001E	279	6-29-2018
Withdrawn by agency		7-2-2018
895 KAR 1:010E	282	6-29-2018
Withdrawn by agency		7-2-2018
895 KAR 1:015E	285	6-29-2018
Withdrawn by agency		7-2-2018
895 KAR 1:020E	288	6-29-2018
Withdrawn by agency		7-2-2018
895 KAR 1:025E	290	6-29-2018
Withdrawn by agency		7-2-2018
895 KAR 1:030E	292	6-29-2018
Withdrawn by agency		7-2-2018
895 KAR 1:035E	295	6-29-2018
Withdrawn by agency		7-2-2018
895 KAR 1:040E	297	6-29-2018
Withdrawn by agency		7-2-2018
895 KAR 1:045E	299	6-29-2018
Withdrawn by agency		7-2-2018
895 KAR 1:050E	301	6-29-2018
Withdrawn by agency		7-2-2018
895 KAR 1:055E	303	6-29-2018
Withdrawn by agency		7-2-2018
900 KAR 11:010E	917	9-13-2018
Replaced	1111	12-12-2018
900 KAR 5:020E	305	7-13-2018
Replaced	1622	12-12-2018
900 KAR 6:075E	1176	9-25-2018
902 KAR 20:008E	307	7-13-2018
Replaced	474	10-17-2018
902 KAR 20:401E(r)	312	7-13-2018
Expired		1-9-2019
902 KAR 55:011E(r)	313	7-13-2018
Expired		1-9-2019
906 KAR 1:071E(r)	315	7-13-2018
Expired		1-9-2019
907 KAR 1:025E	922	9-13-2018
Replaced	1673	1-4-2019
907 KAR 1:560E	1493	11-1-2018
907 KAR 1:563E	1497	11-1-2018
907 KAR 1:604E	2319	12-28-2018
907 KAR 1:642E	316	7-2-2018
Withdrawn by agency		7-27-2018
907 KAR 10:820E	2041	11-30-2018
921 KAR 2:015E	2322	12-28-2018
921 KAR 2:055E	1501	11-1-2018
921 KAR 3:060E	1505	11-1-2018
921 KAR 3:070E	1507	11-1-2018
922 KAR 1:100E	928	9-13-2018
Replaced	2357	2-21-2019
922 KAR 2:160E	2045	11-30-2018
922 KAR 1:360E	619	8-1-2018
Replaced	2106	1-23-2019
922 KAR 1:560E	318	7-13-2018
Replaced	2284	12-12-2018

ORDINARY ADMINISTRATIVE REGULATIONS

Regulation Number	45 Ky.R. Page No.	Effective Date
9 KAR 1:015		
Amended	376	
As Amended	933	10-24-2018
9 KAR 1:030		
Amended	377	
As Amended	933	10-24-2018
11 KAR 4:080		
Amended	1703	
As Amended	2329	
11 KAR 5:145		
Amended	105	
As Amended	626	10-5-2018
11 KAR 15:010		
Amended	106	
As Amended	626	10-5-2018
11 KAR 15:110	207	
As Amended	627	10-5-2018
12 KAR 2:006		
Amended	380	10-10-2018
12 KAR 2:011		
Amended	381	10-10-2018
12 KAR 2:016		

Regulation Number	45 Ky.R. Page No.	Effective Date
Amended	382	10-10-2018
As Amended	935	
12 KAR 2:017		
Amended	384	10-10-2018
12 KAR 2:018		
Amended	385	10-10-2018
As Amended	935	
12 KAR 2:021		
Amended	389	10-10-2018
As Amended	938	
12 KAR 2:026		
Amended	391	10-10-2018
As Amended	940	
12 KAR 2:031		
Amended	392	10-10-2018
As Amended	940	
12 KAR 2:036		
Amended	394	10-10-2018
As Amended	941	
12 KAR 2:041		
Amended	395	10-10-2018
12 KAR 2:046		
Amended	396	10-10-2018
12 KAR 2:051		
Amended	398	10-10-2018
12 KAR 2:056		
Amended	399	10-11-2018
As Amended	941	
12 KAR 2:061		
Amended	400	10-10-2018
12 KAR 2:066		
Amended	401	
As Amended	942	10-10-2018
12 KAR 3:007		
Amended	108	
As Amended	628	9-28-2018
12 KAR 3:012		
Amended	109	
As Amended	628	9-28-2018
12 KAR 3:017		
Amended	112	
As Amended	630	9-28-2018
12 KAR 3:022		
Amended	114	
As Amended	631	9-28-2018
12 KAR 3:027		
Amended	116	
As Amended	633	9-28-2018
12 KAR 3:028	208	
As Amended	634	9-28-2018
12 KAR 3:032		
Amended	118	
As Amended	635	9-28-2018
12 KAR 3:037		
Amended	119	
As Amended	635	9-28-2018
12 KAR 3:039	210	
As Amended	636	9-28-2018
12 KAR 3:042		
Amended	120	
As Amended	637	9-28-2018
13 KAR 2:020		
Amended	403	
As Amended	942	11-2-2018
16 KAR 2:010		See 44 Ky.R.
As Amended	321	8-31-2018
16 KAR 2:100		
Amended	1704	
As Amended	2329	
16 KAR 2:210	1850	
As Amended	2330	
16 KAR 003:011*(r)*	2801	
16 KAR 3:090	2250	
16 KAR 5:030		See 44 Ky.R.
As Amended	326	8-31-2018
16 KAR 9:040		
Amended	1706	
As Amended	2331	
31 KAR 3:010		
Amended	122	
As Amended	638	10-5-2018
31 KAR 4:100		
Amended	124	
Amended	408	
As Amended	1512	1-4-2019
31 KAR 4:120		
Amended	125	
Withdrawn by agency		6-20-2018
Amended	409	
Withdrawn	*	10-15-2018
Amended	2152	
32 KAR 1:030		
Amended	1052	
As Amended	2055	
32 KAR 1:050		
Amended	2401	
32 KAR 1:070		
Amended	2402	
40 KAR 2:345	557	
As Amended	946	11-2-2018
45 KAR 1:050		
Withdrawn by agency		8-23-2018
Amended	1053	
As Amended	1512	1-4-2019
101 KAR 2:020		
Amended	127	10-5-2018
101 KAR 2:034		
Amended	139	
As Amended	639	10-5-2018
101 KAR 2:076		
Amended	133	10-5-2018
101 KAR 2:095		
Amended	135	
As Amended	643	10-5-2018
101 KAR 2:210		
Amended	1055	1-4-2019
101 KAR 3:045		
Amended	139	
As Amended	646	10-5-2018
101 KAR 3:050		
Amended	144	10-5-2018
102 KAR 1:060		
Amended	2404	
102 KAR 1:163	2526	
102 KAR 1:168	2527	
102 KAR 1:320		
Amended	2406	
103 KAR 1:040		
Amended	1297	2-1-2019
103 KAR 1:130		
Amended	1299	2-1-2019
103 KAR 015:040		
Repealed	859	12-7-2018
103 KAR 15:041(r)	859	12-7-2018
103 KAR 15:050		
Amended	1057	
As Amended	1513	1-4-2019
103 KAR 15:060		
Amended	1059	
As Amended	1514	1-4-2019

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	45 Ky.R. Page No.	Effective Date
103 KAR 015:090		
Repealed	859	12-7-2018
103 KAR 15:110		
Amended	727	
As Amended	1180	12-7-2018
103 KAR 15:120		
Amended	728	
As Amended	1180	12-7-2018
103 KAR 15:140		
Amended	730	
As Amended	1181	12-7-2018
103 KAR 15:180		
Amended	1060	
As Amended	1514	1-4-2019
103 KAR 15:195		
Amended	1062	1-4-2019
103 KAR 016:010		
Repealed	860	12-7-2018
103 KAR 16:011*(r)*	860	12-7-2018
103 KAR 16:060		
Amended	1301	
As Amended	2055	2-1-2019
103 KAR 16:090		
Amended	1305	2-1-2019
As Amended	2059	
103 KAR 16:151*(r)*	1851	
103 KAR 016:210		
Repealed	860	12-7-2018
103 KAR 16:230		
Amended	1307	2-1-2019
As Amended	2059	
103 KAR 16:240		
Amended	1309	
As Amended	2060	2-1-2019
103 KAR 16:250		
Amended	2153	
As Amended	2571	
103 KAR 16:270		
Amended	1708	
Am Comment	2688	
103 KAR 16:290		
Amended	1312	
As Amended	2063	2-1-2019
103 KAR 016:310		
Repealed	860	12-7-2018
103 KAR 16:330		
Amended	1314	
As Amended	2064	2-1-2019
103 KAR 16:340		
Amended	1316	
As Amended	2065	2-1-2019
103 KAR 16:352		
Amended	732	
103 KAR 016:360		
Repealed	860	12-7-2018
103 KAR 16:380		
Repealed	1152	1-4-2019
103 KAR 16:381*(r)*	1152	1-4-2019
103 KAR 17:010		
Amended	1066	
As Amended	1516	1-4-2019
103 KAR 17:020		
Amended	1068	
As Amended	1516	1-4-2019
103 KAR 017:041		
Repealed	861	12-7-2018
103 KAR 17:042*(r)*	861	12-7-2018
103 KAR 17:060		
Amended	1069	
As Amended	1517	1-4-2019
103 KAR 17:100		
Amended	734	
As Amended	1182	12-7-2018
103 KAR 17:130		
Amended	735	
As Amended	1183	12-7-2018
103 KAR 17:140		
Amended	736	
As Amended	1183	12-7-2018
103 KAR 18:050		
Amended	1070	
As Amended	1518	1-4-2019
103 KAR 18:080		
Repealed	1153	1-4-2019
103 KAR 18:081*(r)*	1153	1-4-2019
103 KAR 18:160		
Repealed	1153	1-4-2019
103 KAR 18:110		
Amended	1073	1-4-2019
103 KAR 18:120		
Amended	1074	
As Amended	1519	1-4-2019
103 KAR 18:150		
Amended	1075	
As Amended	1520	1-4-2019
103 KAR 18:180		
Amended	738	12-7-2018
103 KAR 018:190		
Repealed	862	12-7-2018
103 KAR 18:191*(r)*	862	12-7-2018
103 KAR 018:200		
Repealed	862	12-7-2018
103 KAR 018:210		
Repealed	862	12-7-2018
103 KAR 018:220		
Repealed	862	12-7-2018
103 KAR 19:010		
Amended	1077	
As Amended	2066	
105 KAR 1:145		
Amended	1318	
As Amended	2066	2-1-2019
105 KAR 1:147	1457	
As Amended	2071	
106 KAR 001:081		
Amended	2743	
106 KAR 001:091		
Amended	2745	
106 KAR 001:101		
Amended	2750	
106 KAR 001:111		
Amended	2751	
106 KAR 001:121		
Amended	2753	
200 KAR 3:020	2528	2-1-2019
200 KAR 30:010		
Repealed	558	11-2-2018
200 KAR 30:011*(r)*	558	11-2-2018
200 KAR 30:020		
Repealed	558	11-2-2018
200 KAR 30:030		
Repealed	558	11-2-2018
200 KAR 30:040		
Repealed	558	11-2-2018
200 KAR 30:070		
Repealed	558	11-2-2018
201 KAR 001:290	2802	
201 KAR 001:310	2804	
201 KAR 2:015		
Amended	146	

Regulation Number	45 Ky.R. Page No.	Effective Date
As Amended	650	9-19-2018
201 KAR 2:370		
Amended	740	
Am Comments	1684	
As Amended	2575	
201 KAR 3:045		See 44 Ky.R.
As Amended	327	8-31-2018
Recodified as 831 KAR 1:020		10-12-2018
201 KAR 3:090		See 44 Ky.R.
As Amended	327	8-24-2018
Recodified as 831 KAR 1:010		10-12-2018
201 KAR 3:100		See 44 Ky.R.
As Amended	328	8-31-2018
Recodified as 831 KAR 1:030		10-12-2018
201 KAR 5:090		See 44 Ky.R.
As Amended	330	8-31-2018
201 KAR 6:050		See 44 Ky.R.
As Amended	330	8-31-2018
201 KAR 9:031		See 44 Ky.R.
As Amended	17	7-18-2018
201 KAR 9:260		
Amended	743	12-12-2018
201 KAR 9:270		
Amended	2410	
201 KAR 12:010		See 44 Ky.R.
As Amended	330	8-31-2018
201 KAR 12:030		See 44 Ky.R.
As Amended	331	8-31-2018
Amended	1723	
As Amended	2332	
201 KAR 12:082		See 44 Ky.R.
As Amended	17	8-6-2018
Amended	1727	
As Amended	2335	
201 KAR 12:085		
Repealed	947	11-2-2018
201 KAR 12:088		
Repealed	947	11-2-2018
201 KAR 12:120		
Repealed	947	11-2-2018
201 KAR 12:140		See 44 Ky.R.
As Amended	334	8-31-2018
201 KAR 12:180		
Repealed	947	11-2-2018
201 KAR 12:190		See 44 Ky.R.
As Amended	335	8-31-2018
201 KAR 12:230		See 44 Ky.R.
As Amended	337	8-31-2018
201 KAR 12:250		
Repealed	947	11-2-2018
201 KAR 12:251*(r)*	212	11-2-2018
As Amended	947	
201 KAR 12:260		See 44 Ky.R.
As Amended	20	8-6-2018
Amended	1731	
As Amended	2338	
201 KAR 12:280	213	
As Amended	947	11-9-2018
201 KAR 020:056		
Amended	1733	
Am Comments		
201 KAR 20:057		
Amended	411	
Am Comments	1044	11-27-2018
201 KAR 20:062		
Amended	1736	
As Amended	2577	
201 KAR 20:065		
Amended	2159	
Am Comments	2702	
201 KAR 20:161		
Amended	1739	
As Amended	2580	
201 KAR 20:162		
Amended	1742	
As Amended	2582	
201 KAR 20:215		
Amended	1743	
As Amended	2583	
201 KAR 20:220		
Amended	1746	
201 KAR 20:226*(r)*	1853	
As Amended	2585	
201 KAR 20:240		
Amended	1748	
As Amended	2585	
201 KAR 20:260		
Amended	1750	
As Amended	2586	
201 KAR 20:280		
Amended	1754	
As Amended	2589	
201 KAR 20:310		
Amended	1757	
As Amended	2591	
201 KAR 20:320		
Amended	1759	
As Amended	2593	
201 KAR 20:340		
Amended	1762	
201 KAR 20:350		
Amended	1763	
201 KAR 20:360		
Amended	1764	
As Amended	2594	
201 KAR 20:362	1854	
As Amended	2597	
201 KAR 20:411		
Amended	1767	
As Amended	2597	
201 KAR 20:490		
Amended	415	
As Amended	948	10-17-2018
201 KAR 21:015		
Amended	1079	1-23-2019
201 KAR 21:045		
Amended	1080	
As Amended	2073	1-23-2019
201 KAR 22:020		
Amended	4148	10-17-2018
Amended	2755	
201 KAR 22:040		
Amended	420	10-17-2018
201 KAR 22:070		
Amended	2161	
201 KAR 22:170		
Amended	422	
As Amended	951	10-17-2018
Amended	2164	
201 KAR 23:150	1459	
201 KAR 26:130		
Amended	1324	
As Amended	2073	1-23-2019
201 KAR 26:140		
Amended	1326	
As Amended	2075	1-23-2019
201 KAR 26:171		
Amended	1328	
As Amended	2076	1-23-2019
201 KAR 26:175		

Regulation Number	45 Ky.R. Page No.	Effective Date
Amended	1332	1-23-2019
201 KAR 26:200		
Amended	1335	1-23-2019
201 KAR 026:210		
Repealed	1463	1-23-2019
201 KAR 26:211(r)	1463	
As Amended	2079	1-23-2019
201 KAR 26:280		
Amended	1337	
As Amended	2079	1-23-2019
201 KAR 27:005		
Amended	2414	
201 KAR 27:008		
Amended	2416	
201 KAR 27:011		
Amended	2419	
201 KAR 27:016		
Amended	2425	
201 KAR 27:020		
Amended	2431	
201 KAR 27:022*(r)*	2532	
201 KAR 028:020		
Repealed	1464	2-1-2019
201 KAR 28:021*(r)*	1464	
201 KAR 28:060		
Amended	1339	
As Amended	2080	2-1-2019
201 KAR 028:090		
Repealed	1464	2-1-2019
201 KAR 028:110		
Repealed	1464	2-1-2019
201 KAR 28:170		
Amended	1341	2-1-2019
201 KAR 028:180		
Repealed	1464	2-1-2019
201 KAR 028:210		
Repealed	1464	2-1-2019
201 KAR 032:110	1855	
Am Comments	2705	
201 KAR 34:060		See 44 Ky.R.
As Amended	337	8-31-2018
201 KAR 41:100		See 44 Ky.R.
As Amended	340	8-24-2018
202 KAR 003:040		
Amended	2757	
202 KAR 007:520		
Amended	2760	
202 KAR 007:575	2805	
301 KAR 1:015		
Amended	748	12-7-2018
301 KAR 1:115		
Amended	148	
As Amended	651	9-6-2018
301 KAR 1:132		
Amended	750	12-7-2018
301 KAR 1:152		
Amended	2165	
301 KAR 1:155		
Amended	2167	
301 KAR 1:201		
Amended	423	
As Amended	951	10-4-2018
301 KAR 1:410		
Amended	428	
As Amended	955	10-4-2018
301 KAR 2:095		
Amended	1081	
Withdrawn by agency		12-17-2018
Amended	2432	
301 KAR 2:132		
Amended	1344	
As Amended	2081	2-1-2019
301 KAR 2:172		See 44 Ky.R.
As Amended	652	10-5-2018
Amended	2434	
301 KAR 002:178		
Amended	2765	
301 KAR 2:221		See 44 Ky.R.
As Amended	21	7-5-2018
301 KAR 2:222		See 44 Ky.R.
As Amended	22	7-5-2018
301 KAR 2:225		
Amended	752	12-7-2018
As Amended	1184	
301 KAR 2:228		See 44 Ky.R.
As Amended	341	8-6-2018
301 KAR 3:022		
Amended	755	
As Amended	1186	12-7-2018
Amended	2722	
301 KAR 3:100		
Amended	1083	
As Amended	1521	12-14-2018
301 KAR 4:090		
Amended	758	
As Amended	1187	12-7-2018
302 KAR 1:011*(r)*	1857	
302 KAR 003:011*(r)*	2807	
302 KAR 20:054		
Repealed	1189	11-14-2018
302 KAR 20:056		
Repealed	1189	11-14-2018
302 KAR 20:057		
Repealed	1189	11-14-2018
302 KAR 20:058		
Repealed	1190	11-14-2018
302 KAR 20:210		
Repealed	1188	11-14-2018
302 KAR 20:211(r)	863	
As Amended	1188	11-14-2018
302 KAR 20:220		
Repealed	1188	11-14-2018
302 KAR 20:221(r)	864	
As Amended	1188	11-14-2018
302 KAR 20:230		
Repealed	1189	11-14-2018
302 KAR 20:231(r)	865	
As Amended	1189	11-14-2018
302 KAR 20:541(r)	866	
As Amended	1189	11-14-2018
302 KAR 20:561(r)	867	
As Amended	1189	11-14-2018
302 KAR 20:571(r)	868	
As Amended	1189	11-14-2018
302 KAR 20:581(r)	869	
As Amended	1190	11-14-2018
302 KAR 27:010		
Amended	2437	
302 KAR 27:020		
Amended	2439	
302 KAR 27:031*(r)*	2533	
302 KAR 27:040		
Amended	2441	
302 KAR 27:050		
Amended	2442	
302 KAR 27:060		
Amended	2446	
302 KAR 28:010		
Amended	2448	
302 KAR 28:020		

Regulation Number	45 Ky.R. Page No.	Effective Date
Amended	2450	
302 KAR 28:030		
Amended	2452	
302 KAR 28:040		
Amended	2453	
302 KAR 28:050		
Amended	2454	
302 KAR 28:060		
Amended	2457	
302 KAR 29:020		
Amended	150	
As Amended	655	9-28-2018
302 KAR 50:080		
Amended	1085	
As Amended	1522	
302 KAR 50:090	2253	
302 KAR 77:011*(r)*	1858	
As Amended	2339	
302 KAR 85:010		
Amended	2458	
302 KAR 100:010		
Repealed	1858	11-14-2018
302 KAR 100:011*(r)*	870	11-14-2018
302 KAR 100:020		
Repealed	827	11-14-2018
302 KAR 100:021*(r)*	827	11-14-2018
400 KAR 1:001		
Amended	431	10-4-2018
400 KAR 1:040		
Amended	433	
As Amended	958	10-4-2018
400 KAR 1:090		
Amended	439	
As Amended	963	10-4-2018
400 KAR 1:100		
Amended	448	
As Amended	970	10-4-2018
400 KAR 1:110		
Amended	453	
As Amended	974	10-4-2018
400 KAR 2:060		
Amended	1770	
As Amended	2599	
400 KAR 2:070		
Amended	1772	
As Amended	2600	
400 KAR 2:080		
Amended	1773	
As Amended	2601	
400 KAR 2:090		
Amended	1776	
As Amended	2602	
400 KAR 002:100		
Amended	1780	
As Amended	2605	
400 KAR 3:010		
Amended	1782	
400 KAR 3:020		
Amended	1783	
As Amended	2606	
400 KAR 3:030		
Amended	1785	
As Amended	2607	
400 KAR 3:040		
Amended	1786	
As Amended	2607	
400 KAR 4:110		
Amended	1789	
As Amended	2610	
400 KAR 4:125		
Amended	1791	
As Amended	2611	
400 KAR 4:130		
Amended	1796	
As Amended	2615	
400 KAR 4:140		
Amended	1799	
As Amended	2617	
401 KAR 5:002		See 44 Ky.R.
Am Comments	667	
As Amended	982	11-1-2018
401 KAR 5:005		See 44 Ky.R.
Am Comments	675	
As Amended	989	11-1-2018
401 KAR 5:006		See 44 Ky.R.
As Amended	1000	
As Amended IJC	1523	11-1-2018
401 KAR 5:015		See 44 Ky.R.
Am Comments	687	
As Amended	1002	11-1-2018
401 KAR 5:037		See 44 Ky.R.
Am Comments	690	
As Amended	1003	11-1-2018
401 KAR 5:045		See 44 Ky.R.
As Amended	1008	11-1-2018
401 KAR 5:055		See 44 Ky.R.
As Amended	1009	11-1-2018
401 KAR 5:075		See 44 Ky.R.
As Amended	1011	11-1-2018
401 KAR 5:320		See 44 Ky.R.
Am Comments	696	
As Amended	1012	11-1-2018
401 KAR 39:060		
Amended	1349	
As Amended	2621	
401 KAR 39:080		
Amended	1355	
401 KAR 39:090		
Amended	1358	
As Amended	2624	
401 KAR 40:051(r)	1465	
401 KAR 42:005		
Amended	1365	
Am Comments	2360	
As Amended	2630	
401 KAR 42:020		
Amended	1370	
Am Comments	2365	
As Amended	2634	
401 KAR 42:060		
Amended	1380	
Am Comments	2374	
As Amended	2642	`
401 KAR 42:250		
Amended	1384	
Am Comments	3278	
As Amended	2644	
401 KAR 42:330		
Amended	1397	
Am Comments	2391	
As Amended	2655	
401 KAR 42:341(r)	1466	
401 KAR 52:050		
Amended	759	
Am Comments	1687	
As Amended	2085	2-1-2019
401 KAR 52:070		
Amended	761	
Am Comments	1689	
As Amended	2085	2-1-2019

Regulation Number	45 Ky.R. Page No.	Effective Date
418 KAR 1:010		
Amended	1804	
As Amended	2658	
418 KAR 1:020		
Amended	1806	
As Amended	2659	
418 KAR 1:040		
Amended	1808	
As Amended	2660	
418 KAR 1:050		
Amended	1809	
As Amended	2661	
418 KAR 1:060		
Amended	1811	
As Amended	2661	
418 KAR 1:070		
Amended	1813	
As Amended	2662	
500 KAR 2:020		
Amended	1815	
500 KAR 2:030		
Amended	1401	
500 KAR 3:020		
Amended	1402	
As Amended	2087	2-1-2019
501 KAR 6:020		
Amended	764	
Am Comments	1220	
As Amended	1524	1-4-2019
501 KAR 6:070		See 44 Ky.R.
As Amended	342	8-31-2018
503 KAR 1:110		
Amended	462	
Am Comments	1047	12-7-2018
505 KAR 1:080		
Amended	2460	
505 KAR 1:100		
Amended	2171	
As Amended	2663	
505 KAR 1:110		
Amended	1818	
As Amended	2663	
505 KAR 1:120		See 44 Ky.R.
Am Comments	368	
As Amended	656	10-5-2018
505 KAR 1:140		See 44 Ky.R.
Am Comments	369	10-5-2018
505 KAR 1:180	1859	
As Amended	2664	
505 KAR 1:190	2255	
As Amended	2665	
601 KAR 2:030		
Amended	152	
Withdrawn by agency		1-8-2019
Amended	2464	
603 KAR 2:015		
Amended	2173	
As Amended	2665	
603 KAR 5:070		
Amended	1405	
As Amended	2089	2-1-2019
701 KAR 5:140		
Amended	766	
As Amended	1526	1-4-2019
701 KAR 5:150	1468	
As Amended	2339	
702 KAR 001:160		
Amended	2744	
702 KAR 7:065		
Amended	770	
As Amended	1190	11-19-2018
703 KAR 005:211*(r)*	2808	
703 KAR 5:225		See 44 Ky.R.
As Amended	26	8-6-2018
703 KAR 5:270		
Amended	2179	
Am Comments	2707	
703 KAR 5:280		See 44 Ky.R.
As Amended	29	8-6-2018
704 KAR 3:015	215	
As Amended	1016	11-2-2018
704 KAR 3:292		
Amended	1410	
As Amended	2341	
704 KAR 3:303		
Amended	1412	
704 KAR 3:305		
Amended	1414	
Am Comments	2111	
As Amended	2342	
704 KAR 3:306	217	
Am Comments	700	
As Amended	1017	11-2-2018
Recodified as 704 KAR 8:070		1-10-2019
704 KAR 3:365		
Amended	1418	
As Amended	2348	
704 KAR 007:081*(r)*	2809	
704 KAR 8:010	1471	
As Amended	2092	2-1-2019
704 KAR 8:020	1473	
As Amended	2350	
704 KAR 8:030	1474	2-1-2019
704 KAR 8:040	1476	
As Amended	2350	
704 KAR 8:050	1478	2-1-2019
704 KAR 008:060	2810	
704 KAR 8:070		
Recodified from 704 KAR 3:306		1-10-2019
735 KAR 1:010		See 44 Ky.R.
As Amended	34	8-6-2018
735 KAR 1:020		See 44 Ky.R.
As Amended	36	8-6-2018
735 KAR 2:010		See 44 Ky.R.
As Amended	38	8-6-2018
735 KAR 2:020		See 44 Ky.R.
As Amended	39	8-6-2018
735 KAR 2:030		See 44 Ky.R.
As Amended	39	8-6-2018
735 KAR 2:040		See 44 Ky.R.
As Amended	40	8-6-2018
735 KAR 2:050		See 44 Ky.R.
As Amended	40	8-6-2018
735 KAR 2:060		See 44 Ky.R.
As Amended	41	8-6-2018
787 KAR 1:010		
Amended	1087	
As Amended	1528	1-4-2019
802 KAR 1:010		
Amended	2470	
803 KAR 2:320		
Amended	2472	
803 KAR 2:505		
Amended	2478	
803 KAR 25:089		
Amended	158	
As Amended	1193	12-7-2018
803 KAR 25:270	2534	
803 KAR 25:290	2256	
803 KAR 30:010		

Regulation Number	45 Ky.R. Page No.	Effective Date
Amended	774	
Am Comments	1691	
As Amended	2093	2-1-2019
803 KAR 030:020		
Repealed	873	2-1-2019
803 KAR 30:021*(r)*	873	2-1-2019
803 KAR 50:010		
Amended	780	12-7-2018
As Amended	1193	
804 KAR 1:030		
Amended	2187	
As Amended	26714	
804 KAR 1:070		
Amended	1820	
As Amended	2351	
804 KAR 1:110		
Amended	1822	
As Amended	2351	
804 KAR 2:016*(r)*	2259	
804 KAR 004:010		
Repealed	1479	2-1-2019
804 KAR 4:011*(r)*	1479	2-1-2019
804 KAR 5:020		
Repealed	1154	1-4-2019
804 KAR 5:021*(r)*	1154	1-4-2019
804 KAR 5:080	219	11-2-2018
804 KAR 8:050		
Amended	1088	1-4-2019
804 KAR 11:031*(r)*	1860	
805 KAR 1:210	560	10-4-2018
805 KAR 3:100		
Amended	1421	
As Amended	2097	2-1-2019
805 KAR 7:080		
Amended	2189	
As Amended	2672	
806 KAR 2:092		
Amended	1423	
806 KAR 2:100		
Amended	1425	
806 KAR 2:121(r)	1480	
806 KAR 5:011(r)	1482	
806 KAR 9:360		
Amended	159	
As Amended	656	10-5-2018
806 KAR 10:030		
Amended	1824	
Am Comments	2716	
806 KAR 17:010		
Repealed	561	11-2-2018
806 KAR 17:020		
Amended	446	11-2-2018
806 KAR 17:090		
Repealed	561	11-2-2018
806 KAR 17:091*(r)*	561	11-2-2018
806 KAR 17:130		
Repealed	561	11-2-2018
806 KAR 17:300		
Amended	437	11-2-2018
806 KAR 17:310		
Repealed	561	11-2-2018
806 KAR 17:320		
Repealed	561	11-2-2018
806 KAR 17:330		
Repealed	561	11-2-2018
806 KAR 17:360		
Amended	470	11-2-2018
806 KAR 17:440		
Repealed	561	11-2-2018
806 KAR 17:460		
Repealed	561	11-2-2018
806 KAR 17:500		
Repealed	561	11-2-2018
806 KAR 17:540		
Repealed	561	11-2-2018
806 KAR 17:545		
Repealed	561	11-2-2018
806 KAR 17:555		
Repealed	561	11-2-2018
806 KAR 17:570		
Amended	161	
As Amended	1202	12-7-2018
807 KAR 5:022		
AmComments	62	8-6-2018
807 KAR 5:026		
AmComments	92	8-6-2018
808 KAR 1:060		
Amended	2192	
808 KAR 1:140		
Amended	2194	
808 KAR 1:161*(r)*	2260	
808 KAR 1:170	2261	
808 KAR 1:180	2266	
808 KAR 3:050		
Amended	2196	
808 KAR 1:061*(r)*	2268	
808 KAR 5:041*(r)*	2269	
808 KAR 6:095		
Amended	2199	
808 KAR 6:121*(r)*	*2270*	
808 KAR 9:010		
Amended	2220	
808 KAR 9:031(r)	2271	
808 KAR 9:040		
Amended	2202	
808 KAR 9:050		
Amended	2203	
808 KAR 11:021(r)	2272	
808 KAR 12:050		
Amended	2206	
808 KAR 12:055		
Amended	2207	
808 KAR 12:111(r)	2273	
808 KAR 14:010	2275	
808 KAR 14:020	2277	
808 KAR 15:010	2278	
808 KAR 15:020	2279	
808 KAR 15:030	2281	
808 KAR 15:040	2283	
810 KAR 1:301*(r)*	1862	
810 KAR 2:001	1863	
Am Comments	2718	
810 KAR 2:010	1866	
810 KAR 2:020	1868	
810 KAR 2:030	1870	
810 KAR 2:040	1873	
810 KAR 2:050	1875	
810 KAR 2:060	1880	
810 KAR 2:070	1881	
810 KAR 2:080	1886	
810 KAR 3:001	1890	
810 KAR 3:010	1892	
810 KAR 3:020	1895	
810 KAR 3:030	1901	
810 KAR 3:040	1904	
810 KAR 3:050	1909	
810 KAR 4:001	1912	
810 KAR 4:001	1912	
Am Comments	2720	
810 KAR 4:010	1915	

Regulation Number	45 Ky.R. Page No.	Effective Date
810 KAR 4:020	1918	
Am Comments	2723	
810 KAR 4:030	1919	
810 KAR 4:040	1923	
810 KAR 4:050	1925	
810 KAR 4:060	1927	
810 KAR 4:070	1930	
810 KAR 4:080	1934	
810 KAR 4:090	1936	
810 KAR 4:100	1938	
810 KAR 5:001	1940	
810 KAR 5:010	1942	
810 KAR 5:020	1944	
810 KAR 5:030	1947	
810 KAR 5:040	1949	
810 KAR 5:050	1951	
810 KAR 5:060	1953	
810 KAR 5:070	1958	
810 KAR 5:080	1963	
810 KAR 6:020	1966	
810 KAR 7:010	1976	
810 KAR 7:020	1978	
810 KAR 7:030	1982	
810 KAR 7:040	1984	
810 KAR 7:060	1989	
810 KAR 7:070	1992	
810 KAR 8:010	1995	
810 KAR 8:020	2001	
810 KAR 8:030	2003	
810 KAR 8:040	2009	
810 KAR 8:050	2014	
810 KAR 8:060	2016	
810 KAR 9:010	2018	
811 KAR 1:301	2020	
811 KAR 2:301	2021	
815 KAR 2:010	874	
As Amended	1529	1-4-2019
815 KAR 2:020	876	
As Amended	1530	1-4-2019
815 KAR 2:030	879	1-4-2019
815 KAR 2:040	881	1-4-2019
815 KAR 4:030		
Amended	790	
As Amended	1532	1-4-2019
815 KAR 4:040		
Repealed	882	1-4-2019
815 KAR 4:050		
Repealed	882	1-4-2019
815 KAR 4:060		
Repealed	882	1-4-2019
815 KAR 4:070		
Repealed	882	1-4-2019
815 KAR 4:071*(r)*	882	1-4-2019
815 KAR 6:001		
Amended	1090	
As Amended	2674	
815 KAR 6:010		
Amended	1091	
Am Comments	2117	
As Amended	2674	
815 KAR 6:030		
Amended	1096	
As Amended	2678	
815 KAR 6:040		
Amended	1099	
Am Comments	2121	
As Amended	2681	
815 KAR 6:101*(r)*	1155	
815 KAR 7:070		
Amended	794	
As Amended	1534	1-4-2019
815 KAR 7:110		See 44 Ky.R.
As Amended	343	8-22-2018
815 KAR 7:120		See 44 Ky.R.
Am Comments	96	8-22-2018
815 KAR 7:125		See 44 Ky.R.
Am Comments	98	8-22-2018
815 KAR 8:010		
Amended	800	
As Amended	1539	1-4-2019
815 KAR 8:030		
Amended	804	
As Amended	1542	1-4-2019
815 KAR 8:070		See 44 Ky.R.
As Amended	345	8-22-2018
815 KAR 8:080		See 44 Ky.R.
As Amended	347	8-22-2018
815 KAR 8:020		
Repealed	883	1-4-2019
815 KAR 8:035		
Repealed	883	1-4-2019
815 KAR 8:050		
Repealed	883	1-4-2019
815 KAR 8:060		
Repealed	883	1-4-2019
815 KAR 8:090		
Repealed	883	1-4-2019
815 KAR 8:091*(r)*	883	1-4-2019
815 KAR 8:095		
Repealed	883	1-4-2019
815 KAR 8:100		See 44 Ky.R.
As Amended	348	8-22-2018
815 KAR 15:080		
Amended	805	
As Amended	1543	1-4-2019
815 KAR 20:030		
Amended	808	
As Amended	1544	1-4-2019
815 KAR 20:012		
Repealed	885	1-4-2019
815 KAR 20:015		
Repealed	885	1-4-2019
815 KAR 20:018		
Repealed	885	1-4-2019
815 KAR 20:032		
Repealed	885	1-4-2019
815 KAR 20:034		
Repealed	885	1-4-2019
815 KAR 20:040		
Repealed	885	1-4-2019
815 KAR 20:041*(r)*	885	1-4-2019
815 KAR 22:010		
Repealed	886	1-4-2019
815 KAR 22:011*(r)*	886	1-4-2019
815 KAR 25:001	887	
As Amended	1547	1-4-2019
815 KAR 25:020		
Amended	813	
As Amended	1548	1-4-2019
815 KAR 25:040		
Amended	821	
As Amended	1555	1-4-2019
815 KAR 25:050		
Amended	822	
As Amended	1556	1-4-2019
815 KAR 25:060		
Amended	827	
As Amended	1560	1-4-2019
815 KAR 25:070		
Repealed	889	1-4-2019

Regulation Number	45 Ky.R. Page No.	Effective Date
815 KAR 25:080		
Repealed	889	1-4-2019
815 KAR 25:081*(r)*	889	1-4-2019
815 KAR 25:090		
Amended	832	1-4-2019
815 KAR 25:100		
Amended	835	1-4-2019
815 KAR 35:015		
Amended	837	
As Amended	1567	1-4-2019
815 KAR 35:020		
Amended	841	1-4-2019
815 KAR 35:060		
Amended	845	
As Amended	1570	1-4-2019
815 KAR 35:080		
Amended	849	1-4-2019
815 KAR 35:090		
Amended	850	1-4-2019
815 KAR 35:100		
Repealed	890	1-4-2019
815 KAR 35:101*(r)*	890	1-4-2019
820 KAR 1:001		See 44 Ky.R.
As Amended	1573	1-4-2019
820 KAR 1:005		See 44 Ky.R.
As Amended	1576	1-4-2019
820 KAR 1:025		See 44 Ky.R.
As Amended	1578	1-4-2019
820 KAR 1:032		See 44 Ky.R.
Am Comments	702	
As Amended	1579	1-4-2019
820 KAR 1:042		See 44 Ky.R.
As Amended	1592	1-4-2019
820 KAR 1:050		See 44 Ky.R.
Am Comments	715	
As Amended	1599	1-4-2019
820 KAR 1:055		See 44 Ky.R.
As Amended	1600	1-4-2019
820 KAR 1:057		See 44 Ky.R.
Am Comments	718	
As Amended	1601	1-4-2019
820 KAR 1:060		See 44 Ky.R.
Am Comments	724	
As Amended	1607	1-4-2019
820 KAR 1:130		See 44 Ky.R.
As Amended	1607	1-4-2019
820 KAR 1:135		See 44 Ky.R.
As Amended	1608	1-4-2019
830 KAR 1:010		
Amended	180	9-13-2018
830 KAR 2:001	563	11-2-2018
830 KAR 2:010	564	
As Amended	1021	11-2-2018
830 KAR 2:020	566	
As Amended	1022	11-2-2018
831 KAR 1:010		
Recodified from 201 KAR 3:090		10-12-2018
831 KAR 1:020		
Recodified from 201 KAR 3:045		10-12-2018
831 KAR 1:030		
Recodified from 201 KAR 3:100		10-12-2018
895 KAR 1:001	567	
Am Comments	1222	
As Amended	1609	1-4-2019
895 KAR 1:010	570	
Am Comments	1225	
As Amended	1611	1-4-2019
895 KAR 1:015	573	
Am Comments	1228	
As Amended	1613	1-4-2019
895 KAR 1:020	576	
Am Comments	1231	
As Amended	1615	1-4-2019
895 KAR 1:025	579	
As Amended	1616	1-4-2019
895 KAR 1:030	581	
Am Comments	1233	
As Amended	1617	1-4-2019
895 KAR 1:035	583	
As Amended	1618	1-4-2019
895 KAR 1:040	585	
As Amended	1619	1-4-2019
895 KAR 1:045	587	
As Amended	1620	1-4-2019
895 KAR 1:050	589	
Am Comments	1236	
As Amended	1621	1-4-2019
895 KAR 1:055	591	
As Amended	1621	1-4-2019
900 KAR 001:090		
Repealed	891	11-27-2018
900 KAR 1:091*(r)*	891	11-27-2018
900 KAR 002:020		
Repealed	1156	2-21-2019
900 KAR 002:021*(r)*	1156	2-21-2019
900 KAR 2:040		
Amended	1103	
Am Comments	2125	2-21-2019
900 KAR 5:020		
Amended	472	
Am Comments	1238	
As Amended	1622	12-12-2018
900 KAR 6:020		
Amended	1110	12-12-2018
900 KAR 6:075		
Amended	1427	
Am Comments	2395	
900 KAR 7:030		
Amended	2482	
900 KAR 9:010		
Amended	2210	
As Amended	2683	
900 KAR 10:021*(r)*	2537	
900 KAR 11:010		
Amended	1111	12-12-2018
902 KAR 2:055		See 44 Ky.R.
As Amended	350	8-31-2018
902 KAR 8:165		
Amended	1430	1-23-2019
902 KAR 8:170		
Amended	1432	
As Amended	2098	1-23-2019
902 KAR 10:040		
Am Comments	100	
As Amended	351	8-13-2018
902 KAR 10:050		
Repealed	593	10-17-2018
902 KAR 10:051*(r)*	593	10-17-2018
902 KAR 019:010		
Amended	2777	
902 KAR 20:008		
Amended	474	
As Amended	1022	10-17-2018
902 KAR 20:016		See 44 Ky.R.
As Amended	355	8-31-2018
902 KAR 20:058		
Repealed	312	7-13-2018
902 KAR 020:076	2812	
902 KAR 020:111		
Amended	2781	

Regulation Number	45 Ky.R. Page No.	Effective Date
902 KAR 20:145		
Repealed	312	7-13-2018
902 KAR 20:190		
Repealed	312	7-13-2018
902 KAR 20:250		
Repealed	595	10-17-2018
902 KAR 20:251*(r)*	595	10-17-2018
902 KAR 20:260		
Amended	479	
As Amended	1026	10-17-2018
902 KAR 20:275		
Amended	485	
As Amended	1031	10-17-2018
902 KAR 20:300		
Amended	1117	12-12-2018
902 KAR 20:400		
Repealed	312	7-13-2018
902 KAR 45:005		
Amended	1127	
Am Comments	2132	2-21-2019
902 KAR 045:006		
Repealed	1157	2-21-2019
902 KAR 045:007*(r)*	1157	2-21-2019
902 KAR 045:140		
Repealed	1157	2-21-2019
902 KAR 45:090		
Amended	1130	
Am Comments	2136	2-21-2019
902 KAR 45:160		
Amended	495	
As Amended	1040	10-17-2018
902 KAR 47:040		
Repealed	596	10-17-2018
902 KAR 47:050		
Repealed	596	1017-2018
902 KAR 47:060		
Repealed	596	10-17-2018
902 KAR 47:070		
Repealed	596	10-17-2018
902 KAR 47:071*(r)*	596	10-17-2018
902 KAR 55:010		
Repealed	313	7-13-2018
902 KAR 100:017		
Repealed	597	12-12-2018
902 KAR 100:018*(r)*	597	12-12-2018
902 KAR 100:022		
Amended	499	
Am Comments	1240	
As Amended	1622	12-12-2018
902 KAR 100:052		
Amended	508	
As Amended	1630	12-12-2018
902 KAR 100:060		
Repealed	597	12-12-2018
902 KAR 100:070		
Amended	510	
Am Comments	1248	
As Amended	1631	12-12-2018
902 KAR 100:072		
Amended	517	
Am Comments	1255	
As Amended	1637	12-12-2018
902 KAR 100:090		
Repealed	597	12-12-2018
902 KAR 100:100		
Amended	542	
Am Comments	1280	
As Amended	1661	12-12-2018
902 KAR 100:142		
Amended	550	
Am Comments	1288	
As Amended	1667	12-12-2018
906 KAR 1:050		
Repealed	315	7-13-2018
906 KAR 1:060		
Repealed	315	7-13-2018
906 KAR 1:070		
Repealed	315	7-13-2018
906 KAR 1:190		
Amended	181	11-27-2018
906 KAR 1:200		See 44 Ky.R.
As Amended	42	7-18-2018
907 KAR 1:005		
Amended	1439	2-1-2019
907 KAR 001:022		
Amended	2784	
907 KAR 1:025		
Amended	1138	
As Amended	1673	1-4-2019
907 KAR 1:075		
Amended	1441	
As Amended	2104	2-1-2019
907 KAR 1:120		
Repealed	892	11-27-2018
907 KAR 1:121(r)	892	11-27-2018
907 KAR 1:130		
Repealed	892	11-27-2018
907 KAR 1:270		
Amended	2212	
As Amended	2684	
907 KAR 1:280		
Amended	2214	
907 KAR 001:330		
Amended	2790	
907 KAR 001:340		
Amended	2793	
907 KAR 1:360		
Amended	2215	
907 KAR 001:441	2813	
907 KAR 1:560		
Amended	1826	
Am Comments	2725	
907 KAR 1:563		
Amended	1830	
Am Comments	2729	
907 KAR 1:604		
Amended	2485	
907 KAR 1:642	598	
Withdrawn by agency		9-21-2018
907 KAR 001:755		
Amended	2796	
907 KAR 3:170		
Amended	2489	
907 KAR 5:005		
Amended	2496	
907 KAR 8:040		
Amended	1444	
As Amended	2352	
907 KAR 10:820		
Amended	2218	
908 KAR 1:341*(r)*	2538	
908 KAR 1:370		
Amended	2500	
908 KAR 1:372	2539	
908 KAR 1:374	2546	
910 KAR 1:090		
Amended	187	
As Amended	657	9-19-2018
910 KAR 1:240		
Amended	2223	

Regulation Number	45 Ky.R. Page No.	Effective Date
Am Comments	2733	
910 KAR 2:030		See 44 Ky.R.
Am Comments	371	
As Amended	662	9-19-2018
911 KAR 001:010	2814	
911 KAR 001:020	2819	
911 KAR 001:060	2823	
911 KAR 001:071 *(r)*	2828	
921 KAR 1:380		
Amended	193	9-19-2018
921 KAR 2:015		
Amended	2520	
921 KAR 2:055		
Amended	1835	
Am Comments	2738	
921 KAR 3:025		
Amended	196	
As Amended	1677	12-12-2018
921 KAR 3:030		
Amended	200	
As Amended	664	9-19-2018
921 KAR 3:035		
Amended	202	
As Amended	1680	12-12-2018
921 KAR 3:050		
Amended	1838	2-21-2019
921 KAR 3:060		
Amended	1842	
921 KAR 3:070		
Amended	1845	
922 KAR 1:010		
Amended	1142	
Am Comments	2143	
As Amended	2354	2-21-2019
922 KAR 1:050		
Amended	1447	
As Amended	2685	
922 KAR 1:060		
Amended	1451	1-23-2019
922 KAR 1:100		
Amended	1147	
Am Comments	2147	
As Amended	2357	2-21-2019
922 KAR 1:140		
Amended	2228	
922 KAR 1:305		
Amended	2231	
922 KAR 1:360		
Amended	853	
Am Comments	1696	
As Amended	2106	1-23-2019
922 KAR 1:400		
Amended	2235	
922 KAR 1:410		
Repealed	1159	12-12-2018
922 KAR 1:411*(r)*	1159	12-12-2018
922 KAR 1:500		
Amended	2238	
922 KAR 1:530		
Amended	1454	
Am Comments	2398	
922 KAR 1:560	600	
Am Comments	1294	
As Amended	1682	
922 KAR 1:565	2284	12-12-2018
922 KAR 2:120		See 44 Ky.R.
As Amended	43	7-18-2018
922 KAR 2:160		
Amended	2284	
922 KAR 2:180		See 44 Ky.R.
As Amended	51	7-18-2018
922 KAR 2:190		See 44 Ky.R.
As Amended	56	7-18-2018
922 KAR 2:270		See 44 Ky.R.
As Amended	57	7-18-2018

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* Statement of Consideration not filed by deadline

** Withdrawn, deferred more than twelve months (KRS 13A.300(2)(e) and 13A.315(1)(d))

*** Withdrawn before being printed in Register

IJC Interim Joint Committee

(r) Repealer regulation: KRS 13A.310(3)-on the effective date of an administrative regulation that repeals another, the regulations compiler shall delete the repealed administrative regulation and the repealing administrative regulation.

KRS SECTION	REGULATION
11A.080	009 KAR 001:015
	009 KAR 001:030
11A.100	009 KAR 001:030
12.040	101 KAR 003:050
12.050	101 KAR 003:050
13B	201 KAR 020:161
	201 KAR 020:162
	201 KAR 026:140
	603 KAR 002:015
	802 KAR 001:010
	900 KAR 002:021
	900 KAR 007:030
	902 KAR 045:160
	906 KAR 001:190
	907 KAR 001:560
	907 KAR 001:563
	910 KAR 001:090
	910 KAR 001:240
	921 KAR 002:055
	921 KAR 003:060
	921 KAR 003:070
	922 KAR 001:360
	922 KAR 001:500
13B.040	900 KAR 002:040
13B.050	900 KAR 002:040
	908 KAR 001:370
	922 KAR 001:305
13B.080	900 KAR 002:040
13B.090	900 KAR 002:040
13B.110	900 KAR 002:040
13B.125	908 KAR 001:370
13B.130	900 KAR 002:040
15.330	503 KAR 001:110
15.386	503 KAR 001:110
15.404	503 KAR 001:110
15.440	503 KAR 001:110
15A.065	505 KAR 001:100
	505 KAR 001:110
	505 KAR 001:180
	505 KAR 001:190
15A.0652	505 KAR 001:100
	505 KAR 001:110
	505 KAR 001:180
	505 KAR 001:190
15A.067	505 KAR 001:100
	505 KAR 001:110
	505 KAR 001:180
	505 KAR 001:190
17.165	910 KAR 001:240
	922 KAR 001:305
17.500	908 KAR 001:370
18A.005	101 KAR 002:020
	101 KAR 002:076
18A.030	101 KAR 002:020
	101 KAR 002:034
	101 KAR 002:095
	101 KAR 002:210
18A.032	101 KAR 002:020
18A.110	101 KAR 002:020
	101 KAR 002:034
	101 KAR 002:076
	101 KAR 002:095
	101 KAR 003:045
	101 KAR 003:050
18A.115	101 KAR 002:076
	101 KAR 003:050
18A.120	101 KAR 002:076
18A.155	101 KAR 003:045
	101 KAR 003:050
18A.165	101 KAR 002:034

KRS SECTION	REGULATION
18A.202	101 KAR 003:045
18A.225	101 KAR 002:210
18A.2254	101 KAR 002:210
23A.010	921 KAR 002:055
	921 KAR 003:070
39E.020	106 KAR 001:081
39E.030	106 KAR 001:081
39E.040	106 KAR 001:091
	106 KAR 001:111
39E.050	106 KAR 001:091
	106 KAR 001:101
	106 KAR 001:111
	106 KAR 001:121
39E.080	106 KAR 001:111
39E.110	106 KAR 001:091
	106 KAR 001:111
39E.130	106 KAR 001:091
39E.140	106 KAR 001:091
	106 KAR 001:111
39E.150	106 KAR 001:091
	106 KAR 001:111
39E.160	106 KAR 001:091
39E.170	106 KAR 001:091
39E.220	106 KAR 001:091
39E.230	106 KAR 001:091
	106 KAR 001:101
41	302 KAR 003:011
41.240	902 KAR 008:170
42.019	200 KAR 003:020
42.425	200 KAR 003:020
43.070	045 KAR 001:050
43.075	045 KAR 001:050
45.237	921 KAR 002:055
	921 KAR 003:070
45.237-45-241	922 KAR 001:400
	922 KAR 001:565
45A	603 KAR 002:015
	601 KAR 002:030
49.220	802 KAR 001:010
	803 KAR 030:010
49.230	802 KAR 001:010
49.240	802 KAR 001:010
49.250	802 KAR 001:010
56.010	200 KAR 003:020
56.463	200 KAR 003:020
61.300	500 KAR 003:020
61.360	500 KAR 003:020
61.510	105 KAR 001:145
	105 KAR 001:147
61.522	105 KAR 001:145
	105 KAR 001:147
61.546	105 KAR 001:145
	105 KAR 001:147
61.552	105 KAR 001:145
	105 KAR 001:147
61.555	105 KAR 001:145
	105 KAR 001:147
61.565	105 KAR 001:145
	105 KAR 001:147
61.590	105 KAR 001:145
	105 KAR 001:147
61.598	105 KAR 001:145
	105 KAR 001:147
61.625	105 KAR 001:145
	105 KAR 001:147
61.637	105 KAR 001:145
	105 KAR 001:147
61.675	105 KAR 001:145
	105 KAR 001:147
61.800	106 KAR 001:091

KRS SECTION	REGULATION
61.805	106 KAR 001:091
61.805 - 61.850	418 KAR 001:020
	702 KAR 007:065
61.810	106 KAR 001:091
61.820	106 KAR 001:091
61.823	106 KAR 001:091
61.826	106 KAR 001:091
61.835	106 KAR 001:091
61.870	401 KAR 039:060
61.870 - 61.884	202 KAR 007:575
	418 KAR 001:020
61.874	201 KAR 020:240
61.878	401 KAR 042:250
	401 KAR 042:341
	603 KAR 002:015
61.884	401 KAR 039:060
61.900 - 61.930	500 KAR 002:020
61.906	500 KAR 002:030
61.990	500 KAR 003:020
62.010	500 KAR 003:020
62.990	500 KAR 003:020
64.810	045 KAR 001:050
68.210	045 KAR 001:050
78.510 - 78.852	105 KAR 001:145
	105 KAR 001:147
91A.080	806 KAR 002:092
	806 KAR 002:121
91A.0804	806 KAR 002:092
	806 KAR 002:121
91A.08010	806 KAR 002:092
116.048	921 KAR 003:030
116.085	031 KAR 003:010
116.155	031 KAR 003:010
117.015	031 KAR 004:120
117.025	031 KAR 003:010
117.045	031 KAR 004:100
	031 KAR 004:120
117.225	031 KAR 003:010
121.015	032 KAR 001:050
121.170	032 KAR 001:050
121.180	032 KAR 001:030
	032 KAR 001:070
131.010	103 KAR 001:040
131.030	103 KAR 001:040
131.081	103 KAR 001:040
	103 KAR 015:050
131.130	103 KAR 016:230
	103 KAR 016:352
	103 KAR 017:020
131.131	103 KAR 015:180
131.155	103 KAR 018:150
131.170	103 KAR 015:050
131.175	103 KAR 001:040
131.180	103 KAR 001:040
131.183	103 KAR 015:041
131.250	103 KAR 018:050
131.440	103 KAR 001:040
133.180	103 KAR 001:040
133.220	103 KAR 001:040
134.580	103 KAR 015:041
136.100	103 KAR 015:050
136.290	103 KAR 001:130
136.300	103 KAR 001:130
136.310	103 KAR 001:130
136.320	103 KAR 001:130
	103 KAR 015:180
136.330	103 KAR 015:180
136.340	103 KAR 015:180
136.350	103 KAR 015:180
136.370	103 KAR 015:180
136.390	103 KAR 015:180
136.392	806 KAR 002:100
138.510	810 KAR 007:030
	810 KAR 007:060

KRS SECTION	REGULATION
138.885	103 KAR 001:040
139.185	103 KAR 001:040
141.010	103 KAR 015:110
	103 KAR 015:120
	103 KAR 015:140
	103 KAR 016:011
	103 KAR 016:060
	103 KAR 016:090
	103 KAR 016:240
	103 KAR 016:352
	103 KAR 017:010
	103 KAR 017:020
	103 KAR 017:060
	103 KAR 019:010
141.011	103 KAR 016:250
141.017	103 KAR 017:060
141.019	103 KAR 001:130
	103 KAR 017:060
	103 KAR 019:010
141.020	103 KAR 015:110
	103 KAR 015:120
	103 KAR 015:140
	103 KAR 015:180
	103 KAR 017:010
	103 KAR 017:060
	103 KAR 017:100
	103 KAR 017:130
	103 KAR 019:010
141.030	103 KAR 015:110
	103 KAR 015:120
	103 KAR 015:140
	103 KAR 019:010
141.040	103 KAR 015:110
	103 KAR 015:120
	103 KAR 015:140
	103 KAR 015:180
	103 KAR 016:240
	103 KAR 016:270
	103 KAR 016:352
	103 KAR 016:381
141.042	103 KAR 015:050
	103 KAR 015:060
141.044	103 KAR 015:060
141.050	103 KAR 015:180
	103 KAR 017:020
141.070	103 KAR 017:140
141.081	103 KAR 019:010
141.120	103 KAR 015:195
	103 KAR 016:060
	103 KAR 016:090
	103 KAR 016:270
	103 KAR 016:290
	103 KAR 016:330
	103 KAR 016:340
	103 KAR 016:352
	103 KAR 016:381
	103 KAR 016:151
	103 KAR 016:270
141.121	103 KAR 016:090
	103 KAR 016:290
141.160	103 KAR 015:050
	103 KAR 016:352
141.170	103 KAR 015:050
	103 KAR 016:352
141.180	103 KAR 001:040
	103 KAR 017:020
141.190	103 KAR 019:010
141.200	103 KAR 016:250
	103 KAR 016:352
141.201	103 KAR 016:250
141.202	103 KAR 016:250
141.205	103 KAR 016:230
141.206	103 KAR 016:240
	103 KAR 016:270

KRS SECTION	REGULATION
	103 KAR 016:352
	103 KAR 018:081
141.210	103 KAR 015:041
	103 KAR 016:352
141.215	103 KAR 017:042
141.235	103 KAR 015:041
141.300	103 KAR 015:050
	103 KAR 015:060
	103 KAR 017:100
141.305	103 KAR 015:060
	103 KAR 017:100
141.310	103 KAR 018:110
	103 KAR 018:120
141.315	103 KAR 018:081
141.330	103 KAR 018:050
	103 KAR 018:150
141.335	103 KAR 018:050
141.340	103 KAR 001:040
141.347	103 KAR 018:180
	103 KAR 018:191
141.370	103 KAR 018:110
141.400	103 KAR 018:180
	103 KAR 018:191
141.401	103 KAR 018:180
	103 KAR 018:191
141.402	103 KAR 018:180
141.403	103 KAR 018:180
141.407	103 KAR 018:180
	103 KAR 018:191
141.415	103 KAR 018:180
141.422	103 KAR 015:110
	103 KAR 015:120
	103 KAR 015:140
141.423	103 KAR 015:140
141.424	103 KAR 015:140
141.432	103 KAR 015:180
141.433	103 KAR 015:180
141.434	103 KAR 015:180
141.438	103 KAR 015:195
141.900	103 KAR 001:130
141.901	103 KAR 016:330
141.990	103 KAR 001:040
	103 KAR 015:060
	103 KAR 016:352
	103 KAR 017:042
141.0401	103 KAR 015:110
	103 KAR 015:120
	103 KAR 015:140
	103 KAR 015:180
141.4242	103 KAR 015:110
	103 KAR 015:120
141.4246	103 KAR 015:110
	103 KAR 015:120
141.4248	103 KAR 015:110
	103 KAR 015:120
141.900	103 KAR 016:381
142.357	103 KAR 001:040
142.363	907 KAR 001:025
143.085	103 KAR 001:040
146.200 - 146.360	400 KAR 001:001
	400 KAR 001:040
	400 KAR 001:090
	400 KAR 001:100
146.220	400 KAR 004:110
	400 KAR 004:125
	400 KAR 004:130
	400 KAR 004:140
146.241	400 KAR 004:110
146.250	400 KAR 004:110
146.260	400 KAR 004:110
146.270	400 KAR 004:110
	400 KAR 004:125
	400 KAR 004:130
	400 KAR 004:140

KRS SECTION	REGULATION
146.280	400 KAR 004:140
146.290	400 KAR 004:110
	400 KAR 004:125
	400 KAR 004:130
	400 KAR 004:140
146.310	400 KAR 004:110
	400 KAR 004:125
146.350	400 KAR 004:110
	400 KAR 004:125
	400 KAR 004:140
146.360	400 KAR 004:110
146.410	400 KAR 002:070
	400 KAR 002:080
	400 KAR 002:090
146.420	400 KAR 002:080
146.430	400 KAR 002:070
146.440	400 KAR 002:080
	400 KAR 002:090
146.450	400 KAR 001:001
	400 KAR 001:090
146.460	400 KAR 002:060
146.465	400 KAR 002:100
146.470	400 KAR 002:080
146.480	400 KAR 002:100
146.485	400 KAR 003:010
	400 KAR 003:020
	400 KAR 003:030
	400 KAR 003:040
146.490	400 KAR 002:060
	400 KAR 002:080
146.495	400 KAR 002:100
146.505	400 KAR 002:080
146.530	400 KAR 001:001
	400 KAR 001:090
146.550-146.570	418 KAR 001:010
	418 KAR 001:020
	418 KAR 001:040
	418 KAR 001:050
	418 KAR 001:060
	418 KAR 001:070
146.610	400 KAR 003:010
	400 KAR 003:020
	400 KAR 003:030
	400 KAR 003:040
146.990	400 KAR 001:001
	400 KAR 001:040
	400 KAR 001:090
	400 KAR 001:100
	400 KAR 004:130
	400 KAR 004:140
147A.310	103 KAR 015:195
149.344	400 KAR 001:001
	400 KAR 001:090
	400 KAR 001:100
149.346	400 KAR 001:001
	400 KAR 001:090
	400 KAR 001:100
149.348	400 KAR 001:001
	400 KAR 001:090
	400 KAR 001:100
150.010	301 KAR 001:152
	301 KAR 001:155
	301 KAR 001:201
	301 KAR 001:410
	301 KAR 002:132
	301 KAR 002:172
	301 KAR 002:178
	301 KAR 004:090
150.025	301 KAR 003:022
150.120	301 KAR 001:155
150.090	301 KAR 001:015
150.170	301 KAR 001:152
	301 KAR 001:155
	301 KAR 001:201

KRS SECTION	REGULATION
	301 KAR 001:410
	301 KAR 002:132
	301 KAR 002:178
	301 KAR 003:100
150.175	301 KAR 001:132
	301 KAR 001:152
	301 KAR 001:201
	301 KAR 001:410
	301 KAR 003:100
	301 KAR 004:090
150.177	301 KAR 002:172
150.180	301 KAR 001:132
	301 KAR 002:095
	301 KAR 002:132
	301 KAR 002:172
	301 KAR 003:022
	301 KAR 004:090
150.183	301 KAR 003:022
	301 KAR 004:090
150.235	301 KAR 001:410
150.240	301 KAR 003:022
150.275	301 KAR 003:022
150.280	301 KAR 001:132
	301 KAR 002:095
	301 KAR 003:022
150.290	301 KAR 001:115
	301 KAR 002:095
	301 KAR 003:022
150.305	301 KAR 004:090
150.330	301 KAR 002:225
	301 KAR 004:090
150.340	301 KAR 001:201
	301 KAR 002:178
	301 KAR 002:225
150.370	301 KAR 002:178
	301 KAR 004:090
150.411	301 KAR 002:172
	301 KAR 004:090
150.445	301 KAR 001:152
	301 KAR 001:155
	301 KAR 001:410
150.450	301 KAR 001:132
	301 KAR 001:152
	301 KAR 001:155
	301 KAR 003:022
150.485	301 KAR 001:115
	301 KAR 001:132
	301 KAR 003:022
150.520	301 KAR 003:022
150.525	301 KAR 003:022
150.600	301 KAR 003:022
150.603	301 KAR 002:225
	301 KAR 003:022
150.620	301 KAR 001:201
	301 KAR 001:410
150.625	301 KAR 001:015
150.660	301 KAR 003:022
150.720	301 KAR 003:022
150.990	301 KAR 001:015
	301 KAR 001:152
	301 KAR 001:155
	301 KAR 001:201
	301 KAR 001:410
	301 KAR 002:132
	301 KAR 002:172
	301 KAR 002:178
	301 KAR 004:090
151.125	400 KAR 001:001
	400 KAR 001:090
151.140	400 KAR 003:140
151.182	400 KAR 001:001
	400 KAR 001:040
	400 KAR 001:090
	400 KAR 001:100

KRS SECTION	REGULATION
151.184	400 KAR 001:001
	400 KAR 001:040
	400 KAR 001:090
	400 KAR 001:100
151.297	400 KAR 001:001
	400 KAR 001:040
	400 KAR 001:090
	400 KAR 001:100
151.990	400 KAR 001:001
	400 KAR 001:040
	400 KAR 001:090
	400 KAR 001:100
154.22-010	103 KAR 018:180
	103 KAR 018:191
154.22-070	103 KAR 018:180
	103 KAR 018:191
154.23-010	103 KAR 018:180
	103 KAR 018:191
154.23-055	103 KAR 018:180
	103 KAR 018:191
154.24-010	103 KAR 018:180
	103 KAR 018:191
154.24-110	103 KAR 018:180
	103 KAR 018:191
154.25-010	103 KAR 018:180
154.25-040	103 KAR 018:180
154.26-010	103 KAR 018:180
154.26-100	103 KAR 018:180
154.28-010	103 KAR 018:180
	103 KAR 018:191
154.28-110	103 KAR 018:180
	103 KAR 018:191
154.32-010	103 KAR 018:180
154.32-090	103 KAR 018:180
154A.020	202 KAR 003:040
154A.030	202 KAR 003:040
154A.050	202 KAR 003:040
154A.060	202 KAR 003:040
156.010	704 KAR 003:292
	704 KAR 003:365
156.031	704 KAR 007:081
156.035	704 KAR 003:292
	704 KAR 003:365
156.070	701 KAR 005:150
	702 KAR 007:065
	704 KAR 003:292
	704 KAR 003:303
	704 KAR 003:306
	704 KAR 008:010
	704 KAR 008:020
	704 KAR 008:030
	704 KAR 008:040
	704 KAR 008:050
	704 KAR 008:060
156.108	701 KAR 005:140
156.160	013 KAR 002:020
	701 KAR 005:140
	702 KAR 001:160
	704 KAR 003:303
	704 KAR 003:305
	704 KAR 003:306
	704 KAR 008:010
	704 KAR 008:020
	704 KAR 008:030
	704 KAR 008:040
	704 KAR 008:050
	704 KAR 008:060
156.162	704 KAR 003:306
156.496	922 KAR 001:565
156.501	702 KAR 001:160
156.502	702 KAR 001:160
156.850	704 KAR 008:010
157.605	704 KAR 007:081
157.606	704 KAR 007:081

KRS SECTION	REGULATION
157.3175	704 KAR 003:015
158.035	702 KAR 001:160
158.135	505 KAR 001:080
158.137	505 KAR 001:080
158.142	704 KAR 003:305
158.160	702 KAR 001:160
158.197	704 KAR 003:306
158.645	703 KAR 005:270
	704 KAR 003:305
	704 KAR 008:010
158.6451	013 KAR 002:020
	703 KAR 005:211
	703 KAR 005:270
	704 KAR 003:303
	704 KAR 003:305
	704 KAR 003:306
	704 KAR 008:010
	704 KAR 008:020
	704 KAR 008:030
	704 KAR 008:040
	704 KAR 008:050
	704 KAR 008:060
158.6453	013 KAR 002:020
	703 KAR 005:211
	703 KAR 005:270
	704 KAR 003:303
	704 KAR 008:020
	704 KAR 008:030
	704 KAR 008:040
	704 KAR 008:050
	704 KAR 008:060
158.6455	703 KAR 005:211
	703 KAR 005:270
158.838	702 KAR 001:160
158.860	703 KAR 005:211
160.107	701 KAR 005:140
160.290	704 KAR 003:303
	704 KAR 003:306
	704 KAR 008:010
	704 KAR 008:020
	704 KAR 008:030
	704 KAR 008:040
	704 KAR 008:050
	704 KAR 008:060
160.380	702 KAR 007:065
160.445	702 KAR 007:065
160.380	016 KAR 002:100
	016 KAR 009:040
161.010	016 KAR 002:100
161.020	016 KAR 002:100
	016 KAR 002:210
	016 KAR 003:090
	016 KAR 009:040
161.027	016 KAR 003:090
161.028	016 KAR 003:090
161.128	016 KAR 002:100
	016 KAR 002:210
	016 KAR 009:040
161.030	016 KAR 002:100
	016 KAR 002:210
	016 KAR 003:090
	016 KAR 009:040
161.046	016 KAR 009:040
161.048	016 KAR 009:040
161.120	016 KAR 009:040
161.145	702 KAR 001:160
161.220	102 KAR 001:320
161.470	102 KAR 001:060
161.520	102 KAR 001:060
	102 KAR 001:168
161.655	102 KAR 001:163
161.700	102 KAR 001:060
	102 KAR 001:320
161.716	102 KAR 001:320

KRS SECTION	REGULATION
164.001	013 KAR 002:020
164.020	013 KAR 002:020
164.030	013 KAR 002:020
164.2847	922 KAR 001:500
164.518	011 KAR 004:080
164.744	011 KAR 004:080
	011 KAR 005:145
164.748	011 KAR 004:080
164.753	011 KAR 004:080
	011 KAR 005:145
164.769	011 KAR 004:080
164.772	201 KAR 022:020
	201 KAR 022:040
	815 KAR 035:060
164.780	011 KAR 004:080
164.785	011 KAR 004:080
164.6901 - 164.6935	200 KAR 030:011
	830 KAR 002:001
164.6907	830 KAR 002:010
164.6909	830 KAR 002:010
164.6911	830 KAR 002:010
164.6913 - 164.6933	830 KAR 002:020
164.6915	830 KAR 002:010
164.7535	011 KAR 004:080
	011 KAR 005:145
164.7871 - 164.7885	011 KAR 015:010
	011 KAR 015:110
164.7889	011 KAR 005:145
164.7890	011 KAR 004:080
164.7894	011 KAR 004:080
165A	815 KAR 006:040
176.090-176.110	603 KAR 002:015
176.130-176-220	603 KAR 002:015
186.010	601 KAR 002:030
186.440	601 KAR 002:030
186.442	601 KAR 002:030
186.480	601 KAR 002:030
186.531	601 KAR 002:030
186.560	601 KAR 002:030
186.570	601 KAR 002:030
186.655	603 KAR 005:070
189.222	603 KAR 005:070
189A.005	601 KAR 002:030
189A.010	601 KAR 002:030
189A.040	601 KAR 002:030
189A.070	601 KAR 002:030
189A.085	601 KAR 002:030
189A.090	601 KAR 002:030
189A.103	601 KAR 002:030
189A.105	601 KAR 002:030
189A.107	601 KAR 002:030
189A.200	601 KAR 002:030
189A.240	601 KAR 002:030
189A.250	601 KAR 002:030
189A.340	601 KAR 002:030
189A.345	601 KAR 002:030
189A.400	601 KAR 002:030
189A.410	601 KAR 002:030
189A.420	601 KAR 002:030
189A.440	601 KAR 002:030
189A.500	601 KAR 002:030
194A	921 KAR 002:015
194A.005	902 KAR 100:022
	902 KAR 100:070
	902 KAR 100:142
	922 KAR 001:140
	922 KAR 001:400
	922 KAR 001:565
194A.025	907 KAR 001:563
194A.030	900 KAR 009:010
	911 KAR 001:020
	911 KAR 001:071
194A.050	900 KAR 010:021
	902 KAR 019:010

KRS SECTION	REGULATION
	922 KAR 001:400
	922 KAR 001:565
194A.060	907 KAR 003:170
	910 KAR 001:240
	922 KAR 001:100
	922 KAR 001:560
	922 KAR 002:160
194A.125	907 KAR 003:170
194A.700-729	501 KAR 006:020
	910 KAR 001:240
197	501 KAR 006:020
198B.010	815 KAR 007:070
198B.040	815 KAR 007:070
198B.050	815 KAR 007:070
	815 KAR 035:020
198B.060	815 KAR 007:070
	815 KAR 035:015
198B.090	815 KAR 002:010
	815 KAR 002:020
	815 KAR 007:070
	815 KAR 035:015
198B.095	815 KAR 002:010
	815 KAR 002:020
	815 KAR 007:070
198B.260	902 KAR 020:260
	908 KAR 001:374
198B.4003	815 KAR 004:030
198B.4009	815 KAR 002:010
	815 KAR 002:020
	815 KAR 004:030
	815 KAR 004:071
198B.4011	815 KAR 002:010
	815 KAR 004:030
198B.4013	815 KAR 002:010
	815 KAR 004:030
198B.4023	815 KAR 002:010
	815 KAR 002:020
	815 KAR 004:030
198B.4025	815 KAR 002:010
	815 KAR 002:020
	815 KAR 004:030
198B.4027	815 KAR 004:030
198B.4033	815 KAR 004:030
198B.4037	815 KAR 002:040
198B.615	815 KAR 002:040
198B.6405	815 KAR 002:010
198B.6409	815 KAR 002:010
	815 KAR 002:020
	815 KAR 022:011
	815 KAR 025:081
198B.645	815 KAR 002:010
198B.650	815 KAR 008:010
198B.654	815 KAR 002:010
	815 KAR 002:020
	815 KAR 008:010
	815 KAR 008:091
198B.656	815 KAR 008:010
	815 KAR 008:030
198B.658	815 KAR 002:010
	815 KAR 008:010
	815 KAR 008:030
	815 KAR 008:091
198B.659	815 KAR 008:010
198B.6504	815 KAR 002:020
198B.660	815 KAR 002:010
	815 KAR 008:010
	815 KAR 008:030
198B.662	815 KAR 008:030
198B.664	815 KAR 002:010
	815 KAR 002:020
	815 KAR 008:010
	815 KAR 008:030
198B.668	815 KAR 008:010
198B.670	815 KAR 002:030

KRS SECTION	REGULATION
198B.672	815 KAR 002:010
	815 KAR 008:010
198B.676	815 KAR 002:040
	815 KAR 008:010
198B.684	815 KAR 002:020
198B.700	815 KAR 006:001
	815 KAR 006:010
198B.706	815 KAR 006:001
	815 KAR 006:010
	815 KAR 006:030
	815 KAR 006:040
	815 KAR 006:101
198B.712	815 KAR 006:010
	815 KAR 006:030
	815 KAR 006:040
198B.714	815 KAR 006:010
198B.716	815 KAR 006:010
198B.722	815 KAR 006:010
	815 KAR 006:030
	815 KAR 006:040
198B.724	815 KAR 006:010
	815 KAR 006:040
198B.728	815 KAR 006:030
198B.730	815 KAR 006:030
198B.738	815 KAR 006:010
199.011	922 KAR 001:010
	922 KAR 001:100
	922 KAR 001:140
	922 KAR 001:305
	922 KAR 001:360
	922 KAR 001:400
	922 KAR 001:530
	922 KAR 001:560
	922 KAR 001:565
199.430	922 KAR 001:100
199.462	922 KAR 001:140
	922 KAR 001:565
199.467	922 KAR 001:140
199.470	922 KAR 001:010
199.470-199.590	922 KAR 001:565
199.473	922 KAR 001:010
199.474	922 KAR 001:010
199.480	922 KAR 001:010
	922 KAR 001:560
199.490	922 KAR 001:010
199.492	922 KAR 001:010
199.493	922 KAR 001:010
199.500	922 KAR 001:010
	922 KAR 001:060
199.502	922 KAR 001:060
199.505	922 KAR 001:560
199.510	922 KAR 001:010
199.520	922 KAR 001:010
	922 KAR 001:100
199.525	922 KAR 001:100
199.540	922 KAR 001:010
199.555	101 KAR 003:045
	922 KAR 001:050
	922 KAR 001:060
	922 KAR 001:140
199.557	922 KAR 001:060
	922 KAR 001:140
199.570	922 KAR 001:010
	922 KAR 001:100
199.572	922 KAR 001:010
	922 KAR 001:100
199.575	922 KAR 001:100
199.590	922 KAR 001:010
199.640	922 KAR 001:305
199.670	922 KAR 001:305
199.640 - 199.680	922 KAR 001:360
199.801	922 KAR 001:360
	922 KAR 001:140
199.892	921 KAR 002:055

KRS SECTION	REGULATION
	922 KAR 002:160
199.894	922 KAR 002:160
199.8943	704 KAR 003:015
199.896	922 KAR 002:160
199.898	922 KAR 002:160
199.8982	922 KAR 002:160
199.899	922 KAR 002:160
199.8994	922 KAR 002:160
199.990	922 KAR 001:010
199.640	922 KAR 001:305
	922 KAR 001:560
200.080 - 200.120	505 KAR 001:100
	505 KAR 001:110
	505 KAR 001:180
	505 KAR 001:190
200.460	911 KAR 001:010
	911 KAR 001:060
200.470	911 KAR 001:010
	911 KAR 001:020
200.575	922 KAR 001:411
200.654	911 KAR 001:010
202A.011	921 KAR 002:015
202B.010	922 KAR 001:100
205.175	907 KAR 001:075
205.200	922 KAR 001:400
205.211	921 KAR 002:055
	922 KAR 001:565
205.231	907 KAR 001:075
	907 KAR 001:560
	907 KAR 001:563
	921 KAR 002:055
	921 KAR 003:060
	921 KAR 003:070
205.237	907 KAR 001:075
	907 KAR 001:560
	907 KAR 001:563
	921 KAR 002:055
205.245	921 KAR 002:015
205.455	910 KAR 001:090
205.510	907 KAR 003:170
205.520	895 KAR 001:001
	895 KAR 001:010
	895 KAR 001:015
	895 KAR 001:020
	895 KAR 001:025
	895 KAR 001:030
	895 KAR 001:035
	895 KAR 001:040
	895 KAR 001:045
	895 KAR 001:050
	895 KAR 001:055
	907 KAR 001:005
	907 KAR 001:121
	907 KAR 001:270
	907 KAR 001:280
	907 KAR 001:330
	907 KAR 001:360
	907 KAR 001:441
	907 KAR 001:560
	907 KAR 001:563
	907 KAR 008:040
205.531	907 KAR 001:560
205.558	907 KAR 001:755
205.559	907 KAR 003:170
205.560	907 KAR 001:121
	907 KAR 001:270
	907 KAR 001:280
	907 KAR 001:360
	907 KAR 001:604
	907 KAR 003:170
205.565	907 KAR 010:820
205.622	895 KAR 001:035
	907 KAR 008:040
205.637	907 KAR 010:820

KRS SECTION	REGULATION
205.639	907 KAR 010:820
	922 KAR 001:050
205.640	907 KAR 010:820
205.641	907 KAR 010:820
205.703	922 KAR 001:400
205.705	921 KAR 001:380
205.712	601 KAR 002:030
205.710 - 205.800	921 KAR 001:380
205.900 - 205.925	910 KAR 001:090
205.992	921 KAR 001:380
205.2005	921 KAR 003:025
205.6312	907 KAR 001:604
205.6328	900 KAR 001:091
205.6485	907 KAR 001:604
205.8451	895 KAR 001:001
	907 KAR 001:563
	907 KAR 001:604
209A.020	922 KAR 001:400
209.020	921 KAR 002:015
	922 KAR 001:400
209.030	902 KAR 020:300
	908 KAR 001:370
	910 KAR 001:240
209.032	902 KAR 020:300
209.130	922 KAR 001:400
210.270	907 KAR 001:075
	907 KAR 001:563
210.366	201 KAR 026:175
211.025	902 KAR 010:051
211.090	902 KAR 010:051
	902 KAR 047:071
211.180	902 KAR 008:165
	902 KAR 008:170
	902 KAR 010:051
	902 KAR 019:010
	902 KAR 047:071
	902 KAR 100:022
	902 KAR 100:070
	902 KAR 100:100
	902 KAR 100:142
211.350	815 KAR 035:015
	815 KAR 035:020
211.461	907 KAR 001:560
211.466	907 KAR 001:560
211.651	902 KAR 019:010
211.655	902 KAR 019:010
211.660	902 KAR 019:010
211.670	902 KAR 019:010
211.842 - 211.852	902 KAR 020:275
	902 KAR 100:018
	902 KAR 100:022
	902 KAR 100:052
	902 KAR 100:070
	902 KAR 100:072
	902 KAR 100:100
	902 KAR 100:142
211.990	902 KAR 100:018
	902 KAR 100:022
	902 KAR 100:052
	902 KAR 100:070
	902 KAR 100:072
	902 KAR 100:100
	902 KAR 100:142
212.025	902 KAR 008:170
212.120	902 KAR 008:170
212.230	902 KAR 008:165
212.240	902 KAR 008:165
212.245	902 KAR 008:165
	902 KAR 008:170
212.890	902 KAR 008:165
	902 KAR 008:170
213.046	921 KAR 001:380
214.034	702 KAR 001:160
214.036	702 KAR 001:160

KRS SECTION	REGULATION
	922 KAR 002:160
214.181	908 KAR 001:370
214.625	908 KAR 001:370
216.300	910 KAR 001:240
216.380	907 KAR 010:820
216.510 - 216.525	900 KAR 002:040
	902 KAR 020:300
216.530	902 KAR 020:008
	921 KAR 002:015
216.532	902 KAR 020:300
216.535	902 KAR 020:300
216.537 - 216.590	900 KAR 002:021
216.540	902 KAR 020:300
216.543	902 KAR 020:300
216.545	902 KAR 020:300
216.547	902 KAR 020:300
216.555 - 216.567	900 KAR 002:040
216.557	921 KAR 002:015
216.577	900 KAR 002:040
216.595	910 KAR 001:240
216.750	921 KAR 002:015
216.765	921 KAR 002:015
216.785 - 216.793	902 KAR 020:300
216.789	910 KAR 001:240
216.793	910 KAR 001:240
216.860	906 KAR 001:071
216.865	906 KAR 001:071
216.900 - 216.915	906 KAR 001:071
216.930	906 KAR 001:071
216.2920	900 KAR 007:030
216.2925	900 KAR 007:030
	902 KAR 020:008
216.2927	900 KAR 007:030
216A.010	900 KAR 002:040
216B	902 KAR 019:010
	921 KAR 002:015
216B.010	900 KAR 006:075
	902 KAR 020:008
216B.010 - 216B.130	900 KAR 005:020
216B.010 - 216B.131	902 KAR 020:260
216B.010 - 216B.170	902 KAR 020:275
216B.015	900 KAR 006:075
	902 KAR 020:008
	902 KAR 020:111
216B.020	902 KAR 020:008
	902 KAR 020:076
	902 KAR 020:251
	908 KAR 001:370
216B.040	900 KAR 006:020
	902 KAR 020:008
216B.042	902 KAR 020:008
216B.045 - 216B.055	902 KAR 020:008
216B.075	902 KAR 020:008
216B.090	900 KAR 006:075
216B.105 - 216B.131	902 KAR 020:008
216B.176	902 KAR 020:401
216B.177	902 KAR 020:401
216B.185	902 KAR 020:008
216B.400	201 KAR 020:411
216B.450	922 KAR 001:050
216B.455	900 KAR 006:075
216B.990	900 KAR 006:075
	902 KAR 020:008
	902 KAR 020:260
	902 KAR 020:275
216C.010	900 KAR 011:010
216C.030	900 KAR 011:010
216C.040	900 KAR 011:010
216C.050	900 KAR 011:010
216C.060	900 KAR 011:010
216C.070	900 KAR 011:010
216C.080	900 KAR 011:010
216C.090	900 KAR 011:010
216C.100	900 KAR 011:010

KRS SECTION	REGULATION
216C.110	900 KAR 011:010
216C.120	900 KAR 011:010
216C.160	900 KAR 011:010
216C.170	900 KAR 011:010
216C.180	900 KAR 011:010
216C.200	900 KAR 011:010
216C.210	900 KAR 011:010
216C.220	900 KAR 011:010
216C.230	900 KAR 011:010
217.005	902 KAR 045:007
217.005 - 217.205	902 KAR 045:005
	902 KAR 045:160
217.005 - 217.215	902 KAR 045:090
217.015	301 KAR 001:155
217.127	902 KAR 045:007
217.280 - 217.390	902 KAR 045:005
217.290	902 KAR 045:090
217.290 - 217.390	902 KAR 045:160
217.801	902 KAR 047:071
217.990 - 217.992	902 KAR 045:005
	902 KAR 045:160
217.992	902 KAR 045:090
217B	302 KAR 027:010
	302 KAR 027:020
	302 KAR 027:031
	302 KAR 027:040
	302 KAR 027:050
	302 KAR 028:010
	302 KAR 028:020
	302 KAR 028:030
	302 KAR 028:040
	302 KAR 028:050
	302 KAR 029:020
217B.120	302 KAR 027:060
	302 KAR 028:060
217B.500 - 217B.900	902 KAR 045:090
218A.205	201 KAR 020:056
	201 KAR 020:161
	201 KAR 020:215
218A.160	902 KAR 055:011
218A.172	201 KAR 009:260
	201 KAR 020:057
218A.175	902 KAR 020:260
218A.180	908 KAR 001:341
	908 KAR 001:374
218A.202	908 KAR 001:374
218A.205	201 KAR 009:260
	201 KAR 020:057
	902 KAR 020:260
219.310 - 219.410	815 KAR 025:040
222	908 KAR 001:341
222.003	908 KAR 001:370
222.005	908 KAR 001:370
222.231	908 KAR 001:370
	908 KAR 001:372
	908 KAR 001:374
222.271	908 KAR 001:370
222.441	908 KAR 001:370
222.462	908 KAR 001:370
	908 KAR 001:374
222.990	908 KAR 001:370
223	400 KAR 001:001
	400 KAR 001:040
	400 KAR 001:090
	400 KAR 001:100
224	400 KAR 001:001
	400 KAR 001:040
	400 KAR 001:090
	400 KAR 001:100
224.01-110	400 KAR 004:125
224.1	401 KAR 042:005
	401 KAR 042:020
	401 KAR 042:060
	401 KAR 042:341

KRS SECTION	REGULATION
224.1-010	401 KAR 005:002
224.1-070	401 KAR 005:002
224.1-400	401 KAR 005:002
	401 KAR 039:060
	401 KAR 042:060
	401 KAR 042:250
224.1-405	401 KAR 042:250
224.10	401 KAR 039:060
	401 KAR 039:080
	401 KAR 039:090
	401 KAR 040:051
	401 KAR 042:005
	401 KAR 042:020
	401 KAR 042:060
	401 KAR 042:341
224.10-100	401 KAR 052:050
	401 KAR 052:070
224.10-240	400 KAR 004:125
224.10-410	400 KAR 001:110
	401 KAR 042:250
224.10-420	401 KAR 042:250
224.10-430	401 KAR 042:250
224.10-440	401 KAR 042:250
	400 KAR 004:125
224.10-470	401 KAR 042:250
	400 KAR 004:125
224.20-100	401 KAR 052:050
	401 KAR 052:070
224.20-110	401 KAR 052:050
	401 KAR 052:070
224.20-120	401 KAR 052:050
	401 KAR 052:070
224.40	401 KAR 042:060
	401 KAR 042:341
224.40-310	401 KAR 039:060
224.43	401 KAR 042:060
	401 KAR 042:341
224.46	401 KAR 039:060
	401 KAR 039:080
	401 KAR 039:090
	401 KAR 040:051
	401 KAR 042:060
	401 KAR 042:341
224.50-130	401 KAR 039:090
224.60	401 KAR 042:005
	401 KAR 042:020
	401 KAR 042:060
	401 KAR 042:341
224.60-105	401 KAR 042:330
224.60-110	401 KAR 042:250
224.60-120	401 KAR 042:250
224.60-130	401 KAR 042:250
	401 KAR 042:330
224.60-135	401 KAR 042:250
224.60-140	401 KAR 042:250
	401 KAR 042:330
224.60-150	401 KAR 042:250
	401 KAR 042:330
224.70-100	401 KAR 005:002
224.70-120	401 KAR 005:002
224.99	401 KAR 039:060
	401 KAR 039:080
	401 KAR 039:090
	401 KAR 040:051
224.99-010	401 KAR 005:002
	401 KAR 040:051
224.99-020	401 KAR 040:051
224.99-030	401 KAR 040:051
227.450	815 KAR 035:015
227.460	815 KAR 035:020
227.480	815 KAR 035:015
	815 KAR 035:020
227.487	815 KAR 035:020
227.489	815 KAR 035:015

KRS SECTION	REGULATION
227.491	815 KAR 035:015
	815 KAR 035:020
227.492	815 KAR 035:015
227.495	815 KAR 035:015
227.550	815 KAR 025:050
	815 KAR 025:060
	815 KAR 025:090
	815 KAR 025:100
227.550 - 227.660	815 KAR 025:020
227.550 - 227.665	815 KAR 025:001
227.555	815 KAR 025:050
227.560	815 KAR 025:060
227.570	815 KAR 002:010
	815 KAR 002:020
	815 KAR 025:050
	815 KAR 025:060
	815 KAR 025:090
227.580	815 KAR 025:050
	815 KAR 025:060
227.590	815 KAR 002:010
	815 KAR 002:020
	815 KAR 025:040
	815 KAR 025:050
	815 KAR 025:060
	815 KAR 025:090
227.600	815 KAR 025:050
	815 KAR 025:060
227.610	815 KAR 025:060
227.620	815 KAR 025:060
227.630	815 KAR 025:060
227.640	815 KAR 025:100
227.660	815 KAR 025:090
227.990	815 KAR 025:050
	815 KAR 025:060
	815 KAR 025:090
227.992	815 KAR 025:050
227A.010	815 KAR 035:060
227A.020	815 KAR 002:030
227A.040	815 KAR 002:010
	815 KAR 002:020
	815 KAR 035:080
	815 KAR 035:090
	815 KAR 035:101
227A.060	815 KAR 035:060
	815 KAR 035:080
	815 KAR 035:090
227A.100	815 KAR 002:010
	815 KAR 002:020
	815 KAR 035:060
227A.110	815 KAR 035:080
229.011	201 KAR 027:005
229.025	201 KAR 027:008
229.031	201 KAR 027:005
	201 KAR 027:011
	201 KAR 027:016
	201 KAR 027:020
229.035	201 KAR 027:008
229.055	201 KAR 027:011
229.065	201 KAR 027:008
229.111	201 KAR 027:005
	201 KAR 027:011
	201 KAR 027:016
229.131	201 KAR 027:005
	201 KAR 027:011
	201 KAR 027:016
229.155	201 KAR 027:005
	201 KAR 027:011
229.171	201 KAR 027:005
	201 KAR 027:008
	201 KAR 027:011
	201 KAR 027:016
	201 KAR 027:020
	201 KAR 027:022
230.210	810 KAR 006:020

KRS SECTION	REGULATION
	810 KAR 008:050
230.215	810 KAR 002:001
	810 KAR 002:020
	810 KAR 002:030
	810 KAR 002:040
	810 KAR 002:050
	810 KAR 002:060
	810 KAR 002:070
	810 KAR 002:080
	810 KAR 003:010
	810 KAR 003:020
	810 KAR 004:010
	810 KAR 004:020
	810 KAR 004:030
	810 KAR 004:040
	810 KAR 004:050
	810 KAR 004:060
	810 KAR 004:070
	810 KAR 004:080
	810 KAR 004:090
	810 KAR 004:100
	810 KAR 005:010
	810 KAR 005:020
	810 KAR 005:030
	810 KAR 004:040
	810 KAR 005:050
	810 KAR 005:060
	810 KAR 005:070
	810 KAR 005:080
	810 KAR 006:020
	810 KAR 007:020
	810 KAR 007:030
	810 KAR 007:040
	810 KAR 007:060
	810 KAR 007:070
	810 KAR 008:010
	810 KAR 008:020
	810 KAR 008:030
	810 KAR 008:040
	810 KAR 008:050
	810 KAR 008:060
	810 KAR 009:010
230.218	810 KAR 007:010
230.225	810 KAR 001:301
	810 KAR 003:030
	810 KAR 007:030
	810 KAR 007:060
	810 KAR 007:070
	810 KAR 008:010
	810 KAR 008:020
	810 KAR 008:040
	811 KAR 001:301
	811 KAR 002:301
230.230	810 KAR 002:010
230.240	810 KAR 002:010
	810 KAR 002:020
	810 KAR 002:050
	810 KAR 004:030
	810 KAR 008:010
	810 KAR 008:020
	810 KAR 008:040
	810 KAR 008:050
	810 KAR 008:060
230.445	810 KAR 007:060
	810 KAR 007:070
230.260	810 KAR 002:001
	810 KAR 002:020
	810 KAR 002:030
	810 KAR 002:050
	810 KAR 002:060
	810 KAR 002:070
	810 KAR 002:080
	810 KAR 003:010
	810 KAR 003:020

KRS SECTION	REGULATION
	810 KAR 003:030
	810 KAR 003:040
	810 KAR 004:020
	810 KAR 004:040
	810 KAR 004:050
	810 KAR 004:060
	810 KAR 004:070
	810 KAR 004:090
	810 KAR 004:100
	810 KAR 005:010
	810 KAR 005:020
	810 KAR 005:030
	810 KAR 005:050
	810 KAR 005:060
	810 KAR 005:070
	810 KAR 005:080
	810 KAR 006:020
	810 KAR 007:040
	810 KAR 008:010
	810 KAR 008:020
	810 KAR 008:030
	810 KAR 008:040
	810 KAR 008:050
	810 KAR 008:060
230.265	810 KAR 008:010
	810 KAR 008:020
	810 KAR 008:030
	810 KAR 008:060
230.280	810 KAR 003:010
	810 KAR 003:020
	810 KAR 005:070
	810 KAR 005:080
230.290	810 KAR 002:030
	810 KAR 002:050
	810 KAR 003:010
	810 KAR 003:020
	810 KAR 003:030
	810 KAR 003:040
	810 KAR 004:030
	810 KAR 004:090
	810 KAR 004:100
	810 KAR 005:070
	810 KAR 005:080
	810 KAR 008:010
	810 KAR 008:020
	810 KAR 008:030
	810 KAR 008:040
	810 KAR 008:050
	810 KAR 008:060
230.300	810 KAR 003:010
	810 KAR 003:020
	810 KAR 003:030
	810 KAR 005:070
	810 KAR 008:030
	810 KAR 008:040
230.310	810 KAR 002:030
	810 KAR 002:050
	810 KAR 003:020
	810 KAR 003:030
	810 KAR 003:040
	810 KAR 004:030
	810 KAR 004:090
	810 KAR 004:100
	810 KAR 005:040
	810 KAR 005:070
	810 KAR 005:080
	810 KAR 008:030
	810 KAR 008:040
	810 KAR 009:010
230.320	810 KAR 002:030
	810 KAR 003:010
	810 KAR 003:020
	810 KAR 003:030
	810 KAR 003:040

KRS SECTION	REGULATION
	810 KAR 004:030
	810 KAR 004:090
	810 KAR 004:100
	810 KAR 005:070
	810 KAR 007:070
	810 KAR 008:010
	810 KAR 008:020
	810 KAR 008:030
	810 KAR 008:040
	810 KAR 008:050
	810 KAR 008:060
	810 KAR 009:010
230.330	810 KAR 007:020
	810 KAR 007:070
	810 KAR 009:010
230.361	810 KAR 003:030
	810 KAR 004:080
	810 KAR 006:020
	810 KAR 008:030
230.3615	810 KAR 006:020
230.370	810 KAR 003:030
	810 KAR 008:010
	810 KAR 008:020
	810 KAR 008:040
230.377	810 KAR 003:050
230.380	810 KAR 003:030
	810 KAR 003:050
230.400	810 KAR 007:030
	810 KAR 007:070
230.443	810 KAR 007:060
230.770	810 KAR 007:040
	810 KAR 007:070
230.800	810 KAR 007:020
	810 KAR 007:070
230.802	810 KAR 007:040
	810 KAR 007:070
230.804	810 KAR 007:070
230.990	810 KAR 006:020
	810 KAR 007:040
230.398	810 KAR 005:080
235.010	301 KAR 001:015
235.990	301 KAR 001:015
236.097	815 KAR 015:080
236.210	815 KAR 015:080
237.110	301 KAR 002:172
241.010	804 KAR 005:080
241.060	804 KAR 011:031
243.020	804 KAR 008:050
243.0307	804 KAR 001:110
243.036	804 KAR 001:110
243.130	804 KAR 001:070
243.150	804 KAR 001:070
243.170	804 KAR 001:070
243.180	804 KAR 001:070
243.232	804 KAR 005:080
243.260	804 KAR 001:110
243.340	804 KAR 001:070
243.390	804 KAR 004:011
243.630	804 KAR 004:011
244.090	804 KAR 005:021
244.130	804 KAR 001:030
	804 KAR 002:016
244.240	804 KAR 001:070
	804 KAR 001:110
	804 KAR 005:021
244.590	804 KAR 001:070
	804 KAR 001:110
244.600	804 KAR 005:021
246.210	302 KAR 020:221
247	302 KAR 001:011
	302 KAR 077:011
250.491 - 250.631	012 KAR 002:006
	012 KAR 002:011
	012 KAR 002:016

KRS SECTION	REGULATION
	012 KAR 002:017
	012 KAR 002:018
	012 KAR 002:021
	012 KAR 002:026
	012 KAR 002:036
	012 KAR 002:056
	012 KAR 003:007
	012 KAR 003:032
250.501	012 KAR 002:031
	012 KAR 002:041
	012 KAR 002:046
	012 KAR 002:051
	012 KAR 002:061
	012 KAR 003:012
	012 KAR 003:017
	012 KAR 003:022
	012 KAR 003:027
	012 KAR 003:028
	012 KAR 003:037
	012 KAR 003:039
	012 KAR 003:042
250.511	012 KAR 002:041
	012 KAR 002:051
	012 KAR 002:061
	012 KAR 003:037
250.521	012 KAR 002:061
	012 KAR 003:012
	012 KAR 003:017
	012 KAR 003:022
	012 KAR 003:027
	012 KAR 003:028
	012 KAR 003:039
	012 KAR 003:042
250.531	012 KAR 002:031
	012 KAR 003:017
250.541	012 KAR 002:041
	012 KAR 002:051
	012 KAR 002:046
	012 KAR 002:066
	012 KAR 003:037
250.551	012 KAR 002:031
	012 KAR 002:046
	012 KAR 002:051
250.561	012 KAR 002:061
250.581	012 KAR 002:051
257	302 KAR 020:211
	302 KAR 020:231
	302 KAR 020:541
	302 KAR 020:581
257.020	302 KAR 020:561
	302 KAR 020:571
257.030	302 KAR 020:561
	302 KAR 020:571
257.040	302 KAR 020:571
257.050	302 KAR 020:221
	302 KAR 020:571
257.080	302 KAR 020:221
257.110	302 KAR 020:561
257.120	302 KAR 020:561
257.110 - 257.170	302 KAR 020:221
257.140	302 KAR 020:561
257.480	302 KAR 020:221
260.850 - 260.869	302 KAR 050:080
	302 KAR 050:090
262.902	302 KAR 100:011
	302 KAR 100:021
262.904	302 KAR 100:011
	302 KAR 100:021
262.908	302 KAR 100:011
	302 KAR 100:021
286	808 KAR 014:010
286.3-010	808 KAR 001:140
	808 KAR 001:161
286.3-020	808 KAR 001:140

KRS SECTION	REGULATION
	808 KAR 001:161
286.3-050	808 KAR 001:140
	808 KAR 001:161
286.3-095	808 KAR 001:140
	808 KAR 001:161
	808 KAR 011:021
	808 KAR 015:040
286.3-135	808 KAR 001:140
286.3-102	808 KAR 001:161
	808 KAR 015:030
286.3-135	808 KAR 001:161
286.3-140	808 KAR 001:140
	808 KAR 001:161
286.3-145	808 KAR 001:140
	808 KAR 001:161
286.3-146	808 KAR 001:140
	808 KAR 001:161
286.3-170	808 KAR 001:140
	808 KAR 001:161
286.3-172	808 KAR 001:140
	808 KAR 001:161
286.3-174	808 KAR 001:140
	808 KAR 001:161
286.3-180	808 KAR 001:060
	808 KAR 001:140
	808 KAR 001:161
	808 KAR 015:030
286.3-185	808 KAR 001:161
	808 KAR 015:030
286.3-280	808 KAR 001:161
	808 KAR 015:010
286.3-290	808 KAR 001:161
	808 KAR 015:010
286.3-300	808 KAR 001:161
	808 KAR 015:010
286.3-375	808 KAR 001:161
286.3-450	808 KAR 001:140
	808 KAR 001:161
286.3-480	808 KAR 001:140
	808 KAR 001:161
286.3-530	808 KAR 001:140
	808 KAR 001:161
286.3-690	808 KAR 001:161
	808 KAR 015:020
286.3-820	808 KAR 001:140
	808 KAR 001:161
	808 KAR 015:030
286.3-905	808 KAR 011:021
	808 KAR 015:040
5286.3-920	808 KAR 001:140
	808 KAR 001:161
286.4	808 KAR 001:170
	808 KAR 006:095
286.4-460	808 KAR 006:095
286.4-490	808 KAR 006:095
286.4-590	808 KAR 014:020
286.5-061	808 KAR 001:060
286.6-055	808 KAR 001:060
286.6-070	808 KAR 003:061
286.6-095	808 KAR 003:050
286.6-100	808 KAR 003:050
	808 KAR 003:061
286.6-225	808 KAR 003:050
286.6-585	808 KAR 003:050
286.6-095	808 KAR 003:050
286.6-405	808 KAR 003:061
286.7	808 KAR 003:061
286.8	808 KAR 012:111
286.8-010	808 KAR 012:055
286.8-020	808 KAR 001:170
286.8-030	808 KAR 001:170
286.8-036	808 KAR 001:170
286.8-070	808 KAR 001:170
286.8-080	808 KAR 001:170

KRS SECTION	REGULATION
286.8-090	808 KAR 001:170
286.8-120	808 KAR 012:050
286.8-150	808 KAR 001:180
286.8-225	808 KAR 001:180
286.8-227	808 KAR 001:180
286.8-255	808 KAR 012:055
286.8-260	808 KAR 001:170
286.8-290	808 KAR 001:170
286.9-010	808 KAR 001:170
	808 KAR 009:010
	808 KAR 009:050
286.9-020	808 KAR 001:170
	808 KAR 009:050
286.9-030	808 KAR 001:170
	808 KAR 009:050
286.9-040	808 KAR 001:170
	808 KAR 009:040
	808 KAR 009:050
286.9-050	808 KAR 001:170
	808 KAR 009:050
286.9-060	808 KAR 001:170
	808 KAR 009:050
286.9-070	808 KAR 009:050
286.9-071	808 KAR 001:170
	808 KAR 009:050
286.9-073	808 KAR 001:170
	808 KAR 009:050
286.9-075	808 KAR 009:010
	808 KAR 009:050
286.9-080	808 KAR 001:170
286.9-090	808 KAR 009:031
286.9-100	808 KAR 009:010
	808 KAR 009:040
286.9-104	808 KAR 009:050
286.9-120	808 KAR 009:031
286.9-140	808 KAR 009:010
290.095	808 KAR 003:061
290.585	808 KAR 003:061
292.322	808 KAR 001:180
304.1-080	806 KAR 009:360
	806 KAR 017:091
304.1-070	806 KAR 010:030
304.2-250	806 KAR 002:121
304.2-310	806 KAR 017:091
	806 KAR 017:570
304.3	806 KAR 002:121
304.3-150	806 KAR 002:092
304.3-240	806 KAR 017:570
304.3-270	103 KAR 015:180
304.9-020	806 KAR 017:091
304.9-053	806 KAR 009:360
304.9-054	806 KAR 009:360
304.5-130	806 KAR 005:011
304.5-140	806 KAR 005:011
304.5-150	806 KAR 005:011
304.10-030	806 KAR 010:030
304.10-050	806 KAR 010:030
304.10-120	806 KAR 002:121
304.10-170	806 KAR 010:030
304.10-180	806 KAR 010:030
304.11-010	806 KAR 005:011
304.11-030	401 KAR 039:090
304.11-050	806 KAR 005:011
304.12-013	806 KAR 017:091
304.12-020	806 KAR 017:570
304.12-190	806 KAR 017:091
304.14-020	806 KAR 017:091
304.14-120	806 KAR 017:020
	806 KAR 017:091
	806 KAR 017:570
304.14-135	900 KAR 007:030
304.14-140	806 KAR 017:091
304.14-150	806 KAR 017:091
304.14-180	806 KAR 017:091

KRS SECTION	REGULATION
304.14-210	806 KAR 017:091
304.14-360	806 KAR 017:091
304.14-430	806 KAR 017:091
304.14-440	806 KAR 017:091
304.14-450	806 KAR 017:091
304.14-500 - 304.14-550	806 KAR 017:570
304.17-030	806 KAR 017:091
304.17-042	806 KAR 017:091
304.17-070	806 KAR 017:091
304.17-310	806 KAR 017:091
304.17-311	806 KAR 017:570
304.17-313	806 KAR 017:091
304.17-319	806 KAR 017:091
304.17-415	806 KAR 017:091
304.17-3165	806 KAR 017:091
304.17A.005	806 KAR 017:091
	806 KAR 017:360
	806 KAR 017:570
304.17A-095 - 304.17A-0954	806 KAR 017:091
304.17A-096 - 304.17A-132	806 KAR 017:091
304.17A.132	806 KAR 017:091
304.17A.134	806 KAR 017:091
304.17A-135 - 304.17A-145	806 KAR 017:091
304.17A.139	806 KAR 017:091
304.17A.140	806 KAR 017:091
304.17A.142	806 KAR 017:091
304.17A-148 - 304.17A-149	806 KAR 017:091
304.17A.149	806 KAR 017:091
304.17A-150	806 KAR 017:300
304.17A.155	806 KAR 017:091
304.17A.171	806 KAR 017:091
304.17A.200	806 KAR 017:091
304.17A.230	806 KAR 017:091
304.17A.243	806 KAR 017:091
304.17A.245	806 KAR 017:091
304.17A.250	806 KAR 017:091
304.17A.258	806 KAR 017:091
304.17A-500	806 KAR 017:300
304.17A.520	806 KAR 017:091
304.17A-527	806 KAR 017:300
304.17A-530	806 KAR 017:300
304.17A-532	806 KAR 017:300
304.17A.540	806 KAR 017:091
304.17A.545	806 KAR 017:091
304.17A-560	806 KAR 017:300
304.17A-575	806 KAR 017:300
304.17A-577	806 KAR 017:300
304.17A-578	806 KAR 017:300
304.17A.647	806 KAR 017:091
304.17A-700	806 KAR 017:360
304.17A-702	806 KAR 017:360
304.17A-704	806 KAR 017:360
304.17A-706	806 KAR 017:360
304.17A-708	806 KAR 017:360
304.17A-720	806 KAR 017:360
304.17A-728	806 KAR 017:300
304.17A-730	806 KAR 017:360
304.17B.001 - 304.17B.033	806 KAR 017:091
304.17C-060	806 KAR 017:091
	806 KAR 017:300
304.17C-090	806 KAR 017:360
304.18-032	806 KAR 017:091
304.18-034	806 KAR 017:570
304.18-110	806 KAR 017:091
304.18-0365	806 KAR 017:091
304.18-0365 - 304.18-037	806 KAR 017:091
304.18-0985	806 KAR 017:091
304.24-420	806 KAR 005:011
304.32-153	806 KAR 017:091
304.32-275	806 KAR 017:570
304.32-280	806 KAR 017:091
304.32-1585	806 KAR 017:091
304.32-1595	806 KAR 017:091
304.33-030	806 KAR 017:570

KRS SECTION	REGULATION
304.38-199	806 KAR 017:091
304.38-205	806 KAR 017:570
304.38-210	806 KAR 017:091
304.38-240	907 KAR 003:170
304.38-1935 - 304.38-1937	806 KAR 017:091
304.38-1937	806 KAR 017:091
304.99	806 KAR 017:300
304.99-085	806 KAR 010:030
304.99-123	806 KAR 017:360
309.080	908 KAR 001:370
	908 KAR 001:372
309.130	908 KAR 001:370
309.0831	908 KAR 001:370
311	201 KAR 027:008
	902 KAR 020:260
	911 KAR 001:010
311.530 - 311.620	201 KAR 009:260
	201 KAR 009:270
311.571	908 KAR 001:370
311.621	900 KAR 009:010
311.990	201 KAR 009:260
	201 KAR 009:270
311A.010	202 KAR 007:520
	202 KAR 007:575
311A.030	202 KAR 007:520
	900 KAR 006:075
311A.032	202 KAR 007:575
311A.035	202 KAR 007:520
311A.050	202 KAR 007:520
311A.055	202 KAR 007:520
311A.060	202 KAR 007:520
311A.155	202 KAR 007:520
311A.190	202 KAR 007:520
312.019	201 KAR 021:015
	201 KAR 021:045
312.021	201 KAR 021:045
314	902 KAR 020:260
314.011	201 KAR 020:056
	201 KAR 020:057
	201 KAR 020:062
	201 KAR 020:065
	201 KAR 020:161
	201 KAR 020:162
	201 KAR 020:215
	201 KAR 020:220
	201 KAR 020:280
	201 KAR 020:320
	201 KAR 020:411
	201 KAR 020:490
	908 KAR 001:370
	922 KAR 002:160
314.021	201 KAR 020:320
314.027	201 KAR 020:240
314.031	201 KAR 020:161
	201 KAR 020:162
314.041	201 KAR 020:240
	201 KAR 020:260
	201 KAR 020:320
314.042	201 KAR 020:056
	201 KAR 020:057
	201 KAR 020:062
	201 KAR 020:065
	201 KAR 020:240
314.051	201 KAR 020:240
314.071	201 KAR 020:161
	201 KAR 020:162
	201 KAR 020:240
314.073	201 KAR 020:215
	201 KAR 020:220
	201 KAR 020:240
314.075	201 KAR 020:240
314.091	201 KAR 020:056
	201 KAR 020:161
	201 KAR 020:162

KRS SECTION	REGULATION
314.101	201 KAR 020:240
314.103	201 KAR 020:056
	201 KAR 020:411
314.105	201 KAR 020:226
314.107	201 KAR 020:161
314.109	201 KAR 020:056
314.111	201 KAR 020:056
	201 KAR 020:260
	201 KAR 020:280
	201 KAR 020:310
	201 KAR 020:320
	201 KAR 020:340
	201 KAR 020:350
	201 KAR 020:360
	201 KAR 020:632
314.131	201 KAR 020:062
	201 KAR 020:220
	201 KAR 020:260
	201 KAR 020:280
	201 KAR 020:320
	201 KAR 020:350
314.142	201 KAR 020:240
	201 KAR 020:411
314.161	201 KAR 020:056
	201 KAR 020:162
	201 KAR 020:240
314.171	201 KAR 020:240
314.181	201 KAR 020:226
314.193	201 KAR 020:057
314.195	201 KAR 020:057
314.196	201 KAR 020:057
314.470	201 KAR 020:161
	201 KAR 020:310
314.475	201 KAR 020:056
	201 KAR 020:475
314.991	201 KAR 020:161
	201 KAR 020:162
	201 KAR 020:215
315.010	201 KAR 002:370
315.020	201 KAR 002:370
	908 KAR 001:341
315.030	201 KAR 002:370
315.036	902 KAR 055:011
315.065	201 KAR 002:015
315.120	201 KAR 002:015
315.121	201 KAR 002:370
315.191	902 KAR 055:011
315.402	902 KAR 055:011
315.406	902 KAR 055:011
317A.020	201 KAR 012:030
	201 KAR 012:082
	201 KAR 012:260
317A.050	201 KAR 012:030
	201 KAR 012:082
317A.060	201 KAR 012:030
	201 KAR 012:251
317A.062	201 KAR 012:260
317A.090	317 KAR 012:082
317A.130	201 KAR 012:280
318.010	815 KAR 020:030
318.020	815 KAR 020:030
318.030	815 KAR 020:030
318.040	815 KAR 020:030
318.050	815 KAR 002:040
	815 KAR 020:030
318.054	815 KAR 002:010
	815 KAR 002:020
	815 KAR 002:040
	815 KAR 020:030
318.060	815 KAR 020:030
318.080	815 KAR 020:030
318.100	815 KAR 002:030
318.130	815 KAR 002:010
	815 KAR 002:020

KRS SECTION	REGULATION
	902 KAR 045:160
318.134	815 KAR 002:040
318.170	815 KAR 002:030
	815 KAR 020:041
319	911 KAR 001:010
319.005	201 KAR 026:130
	908 KAR 001:370
319.032	201 KAR 026:130
	201 KAR 026:171
	201 KAR 026:175
319.050	201 KAR 026:171
	201 KAR 026:175
	201 KAR 026:200
319.053	201 KAR 026:175
319.056	201 KAR 026:171
	908 KAR 001:370
319.064	201 KAR 026:171
	201 KAR 026:175
	201 KAR 026:200
	201 KAR 026:211
	201 KAR 026:280
	908 KAR 001:370
319.071	201 KAR 026:175
319.082	201 KAR 026:130
	201 KAR 026:171
319.092	201 KAR 026:140
	201 KAR 026:171
319.118	201 KAR 026:130
	201 KAR 026:171
319.990	201 KAR 026:130
319A.010	201 KAR 028:170
	907 KAR 001:604
319A.070	201 KAR 028:021
319A.080	201 KAR 028:060
	201 KAR 028:170
319A.100	201 KAR 028:060
319A.110	201 KAR 028:060
319A.120	201 KAR 028:060
319A.140	201 KAR 028:060
319A.150	201 KAR 028:060
319A.160	201 KAR 028:060
319A.170	201 KAR 028:060
	201 KAR 028:170
322	401 KAR 042:341
322A	401 KAR 042:341
325.240	201 KAR 001:290
	201 KAR 001:310
325.340	201 KAR 001:290
327.010	201 KAR 022:020
	907 KAR 001:604
327.050	201 KAR 022:020
	201 KAR 022:040
	201 KAR 022:070
327.060	201 KAR 022:020
	201 KAR 022:070
327.070	201 KAR 022:040
327.075	201 KAR 022:020
327.080	201 KAR 022:020
327.300	201 KAR 022:170
327.310	201 KAR 022:020
334A	911 KAR 001:010
334A.020	907 KAR 001:604
335.030	201 KAR 023:150
335.070	201 KAR 023:150
335.080	908 KAR 001:370
335.100	908 KAR 001:370
335.150	201 KAR 023:150
335.155	201 KAR 023:150
335.300	908 KAR 001:370
335.305	201 KAR 032:110
335.310	201 KAR 032:110
335.320	201 KAR 032:110
335.325	201 KAR 032:110
335.380	201 KAR 032:110

KRS SECTION	REGULATION
335.399	201 KAR 032:110
335.500	908 KAR 001:370
337.275	922 KAR 002:160
338	803 KAR 050:010
338.015	803 KAR 002:320
	803 KAR 002:505
338.031	803 KAR 002:320
339.230	815 KAR 035:060
341.190	787 KAR 001:010
342.0011	803 KAR 025:089
	803 KAR 025:270
	803 KAR 025:290
	803 KAR 030:010
342.019	803 KAR 025:089
342.020	803 KAR 025:089
	803 KAR 025:270
	803 KAR 025:290
342.035	803 KAR 025:089
	803 KAR 025:270
342.122	803 KAR 030:010
	803 KAR 030:021
342.1221	803 KAR 030:010
342.1222	803 KAR 030:010
342.1223	803 KAR 030:010
342.1231	803 KAR 030:010
	803 KAR 030:021
342.340	803 KAR 030:010
342.650	803 KAR 030:010
350.010	400 KAR 001:110
350.028	400 KAR 001:001
	400 KAR 001:040
	400 KAR 001:090
	400 KAR 001:110
350.029	400 KAR 001:090
350.032	400 KAR 001:001
	400 KAR 001:090
350.060	400 KAR 001:090
350.070	400 KAR 001:001
	400 KAR 001:040
	400 KAR 001:090
	400 KAR 001:110
350.085	400 KAR 001:001
	400 KAR 001:040
	400 KAR 001:090
350.090	400 KAR 001:001
	400 KAR 001:090
	400 KAR 001:110
350.093	400 KAR 001:001
	400 KAR 001:040
	400 KAR 001:090
	400 KAR 001:110
350.130	400 KAR 001:001
	400 KAR 001:040
	400 KAR 001:090
	400 KAR 001:110
350.240	400 KAR 001:090
350.255	400 KAR 001:001
	400 KAR 001:090
	400 KAR 001:110
350.300	400 KAR 001:090
350.305	400 KAR 001:090
350.465	400 KAR 001:001
	400 KAR 001:040
	400 KAR 001:090
	400 KAR 001:110
350.610	400 KAR 001:001
	400 KAR 001:090
350.990	400 KAR 001:001
	400 KAR 001:040
	400 KAR 001:090
	400 KAR 001:110
350.0301	400 KAR 001:001
	400 KAR 001:090
	400 KAR 001:110

KRS SECTION	REGULATION
350.0305	400 KAR 001:001
	400 KAR 001:090
351.010	805 KAR 007:080
351.070	805 KAR 003:100
351.127	805 KAR 007:080
351.182	805 KAR 007:080
351.315	400 KAR 001:001
	400 KAR 001:040
	400 KAR 001:090
	400 KAR 001:110
351.345	400 KAR 001:001
	400 KAR 001:040
	400 KAR 001:090
	400 KAR 001:110
351.350	400 KAR 001:001
	400 KAR 001:040
	400 KAR 001:090
	400 KAR 001:110
353	400 KAR 001:100
353.060	400 KAR 001:001
	400 KAR 001:040
	400 KAR 001:090
353.200	400 KAR 001:001
	400 KAR 001:040
	400 KAR 001:090
353.510	805 KAR 001:210
353.590	400 KAR 001:001
	400 KAR 001:040
	400 KAR 001:090
353.620	400 KAR 001:001
	400 KAR 001:040
	400 KAR 001:090
353.630	400 KAR 001:001
	400 KAR 001:040
	400 KAR 001:090
	805 KAR 001:210
353.640	400 KAR 001:001
	400 KAR 001:040
	400 KAR 001:090
	805 KAR 001:210
353.700	400 KAR 001:001
	400 KAR 001:040
	400 KAR 001:090
353.5901	400 KAR 001:001
	400 KAR 001:040
	400 KAR 001:090
363.590	302 KAR 085:010
363.610	302 KAR 085:010
367.680	040 KAR 002:345
367.686	040 KAR 002:345
367.688	040 KAR 002:345
367.689	040 KAR 002:345
367.690	040 KAR 002:345
369.101 - 369.120	895 KAR 001:035
	907 KAR 008:040
382.800 - 382.860	418 KAR 001:040
	418 KAR 001:050
352.390	805 KAR 007:080
387	922 KAR 001:565
387.025	922 KAR 001:140
403.190	102 KAR 001:320
403.211	921 KAR 001:380
403.270-403.355	922 KAR 001:565
403.707	201 KAR 020:411
405.024	922 KAR 001:565
405.430	921 KAR 001:380
405.467	921 KAR 001:380
405.520	921 KAR 001:380
406.021	921 KAR 001:380
406.025	921 KAR 001:380
407.5101 - 407.5903	921 KAR 001:380
421.500 - 421.575	201 KAR 020:411
422.317	907 KAR 003:170
	908 KAR 001:370

KRS SECTION	REGULATION
424	106 KAR 001:091
	400 KAR 002:100
424.110 - 424.150	902 KAR 008:170
431.615	907 KAR 001:360
433.900 - 433.906	830 KAR 001:010
434.840 - 434.860	907 KAR 003:170
439	501 KAR 006:020
439.3401	908 KAR 001:370
446.010	418 KAR 001:010
514	921 KAR 002:015
527.100	922 KAR 001:140
	922 KAR 001:565
527.110	922 KAR 001:140
	922 KAR 001:565
600 - 645	505 KAR 001:100
	505 KAR 001:110
	505 KAR 001:180
	505 KAR 001:190
600.020	922 KAR 001:050
	922 KAR 001:100
	922 KAR 001:305
	922 KAR 001:360
	922 KAR 001:400
	922 KAR 001:530
	922 KAR 002:160
	922 KAR 001:565
605.090	922 KAR 001:100
	922 KAR 001:140
	922 KAR 001:360
605.100	922 KAR 001:530
605.110	505 KAR 001:080
605.120	922 KAR 002:160
	922 KAR 001:565
605.130	922 KAR 001:530
	922 KAR 001:400
	922 KAR 001:565
605.150	922 KAR 001:400
	922 KAR 001:565
610.110	922 KAR 001:360
	922 KAR 001:140
	922 KAR 001:305
	922 KAR 001:565
610.125	922 KAR 001:140
610.127	922 KAR 001:140
610.170	921 KAR 001:380
	922 KAR 001:530
610.110	922 KAR 001:305
	922 KAR 001:400
	922 KAR 001:500
615.030	922 KAR 001:010
	922 KAR 001:100
620.020	922 KAR 001:140
	922 KAR 001:400
	922 KAR 001:560
	922 KAR 001:500
	922 KAR 002:160
	922 KAR 001:565
620.030	908 KAR 001:370
620.050	922 KAR 001:100
620.060	922 KAR 001:140
620.090	922 KAR 001:140
620.140	922 KAR 001:140
	922 KAR 001:305
	922 KAR 001:400
	922 KAR 001:500
620.180	922 KAR 001:140
620.360	922 KAR 001:100
625	922 KAR 001:010
	922 KAR 001:050
	922 KAR 001:060
	922 KAR 001:100
625.040	922 KAR 001:140
625.045	922 KAR 001:100
625.065	922 KAR 001:560

KRS SECTION	REGULATION
625.090	922 KAR 001:140
625.108	922 KAR 001:100
2 C.F.R.	202 KAR 007:520
	902 KAR 008:165
	902 KAR 008:170
7 C.F.R.	921 KAR 003:025
	921 KAR 003:030
	921 KAR 003:035
	921 KAR 003:060
	921 KAR 003:070
	922 KAR 002:160
10 C.F.R.	401 KAR 042:020
	902 KAR 100:022
	902 KAR 100:052
	902 KAR 100:070
	902 KAR 100:072
	902 KAR 100:100
	902 KAR 100:142
12 C.F.R.	808 KAR 003:061
	808 KAR 014:010
	808 KAR 015:030
20 C.F.R.	895 KAR 001:001
	922 KAR 002:160
21 C.F.R.	012 KAR 002:031
	012 KAR 002:041
	012 KAR 002:051
	012 KAR 003:037
	902 KAR 045:090
	902 KAR 045:160
	908 KAR 001:374
	921 KAR 002:015
23 C.F.R.	603 KAR 005:070
24 C.F.R.	815 KAR 025:090
29 C.F.R.	106 KAR 001:081
	702 KAR 001:160
	803 KAR 002:320
	803 KAR 002:505
	806 KAR 017:091
	815 KAR 035:060
	902 KAR 020:260
	902 KAR 020:275
30 C.F.R.	400 KAR 001:001
	400 KAR 001:040
	400 KAR 001:090
	400 KAR 001:110
34 C.F.R.	011 KAR 004:080
	922 KAR 002:160
39 C.F.R.	400 KAR 001:090
40 C.F.R.	106 KAR 001:081
	106 KAR 001:091
	401 KAR 005:002
	401 KAR 039:060
	401 KAR 039:080
	401 KAR 039:090
	401 KAR 042:005
	401 KAR 042:020
	401 KAR 042:060
	401 KAR 042:250
	401 KAR 042:330
	401 KAR 042:341
	401 KAR 052:050
	401 KAR 052:070
	902 KAR 100:022
42 C.F.R.	806 KAR 017:570
	895 KAR 001:001
	895 KAR 001:010
	895 KAR 001:015
	895 KAR 001:030
	895 KAR 001:035
	895 KAR 001:055
	900 KAR 002:040
	900 KAR 009:010
	902 KAR 020:300
	907 KAR 001:005

KRS SECTION	REGULATION
	907 KAR 001:022
	907 KAR 001:025
	907 KAR 001:270
	907 KAR 001:330
	907 KAR 001:340
	907 KAR 001:360
	907 KAR 001:560
	907 KAR 001:563
	907 KAR 001:604
	907 KAR 001:755
	907 KAR 003:170
	907 KAR 005:005
	907 KAR 008:040
	907 KAR 010:820
	908 KAR 001:341
	908 KAR 001:370
	908 KAR 001:374
	911 KAR 001:010
45 C.F.R.	806 KAR 009:360
	806 KAR 017:570
	900 KAR 002:040
	900 KAR 009:010
	902 KAR 020:260
	902 KAR 020:275
	902 KAR 100:072
	907 KAR 001:360
	907 KAR 003:170
	907 KAR 008:040
	908 KAR 001:370
	921 KAR 001:380
	921 KAR 002:055
	921 KAR 003:025
	922 KAR 001:060
	922 KAR 001:100
	922 KAR 001:140
	922 KAR 001:400
	922 KAR 001:500
	922 KAR 001:530
	922 KAR 002:160
49 C.F.R.	902 KAR 100:070
50 C.F.R.	400 KAR 003:020
74 C.F.R.	806 KAR 017:570
7 U.S.C.	302 KAR 027:050
	302 KAR 028:050
	302 KAR 029:020
	302 KAR 050:080
	921 KAR 003:025
	921 KAR 003:030
	921 KAR 003:035
	921 KAR 003:060
	922 KAR 002:160
8 U.S.C.	921 KAR 002:015
12 U.S.C.	808 KAR 003:050
15 U.S.C.	012 KAR 003:012
	012 KAR 003:028
	012 KAR 003:039
	201 KAR 027:008
	201 KAR 027:011
	401 KAR 005:002
	808 KAR 012:055
	908 KAR 001:374
18 U.S.C.	601 KAR 002:030
20 U.S.C.	011 KAR 004:080
	011 KAR 015:010
	703 KAR 005:270
	702 KAR 007:065
	704 KAR 003:292
	704 KAR 003:365
	808 KAR 003:050
	922 KAR 001:500
21 U.S.C.	012 KAR 002:041
	012 KAR 003:037
	902 KAR 020:111
	902 KAR 020:260

KRS SECTION	REGULATION
	902 KAR 045:090
	902 KAR 045:160
23 U.S.C.	603 KAR 005:070
25 U.S.C.	922 KAR 001:100
	922 KAR 001:140
	922 KAR 002:160
26 U.S.C.	101 KAR 002:095
	102 KAR 001:320
	103 KAR 015:180
	105 KAR 001:145
	105 KAR 001:147
	301 KAR 003:100
	907 KAR 005:005
29 U.S.C.	806 KAR 017:091
	806 KAR 017:570
	895 KAR 001:001
	907 KAR 005:005
	922 KAR 002:160
30 U.S.C.	400 KAR 001:001
	400 KAR 001:040
	400 KAR 001:090
	400 KAR 001:110
	803 KAR 030:010
	921 KAR 002:055
31 U.S.C.	045 KAR 001:050
33 U.S.C.	401 KAR 005:002
	803 KAR 030:010
34 U.S.C.	922 KAR 002:160
38 U.S.C.	921 KAR 002:055
	922 KAR 002:160
42 U.S.C.	106 KAR 001:081
	106 KAR 001:091
	106 KAR 001:121
	401 KAR 005:002
	401 KAR 039:060
	401 KAR 042:005
	401 KAR 042:020
	401 KAR 042:060
	401 KAR 042:341
	401 KAR 052:050
	806 KAR 017:091
	806 KAR 017:570
	815 KAR 025:050
	895 KAR 001:001
	895 KAR 001:010
	895 KAR 001:015
	895 KAR 001:020
	895 KAR 001:025
	895 KAR 001:030
	895 KAR 001:035
	895 KAR 001:040
	895 KAR 001:045
	895 KAR 001:050
	895 KAR 001:055
	900 KAR 002:040
	902 KAR 020:260
	902 KAR 020:275
	902 KAR 100:022
	902 KAR 100:052
	902 KAR 100:070
	902 KAR 100:072
	902 KAR 100:100
	902 KAR 100:142
	906 KAR 001:190
	907 KAR 001:005
	907 KAR 001:022
	907 KAR 001:270
	907 KAR 001:330
	907 KAR 001:340
	907 KAR 001:360
	907 KAR 001:560
	907 KAR 001:563
	907 KAR 001:604
	907 KAR 001:755

KRS SECTION	REGULATION	KRS SECTION	REGULATION
	907 KAR 005:005		
	907 KAR 008:040		
	907 KAR 010:820		
	908 KAR 001:370		
	911 KAR 001:010		
	921 KAR 001:380		
	921 KAR 002:015		
	921 KAR 002:055		
	921 KAR 003:030		
	921 KAR 003:035		
	922 KAR 001:060		
	922 KAR 001:100		
	922 KAR 001:140		
	922 KAR 001:305		
	922 KAR 001:360		
	922 KAR 001:400		
	922 KAR 001:500		
	922 KAR 001:530		
	922 KAR 002:160		
45 U.S.C.	921 KAR 002:055		
49 U.S.C.	302 KAR 029:020		
	603 KAR 005:070		
50 U.S.C.	103 KAR 017:130		
52 U.S.C.	921 KAR 003:030		
2012 Ky Acts ch. 144, Part XII	806 KAR 017:091		
2016 Ky Acts ch. 149, Part 1	922 KAR 002:160		
Pres. EO 13166	921 KAR 003:030		
Pub. L 108-173	806 KAR 017:570		
Pub. L 114-94	603 KAR 005:070		
Pub L 14-198	201 KAR 020:065		

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 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
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
103 KAR 017:120	01-05-2007	01-05-2007	11-06-2018	Remain in Effect without Amendment
103 KAR 018:010	02-05-1975	02-05-1975	11-06-2018	Remain in Effect without Amendment
103 KAR 018:060	02-05-1975	02-05-1975	11-06-2018	Remain in Effect without Amendment
103 KAR 018:172	01-05-2007	01-05-2007	11-06-2018	Remain in Effect without Amendment
201 KAR 009:021	10-09-1984	05-05-2006	03-29-2018	To Be Amended. Amendment filed 4-12-2018, effective 7-18-2018.
201 KAR 009:031	10-09-1984	05-05-2006	03-29-2018	To Be Amended. Amendment filed 4-12-2018, effective 7-18-2018.
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 009:082	10-09-1984	10-09-1984	12-20-2018	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 009:350	11-19-2003	11-19-2003	12-20-2018	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	09-10-1975	06-06-2014	06-04-2018	Remain in Effect without Amendment
201 KAR 022:010	09-11-1975	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	07-03-1987	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
302 KAR 029:070	12-19-2001	12-19-2001	12-05-2018	Remain in Effect without Amendment
302 KAR 100:030	08-28-2009	08-28-2009	12-10-2018	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
400 KAR 004:100	01-05-1977	10-26-1988	11-06-2018	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 006:320	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
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 011:001	03-06-2009	02-05-2010	11-01-2018	Remain in Effect without Amendment
401 KAR 011:010	03-06-2009	02-05-2010	11-01-2018	Remain in Effect without Amendment
401 KAR 011:020	03-06-2009	02-05-2010	11-01-2018	Remain in Effect without Amendment
401 KAR 011:030	03-06-2009	08-05-2010	11-01-2018	Remain in Effect without Amendment
401 KAR 011:040	02-05-2010	02-05-2010	11-01-2018	Remain in Effect without Amendment
401 KAR 011:050	03-06-2009	02-05-2010	11-01-2018	Remain in Effect without Amendment
401 KAR 011:060	03-06-2009	03-06-2009	11-01-2018	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	10-09-2018	Remain in Effect without Amendment
401 KAR 042:320	03-12-1993	10-06-2011	10-09-2018	Remain in Effect without Amendment
401 KAR 042:330	07-09-1997	10-06-2011	10-09-2018	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
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	10-09-2018	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 050:010	06-06-1979	11-08-2006	11-21-2018	Remain in Effect without Amendment
401 KAR 050:012	06-06-1979	11-12-1997	11-21-2018	Remain in Effect without Amendment
401 KAR 050:015	06-06-1979	10-26-1988	11-21-2018	Remain in Effect without Amendment
401 KAR 050:020	06-06-1979	06-06-1979	11-21-2018	Remain in Effect without Amendment
401 KAR 050:025	06-06-1979	06-01-1983	11-21-2018	Remain in Effect without Amendment
401 KAR 050:038	11-29-1993	04-12-1995	11-21-2018	Remain in Effect without Amendment
401 KAR 050:040	06-06-1979	03-01-1984	11-21-2018	Remain in Effect without Amendment
401 KAR 050:042	06-10-1986	06-10-1986	11-21-2018	Remain in Effect without Amendment
401 KAR 050:045	06-06-1979	07-13-2005	11-21-2018	Remain in Effect without Amendment
401 KAR 050:047	06-24-1992	06-24-1992	11-21-2018	Remain in Effect without Amendment
401 KAR 050:050	06-06-1979	06-06-1979	11-21-2018	Remain in Effect without Amendment
401 KAR 050:055	06-06-1979	09-22-1982	11-21-2018	Remain in Effect without Amendment
401 KAR 050:060	06-06-1979	06-06-1979	11-21-2018	Remain in Effect without Amendment
401 KAR 050:065	10-11-1995	10-11-1995	11-21-2018	Remain in Effect without Amendment
401 KAR 050:066	11-12-1997	11-12-2008	11-21-2018	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, filing 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, filing 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 059:001	06-24-1992	11-08-2006	11-21-2018	Remain in Effect without Amendment
401 KAR 059:005	06-06-1979	12-01-1982	11-21-2018	Remain in Effect without Amendment
401 KAR 059:010	06-06-1979	04-14-1988	11-21-2018	Remain in Effect without Amendment
401 KAR 059:020	06-06-1979	11-21-2018	11-21-2018	Remain in Effect without Amendment
401 KAR 059:021	11-15-1990	11-15-1990	11-21-2018	Remain in Effect without Amendment
401 KAR 059:023	11-15-1990	11-15-1990	11-21-2018	Remain in Effect without Amendment
401 KAR 059:046	06-29-1979	06-29-1979	11-21-2018	Remain in Effect without Amendment
401 KAR 059:050	06-29-1979	04-14-1988	11-21-2018	Remain in Effect without Amendment
401 KAR 059:080	06-06-1979	06-06-1979	11-21-2018	Remain in Effect without Amendment
401 KAR 059:085	06-06-1979	06-06-1979	11-21-2018	Remain in Effect without Amendment
401 KAR 059:090	06-06-1979	06-06-1979	11-21-2018	Remain in Effect without Amendment
401 KAR 059:095	06-29-1979	06-29-1979	11-21-2018	Remain in Effect without Amendment
401 KAR 059:101	06-29-1979	09-28-1994	11-21-2018	Remain in Effect without Amendment
401 KAR 059:105	06-06-1979	04-07-1982	11-21-2018	Remain in Effect without Amendment
401 KAR 059:174	01-12-1998	03-04-2016	11-21-2018	Remain in Effect without Amendment
401 KAR 059:175	06-06-1979	02-08-1993	11-21-2018	Remain in Effect without Amendment
401 KAR 059:185	06-29-1979	01-04-2005	11-21-2018	Remain in Effect without Amendment
401 KAR 059:190	06-29-1979	06-24-1992	11-21-2018	Remain in Effect without Amendment
401 KAR 059:210	06-29-1979	06-24-1992	11-21-2018	Remain in Effect without Amendment
401 KAR 059:212	02-04-1981	06-24-1992	11-21-2018	Remain in Effect without Amendment
401 KAR 059:214	02-04-1981	06-24-1992	11-21-2018	Remain in Effect without Amendment
401 KAR 059:225	02-04-1981	06-24-1992	11-21-2018	Remain in Effect without Amendment
401 KAR 059:230	02-04-1981	06-24-1992	11-21-2018	Remain in Effect without Amendment
401 KAR 059:240	02-04-1981	06-24-1992	11-21-2018	Remain in Effect without Amendment
401 KAR 059:260	03-02-1983	04-01-1984	11-21-2018	Remain in Effect without Amendment
401 KAR 059:315	06-24-1992	06-24-1992	11-21-2018	Remain in Effect without Amendment
401 KAR 059:760	03-11-2005	03-11-2005	11-21-2018	Remain in Effect without Amendment
401 KAR 063:001	06-24-1992	11-08-2006	09-12-2018	Remain in Effect without Amendment
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	08-13-2018	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	01-05-0215	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
405 KAR 010:015	09-06-2012	11-07-2013	07-03-2018	Remain in Effect without Amendment
405 KAR 010:025	12-05-2014	12-05-2014	07-03-2018	Remain in Effect without Amendment
405 KAR 010:030	01-06-1983	09-06-2012	07-03-2018	Remain in Effect without Amendment
405 KAR 010:035	10-09-1984	10-09-1984	07-03-2018	Remain in Effect without Amendment
405 KAR 010:040	01-06-1983	04-24-1991	07-03-2018	Remain in Effect without Amendment
405 KAR 010:050	01-06-1983	09-22-1993	07-03-2018	Remain in Effect without Amendment
405 KAR 010:070	11-07-2013	11-07-2013	07-03-2018	Remain in Effect without Amendment
405 KAR 010:080	11-07-2013	11-07-2013	07-03-2018	Remain in Effect without Amendment
405 KAR 010:090	11-07-2013	11-07-2013	07-03-2018	Remain in Effect without Amendment
405 KAR 012:001	04-03-1992	01-05-2018	07-03-2018	Remain in Effect without Amendment
405 KAR 012:010	01-06-1983	09-22-1993	07-03-2018	Remain in Effect without Amendment
405 KAR 012:020	01-06-1983	02-03-2012	07-03-2018	Remain in Effect without Amendment
405 KAR 012:030	01-06-1983	01-06-1983	07-03-2018	Remain in Effect without Amendment
405 KAR 016:001	04-03-1992	01-05-2018	07-03-2018	Remain in Effect without Amendment
405 KAR 016:010	01-06-1983	12-12-1994	07-03-2018	Remain in Effect without Amendment

405 KAR 016:020	01-06-1983	09-06-2012	07-03-2018	Remain in Effect without Amendment
405 KAR 016:030	01-06-1983	01-06-1983	07-03-2018	Remain in Effect without Amendment
405 KAR 016:040	01-06-1983	01-06-1983	07-03-2018	Remain in Effect without Amendment
405 KAR 016:050	01-06-1983	08-13-1985	07-03-2018	Remain in Effect without Amendment
405 KAR 016:060	01-06-1983	07-07-1998	07-03-2018	Remain in Effect without Amendment
405 KAR 016:070	01-06-1983	12-13-1988	07-03-2018	Remain in Effect without Amendment
405 KAR 016:080	01-06-1983	12-13-1988	07-03-2018	Remain in Effect without Amendment
405 KAR 016:090	01-06-1983	10-09-2002	07-03-2018	Remain in Effect without Amendment
405 KAR 016:100	01-06-1983	06-10-1998	07-03-2018	Remain in Effect without Amendment
405 KAR 016:110	01-06-1983	01-05-2018	07-03-2018	Remain in Effect without Amendment
405 KAR 016:120	01-06-1983	12-13-1988	07-03-2018	Remain in Effect without Amendment
405 KAR 016:130	01-06-1983	08-13-1985	07-03-2018	Remain in Effect without Amendment
405 KAR 016:140	01-06-1983	11-17-2009	07-03-2018	Remain in Effect without Amendment
405 KAR 016:150	01-06-1983	12-13-1988	07-03-2018	Remain in Effect without Amendment
405 KAR 016:160	01-06-1983	06-10-1998	07-03-2018	Remain in Effect without Amendment
405 KAR 016:170	01-06-1983	08-13-1985	07-03-2018	Remain in Effect without Amendment
405 KAR 016:180	01-06-1983	06-24-1992	07-03-2018	Remain in Effect without Amendment
405 KAR 016:190	01-06-1983	11-26-1991	07-03-2018	Remain in Effect without Amendment
405 KAR 016:200	01-06-1983	02-22-1995	07-03-2018	Remain in Effect without Amendment
405 KAR 016:210	01-06-1983	11-26-1991	07-03-2018	Remain in Effect without Amendment
405 KAR 016:220	01-06-1983	01-06-1983	07-03-2018	Remain in Effect without Amendment
405 KAR 016:250	01-06-1983	01-06-1983	07-03-2018	Remain in Effect without Amendment
405 KAR 018:001	04-03-1992	01-05-2018	07-03-2018	Remain in Effect without Amendment
405 KAR 018:010	01-06-1983	01-05-2018	07-03-2018	Remain in Effect without Amendment
405 KAR 018:020	01-06-1983	01-06-1983	07-03-2018	Remain in Effect without Amendment
405 KAR 018:030	01-06-1983	01-06-1983	07-03-2018	Remain in Effect without Amendment
405 KAR 018:040	01-06-1983	01-05-2018	07-03-2018	Remain in Effect without Amendment
405 KAR 018:050	01-06-1983	08-13-1985	07-03-2018	Remain in Effect without Amendment
405 KAR 018:060	01-06-1983	01-05-2018	07-03-2018	Remain in Effect without Amendment
405 KAR 018:070	01-06-1983	12-13-1988	07-03-2018	Remain in Effect without Amendment
405 KAR 018:080	01-06-1983	12-13-1988	07-03-2018	Remain in Effect without Amendment
405 KAR 018:090	01-06-1983	10-09-2002	07-03-2018	Remain in Effect without Amendment
405 KAR 018:100	01-06-1983	06-10-1998	07-03-2018	Remain in Effect without Amendment
405 KAR 018:110	01-06-1983	01-05-2018	07-03-2018	Remain in Effect without Amendment
405 KAR 018:120	01-06-1983	12-13-1988	07-03-2018	Remain in Effect without Amendment
405 KAR 018:130	01-06-1983	08-13-1985	07-03-2018	Remain in Effect without Amendment
405 KAR 018:140	01-06-1983	11-17-2009	07-03-2018	Remain in Effect without Amendment
405 KAR 018:150	01-06-1983	12-13-1988	07-03-2018	Remain in Effect without Amendment
405 KAR 018:160	01-06-1983	06-10-1998	07-03-2018	Remain in Effect without Amendment
405 KAR 018:170	01-06-1983	08-13-1985	07-03-2018	Remain in Effect without Amendment
405 KAR 018:180	01-06-1983	06-24-1992	07-03-2018	Remain in Effect without Amendment
405 KAR 018:190	01-06-1983	11-26-1991	07-03-2018	Remain in Effect without Amendment
405 KAR 018:200	01-06-1983	02-22-1995	07-03-2018	Remain in Effect without Amendment
405 KAR 018:210	01-06-1983	06-08-2001	07-03-2018	Remain in Effect without Amendment
405 KAR 018:220	01-06-1983	11-26-1991	07-03-2018	Remain in Effect without Amendment
405 KAR 018:230	01-06-1983	01-06-1983	07-03-2018	Remain in Effect without Amendment
405 KAR 018:260	01-06-1983	01-05-2018	07-03-2018	Remain in Effect without Amendment
405 KAR 020:001	04-03-1992	01-05-2018	07-03-2018	Remain in Effect without Amendment
405 KAR 020:010	01-06-1983	12-17-1991	07-03-2018	Remain in Effect without Amendment
405 KAR 020:030	01-06-1983	08-13-1985	07-03-2018	Remain in Effect without Amendment
405 KAR 020:040	01-06-1983	02-04-1986	07-03-2018	Remain in Effect without Amendment
405 KAR 020:050	01-06-1983	01-06-1983	07-03-2018	Remain in Effect without Amendment
405 KAR 020:060	01-06-1983	05-22-2000	07-03-2018	Remain in Effect without Amendment
405 KAR 020:070	01-06-1983	02-04-1986	07-03-2018	Remain in Effect without Amendment
405 KAR 020:080	01-06-1983	01-05-2018	07-03-2018	Remain in Effect without Amendment
405 KAR 020:090	01-05-2018	01-05-2018	07-03-2018	Remain in Effect without Amendment
405 KAR 024:001	04-03-1992	04-03-1992	07-03-2018	Remain in Effect without Amendment
405 KAR 024:020	01-06-1983	12-13-1988	07-03-2018	Remain in Effect without Amendment
405 KAR 024:030	01-06-1983	12-13-1988	07-03-2018	Remain in Effect without Amendment
405 KAR 024:040	01-06-1983	06-28-1989	07-03-2018	Remain in Effect without Amendment
405 KAR 026:001	01-06-1983	01-06-1983	07-03-2018	Remain in Effect without Amendment
405 KAR 030:010	03-01-1982	10-05-1983	07-03-2018	Remain in Effect without Amendment
405 KAR 030:015	08-07-1984	08-07-1984	07-03-2018	Remain in Effect without Amendment
405 KAR 030:020	03-01-1982	11-02-1983	07-03-2018	Remain in Effect without Amendment
405 KAR 030:025	06-25-1983	10-05-1983	07-03-2018	Remain in Effect without Amendment
405 KAR 030:035	06-25-1982	06-25-1982	07-03-2018	Remain in Effect without Amendment
405 KAR 030:040	03-01-1982	03-01-1982	07-03-2018	Remain in Effect without Amendment
405 KAR 030:050	06-02-1982	06-02-1982	07-03-2018	Remain in Effect without Amendment
405 KAR 030:060	03-01-1982	03-01-1982	07-03-2018	Remain in Effect without Amendment

405 KAR 030:070	03-01-1982	10-05-1983	07-03-2018	Remain in Effect without Amendment
405 KAR 030:080	03-01-1982	03-01-1982	07-03-2018	Remain in Effect without Amendment
405 KAR 030:090	03-01-1982	03-01-1982	07-03-2018	Remain in Effect without Amendment
405 KAR 030:100	03-01-1982	03-01-1982	07-03-2018	Remain in Effect without Amendment
405 KAR 030:110	03-01-1982	03-01-1982	07-03-2018	Remain in Effect without Amendment
405 KAR 030:121	06-02-1982	10-05-1983	07-03-2018	Remain in Effect without Amendment
405 KAR 030:125	06-02-1982	06-02-1982	07-03-2018	Remain in Effect without Amendment
405 KAR 030:130	08-02-1981	10-05-1983	07-03-2018	Remain in Effect without Amendment
405 KAR 030:140	03-01-1982	03-01-1982	07-03-2018	Remain in Effect without Amendment
405 KAR 030:150	03-01-1982	03-01-1982	07-03-2018	Remain in Effect without Amendment
405 KAR 030:160	11-02-1983	11-02-1983	07-03-2018	Remain in Effect without Amendment
405 KAR 030:170	03-01-1982	03-01-1982	07-03-2018	Remain in Effect without Amendment
405 KAR 030:180	03-01-1982	03-01-1982	07-03-2018	Remain in Effect without Amendment
405 KAR 030:210	03-01-1982	03-01-1982	07-03-2018	Remain in Effect without Amendment
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
416 KAR 001:010	08-24-1995	08-24-1995	06-27-2018	Remain in Effect without Amendment
500 KAR 008:010	02-07-1991	12-01-2017	12-17-2018	Remain in Effect without Amendment
500 KAR 008:020	11-08-1991	05-24-2004	12-17-2018	Remain in Effect without Amendment
500 KAR 008:030	11-08-1991	12-01-2017	12-17-2018	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
701 KAR 005:055	08-04-1994	12-05-1996	11-16-2018	Remain in Effect without Amendment
701 KAR 005:080	03-13-1991	03-13-1991	11-16-2018	Remain in Effect without Amendment
701 KAR 005:090	09-06-1991	11-12-2002	11-16-2018	Remain in Effect without Amendment
701 KAR 005:100	09-06-1991	06-01-1995	11-16-2018	Remain in Effect without Amendment
701 KAR 005:120	01-19-1999	01-19-1999	11-16-2018	Remain in Effect without Amendment
701 KAR 005:130	03-07-2008	03-07-2008	11-16-2018	Remain in Effect without Amendment
702 KAR 001:035	03-02-1977	07-15-2002	11-16-2018	Remain in Effect without Amendment
702 KAR 001:080	03-10-1976	12-05-1996	11-16-2018	Remain in Effect without Amendment
702 KAR 001:100	02-02-1977	10-14-1990	11-16-2018	Remain in Effect without Amendment
702 KAR 001:140	07-06-1995	07-06-1995	11-16-2018	Remain in Effect without Amendment
702 KAR 001:150	01-15-2001	03-19-2003	11-16-2018	Remain in Effect without Amendment
702 KAR 003:020	11-13-1974	01-14-2002	11-16-2018	Remain in Effect without Amendment
702 KAR 003:030	11-13-1974	07-02-2010	11-16-2018	Remain in Effect without Amendment
702 KAR 003:045	03-12-1975	08-01-1992	11-16-2018	Remain in Effect without Amendment
702 KAR 003:050	03-12-1975	12-09-1990	11-16-2018	Remain in Effect without Amendment

702 KAR 003:060	11-03-1974	01-16-2003	11-16-2018	Remain in Effect without Amendment
702 KAR 003:070	03-12-1975	01-14-2002	11-16-2018	Remain in Effect without Amendment
702 KAR 003:075	11-13-1974	11-01-1999	11-16-2018	Remain in Effect without Amendment
702 KAR 003:080	11-13-1975	01-05-2009	11-16-2018	Remain in Effect without Amendment
702 KAR 003:090	11-13-1975	06-08-2009	11-16-2018	Remain in Effect without Amendment
702 KAR 003:135	10-01-1980	01-14-2002	11-16-2018	Remain in Effect without Amendment
702 KAR 003:150	11-13-1974	02-07-1991	11-16-2018	Remain in Effect without Amendment
702 KAR 003:190	10-09-1984	09-02-1993	11-16-2018	Remain in Effect without Amendment
702 KAR 003:246	02-12-1996	01-03-2011	11-16-2018	Remain in Effect without Amendment
702 KAR 003:250	09-06-1991	10-01-1992	11-16-2018	Remain in Effect without Amendment
702 KAR 003:270	12-01-1994	09-08-2008	11-16-2018	Remain in Effect without Amendment
702 KAR 003:275	02-02-1995	02-02-1995	11-16-2018	Remain in Effect without Amendment
702 KAR 003:285	01-09-1997	01-09-1997	11-16-2018	Remain in Effect without Amendment
702 KAR 003:310	02-03-2003	02-03-2003	11-16-2018	Remain in Effect without Amendment
702 KAR 004:005	06-11-1975	02-07-1991	11-16-2018	Remain in Effect without Amendment
702 KAR 004:050	10-08-1975	03-07-1992	11-16-2018	Remain in Effect without Amendment
702 KAR 004:090	06-11-1975	02-07-1991	11-16-2018	Remain in Effect without Amendment
702 KAR 004:100	12-10-1975	02-07-1991	11-16-2018	Remain in Effect without Amendment
702 KAR 004:170	03-02-1995	03-02-1995	11-16-2018	Remain in Effect without Amendment
702 KAR 004:180	10-06-1991	07-07-2008	11-16-2018	Remain in Effect without Amendment
702 KAR 005:010	06-11-1975	12-01-2006	11-16-2018	Remain in Effect without Amendment
702 KAR 005:020	10-08-1975	10-14-1990	11-16-2018	Remain in Effect without Amendment
702 KAR 005:060	06-11-1975	10-14-1990	11-16-2018	Remain in Effect without Amendment
702 KAR 005:080	03-16-1998	01-04-2008	11-16-2018	Remain in Effect without Amendment
702 KAR 005:100	06-11-1975	10-14-1990	11-16-2018	Remain in Effect without Amendment
702 KAR 005:120	01-05-1977	10-01-1992	11-16-2018	Remain in Effect without Amendment
702 KAR 005:130	06-04-1985	01-16-2003	11-16-2018	Remain in Effect without Amendment
702 KAR 005:150	12-07-1990	01-16-2003	11-16-2018	Remain in Effect without Amendment
702 KAR 006:010	10-02-1974	01-04-2010	11-16-2018	Remain in Effect without Amendment
702 KAR 006:020	03-12-1975	01-04-2010	11-16-2018	Remain in Effect without Amendment
702 KAR 006:040	03-12-1975	01-04-2010	11-16-2018	Remain in Effect without Amendment
702 KAR 006:045	03-23-1989	01-04-2010	11-16-2018	Remain in Effect without Amendment
702 KAR 006:050	10-02-1974	02-07-1991	11-16-2018	Remain in Effect without Amendment
702 KAR 006:060	03-12-1975	02-07-1991	11-16-2018	Remain in Effect without Amendment
702 KAR 006:075	10-14-1990	01-04-2010	11-16-2018	Remain in Effect without Amendment
702 KAR 007:130	01-05-2009	10-06-2010	11-16-2018	Remain in Effect without Amendment
703 KAR 003:205	09-02-1993	12-05-1996	11-16-2018	Remain in Effect without Amendment
704 KAR 003:285	07-05-1978	09-01-1999	11-16-2018	Remain in Effect without Amendment
704 KAR 003:307	04-01-1981	02-07-1991	11-16-2018	Remain in Effect without Amendment
704 KAR 003:325	10-09-1994	02-03-2006	11-16-2018	Remain in Effect without Amendment
704 KAR 003:406	08-04-1994	08-04-1994	11-16-2018	Remain in Effect without Amendment
704 KAR 003:410	12-09-1990	06-07-1999	11-16-2018	Remain in Effect without Amendment
704 KAR 003:420	06-07-1999	06-07-1999	11-16-2018	Remain in Effect without Amendment
704 KAR 003:440	08-01-1992	08-01-1992	11-16-2018	Remain in Effect without Amendment
704 KAR 003:455	01-09-1995	03-19-2003	11-16-2018	Remain in Effect without Amendment
704 KAR 003:480	03-01-1999	03-01-1999	11-16-2018	Remain in Effect without Amendment
704 KAR 003:490	01-15-2001	08-07-2006	11-16-2018	Remain in Effect without Amendment
704 KAR 003:500	11-05-2001	11-05-2001	11-16-2018	Remain in Effect without Amendment
704 KAR 003:510	03-19-2003	03-19-2003	11-16-2018	Remain in Effect without Amendment
704 KAR 003:530	08-07-2006	08-07-2006	11-16-2018	Remain in Effect without Amendment
704 KAR 004:010	11-13-1974	02-07-1991	11-16-2018	Remain in Effect without Amendment
704 KAR 005:060	12-02-1988	02-07-1991	11-16-2018	Remain in Effect without Amendment
704 KAR 007:070	12-02-1986	01-19-1999	11-16-2018	Remain in Effect without Amendment
704 KAR 007:120	10-07-1993	04-22-2005	11-16-2018	Remain in Effect without Amendment
704 KAR 007:130	09-04-1997	06-08-2001	11-16-2018	Remain in Effect without Amendment
704 KAR 007:140	01-16-2003	11-08-2004	11-16-2018	Remain in Effect without Amendment
704 KAR 010:022	11-03-1976	10-08-1989	11-16-2018	Remain in Effect without Amendment
705 KAR 003:141	08-04-1994	08-04-1994	11-16-2018	Remain in Effect without Amendment
705 KAR 004:081	08-04-1994	08-04-1994	11-16-2018	Remain in Effect without Amendment
705 KAR 004:240	01-19-1999	01-19-1999	11-16-2018	Remain in Effect without Amendment
707 KAR 001:270	03-01-1999	03-01-1999	11-16-2018	Remain in Effect without Amendment
707 KAR 001:290	08-14-2000	11-05-2007	11-16-2018	Remain in Effect without Amendment
707 KAR 001:300	08-14-2000	11-05-2007	11-16-2018	Remain in Effect without Amendment
707 KAR 001:320	08-14-2000	11-05-2007	11-16-2018	Remain in Effect without Amendment
707 KAR 001:350	08-14-2000	11-05-2007	11-16-2018	Remain in Effect without Amendment
707 KAR 001:360	08-14-2000	11-05-2007	11-16-2018	Remain in Effect without Amendment
707 KAR 001:370	08-14-2000	11-05-2007	11-16-2018	Remain in Effect without Amendment
707 KAR 001:380	08-14-2000	11-05-2007	11-16-2018	Remain in Effect without Amendment
750 KAR 001:010	07-02-1986	04-02-2010	07-25-2018	Remain in Effect without Amendment

750 KAR 002:010	11-04-1993	02-04-1999	07-25-2018	Remain in Effect without Amendment
780 KAR 001:010	10-14-1990	05-01-2009	11-16-2018	Remain in Effect without Amendment
780 KAR 002:010	10-14-1990	05-01-2009	11-16-2018	Remain in Effect without Amendment
780 KAR 002:030	10-14-1990	05-01-2009	11-16-2018	Remain in Effect without Amendment
780 KAR 002:110	10-14-1990	05-01-2009	11-16-2018	Remain in Effect without Amendment
780 KAR 003:010	10-14-1990	05-01-2009	11-16-2018	Remain in Effect without Amendment
780 KAR 003:020	10-14-1990	05-01-2009	11-16-2018	Remain in Effect without Amendment
780 KAR 003:030	10-14-1990	05-01-2009	11-16-2018	Remain in Effect without Amendment
780 KAR 003:035	09-11-2000	05-01-2009	11-16-2018	Remain in Effect without Amendment
780 KAR 003:040	10-14-1990	05-01-2009	11-16-2018	Remain in Effect without Amendment
780 KAR 003:060	10-14-1990	05-01-2009	11-16-2018	Remain in Effect without Amendment
780 KAR 003:065	07-17-2000	05-01-2009	11-16-2018	Remain in Effect without Amendment
780 KAR 003:075	07-17-2000	05-01-2009	11-16-2018	Remain in Effect without Amendment
780 KAR 003:090	10-14-1990	05-01-2009	11-16-2018	Remain in Effect without Amendment
780 KAR 003:100	10-14-1990	05-01-2009	11-16-2018	Remain in Effect without Amendment
780 KAR 003:110	10-14-1990	05-01-2009	11-16-2018	Remain in Effect without Amendment
780 KAR 003:150	10-14-1990	05-01-2009	11-16-2018	Remain in Effect without Amendment
780 KAR 003:160	07-05-1991	05-01-2009	11-16-2018	Remain in Effect without Amendment
780 KAR 006:005	07-17-2000	05-01-2009	11-16-2018	Remain in Effect without Amendment
780 KAR 006:010	12-09-1990	05-01-2009	11-16-2018	Remain in Effect without Amendment
780 KAR 006:020	12-09-1990	05-01-2009	11-16-2018	Remain in Effect without Amendment
780 KAR 006:030	12-09-1990	05-01-2009	11-16-2018	Remain in Effect without Amendment
780 KAR 006:040	12-09-1990	05-01-2009	11-16-2018	Remain in Effect without Amendment
780 KAR 006:050	12-09-1990	05-01-2009	11-16-2018	Remain in Effect without Amendment
780 KAR 006:062	07-17-2000	01-04-2010	11-16-2018	Remain in Effect without Amendment
780 KAR 006:065	07-17-2000	05-01-2009	11-16-2018	Remain in Effect without Amendment
780 KAR 006:070	12-09-1990	05-01-2009	11-16-2018	Remain in Effect without Amendment
780 KAR 006:080	12-09-1990	05-01-2009	11-16-2018	Remain in Effect without Amendment
780 KAR 006:090	12-09-1990	05-01-2009	11-16-2018	Remain in Effect without Amendment
780 KAR 006:100	12-09-1990	05-01-2009	11-16-2018	Remain in Effect without Amendment
780 KAR 007:020	10-14-1990	05-01-2009	11-16-2018	Remain in Effect without Amendment
780 KAR 007:040	10-14-1990	05-01-2009	11-16-2018	Remain in Effect without Amendment
805 KAR 001:020	08-02-1978	09-25-1991	07-03-2018	Remain in Effect without Amendment
805 KAR 001:030	11-13-1975	10-23-2009	06-27-2018	Remain in Effect without Amendment
805 KAR 001:040	04-09-1975	04-09-1975	06-27-2018	Remain in Effect without Amendment
805 KAR 001:050	04-09-1975	09-25-1991	06-27-2018	Remain in Effect without Amendment
805 KAR 001:060	06-11-1975	12-07-2017	06-27-2018	Remain in Effect without Amendment
805 KAR 001:080	06-11-1975	06-11-1975	06-27-2018	Remain in Effect without Amendment
805 KAR 001:100	08-13-1975	09-03-2015	06-27-2018	Remain in Effect without Amendment
805 KAR 001:110	09-01-1984	04-04-2008	06-27-2018	Remain in Effect without Amendment
805 KAR 001:120	09-25-1991	09-25-1991	06-27-2018	Remain in Effect without Amendment
805 KAR 001:130	09-25-1991	09-04-2015	06-27-2018	Remain in Effect without Amendment
805 KAR 001:140	09-25-1991	09-04-2015	06-27-2018	Remain in Effect without Amendment
805 KAR 001:160	07-09-1997	07-09-1997	06-27-2018	Remain in Effect without Amendment
805 KAR 001:170	07-09-1997	09-04-2015	06-27-2018	Remain in Effect without Amendment
805 KAR 001:180	11-12-1997	11-12-1997	06-27-2018	Remain in Effect without Amendment
805 KAR 001:190	03-18-2004	11-17-2009	06-27-2018	Remain in Effect without Amendment
805 KAR 001:200	10-23-2009	10-23-2009	06-27-2018	Remain in Effect without Amendment
805 KAR 002:010	12-11-1974	12-11-1974	06-27-2018	Remain in Effect without Amendment
805 KAR 003:010	05-14-1975	09-22-1993	06-27-2018	Remain in Effect without Amendment
805 KAR 003:020	05-14-1975	07-09-1985	06-27-2018	Remain in Effect without Amendment
805 KAR 003:030	05-14-1975	05-14-1975	06-27-2018	Remain in Effect without Amendment
805 KAR 003:040	05-14-1975	05-14-1975	06-27-2018	Remain in Effect without Amendment
805 KAR 003:060	05-14-1975	05-14-1975	06-27-2018	Remain in Effect without Amendment
805 KAR 003:070	05-14-1975	05-14-1975	06-27-2018	Remain in Effect without Amendment
805 KAR 003:080	05-14-1975	05-14-1975	06-27-2018	Remain in Effect without Amendment
805 KAR 003:090	05-14-1975	05-14-1975	06-27-2018	Remain in Effect without Amendment
805 KAR 003:100	05-14-1975	02-05-2016	06-27-2018	Remain in Effect without Amendment
805 KAR 003:110	05-14-1975	05-14-1975	06-27-2018	Remain in Effect without Amendment
805 KAR 003:120	05-14-1975	05-14-1975	06-27-2018	Remain in Effect without Amendment
805 KAR 004:005	09-01-1976	06-07-1993	06-27-2018	Remain in Effect without Amendment
805 KAR 004:010	06-11-1975	09-16-2002	06-27-2018	Remain in Effect without Amendment
805 KAR 004:020	07-02-1975	07-02-1975	06-27-2018	Remain in Effect without Amendment
805 KAR 004:030	07-02-1975	06-26-1991	06-27-2018	Remain in Effect without Amendment
805 KAR 004:040	06-11-1975	09-16-2002	06-27-2018	Remain in Effect without Amendment
805 KAR 004:050	06-11-1975	06-26-1991	06-27-2018	Remain in Effect without Amendment
805 KAR 004:060	06-11-1975	06-26-1991	06-27-2018	Remain in Effect without Amendment
805 KAR 004:075	09-01-1976	06-26-1991	06-27-2018	Remain in Effect without Amendment
805 KAR 004:080	09-01-1976	09-01-1976	06-27-2018	Remain in Effect without Amendment

805 KAR 004:085	09-01-1976	12-11-1996	06-27-2018	Remain in Effect without Amendment
805 KAR 004:087	03-02-1977	06-26-1991	06-27-2018	Remain in Effect without Amendment
805 KAR 004:090	09-01-1976	09-07-1983	06-27-2018	Remain in Effect without Amendment
805 KAR 004:093	12-11-1996	12-11-1996	06-27-2018	Remain in Effect without Amendment
805 KAR 004:095	09-01-1976	05-03-1978	06-27-2018	Remain in Effect without Amendment
805 KAR 004:100	09-01-1976	09-16-2002	06-27-2018	Remain in Effect without Amendment
805 KAR 004:105	09-01-1976	09-01-1976	06-27-2018	Remain in Effect without Amendment
805 KAR 004:110	09-01-1976	06-26-1991	06-27-2018	Remain in Effect without Amendment
805 KAR 004:115	09-01-1976	05-03-1978	06-27-2018	Remain in Effect without Amendment
805 KAR 004:120	09-01-1976	06-26-1991	06-27-2018	Remain in Effect without Amendment
805 KAR 004:125	09-01-1976	09-16-2002	06-27-2018	Remain in Effect without Amendment
805 KAR 004:130	09-01-1976	09-01-1976	06-27-2018	Remain in Effect without Amendment
805 KAR 004:135	09-01-1976	09-01-1976	06-27-2018	Remain in Effect without Amendment
805 KAR 004:140	09-01-1976	12-11-1996	06-27-2018	Remain in Effect without Amendment
805 KAR 004:145	09-01-1976	09-01-1976	06-27-2018	Remain in Effect without Amendment
805 KAR 004:150	09-01-1976	09-01-1976	06-27-2018	Remain in Effect without Amendment
805 KAR 004:155	06-26-1991	06-26-1991	06-27-2018	Remain in Effect without Amendment
805 KAR 004:160	06-27-1991	06-26-1991	06-27-2018	Remain in Effect without Amendment
805 KAR 004:165	06-28-1991	06-26-1991	06-27-2018	Remain in Effect without Amendment
805 KAR 005:010	09-01-1976	10-14-1996	06-27-2018	Remain in Effect without Amendment
805 KAR 005:030	11-09-1992	12-11-2009	06-27-2018	Remain in Effect without Amendment
805 KAR 005:070	12-11-1996	12-11-1996	06-27-2018	Remain in Effect without Amendment
805 KAR 007:010	10-05-1977	08-06-2007	06-27-2018	Remain in Effect without Amendment
805 KAR 007:020	10-05-1977	02-02-2018	06-27-2018	Remain in Effect without Amendment
805 KAR 007:030	10-05-1977	02-02-2018	06-27-2018	Remain in Effect without Amendment
805 KAR 007:040	10-05-1977	02-02-2018	06-27-2018	Remain in Effect without Amendment
805 KAR 007:050	10-05-1977	02-02-2018	06-27-2018	Remain in Effect without Amendment
805 KAR 007:060	07-05-1978	02-02-2018	06-27-2018	Remain in Effect without Amendment
805 KAR 007:070	02-07-1979	10-13-1999	06-27-2018	Remain in Effect without Amendment
805 KAR 007:080	12-11-1996	03-06-2009	06-27-2018	Remain in Effect without Amendment
805 KAR 007:090	10-13-1999	10-13-1999	06-27-2018	Remain in Effect without Amendment
805 KAR 007:100	08-06-2007	08-06-2007	06-27-2018	Remain in Effect without Amendment
805 KAR 008:010	09-16-2002	09-16-2002	06-27-2018	Remain in Effect without Amendment
805 KAR 008:030	09-16-2002	02-02-2018	06-27-2018	Remain in Effect without Amendment
805 KAR 008:040	09-16-2002	02-02-2018	06-27-2018	Remain in Effect without Amendment
805 KAR 008:050	09-16-2002	02-02-2018	06-27-2018	Remain in Effect without Amendment
805 KAR 008:060	09-16-2002	09-02-2010	06-27-2018	Remain in Effect without Amendment
805 KAR 009:010	06-08-2005	06-08-2005	06-27-2018	Remain in Effect without Amendment
805 KAR 009:020	06-09-2005	06-08-2005	06-27-2018	Remain in Effect without Amendment
805 KAR 009:030	06-10-2005	06-08-2005	06-27-2018	Remain in Effect without Amendment
805 KAR 009:050	06-11-2005	06-08-2005	06-27-2018	Remain in Effect without Amendment
805 KAR 009:060	06-12-2005	06-08-2005	06-27-2018	Remain in Effect without Amendment
805 KAR 009:070	06-13-2005	06-08-2005	06-27-2018	Remain in Effect without Amendment
805 KAR 009:080	06-14-2005	06-08-2005	06-27-2018	Remain in Effect without Amendment
805 KAR 009:090	06-15-2005	06-08-2005	06-27-2018	Remain in Effect without Amendment
805 KAR 009:100	06-16-2005	06-08-2005	06-27-2018	Remain in Effect without Amendment
805 KAR 011:001	08-23-2007	08-23-2007	06-27-2018	Remain in Effect without Amendment
805 KAR 011:010	08-23-2007	08-23-2007	06-27-2018	Remain in Effect without Amendment
805 KAR 011:020	08-23-2007	08-23-2007	06-27-2018	Remain in Effect without Amendment
825 KAR 001:020	06-14-2002	12-07-2006	08-06-2018	Remain in Effect without Amendment
825 KAR 001:030	11-12-2002	11-12-2002	08-06-2018	Remain in Effect without Amendment
900 KAR 006:040	12-18-1996	12-18-1996	07-30-2018	Remain in Effect without Amendment
902 KAR 020:009	04-13-1998	12-12-2007	01-11-2019	Remain in Effect without Amendment
902 KAR 020:012	08-05-1981	01-12-1990	01-11-2019	Remain in Effect without Amendment
902 KAR 020:018	11-05-1981	03-14-2002	01-11-2019	Remain in Effect without Amendment
902 KAR 020:410	03-04-2011	03-04-2011	01-11-2019	Remain in Effect without Amendment
902 KAR 048:020	02-07-2002	02-07-2002	01-11-2019	Remain in Effect without Amendment
902 KAR 048:030	02-07-2002	02-07-2002	01-11-2019	Remain in Effect without Amendment
902 KAR 048:040	02-07-2002	02-07-2002	01-11-2019	Remain in Effect without Amendment
902 KAR 055:060	06-03-1981	01-10-1994	01-11-2019	Remain in Effect without Amendment
902 KAR 055:065	03-15-1989	03-14-1994	01-11-2019	Remain in Effect without Amendment
902 KAR 055:080	07-17-1991	07-17-1991	01-11-2019	Remain in Effect without Amendment
902 KAR 055:105	12-16-1998	12-16-1998	01-11-2019	Remain in Effect without Amendment
902 KAR 055:115	12-16-1998	12-16-1998	01-11-2019	Remain in Effect without Amendment
906 KAR 001:100	03-07-1992	09-01-2006	01-11-2019	Remain in Effect without Amendment
906 KAR 001:110	08-28-1992	07-24-2006	01-11-2019	Remain in Effect without Amendment
906 KAR 001:120	02-17-1998	01-23-2004	01-11-2019	Remain in Effect without Amendment
906 KAR 001:140	10-15-2003	10-15-2003	01-11-2019	Remain in Effect without Amendment
906 KAR 001:160	02-01-2008	10-17-2012	01-11-2019	Remain in Effect without Amendment

906 KAR 001:170	01-05-2009	01-05-2009	01-11-2019	Remain in Effect without Amendment
906 KAR 001:180	06-04-2010	06-04-2010	01-11-2019	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: Copies of the technical amendments are usually posted on the Legislative Research Commission Web site for a short time before they are finalized. Regulations are available for viewing on the Legislative Research Commission Web site at https://legislature.ky.gov/law/kar/pages/default.aspx.

‡ - 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 015:180	02-07-2019		
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		
200 KAR 021:020	11-15-2018		
200 KAR 021:040	11-15-2018		
200 KAR 021:050	11-15-2018		
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		
401 KAR 045:025	10-15-2018		
401 KAR 045:030	10-15-2018		
401 KAR 045:090	10-15-2018		
401 KAR 045:130	10-15-2018		
401 KAR 045:250	10-15-2018		
401 KAR 048:090	10-15-2018		
401 KAR 048:200	10-15-2018		
401 KAR 048:300	10-15-2018		
401 KAR 048:310	10-15-2018		
703 KAR 005:280	09-10-2018		
804 KAR 004:370	08-01-2018		
831 KAR 001:030	11-13-2018		
900 KAR 006:040	08-02-2018		
900 KAR 011:010	07-13-2018		
901 KAR 005:120	01-25-2019		
902 KAR 030:180	07-18-2018		
902 KAR 048:020	09-13-2018		
902 KAR 048:030	09-13-2018		
	01-25-2019		
907 KAR 017:020	06-05-2018		
908 KAR 002:250	09-17-2018		
910 KAR 001:240	09-17-2018		
920 KAR 001:060	07-25-2018		
921 KAR 001:400	08-22-2018		
921 KAR 001:410	08-22-2018		

ACCOUNTANCY, BOARD OF
Expungement of minor violation; 201 KAR 001:310
Standards of Practice; 201 KAR 001:290

AGING AND INDEPENDENT LIVING
Aging Services
Certification of assisted-living communities; 910 KAR 001:240
Personal care attendant program and assistance services; 910 KAR 1:090

AGRICULTURE
Agricultural Pest Control
Certification; 302 KAR 027:050
Definitions for 302 KAR Chapter 027; 302 KAR 027:010
Fine schedule for violation of KRS 217B.120; 302 KAR 027:060
General provisions; 302 KAR 027:020
Prison inmates; 302 KAR 027:040
Repeal of 302 KAR 027:030; 302 KAR 027:031
Industrial Hemp
Enforcement, corrective action plans, and mandatory reporting to state and federal agencies, Department to retain growing site information for at least three (3) years; 302 KAR 050:090
Materials incorporated by reference; 302 KAR 050:080
Livestock Sanitation
Repeal of 302 KAR 020:210; 302 KAR 020:210
Repeal of 302 KAR 020:220; 302 KAR 020:221
Repeal of 302 KAR 020:231; 302 KAR 020:231
Repeal of 302 KAR 020:054; 302 KAR 020:541
Repeal of 302 KAR 020:561; 302 KAR 020:561
Repeal of 302 KAR 020:057; 302 KAR 020:571
Repeal of 302 KAR 020:058; 302 KAR 020:581
Office of the Commissioner
Repeal of 302 KAR 003:010; 302 KAR 003:011
Ornamental Turf Lawn and Interior Plantscape Pest Control
Certification 302 KAR 028:050.
Definitions for 302 KAR Chapter 028; 302 KAR 028:010
General provisions; 302 KAR 028:020
Fine schedule violation of KRS 217B.120; 302 KAR 028:060
Ornamental and interior plantscape posting; 302 KAR 028:030
Prison inmates; 302 KAR 028:040
Purchase of Agricultural Conservation Easement Corporation;
Repeal of 302 KAR 100:010; 302 KAR 100:011
Repeal of 302 KAR 100:020; 302 KAR 100:021
Referendums
Repeal of 302 KAR 001:010, 302 KAR 001:020, 302 KAR 001:030, 302 KAR 001:035, 302 KAR 001:040, 302 KAR 001:050, 302 KAR 001:055, 302 KAR 001:070, and 302 KAR 001:080; 302 KAR 001:011
Regulation and Inspection; General
Repeal of 302 KAR 007:010 and 302 KAR 077:030; 302 KAR 077:011
Structural Pest Control
General provisions; 302 KAR 29:020
Weights and Measures
Requirements to establish fee schedules for calibrations, adjustments, weights and measures; 302 KAR 085:010

AGRICULTURE EXPERIMENT STATION
Commercial Feeds
Brand and product names; 012 KAR 002:016
Definitions for 12 KAR Chapter 2; 012 KAR 002:006
Directions for use and precautionary statements; 012 KAR 002:031
Drug and feed additives; 012 KAR 002:041
Expression of guarantees; 012 KAR 002:021
Guaranteed analysis; 012 KAR 002:018
Ingredients; 012 KAR 002:026
Label format; 012 KAR 002:011
List of manufacturers; 012 KAR 002:056
Manufacturing conditions; 012 KAR 002:051
Non-protein; 012 KAR 002:036
Poisonous or deleterious substances; 012 KAR 002:046
Product purpose statement; 012 KAR 002:017
Registration; 012 KAR 002:061
Suitability; 012 KAR 002:066
Pet food
Additives, drugs and pet food; 012 KAR 003:037
Brand and product names; 012 KAR 003:017
Calorie content, statements of; 012 KAR 003:042
Definitions; 012 KAR 003:007
Descriptive terms; 012 KAR 003:028
Feeding directions; 012 KAR 003:032
Guarantees, expression of; 012 KAR 003:022
Ingredients; 012 KAR 003:027
Label format and labeling; 012 KAR 003:012
Nutritional adequacy; 012 KAR 003:039

ALCOHOLIC BEVERAGE CONTROL
Advertising Distilled Spirits and Wine
Consumer sampling events; 804 KAR 001:110
Product development and marketing samples; 804 KAR 001:070
Prohibited alcoholic beverage advertisements; 804 KAR 001:030
Advertising Malt Beverages
Repeal of 804 KAR 002:015; 804 KAR 002:016
Conduct of Business; Employees
Repeal of 804 KAR 005:020; 804 KAR 005:021
Licensing
Repeal of 804 KAR 004:010; 804 KAR 004:011
Malt Beverage, Equipment, Supplies, and Service
Repeal of 804 KAR 011:030; 804 KAR 011:031
Transportation of Alcoholic Beverages
Identification of vehicles used to transport alcoholic beverages; 804 KAR 008:050

AUCTIONEERS, KENTUCKY BOARD OF
Standards of conduct and complaints; 201 KAR 3:045

AUDITOR OF PUBLIC ACCOUNTS
Audits
Audits and fiscal courts; 045 KAR 001:050

ATTORNEY GENERAL
Office of Consumer Protection
Visual aid glasses seller annual registration requirements; 40 KAR 002:245

BEHAVIORAL HEALTH, DEVELOPMENTAL AND INTELLECTUAL DISABILITIES
Substance Abuse
Licensing procedures, fees, and general requirements for nonhospital-based alcohol and other drug treatment entities; 908 KAR 001:370
Licensure of nonhospital-based outpatient alcohol and other drug treatment entities; 908 KAR 001:374
Licensure of residential alcohol and other drug treatment entities; 908 KAR 001:372
Repeal of 908 KAR 001:340; 908 KAR 001:341

BOARDS AND COMMISSIONS
See also Occupations and Professions
See listing below for specific subject headings:
Board of Accountancy; 201 KAR Chapter 001
Boxing and Wrestling Commission; 201 KAR Chapter 027
Cosmetology, 201 KAR Chapter 012
Chiropractic Examiners; 201 KAR Chapter 021
Licensure for Marriage and Family Therapists; Chapter 032
Medical Licensure; 201 KAR Chapter 009
Nursing; 201 KAR Chapter 020
Occupational Therapy; 201 KAR Chapter 028
Optometric Examiners; 201 KAR Chapter 005
Pharmacy; 201 KAR Chapter 002
Physical Therapy; 201 KAR Chapter 022
Psychology; 201 KAR Chapter 026
Social Work; 201 KAR Chapter 023

SUBJECT INDEX

BOXING AND WRESTLING COMMISSION
Definitions for 201 KAR Chapter 027; 201 KAR 027:005
General requirements for boxing and kickboxing shows; 201 KAR 027:011
General requirements for mixed martial arts matches, shows, or exhibitions; 201 KAR 027:016
License requirements and fees; 201 KAR 027:008
Repeal of 201 KAR 027:017; 201 KAR 027:022
Tickets; 201 KAR 027:020

CHIROPRACTIC EXAMINERS
Code of ethical conduct and standards of practice; 201 KAR 021:015
Specialties; 201 KAR 021:045

CLAIMS COMMISSION
Tax Appeals
Tax appeal procedures; 802 KAR 001:010

KENTUCKY COMMUNITY AND TECHNICAL COLLEGE SYSTEM
Allocation of block grant funding assistance for emergency medical services; 202 KAR 007:520
Posting of fee schedules of licensed ambulance providers; 202 KAR 007:575

COMMUNITY BASED SERVICES
Child Welfare
Educational and training vouchers; 922 KAR 001:500
Foster care and adoption permanency services; 922 KAR 001:140
Federal Title IV-E adoption assistance; 922 KAR 001:060
Foster care and adoption permanency services; 922 KAR 001:140
Independent non-relative adoptions; 922 KAR 001:010
Licensure of child-caring facilities and child-placing agencies; 922 KAR 001:305
Post-adoption placement stabilization services; 922 KAR 001:530
Private child care placement, levels of care, and payment; 922 KAR 001:36
Public agency adoptions922 KAR 001:100
Putative father registry and operating procedures; 922 KAR 001:560
Repeal of 922 KAR 001:410; 922 KAR 001:411
Service array for a relative or fictive kin caregiver; 922 KAR 001:565
State funded adoption assistance; 922 KAR 001:050
Day Care
Health and safety standards for centers; 922 KAR 002:120
Child Care Assistance Program; 922 KAR 002:160
Child care Assistance Program; Requirements for registered providers; 922 KAR 002:180
Civil penalties; 922 KAR 002:190
Kentucky All STARS quality-based graduated early childhood rating system for licensed child-care centers and certified family child-care homes; 922 KAR 002:270
Family Support
Child Support Enforcement Program application and intergovernmental process; 921 KAR 001:380
K-TAP, Kentucky Works, Welfare to Work, State Supplementation
Hearings and appeals; 921 KAR 002:055
Supplemental programs for persons who are aged, blind, or have a disability; 921 KAR 0023:015
Supplemental Nutrition Assistance Program
Administrative disqualification hearings and penalties; 921 KAR 003:060
Application process; 921 KAR 003:030
Certification process; 921 KAR 003:035
Claims and additional administrative provisions; 921 KAR 003:050
Fair hearings; 921 KAR 003:070
Technical requirements; 921 KAR 003:025

CORRECTIONS
Corrections policies and procedures; 501 KAR 006:020

COSMETOLOGY
Education requirements and school administration; 201 KAR 012:082
Esthetic practices restrictions; 201 KAR 012:280
Fees; 201 KAR 012:260
Licensing, permits, and examinations; 201 KAR 012:030
Repeal of 201 KAR 012:085, 012: 088, 012:120, 012:180, 012:250; 201 KAR 012:251

DEAF AND HARD OF HEARING
Interpreter Referral Services
Definitions for 735 KAR Chapter 2; 735 KAR 002:010
Grievance procedures; 735 KAR 002:060
Interpreter qualifications; 735 KAR 002:030
Interpreter protocols; 735 KAR 002:040
KCDHH Interpreter Referral Services Program parameters; 735 KAR 002:020
Processing of requests for services; 735 KAR 002:050
Telecommunication Devices for the Deaf
Eligibility requirements, application and certification procedures to receive specialized equipment for the deaf, hard of hearing, and speech impaired; 735 KAR 001:010
Processing system - vendor participation, security, maintenance, repair for specialized equipment; 735 KAR 001:020

EDUCATION
Academic Standards
Kentucky Academic Standards for Computer Science Elective; 704 KAR 008:010
Kentucky Academic Standards for Health; 704 KAR 008:030
Kentucky Academic Standards for Mathematics; 704 KAR 008:040
Kentucky Academic Standards for Reading and Writing; 704 KAR 008:020
Kentucky Academic Standards for Physical Education; 704 KAR 008:050
Required Academic Standards for Social Studies; 704 KAR 008:060
Assessment and Accountability
Improvement planning for schools and districts; 703 KAR 005:225
Improvement procedures, schools; 703 KAR 005:280
Repeal of 703 KAR 005:200; 703 KAR 005:211
General Administration
School health services; 702 KAR 001:160
Instruction, Office of
All STARS for Preschool programs; 704 KAR 3:015
Bible Elective Social Studies course; 704 KAR 3:306
Complaint procedures for programs under the Elementary and Secondary Education act of 1965; 704 KAR 003:365
Education of migratory children; 704 KAR 003:292
Minimum requirements for high school graduation; 704 KAR 003:305
Required academic standards; 704 KAR 003:303
Office of Chief State School Officer
District of innovation; 701 KAR 005:140
Nontraditional Instruction Program; 701 KAR 005:150
Office of Learning Support Services
Repeal of 704 KAR 007:080; 704 KAR 007:081
Pupil Transportation
Kentucky's Accountability System; 703 KAR 005:270
School Terms, Attendance, and Operation
Designation of agent to manage middle and high school interscholastic athletics; 702 KAR 007:065

EDUCATION AND WORKFORCE DEVELOPMENT
For Education, see listing below:
Board of Education; KAR Title 701, 702
Education Professional Standards Board; KAR Title 16
Education; KAR Title 704 *(See Education)*

Higher Education Assistance Authority; KAR Title 11 *(See Higher Education Assistance Authority)*
Workforce Development, KAR Title 787 *(See Workforce Development)*
For Workforce Development, see listing below:
Workplace Standards; KAR Title 803 *(See Workplace Standards)*

EDUCATION PROFESSIONAL STANDARDS BOARD
Administrative Certificates
Certifications for advanced educational leaders; 016 KAR 003:090
Repeal of 016 KAR 003:010, 016 KAR 003:020, 016 KAR 003:040, and 016 KAR 003:050; 016 KAR 003:011
Advanced Certification and Rank
Part-time adjunct instructor certificate; 016 KAR 009:040
Teaching certificates
Junior reserve officers training corps; 016 KAR 002:100
Provisional and professional certificate for orientation and mobility specialist; 016 KAR 002:210

ELECTION FINANCE
Election finance statement forms; campaign contributions or expenditures in excess of $3,000; 032 KAR 001:030
Political organization registration; 032 KAR 001:050
Waiver from filing candidate election finance statement; 032 KAR 001:070

ELECTIONS
Forms and Procedures
Additional and emergency; 031 KAR 004:120
Evaluation of; 031 KAR 004:100
Statewide Voter Registration
Current address of registered voters; 031 KAR 003:010
Voter registration list distribution; 031 KAR 003:010

ENERGY AND ENVIRONMENT CABINET
Environmental Protection, KAR Title 401
Kentucky Nature Preserves, KAR Title 400, 418
Public Service Commission, KAR Title 807
Office of the Secretary
Administration
Administrative discovery; 400 KAR 001:040
Administrative hearings practice provisions; 400 KAR 001:090
Administrative hearings relating to matters brought under KRS 350.310 through 351.375; 400 KAR 001:110
Definitions for 400 KAR Chapter 1; 400 KAR 001:001
General administrative hearing practice provisions relating to matters brought under KRS Chapters 146, 149, 151, 223, 224, and 353; 400 KAR 001:100

ENVIRONMENTAL PROTECTION
Air Quality
Permit application forms; 401 KAR 052:050
Registration of air contaminant sources; 401 KAR 052:070

EXECUTIVE BRANCH ETHICS COMMISSION
Administrative proceedings; 009 KAR 001:030
Pre-administrative proceedings; 009 KAR 001:015

FACILITIES AND SUPPORT SERVICES
State-Owned Buildings and Grounds
Use of State-Owned facilities and grounds; 200 KAR 003:020

FINANCIAL INSTITUTIONS
Administration
Automated teller machines; 808 KAR 001:060
Fees; 808 KAR 001:140.
Licensing and Registration; 808 KAR 001:170
Repeal of 808 KAR 001:020, 001:050, 001:090, 001:120, 001:130, 001:150, and 001:160; 808 KAR 001:161
Use of special restricted funds; 808 KAR 001:180
Administrative Hearing
Record retention; 808 KAR 014 010
Annual reporting; 808 KAR 014:20
Check Cashing
Customer account transfers; 808 KAR 009:040
Deferred deposit database compliance; 808 KAR 009:010
Licensee change of control; 808 KAR 009:050
Repeal of 808 KAR 009:020 and 009:030; 808 KAR 009:031
Credit Unions
Conduct of Credit Unions; 808 KAR 003:050
Repeal of 808 KAR 00:020 and 003:060; 808 KAR 003:061
General
Bank branches, offices, and loan production offices; 808 KAR 015:030
Exceptions to bank lending limits; 808 KAR 015:010
Multibank companies; 808 KAR 015:040
Stay of notice of intention to remove from office; 808 KAR 015:020
Industrial Loans
Consumer Loans
Mandatory availability for repayment; 808 KAR 006:095
Repeal of 808 KAR 005:040; 808 KAR 005:041
Repeal of 808 KAR 006:015, 006:105, 006:115, and 006:120; 808 KAR 006:121
Multibank Companies
808 KAR 011:021. Repeal of 808 KAR 011:020.
Mortgage Loan Companies and Mortgage Loan Brokers
Processing and closing charges for real estate loans to consumers; 808 KAR 012:050
Repeal of 808 KAR 012:002, 012:021, 012:022, 012:023, 012:024, 012:026, 012:030, and 012:110; 808 KAR 012:111
Uniform standards for mortgage loan processor applicant employee background checks; 808 KAR 012:055

FISH AND WILDLIFE
Fish
Asian Carp and Scaled Rough Fish Harvest Program; 301 KAR 001:152
Aquatic organisms; propagation of; 301 KAR 001:115
Boat and motor restrictions; 301 KAR 001:015
Commercial fishing requirements; 301 KAR 001:155
Sale of live bait; 301 KAR 001:132
Taking of fish by nontraditional fishing methods; 301 KAR 001:410
Taking of fish by traditional fishing methods; 301 KAR 001:201
Game
Deer hunting on Wildlife Management Areas, state parks, other public lands, and federally controlled areas; 301 KAR 002:178
Deer hunting seasons, zones, and requirements; 301 KAR 002:172
Dove, wood duck, teal, and other migratory game bird hunting; 301 KAR 002:225
Elk hunting seasons, permits, zones, and requirements; 301 KAR 002:132
Importation of cervid carcasses and parts; 301 KAR 002:095
Hunting and Fishing
License, tag, and permit fees; 301 KAR 003:022
Special commission permits; 301 KAR 003:100
Wildlife
Buying and selling of inedible wildlife parts; 301 KAR 004:090

FOOD STAMPS
Now called Supplemental Nutrition Assistance Program
See Community Based Services; 921 KAR Chapter 3

HEALTH AND FAMILY SERVICES
See listing below for specific subject headings:
Aging and Independent Living; KAR Title 910
Behavioral Health, Developmental and Intellectual Disabilities; KAR Title 908
Community Based Services; KAR Title 921
Inspector General (Health); KAR Title 900, 902, 906
Medicaid Services; KAR Title 895 and 907
Office for Children with Special Health Care Needs; KAR Title 911

HIGHER EDUCATION ASSISTANCE AUTHORITY
Grant Programs
CAP grant award determination procedure; 011 KAR 005:145
KEES Program
http://www.lrc.ky.gov/kar/011/015/010.pdfDefinitions; 11 KAR 015:010
Scholarships for Registered Apprenticeship programs; 011 KAR 015:110
Student and Administrative Services
Student aid applications; 011 KAR 004:080

HORSE RACING COMMISSION
Flat and Steeplechase Racing
Claiming races; 810 KAR 004:050
Definitions; 810 KAR 004:001
Entries, subscriptions, and declarations; 810 KAR 004:030
Horses; 810 KAR 004:010
Jockeys and apprentices; 810 KAR 004:070
Objections and complaints; 810 KAR 004:060
Owners; 810 KAR 004:090
Running of the race; 810 KAR 004:040
Steeplechase racing; 810 KAR 004:080
Trainers; 810 KAR 004:100
Weights; 810 KAR 004:020
General
Chemical dependency; 810 KAR 002:030
Definitions; 810 KAR 002:001
Judges and Standardbred racing officials; 810 KAR 002:050
Owners' authorized agents and jockey agents; 810 KAR 002:060
Racing commission and administrative staff; 810 KAR 002:010
Standardbred racing associations; 810 KAR 002:080
Stewards; 810 KAR 002:040
Thoroughbred and flat racing officials; 810 KAR 002:020
Thoroughbred and other flat racing associations; 810 KAR 002:070
Harness Racing
Repeal of 811 KAR 001:010, 811 KAR 001:015, 811 KAR 001:020, 811 KAR 001:025, 811 KAR 001:030, 811 KAR 001:035, 811 KAR 001:037, 811 KAR 001:040, 811 KAR 001:045, 811 KAR 001:050, 811 KAR 001:055, 811 KAR 001:060, 811 KAR 001:065, 811 KAR 001:070, 811 KAR 001:075, 811 KAR 001:080, 811 KAR 001:085, 811 KAR 001:90, 811 KAR 001:093, 811 KAR 001:095, 811 KAR 001:100, 811 KAR 001:105, 811 KAR 001:110, 811 KAR 001:115, 811 KAR 001:120, 811 KAR 001:130, 811 KAR 001:140, 811 KAR 001:150, 811 KAR 001:185, 811 KAR 001:215, 811 KAR 001:220, 811 KAR 001:225, 811 KAR 001:230, 811 KAR 001:260, 811 KAR 001:280, 811 KAR 001:285, 811 KAR 001:290, and 811 KAR 001:300; 811 KAR 001:301
Incentive and Development Funds
Backside improvement fund; 810 KAR 007:010
Kentucky Standardbred development fund and Kentucky Standardbred breeders' incentive fund; 810 KAR 007:040
Kentucky thoroughbred breeders' incentive fund; 810 KAR 007:020
Kentucky thoroughbred development fund; 810 KAR 007:030
Kentucky Quarter Horse, Paint Horse, Appaloosa, and Arabian development fund; 810 KAR 07:060
Violations, discipline, disputes, and investigation; 810 KAR 007:070
Licensing
Advance deposit account wagering; 810 KAR 003:040
Definitions; 810 KAR 003:001
Licensing of racing associations; 810 KAR 003:010
Licensing of racing participants; 810 KAR 003:020
Licensing totalizator companies; 810 KAR 003:030
Simulcast facilities; 810 KAR 003:050
Medication Guidelines
Medication; testing procedures; prohibited practices; 810 KAR 008:010
Drug, medication, and substance classification schedule and withdrawal guidelines; 810 KAR 008:020
Disciplinary measures and penalties; 810 KAR 008:030
Out-of-competition testing; 810 KAR 008:040
International medication protocol as condition of a race; 810 KAR 008:050
Post-race sampling and testing procedures;
Hearings and Appeals
810 KAR 009:010. Hearings, reviews and appeals.
Pari-Mutuel Wagering
Calculation of payouts and distribution of pools; 810 KAR 006:020
Quarter Horse, Paint Horse, Appaloosa, and Arabian Racing
Repeal of 811 KAR 002:015, 811 KAR 002:020, 811 KAR 002:030, 811 KAR 002:035, 811 KAR 002:040, 811 KAR 002:045, 811 KAR 002:050, 811 KAR 002:056, 811 KAR 002:065, 811 KAR 002:070, 811 KAR 002:075, 811 KAR 002:080, 811 KAR 002:085811 KAR 002:090, 811 KAR 002:093, 811 KAR 002:096, 811 KAR 002:100, 811 KAR 002:105, 811 KAR 002:110, 811 KAR 002:130, 811 KAR 002:140, 811 KAR 002:150, 811 KAR 002:170, 811 KAR 002:180, 811 KAR 002:185, 811 KAR 002:190, 811 KAR 002:200, and 811 KAR 002:300; 811 KAR 002:301
Standardbred Racing
Claiming races; 810 KAR 05:030
Definitions; 810 KAR 005:001
Eligibility and classification; 810 KAR 005:020
Entries and starters; 810 KAR 005:060
Farm, corporate, or stable name; 810 KAR 005:040
Harness racing and county fairs; 810 KAR 005:080
Registration and identification of horses; 810 KAR 005:010
Running of the race; 810 KAR 005:070
Stakes and futurities; 810 KAR 005:050
Thoroughbred Racing
Repeal of 810 KAR 001:004, 810 KAR 001:005, 810 KAR 001:007, 810 KAR 001:008, 810 KAR 001:009, 810 KAR 001:010, 810 KAR 001:012, 810 KAR 001:014, 810 KAR 001:015, 810 KAR 001:016, 810 KAR 001:017, 810 KAR 001:018, 810 KAR 001:021, 810 KAR 001:024, 810 KAR 001:026, 810 KAR 001:027, 810 KAR 001:028, 810 KAR 001:029, 810 KAR 001:030, 810 KAR 001:037, 810 KAR 001:040, 810 KAR 001:050, 810 KAR 001:060, 810 KAR 001:070, 810 KAR 001:080, 810 KAR 001:090, 810 KAR 001:100, 810 KAR 001:110, 810 KAR 001:130, 810 KAR 001:140, 810 KAR 001:145, 810 KAR 001:150, and 810 KAR 001:300; 810 KAR 001:301

HOUSING, BUILDINGS, AND CONSTRUCTION
Boilers and Pressure Vessels
Boiler and pressure vessel licenses; 815 KAR 015:080
Building Code
The Kentucky Certified Building Inspector Program; 815 KAR 007:070
Electrical
815 KAR 035:015. Certification of electrical inspectors
815 KAR 035:020. Electrical inspections
815 KAR 035:060. Licensing of electrical contractors, master electricians, and electricians
815 KAR 035:080. Electrical code of ethics
815 KAR 035:090. Electrical Training Program Standards
815 KAR 035:101. Repeal of 815 KAR 035:100
Elevator Safety
Elevator licensing; 815 KAR 004:030.
Repeal of 815 KAR 004:040, 815 KAR 004:050, 815 KAR 004:060, and 815 KAR 004:070; 815 KAR 004:071
Fire Protection, Sprinkler Contractors, and Inspectors
Repeal of 815 KAR 022:010; 815 KAR 022:011
General Section
Continuing education; 815 KAR 002:010
Continuing education course and provider approval; 815 KAR 002:020
Fees and refunds; 815 KAR 002:040
Vehicle identification; 815 KAR 002:030
Heating, Ventilation, and Air Conditioning Licensing Requirements
Apprentice HVAC mechanic registration and certification requirements; 815 KAR 008:030

Licensing requirements for master contractors and journeyman HVAC mechanics; 815 KAR 008:010
Repeal of 815 KAR 008:020, 815 KAR 008:035, 815 KAR 008:050, 815 KAR 008:060, 815 KAR 008:090, and 815 KAR 008:095; 815 KAR 008:091
Manufactured Homes and Recreational Vehicles
Administration and enforcement of manufactured housing construction standards; 815 KAR 025:050
Alternative dispute resolution and mediation program; 815 KAR 025:100.
Definitions for 815 KAR Chapter 025; 815 KAR 025:011
Fire safety requirements in manufactured and mobile homes; 815 KAR 025:040
Licensing and certifications with manufactured homes and mobile homes; 815 KAR 025:060
Recreational vehicles; 815 KAR 025:020
Repeal of 815 KAR 025:070 and 815 KAR 025:080; 815 KAR 025:081
Site preparation, installation, and inspection requirements; 815 KAR 025:090
Plumbing
Plumbing licenses; 815 KAR 020:030
Repeal of 815 KAR 020:012, 815 KAR 020:015, 815 KAR 020:018, 815 KAR 020:032, 815 KAR 020:034, and 815 KAR 020:040; 815 KAR 020:041
Real Estate Authority: Board of Home Inspectors
Definitions for 815 KAR Chapter 6; 815 KAR 006:001
Education requirements and providers; 815 KAR 006:040
Licensing requirements; 815 KAR 006:010.
Repeal of 815 KAR 006:020, 815 KAR 006:080, 815 KAR 006:090, and 815 KAR 006:100; 815 KAR 006:101
Standards of conduct, complaints, and discipline; 815 KAR 006:030

JUVENILE JUSTICE
Child Welfare
Department of Juvenile Justice Policies and Procedures: Admissions; 505 KAR 001:100
Department of Juvenile Justice Policy and Procedures: Interstate compact for juveniles; 505 KAR 001:190
Department of Juvenile Justice Policy and Procedures Manual: day treatment services; 505 KAR 001:180
Department of Juvenile Justice Policy and Procedures Manual: program services; 505 KAR 001:110
Kentucky Educational Collaborative for state agency children; 505 KAR 001:080

INSURANCE
Administration
Disclosure of insurance premium surcharge; 806 KAR 002:100
Disclosure of local government taxes and collection fee; 806 KAR 002:092
Repeal of 806 KAR 002:120 and 806 KAR 002:150; 806 KAR 002:121
Agents, Consultants, Solicitors, and Adjusters
Pharmacy Benefit Manager License; 806 KAR 9:360
Health Insurance Contracts
Medicare supplement insurance policies and certificates, minimum standards for; 806 KAR 17:570
Kinds of Insurance; Limits of Risk; Reinsurance
Repeal of 806 KAR 005:010 and 806 KAR 005:020; 806 KAR 005:011

HOUSING, BUILDINGS AND CONSTRUCTION
Kentucky Building Code
Building code; 815 KAR 7:120
Residential code; 815 KAR 7:125

INSPECTOR GENERAL (HEALTH)
Civil Money Penalty Funds collected from certified Long-term Care facilities; 906 KAR 001:200
Inspector General
Repeal of 906 KAR 001:050, 906 KAR 001:060, and 906 KAR 001:070; 906 KAR 1:071E
National background check; 906 KAR 001:190
Kentucky Health Information Exchange
Kentucky Health Information Exchange participation; 900 KAR 009:010
State Health Plan
State Health Plan for facilities and services; 900 KAR 005:020

INSURANCE
Health Insurance Contracts
Disclosure of other coverage in application; 806 KAR 017:020
Prompt payment of claims; 806 KAR 017:360
Provider agreement and risk-sharing agreement filing requirements; 806 KAR 017:300
806 KAR 017:091. Repeal of 806 KAR 017:010, 806 KAR 017:090, 806 KAR 017:130, 806 KAR 017:310, 806 KAR 017:320, 806 KAR 017:330, 806 KAR 017:440, 806 KAR 017:460, 806 KAR 017:500, 806 KAR 017:540, 806 KAR 017:545, 806 KAR 017:555.
Surplus Lines
Surplus lines reporting and tax payment structure; 806 KAR 010:030

JUSTICE AND PUBLIC SAFETY
Corrections, KAR Title 501
Juvenile Justice; KAR 505
Kentucky Law Enforcement Council
Department of Criminal justice Training basic training graduation requirements; records; 503 KAR 001:110
Special Law Enforcement Officers
Special law enforcement officers: evaluation examination; 500 KAR 002:030
Special Law Enforcement Officers
Filing and processing SLPO commissions; 500 KAR 003:020

LABOR
See listing below for specific subject headings:
Occupational Safety and Health Review Commission; 803 KAR Chapter 050
Workplace Standards; KAR Title 803 *(See Workplace Standards)*
Workers' Claims; 803 KAR Chapter 025 *(See Workers' Claims)*
Workers' Compensation Funding Commission, 803 KAR Chapter 030

LICENSURE FOR MARRIAGE AND FAMILY THERAPISTS
Telehealth; 201 KAR 032:110

KENTUCKY LOTTERY CORPORATION
Internal audit; 202 KAR 003:040

MEDICAID SERVICES
Certificate of Need
Certificate of need application fee schedule; 900 KAR 006:020
Certificate of need nonsubstanstive review; 900 KAR 006:075
Commissioner's Office
Repeal of 900 KAR 001:090; 900 KAR 001:091
Health Benefit Exchange
Repeal of 900 KAR 010:010, 900 KAR 010:020, and 900 KAR 010:110; 900 KAR 010:021
Hospital Service Coverage and Reimbursement
Disproportionate share hospital distributions; 907 KAR 010:820
Medicaid
Accommodation, modifications, and appeals for beneficiaries participating in the Kentucky HEALTH program; 895 KAR 001:045
Beneficiary premiums; 895 KAR 001:025
Covered services within the Kentucky HEALTH program; 895 KAR 001:035
Deductible accounts within the Kentucky HEALTH program; 895 KAR 001:040
Definitions for 895 KAR Chapter 001; 895 KAR 001:001
Designation or determination of medically frail status or accommodation due to temporary vulnerability in the Kentucky HEALTH program; 895 KAR 001:055
Eligibility for Kentucky HEALTH program; 895 KAR 001:010

Enrollment and reimbursement for providers in the Kentucky HEALTH program; 895 KAR 001:050
Establishment and use of the MyRewards program; 895 KAR 001:030
PATH requirement for the Kentucky HEALTH program; 895 KAR 001:020
Premium payments within the Kentucky HEALTH programs; 895 KAR 001:015
Medical Review Panels
Medical review panels; 900 KAR 011:010
Medicaid Services
Hearings and appeals for individuals with intellectual disability; 907 KAR 001:075
Hospice services; 907 KAR 001:330
Medicaid covered services appeals and hearings unrelated to managed care; 907 KAR 001:563
Medicaid hearings and appeals regarding eligibility; 907 KAR 001:560
Nonduplication of payments; 907 KAR 001:005
Nursing facility services and intermediate care facility for individuals with an intellectual disability; 907 KAR 001:022
Payment for nursing facility services provided by an intermediate care facility for individuals with an intellectual disability, a dually-licensed pediatric facility, an institution for mental diseases, or a nursing facility with an all-inclusive rate unit; 907 KAR 001:025
Payments for podiatry program services; 907 KAR 001:280
Podiatry program services; 907 KAR 001:270
Preadmission Screening and Resident Review Program; 907 KAR 001:755
Preventative and remedial public health services; 907 KAR 001:360
Recipient cost-sharing; 907 KAR 001:604
Reimbursement for hospice services; 907 KAR 001:340
Repeal of 907 KAR 001:120 and 907 KAR 001:130; 907 KAR 001:121
Repeal of 907 KAR 001:436; 907 KAR 001:441

Occupational, Physical, and Speech Therapy
Coverage of occupational therapy, physical therapy, and speech-language pathology services provided by various entities; 907 KAR 008:040
Office of Health Data and Analytics
Data reporting by health care providers; 900 KAR 007:030
Office of Inspector General
Citations and violations; criteria and specific acts; 900 KAR 002:040
Repeal of 900 KAR 002:020; 900 KAR 002:021
Payments and Services
Telehealth service coverage and reimbursement; 907 KAR 003:170
Program Integrity
Health Insurance Premium Payment (HIPP) Program; 907 KAR 005:005

MEDICAL LICENSURE
Professional standards for prescribing or dispensing Buprenorphine-Mono-Product or Buprenorphine-Combined-with Naloxone; 201 KAR 009:270
Professional standards for prescribing and dispensing controlled substances; 201 KAR 009:260

MILITARY AFFAIRS
Disaster and Emergency Services
Kentucky Emergency Response Commission (KERC) fee account grant distribution formula; 106 KAR 001:121
Kentucky Emergency Response Commission (KERC) fee account grant review committee; 106 KAR 001:111
Kentucky Emergency Response Commission (KERC) fee account grant requirements for Local Emergency Planning Committees (LEPCs); 106 KAR 001:091
Kentucky Emergency Response Commission (KERC) fee account grant requirements for state agencies; 106 KAR 001:101
Kentucky Emergency Response Commission (KERC) Tier II reporting and fee schedule requirements; Extremely Hazardous Substance (EHS) facility planning participation requirements; 106 KAR 001:081

MINE SAFETY
Mining Safety Standards
Equipment use and operation; 805 KAR 003:100
Miner Training, Education and Certification
Training, certification, and annual retraining of mine emergency technicians; 805 KAR 007:080

NATURAL RESOURCES
Coal Bed Methane; *805 KAR Chapter 009*
Forestry, *KAR Title 402*
Mining
Permits; *KAR Title 405*
Mine Safety; *805 KAR Chapters 003, 007 & 008*
Natural Resources; *805 KAR Chapter 003*
Oil and Gas; *805 KAR Chapter 001*
Waste Management; *401 KAR Chapter 039*

NATURE PRESERVES
General Administrative Procedures
Administrative procedures of the board; 418 KAR 001:020
Definitions for 418 KAR Chapter 1; 418 KAR 001:010
Grant applications; 418 KAR 001:040
Management; 418 KAR 001:060
Procedures for acquisition of land; 418 KAR 001:050
Remedies; 418 KAR 001:070
Office of Kentucky Nature Preserves
Dedication of nature preserves and registration of natural areas; 400 KAR 002:080
Definitions; 400 KAR 002:060
Hearings and appeals; 400 KAR 002:100
Management, use, and protection of nature preserves and natural areas; 400 KAR 002:090
The Office of Kentucky Nature Preserves; 400 KAR 002:070
Rare Plant Recognition
Criteria for identifying and designating endangered or threatened species of plants; 400 KAR 003:020
Definitions for 400 KAR Chapter 3; 400 KAR 003:010
Endangered or threatened plant list; 400 KAR 003:040
Procedures for inclusion, removal or change of status of plant species on the state endangered or threatened list; 400 KAR 003:030
Wild Rivers
Definitions for 400 KAR Chapter 4; 400 KAR 004:110
Wild rivers administration; 400 KAR 004:125

NURSING
Advanced practice registered nurse licensure and certification requirements; 201 KAR 020:056
Continuing approval and periodic evaluation; 201 KAR 020:360
Continuing competency requirements; 201 KAR 020:215
Disciplinary proceedings; 201 KAR 020:162
Faculty for prelicensure registered nurse and practical nurse programs; 201 KAR 020:310
Fees for applications and for services; 201 KAR 020:240
Fines for programs of nursing; 201 KAR 020:362
Investigation and disposition of complaints; 201 KAR 020:161
Licensed practical nurse infusion therapy scope of practice; 201 KAR 020:49
Nursing continuing education provider approval; 201 KAR 020:220
Organization and administration standards for prelicensure registered nurse or practical nurse programs of nursing; 201 KAR 020:260
Professional standards for prescribing Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone by APRNs for medication assisted treatment for opioid disorder; 201 KAR 020:065
Repeal of 201 KAR 020:235, 201 KAR 020:420, 201 KAR 020:430, 201 KAR 020:440, and 201 KAR 020:460; 201

KAR 020:26
Scope and standards of practice of advanced practice registered nurses; 201 KAR 020:057
Standards for advanced practice registered nurse (APRN) programs of nursing; 201 KAR 020:062
Standards for curriculum of prelicensure registered nurse and practical nurse programs; 201 KAR 020:320
Standards for developmental status, initial status, and approval of prelicensure registered nurse and practical nurse programs; 201 KAR 020:280
Students in prelicensure registered nurse and practical nurse programs; 201 KAR 020:340
Sexual Assault Nurse Examiner Program standards and credential requirements; 201 KAR 020:411

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION
Hearings: procedure, disposition; 803 KAR 050:010

OCCUPATIONAL THERAPY
See also: Medicaid Services: Occupational, Physical, and Speech Therapy (907 KAR Chapter 8)
Deep physical agent modalities; 201 KAR 028:170
Licensure, renewals and requirements; 201 KAR 028:060
Repeal of 201 KAR 028:020: 201 KAR 028:090, 201 KAR 028:110, 201 KAR 028:180, and 201 KAR 028:210; 201 KAR 028:021

OFFICE FOR CHILDREN WITH SPECIAL HEALTH CARE NEEDS
Aging Services
Application to office for children with special health care needs clinical programs; 911 KAR 001:010
Billing and fees; 911 KAR 001:020
Office for children with special health care needs medical staff; 911 KAR 001:060
Repeal of 911 KAR 001:070 and 911 KAR 001:080; 911 KAR 001:071

OFFICE OF EMPLOYMENT AND TRAINING
Unemployment Insurance
Application for employer account; reports; 787 KAR 001:010

OIL AND GAS
Comment period for pooling of oil and gas shallow wells; 805 KAR 001:210

OPTOMETRIC EXAMINERS
Fee, annual renewal; 201 KAR 005:090

PERSONNEL CABINET
Classified
Compensation; 101 KAR 002:034
General Service requirements; 101 KAR 002:095
Job classification plan; 101 KAR 002:020
Plan Year Handbook for the Public Employee Health Insurance Program; 101 KAR 002:210
Vacancies, detail to special duty and temporary overlap; 101 KAR 002:076
Unclassified
Compensation and pay incentives; 101 KAR 003:045
Service, promotion, transfer, disciplinary actions; 101 KAR 003:050

PHARMACY
Continuing education; 201 KAR 002:015
Pharmacy services in long-term care facility (LTCF); 201 KAR 002:370

PHYSICAL THERAPY
Eligibility and credentialing procedure; 201 KAR 022:020
Physical Therapy Compact Commission; 201 KAR 022:170
Procedure for renewal or reinstatement of a credential for a physical therapist or physical therapist assistant; 201 KAR 022:040
Requirements for foreign-educated physical therapists and physical therapist assistants; 201 KAR 022:070

POSTSECONDARY EDUCATION
Public Educational Institutions
Guidelines for admission to the state-supported postsecondary education institutions; 013 KAR 002:020

PROFESSIONAL LICENSING
Athlete Agent Registry
Registration and Fees; 830 KAR 002:010
Occupations and Professions, Athlete Agents
Repeal of 200 KAR 030:010, 030:020, 030:030, 030:040, and 030:070; 200 KAR 030:011
Registry
Complaints; 830 KAR 002:020
Definitions; 830 KAR 002:001
Registration and fees; 830 KAR 2:010
Secondary Metals Recyclers
Forms for application, certificate of registration, fees; 830 KAR 001:010

PUBLIC PROTECTION CABINET
See listing below for specific subject headings:
Alcoholic Beverage Control*; KAR Title 804 (See Alcoholic Beverage Control)*
Professional Licensing; *KAR Title 830 (See Professional Licensing)*
Secondary Metals Recyclers*; 830 KAR Chapter 1*
Charitable Gaming; *KAR Title 820*
Claims Commission; *KAR Title 107*
Financial Institutions; *KAR Title 808*
Horse Racing Commission, KAR Title 810
Housing, Buildings and Construction; *KAR Title 815 (See Housing, Buildings and Construction)*
Insurance; KAR Title 806 *(See Insurance)*

PUBLIC HEALTH
Controlled Substances
Repeal of 902 KAR 055:010; 902 KAR 055:011E
Food and Cosmetics
Home-based processors and farmers market home-based microprocessors; 902 KAR 045:090
Kentucky food code; 902 KAR 045:005
Kentucky food processing, packaging, storage, and distribution operations; 902 KAR 045:160
Repeal of 902 KAR 045:006 and 902 KAR 045:140; 902 KAR 045:007
Hazardous Substances
Repeal of 902 KAR 047:040, 902 KAR 047:050, 902 KAR 047:060, and 902 KAR 047:070; 902 KAR 047:071
Health Services and Facilities
Hospital-owned pain management clinics; 902 KAR 020:260
Freestanding or mobile technology; 902 KAR 020:275
License procedures and fee schedule; 902 KAR 020:008
Medically managed intensive inpatient withdrawal management; 902 KAR 020:111
Operation and services; nursing facilities; 902 KAR 020:300
Repeal of 902 KAR 020:058, 902 KAR 020:145, 902 KAR 020:190, and 902 KAR 020:400; 902 KAR 020:401E
Repeal of 902 KAR 020:250; 902 KAR 020:251
Repeal of 902 KAR 020:073; 902 KAR 020:076
Kentucky Birth Surveillance Registry
Kentucky Birth Surveillance Registry; 902 KAR 019:010
Local Health Departments
Local health department accounting and auditing requirements; 902 KAR 008:165
Local health department financial management requirements; 902 KAR 008:170
Radiology
Licenses and radiation safety requirements for well logging; 902 KAR 100:142
Licenses for industrial radiography and radiation safety requirements for industrial radiographic operations; 902 KAR

100:100
Licensing requirements for land disposal of radioactive waste; 902 KAR 100:022
Medical use of byproduct material; 902 KAR 100:072.
Packaging and transportation of radioactive material; 902 KAR 100:070
Repeal of 902 KAR 100:017, 902 KAR 100:060, and 902 KAR 100:090; 902 KAR 100:018
Specific domestic licenses of broad scope for by product material; 902 KAR 100:052.
Sanitation
Kentucky youth camps; 902 KAR 010:040
Repeal of 902 KAR 010:050; 902 KAR 010:051

PUBLIC SERVICE COMMISSION
Utilities
Gas service; 807 KAR 5:022
Gas service; gathering systems; 807 KAR 5:026

PSYCHOLOGY
Continuing education; 201 KAR 026:175
Education requirements; 201 KAR 026:200
Grievances and administrative complaints; 201 KAR 026:130
Licensed psychological associate: application procedures and temporary license; 201 KAR 026:280
Procedures for disciplinary hearings; 201 KAR 026:140
Repeal of 201 KAR 026:210; 201 KAR 026:211
Requirements for supervision; 201 KAR 026:171

REAL ESTATE AUTHORITY
Auctioneers *(See Auctioneers, Kentucky Board of)*

RETIREMENT
General Rules
Involuntary cessation of participating employers; 105 KAR 001:147
Voluntary cessation of participation by employers; 105 KAR 001:145

REVENUE
Income Tax; Corporations
Corporation income taxes policies and circulars; 103 KAR 016:352
Repeal of 103 KAR 016:010, 103 KAR 016: 210, 103 KAR 016: 310, and 103 KAR 016:360; 103 KAR 016:011
Income Tax; General Administration
Biodiesel tax credit; 103 KAR 015:140
Cellulosic ethanol tax credit; 103 KAR 015:120
Endow Kentucky Tax Credit; 103 KAR 015:195
Ethanol tax credit; 103 KAR 015:110
Filing dates and extensions; 103 KAR 015:050
Kentucky new markets development program tax credit; 103 KAR 015:180
Repeal of 103 KAR 15:040 and 103 KAR 15:090; 103 KAR 015:041.
Taxation of federal and certain nonfederal obligations; 103 KAR 001:130
Waiver of penalties; 103 KAR 001:040
Income Tax; Corporations
Appointment and allocation; alternative apportionment; separate accounting; 103 KAR 016:330
Appointment; payroll factor; 103 KAR 016:090
Appointment; property factor; 103 KAR 016:290
Apportionment; receipts factor; 103 KAR 016:270
Completed contract method; 103 KAR 016:340
Income classification; apportionable and nonapportionable; 103 KAR 016:060
Intangible expenses, intangible interest expense, and management fees; 103 KAR 016:230
Net operating loss computation and deduction for corporations; 103 KAR 016:250
Nexus standard for corporations and pass-through entities; 103 KAR 016:240
Repeal of 103 KAR 016:100, 103 KAR 016:110, 103 KAR 016:120, 103 KAR 016:130, 103 KAR 016:145, and 103 KAR 016:150; 103 KAR 016:151
Repeal of 103 KAR 016:380; 103 KAR 016:381
Income Tax; Individual
Combined individual returns; 103 KAR 017:020
Division of income between married individuals filing separate tax returns; 103 KAR 017:100
Income subject to taxation; portions; 103 KAR 017:060
Individual income tax – military personnel – nonresidents; 103 KAR 017:130
Individual income tax – reciprocity – nonresidents; 103 KAR 017:140
Repeal of 103 KAR 017:041; 103 KAR 017:042
Residence; 103 KAR 017:010
Income Tax; Withholding
Employer's withholding reporting requirements; 103 KAR 018:150
Kentucky economic development acts wage assessment; 103 KAR 018:180
Repeal of 103 KAR 018:080 and 103 KAR 018:160; 103 KAR 018:081
Repeal of 103 KAR 018:190. 103 KAR 018:200, 103 KAR 018: 210, and 103 KAR 018:220; 103 KAR 018:191
Security for compliance; bonds; 103 KAR 018:120
Voluntary withholding; 103 KAR 018:110
Withholding statements; 103 KAR 018:050
Income Tax; Miscellaneous
Computation of income; estates and trusts; 103 KAR 019:010

TEACHERS' RETIREMENT SYSTEM
Collection of life insurance benefits; 102 KAR 001:163
Qualified domestic relations orders; 102 KAR 001:320
Refunds; 102 KAR 001:060.
Survivor's benefits; 102 KAR 001:168

TRANSPORTATION
See Vehicle Regulation; KAR Title 601
Preconstruction
Prequalification for construction, certificate of eligibility, and contract claims dispute; 603 KAR 002:015.
Traffic
Motor vehicle dimension limits; 603 KAR 005:070

SOCIAL WORK
Complaint procedure, disciplinary action, and reconsideration; 201 KAR 023:150

UTILITIES
See Public Service Commission; KAR Title 807

VEHICLE REGULATION
Motor Carriers
Ignition interlock; 601 KAR 2:030

WASTE MANAGEMENT
Hazardous Waste
General requirements; 401 KAR 039:060
Hazardous waste handlers; 401 KAR 039:080
Hazardous waste permit program; 401 KAR 039:090
Enforcement and Compliance Monitoring
Repeal of 401 KAR 040:050; 401 KAR 040:051
Underground Storage Tanks
Definitions for 401 KAR Chapter 042; 401 KAR 042:005
Petroleum Storage Tank Environmental Assurance Fund reimbursement; 401 KAR 042:250
Repeal of 401 KAR 042:011, 042:030, 042:040, 042:045, 042:050, 042:070, 042:080, 042:090, 042:095, 042:200, 042:290, 042:300, 042:316, 042:320, 042:335, and 042:340; 401 KAR 042:341
Small Owners Tank Removal Account; 401 KAR 042:330
UST system release and corrective action requirements; 401 KAR 042:060
UST system requirements, notification, registration, and annual fees; 401 KAR 042:020

WORKERS' CLAIMS
Continuation of medical benefits; 803 KAR 025:290
Fee schedule for physicians; 803 KAR 25:089
Pharmaceutical formulary; 803 KAR 025:270

WORKERS' COMPENSATION FUNDING
Repeal of 803 KAR 030:020; 803 KAR 030:021
Special fund assessments; 803 KAR 030:010

WORKFORCE DEVELOPMENT CABINET
Workers' Claims; 803 KAR Chapter 25 *(See Workers' Claims)*
Labor; KAR Title 803
Office of Employment and Training; KAR Title 787

WORKPLACE STANDARDS
Workers' Claims; 803 KAR Chapter 25 *(See Workers' Claims)*
Occupational Safety and Health
Cranes and derricks in construction; 803 KAR 002:505
Toxic and hazardous substances; 803 KAR 002:320