



ADMINISTRATIVE REGISTER OF KENTUCKY

The submission deadline for this edition of the *Administrative Register of Kentucky* was noon, June 14, 2019.

MEETING NOTICES

The **Administrative Regulation Review Subcommittee** is **tentatively** scheduled to meet on July 10, 2019, at 10:00 a.m. in room 149 Capitol Annex.

ARRS Tentative Agenda - 1 [Updated as needed online.](#)

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

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

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Administrative Regulation Review Subcommittee
***TENTATIVE* Meeting Agenda**
WEDNESDAY, July 10, 2019, 10:00 AM
Annex Room 149



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

FINANCE AND ADMINISTRATION CABINET

Executive Branch Ethics Commission

009 KAR 001:010 & E. Statement of financial disclosure. ("E" expires 11-11-2019)

009 KAR 001:040 & E. Executive agency lobbyist, employer or executive agency lobbyist, and real party in interest registration and expenditure statements; financial transactions and termination forms; and enforcement. ("E" expires 11-11-2019)

STATE BOARD OF ELECTIONS

Forms and Procedures

031 KAR 004:120. Additional and emergency precinct officers. (Not Amended After Comments) (Deferred from April)

PERSONNEL CABINET

Personnel Cabinet, Classified

101 KAR 002:180. Employee performance evaluation system.

101 KAR 002:190. Employee performance management system.

FINANCE AND ADMINISTRATION CABINET

Department of Revenue

Income Tax; General Administration

103 KAR 015:050. Filing dates and extensions.

103 KAR 015:061. Repeal of 103 KAR 015:060.

Income Tax; Individual

103 KAR 017:121. Repeal of 103 KAR 017:120.

Office of Financial Management

State Investment Commission

200 KAR 014:201. Repeal of 200 KAR 014:200.

BOARDS AND COMMISSIONS

Board of Pharmacy

201 KAR 002:010. Schools approved by the board.

201 KAR 002:090. Reference material and prescription equipment.

201 KAR 002:095. Pharmacist interns.

201 KAR 002:100. Security and control of drugs and prescriptions.

201 KAR 002:116. Substitution of drugs, biologics and biosimilar products.

201 KAR 002:165. Transfer of prescription information.

201 KAR 002:225. Special limited pharmacy permit – medical gas.

201 KAR 002:240. Special limited pharmacy permit – charitable.

201 KAR 002:270. Expungement.

201 KAR 002:310. Compounding for a veterinarian's office or institutional administration for veterinary use.

201 KAR 002:340. Special limited pharmacy permit – clinical practice.

Board of Licensure for Long-Term Care Administrators

201 KAR 006:030. Temporary permits.

201 KAR 006:040. Renewal, reinstatement, and reactivation of license.

Board of Ophthalmic Dispensers

201 KAR 013:040. Licensing. (Not Amended After Comments)

201 KAR 013:050. Apprentices. (Not Amended After Comments)

201 KAR 013:055. Continuing education requirements. (Not Amended After Comments)

201 KAR 013:060. Military service; reciprocity; endorsement. (Not Amended After Comments))

Board of Nursing

201 KAR 020:370. Applications for licensure.

201 KAR 020:506. Nurse licensure compact.

Board of Social Work

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

Board of Podiatry

201 KAR 025:062. Repeal of 201 KAR 025:0610.

201 KAR 025:090. Prescribing and dispensing controlled substances.

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Board of Private Investigators

- 201 KAR 041:020. Application for licensure.
- 201 KAR 041:030. Examination.
- 201 KAR 041:040. Fees.
- 201 KAR 041:060. Renewal and reinstatement procedures.
- 201 KAR 041:065. Inactive status.
- 201 KAR 041:070. Continuing professional education requirements.
- 201 KAR 041:080. Compliant procedure.

KENTUCKY LOTTERY CORPORATION

- 202 KAR 003:010. Code of ethics. (Deferred from June)

KENTUCKY COMMUNITY AND TECHNICAL COLLEGE SYSTEM

Board of Emergency Medical Services

- 202 KAR 007:560. Ground vehicle staff.

TOURISM, ARTS, AND HERITAGE CABINET

Department of Fish and Wildlife Resources

Game

- 301 KAR 002:221. Waterfowl seasons and limits.
- 301 KAR 002:222. Waterfowl hunting requirements on public land.
- 300 KAR 002:300. Black bear seasons and requirements.

GENERAL GOVERNMENT CABINET

Department of Agriculture

Division of Regulation and Inspection

Amusement Rides

- 302 KAR 016:010. Business identification number required.
- 302 KAR 016:020. Inspection and operation of amusement rides or amusement attractions.
- 302 KAR 016:040. Correction of safety violations and right to re-inspection.
- 302 KAR 016:070. Reports of injuries involving amusement rides and amusement attractions.
- 302 KAR 016:091. Rides and attractions not included in the definition of amusement ride or attraction.
- 302 KAR 016:101. Operate amusement ride or device defined.
- 302 KAR 016:111. Violations, civil penalties, revocations, and suspensions of business identification number.
- 302 KAR 016:121. Inflatable rides or attractions.
- 302 KAR 016:131. Maintenance and repair of amusement ride or attractions.

Regulation and Inspection; Tobacco Sales

- 302 KAR 078:021. Repeal of 302 KAR 078:020.

Animal Control Officers

- 302 KAR 101:010. Training requirements for Kentucky Animal Control Officers.

ENERGY AND ENVIRONMENT CABINET

Department for Environmental Protection

Division of Water

Water Quality

- 401 KAR 005:010. Operation of wastewater systems by certified operators.

Water Quality Certification

- 401 KAR 008:030. Water treatment plant and water distribution system classification and staffing.
- 401 KAR 008:050. Drinking water program fees.

Certified Operators

- 401 KAR 011:001. Definitions for 401 KAR Chapter 011.
- 401 KAR 011:030. Wastewater treatment and collection system operators; classification and qualifications.
- 401 KAR 011:040. Water treatment and distribution system operators; classification and qualifications.
- 401 KAR 011:050. Operator and training provider certification.
- 401 KAR 011:060. Operator and training provider certification fees.

ENERGY AND ENVIRONMENT CABINET

Department for Natural Resources

Division of Mine Permits

Bond and Insurance Requirements

- 405 KAR 010: 001. Definitions for 405 KAR Chapter 010. (Amended After Comments)
- 405 KAR 010:015. General bonding provisions. (Not Amended After Comments)

JUSTICE AND PUBLIC SAFETY CABINET

Asset Forfeiture

- 500 KAR 009:011. Repeal of 500 KAR 009:010, 500 KAR 009:020, 500 KAR 009:030, and 500 KAR 009:040. (Deferred from June)

Motorcycle Safety Education Commission

- 500 KAR 015:010 & E. Motorcycle safety education program. ("E" expires 10-02-2019) (Not Amended After Comments)

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TRANSPORTATION CABINET

**Department of Vehicle Regulation
Division of Driver Licensing**

601 KAR 002:030 & E. Ignition interlock. ("E" expires 08-07-2019) (Not Amended After Comments) (Deferred from May)

ENERGY AND ENVIRONMENT CABINET

**Department for Natural Resources
Division of Mine Safety**

Mining Safety Standards
805 KAR 003:110. Employees' personal protection.

PUBLIC PROTECTION CABINET

Department of Insurance

Agents, Consultants, Solicitors, and Adjustors

806 KAR 009:001. Prelicensing courses of study. (Deferred from June)
806 KAR 009:020. False or deceptive names, titles, prohibited. (Deferred from June)
806 KAR 009:030. Adjuster licensing restrictions.
806 KAR 009:061. Repeal of 806 KAR 009:060. (Deferred from June)
806 KAR 009:070. Examinations. (Deferred from June)
806 KAR 009:110. Agent's rights after contract termination.
806 KAR 009:190. Disclosure requirements for financial institutions authorized to engage in insurance agency activities.
806 KAR 009:200. Volume of insurance agent exchange of business.
806 KAR 009:310. Life settlement licenses. (Deferred from June)
806 KAR 009:321. Repeal of 806 KAR 009:320. (Deferred from June)
806 KAR 009:341. Repeal of 806 KAR 009:341.
806 KAR 009:350. Recognition of financial planning certification and designation for receipt of fees and commissions.

Life Insurance and Annuity Contracts

806 KAR 015:081. Repeal of 806 KAR 015:080.

Insurance Fraud

806 KAR 047:010. Fraud prevention. (Amended After Comments)
806 KAR 047:021. Repeal of 806 KAR 047:020 and 806 KAR 047:030. (Deferred from May)

ENERGY AND ENVIRONMENT CABINET

Public Service Commission

Utilities

807 KAR 005:056. Fuel adjustment clause. (Amended After Comments)

LABOR CABINET

**Department of Financial Institutions
Administration**

808 KAR 001:180. Use of special restricted funds. (Deferred from February)

PUBLIC PROTECTION CABINET

Real Estate Authority

Kentucky Board of Auctioneers

831 KAR 001:010. Licensing fees and applications.
831 KAR 001:020. Standards of conduct and complaints.
831 KAR 001:030. Education requirements.

CABINET FOR HEALTH AND FAMILY SERVICES

Division of Maternal and Child Health

902 KAR 004:030. Newborn screening program.
902 KAR 004:035. Cost reimbursement for specialized food products.

Public Accommodations

902 KAR 007:010. Hotel and motel code.

State and Local Confinement Facilities

902 KAR 009:010. Environmental health.

Food and Cosmetics

902 KAR 045:110. Permits and fees for retail food establishments, food manufacturing plants, food storage warehouses, salvage processors and distributors, vending machine companies, restricted food concessions, and cosmetic manufacturers.
902 KAR 045:120. Inspection and permit fees for recreational vehicle communities, youth camps, and private water supplies.

Department for Behavioral Health, Developmental and Intellectual Disabilities

Division of Behavioral Health

Substance Abuse

908 KAR 001:341. Repeal of 908 KAR 001:340. (Deferred from March)
908 KAR 001:370. Licensing procedures, fees, and general requirements for nonhospital-based alcohol and other drug treatment entities. (Amended After Comments) (Deferred from May)
908 KAR 001:372. Licensure of residential alcohol and other drug treatment entities. (Amended After Comments) (Deferred from May)

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908 KAR 001:374. Licensure of nonhospital-based outpatient alcohol and other drug treatment entities. (Amended After Comments)
(Deferred from May)

**Department for Aging and Independent Living
Division of Guardianship
Guardianship**

910 KAR 002:040. Service provisions for adult guardianship.

**Department for Income Support
Division of Child Support Enforcement
Family Support**

921 KAR 001:380. Child support enforcement program application and intergovernmental process.

**Department for Community Based Services
Child Welfare**

922 KAR 001:470. Central registry.

922 KAR 001:510. Authorization for disclosure of protection and permanency records.

3. Regulations REMOVED from July's agenda:

BOARDS AND COMMISSIONS

Board of Dentistry

201 KAR 008:581. Charity dental practices. (Comments Received; SOC ext., due 07-15-2019)

HEALTH AND FAMILY SERVICES CABINET

Department for Public Health

Division of Epidemiology and Health Planning

902 KAR 002:070. Rabies control. (Comments Received; SOC ext., due 07-15-2019)

Division of Public Health Protection and Safety

Mobile Homes and Recreational Vehicles Parks; Facilities Standards

902 KAR 015:010. Manufactured and mobile homes. (Comments Received; SOC ext., due 07-15-2019)

Office of Inspector General

Division of Healthcare

Health Services and Facilities

902 KAR 020:036. Operation and services; personal care homes. (Comments Received; SOC ext., due 07-15-2019)

Food and Cosmetics

902 KAR 045:065. Tattooing. (Comments Received; SOC ext., due 07-15-2019)

902 KAR 045:070. Body piercing and ear piercing. (Comments Received; SOC ext., due 07-15-2019)

902 KAR 045:075. Tanning facilities. (Comments Received; SOC ext., due 07-15-2019)

Department of Medicaid Services

Division of Policy and Operations

Medicaid Services

907 KAR 001:604 & E. Recipient cost-sharing. ("E" expires 09-11-2019) (Comments Received; SOC ext., due 07-15-2019)

Department for Aging and Independent Living

Division of Guardianship

Guardianship

910 KAR 002:020. Referral process for adult guardianship. (Comments Received; SOC ext., due 07-15-2019)

Department for Community Based Services

Division of Protection and Permanency

Child Welfare

922 KAR 001:310 & E. Standards for child-placing agencies. ("E" expires 09-28-2019) (Comments Received; SOC ext., due 07-15-2019)

922 KAR 001:350 & E. Requirements for public child welfare agency foster parents, adoptive parents, and respite care providers. ("E" expires 09-28-2019) (Comments Received; SOC ext., due 07-15-2019)

922 KAR 001:495 & E. Training requirements for foster parents, adoptive parents, and respite care providers for children in the custody of the cabinet. ("E" expires 09-28-2019) (Comments Received; SOC ext., due 07-15-2019)

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.

EMERGENCY ADMINISTRATIVE REGULATIONS

STATEMENT OF EMERGENCY
105 KAR 1:390E

Pursuant to KRS 13A.190, the proposed amendment is an emergency. This emergency amendment establishes the processes and procedures to implement the provisions of 2019 Kentucky Acts Chapters 161 and 189 (House Bills 419 and 55 respectively). An emergency administrative regulation is necessary to provide the processes and procedures to implement 2019 Kentucky Acts Chapters 161 and 189 (House Bills 419 and 55 respectively). These laws go into effect on June 27, 2019. Pursuant to KRS 13A.190(1)(a), this regulation must be placed into effect immediately in order to meet the deadline imposed by statute in order to implement the regulation contemporaneous with the effective dates of House Bills 419 and 55 and to effectively administer reemployment after retirement. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

MATTHEW G. BEVIN, Governor
DAVID L. EAGER, Executive Director

FINANCE AND ADMINISTRATION CABINET
Kentucky Retirement Systems
(Emergency Amendment)

105 KAR 1:390E. Employment after retirement.

RELATES TO: KRS 16.505(15), 61.510, 61.590, 61.637, 78.510(3), (18), 26 U.S.C. 401(a), 26 C.F.R. 1.401-1, 1.401(a)-1
STATUTORY AUTHORITY: KRS 61.645(9)(e)(g), 61.637(18)
EFFECTIVE: June 12, 2019

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.645(9)(e)(g) requires the Board of Trustees of Kentucky Retirement Systems to promulgate administrative regulations necessary or proper in order to carry out the purposes and provisions of KRS 61.510[61.515] to 61.705, 16.505 [16.510] to 16.652, and 78.510[78.520] to 78.852. KRS 61.637(18) requires Kentucky Retirement Systems to promulgate regulations to implement the requirements of KRS 61.637. This administrative regulation concerns the administration of KRS 61.637 in conjunction with federal law regarding bona fide separation from service and changes in employment relationship if a retired member returns to employment with a Kentucky Retirement Systems participating employer [after retirement]. 26 C.F.R. 1.401-1(a)(2) requires that a qualified plan expressly provide in its statutes and administrative regulations (plan documents) how it shall administer its plan in accordance with federal law in order to maintain the tax qualified [tax-qualified] status of the plan. This administrative regulation is necessary to maintain the tax qualified status of the Kentucky Employees Retirement System, the County Employees Retirement System, and the State Police Retirement System under 26 U.S.C. 401(a), and to comply with the provisions established in 26 C.F.R. 1.401-1(b)(1)(i) and 1.401(a)-1.

Section 1. Definitions. (1) "Initial retirement date" means the member's effective retirement date as described [defined] in KRS 61.590(5).

(2) "Participating employer" means any [an] employer that participates in one of the systems administered by Kentucky Retirement Systems.

(3) "Participating position", for the purpose of this administrative regulation, means a regular full-time position as defined in KRS 61.510(21) and 78.510(21) or a regular full-time officer position as defined in KRS 16.505(22).

(4)~~(3)~~ "Reemployment", for purposes of this administrative regulation [KRS 61.637], means the retired member's first date of employment with a participating employer following his or her initial retirement date. ~~[, as long as the retiree has not had a cessation of membership as provided in KRS 61.535 and 61.550.]~~

Section 2. Form 6000 Certification. (1) In order to retire with Kentucky Retirement Systems, an eligible member shall submit a Form 6000, Notification of Retirement. The Form 6000, Notification of Retirement, shall comply with the requirements of KRS 61.590 and 105 KAR 1:200.

(2) Kentucky Retirement Systems shall not process a Form 6000, Notification of Retirement, until the member certifies on the Form 6000 that there is no prearranged agreement for reemployment with a participating employer after the member's initial retirement date. [~~Reemployed~~, for purposes of this administrative regulation, shall not include a transfer to another position with the same employer.]

Section 3. Employment after Retirement. (1) A retired member who is reemployed with a participating employer in any position shall have:

(a) A bona fide separation from service as provided in subsection (2) of this section; and

(b) A break in service as provided in subsection (3) of this section.

(2)(a) "Bona fide separation from service" as provided in this section shall include a cessation of the employment relationship between the member and the member's employer without a prearranged agreement when the member retires that he or she will return to work for any participating employer in any capacity.

(b) "Prearranged agreement" as provided in this section shall not include reemployment accepted more than twelve (12) calendar months after the member's initial retirement date.

(c) An elected official's retirement shall be voided due to the existence of a prearranged agreement if, within twelve (12) months of initial retirement, the official is reelected and takes office in the same position from which the official retired.

(3) "Break in service" as provided in this section shall require that:

(a) A member who retired from a hazardous position shall have a one (1) calendar month break in service before returning to work with any participating employer in a hazardous participating position.

(b) Except as provided in (3)(a) of this section, a member who retired from a hazardous or nonhazardous position shall have a three (3) calendar month break in service before returning to work with any participating employer.

(4)(a) If a retired member seeks reemployment with a participating employer within twelve (12) months of his or her initial retirement date, the participating employer shall certify that there was no prearranged agreement. The participating employer shall file at the retirement office a completed Form 6751, Employer Certification Regarding Reemployment.

(b) The retired member shall file at the retirement office a completed Form 6754, Member Reemployment Certification.

(5) Kentucky Retirement Systems shall issue a final determination to the retired member no later than thirty (30) days after receipt of all required forms and additional requested information. If Kentucky Retirement Systems determines that the retired member failed to have a bona fide separation from service or a break in service and returned to work with any participating employer, the retired member's retirement shall be voided and he or she shall repay all retirement allowances, dependent child payments, and health plan premiums paid by the Kentucky Retirement Systems. (1) Returning to work in a participating position. A retired member who is reemployed in a participating position shall have:

(a) A bona fide separation from service as provided in subsection (2) of this section; and

(b) A break in service as provided in subsection (3) of this section.

(2) "Bona fide separation from service" as provided in this section shall include a cessation of the employment relationship between the member and the member's employer without a prearranged agreement when the member retires that the member

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will return to work for any participating employer in any capacity. "Bona fide separation from service" shall also exclude a prearranged agreement to return to work for any participating employer as a leased employee.

(3) "Break in service" as provided in this section shall require that:

(a) A member who retired from a hazardous position shall have a one (1) calendar month break in service before returning to work with a participating employer in a hazardous participating position.

(b) A member who retired from a nonhazardous position shall have a three (3) calendar month break in service before returning to work with a participating employer in a hazardous participating position.

(c) A member who retired from a hazardous or a non-hazardous position shall have a three (3) calendar month break in service before returning to work with a participating employer in a non-hazardous participating position.

(4) If the member does not have a bona fide separation from service and a break in service and returns to work with any participating employer, the retired member's retirement shall be voided. The member shall repay all retirement allowances, dependent child payments, and health plan premiums paid by the Kentucky Retirement Systems.]

Section 4. Independent Contractors and Leased Employees.

(1)(a) Both the retired member and the participating employer shall file written notice at the retirement office if, within twelve (12) months of the retired member's initial retirement date, the retired member provides services to a participating employer as an independent contractor or as a leased employee.

(b) The participating employer shall file at the retirement office a Form 6752, Employer Certification of Independent Contractor/Leased Employee.

(c) The retired member shall file at the retirement office a completed Form 6754, Member Reemployment Certification as well as a complete copy of any contract under which services are provided by the retired member to the participating employer.

(2) Kentucky Retirement Systems shall issue a final determination to the retired member no later than thirty (30) days after receipt of all required forms and requested information. If Kentucky Retirement Systems determines that the retired member is an employee of the participating employer, rather than an independent contractor or leased employee through a leasing company, staffing agency, or other entity, the retired member shall be subject to the provisions of Section 3 of this administrative regulation and shall be required to have a "bona fide separation from service" and "break in service." [(1) Returning to work for a participating employer in a nonparticipating position. A retired member who is employed by a participating employer in a nonparticipating position shall have:

(a) A bona fide separation from service as provided in subsection (2) of this section; and

(b) A break in service as provided in subsection (3) of this section.

(2) "Bona fide separation from service" as provided in this section means a cessation of the employment relationship between the member and the member's last employer without a prearranged agreement when the member retires that the member will return to work for the member's last employer in any capacity. "Bona fide separation from service" shall also exclude a prearranged agreement to return to work for the member's last employer as a leased employee.

(a) For purposes of this section, all participating employers in the Kentucky Employees Retirement System and the State Police Retirement System shall be treated as the same participating employer.

(b) For purposes of this section, County Employees Retirement System agencies, each county, as defined by KRS 78.510(3), shall be treated as a separate employer.

(3) "Break in service" as provided in this section shall require that a member who retired from a hazardous or nonhazardous position and becomes employed in a nonparticipating hazardous or nonhazardous position shall have a three (3) calendar month break in service before returning to work with a participating employer.]

Section 5. Volunteers. (1)(a) Both the retired member and participating employer shall file written notice at the retirement office if, within twelve (12) months of the retired member's initial retirement date, the retired member seeks to volunteer with a participating employer.

(b) The participating employer shall file at the retirement office a completed Form 6753, Employer Certification of Volunteer.

(c) The retired member shall file at the retirement office a completed Form 6754, Member Reemployment Certification.

(2) Kentucky Retirement Systems shall issue a final determination to the retired member no later than thirty (30) days after receipt of all required forms and requested information. If Kentucky Retirement Systems determines that the retired member is an employee of the participating employer, rather than a volunteer, the retired member shall be subject to the provisions of Section 3 of this administrative regulation and shall be required to have a "bona fide separation from service" and "break in service."

[(1) Returning to work with the same employer in a position required to participate in a retirement system. A retired member who is reemployed in a position required to participate in a different retirement system not administered by Kentucky Retirement Systems shall have:

(a) A bona fide separation from service as provided in subsection (2) of this section; and

(b) A break in service as provided in subsection (3) of this section.

(2) "Bona fide separation from service" as provided in this section means a cessation of the employment relationship between the member and a participating employer without a prearranged agreement when the member retires that the member will return to work for the same employer in any capacity. "Bona fide separation from service" shall also exclude a prearranged agreement to return to work for the same employer as a leased employee.

(a) For purposes of this section, all participating employers in the Kentucky Employees Retirement System and the State Police Retirement System shall be treated as the same participating employer.

(b) For purposes of this section, County Employees Retirement System agencies, each county, as defined by KRS 78.510(3), shall be treated as a separate employer.

(3) "Break in service" as provided in this section shall require that:

(a) A member who retired from a hazardous position and becomes employed by the same employer in a hazardous position required to participate in a retirement system not administered by Kentucky Retirement Systems, shall have a one (1) calendar month break in service before returning to work with a participating employer.

(b) A member who retired from a nonhazardous position and becomes employed by the same employer in a hazardous position required to participate in a retirement system not administered by Kentucky Retirement Systems, shall have a three (3) calendar month break in service before returning to work with a participating employer.

(c) A member who retired from a nonhazardous position and becomes employed by the same employer in a participating non-hazardous or hazardous position in a retirement system not administered by Kentucky Retirement Systems, shall have a three (3) calendar month break in service before returning to work with a participating employer.

(4) If the member does not have a bona fide separation from service and a break in service and returns to work with the same employer in a position required to participate in a retirement system not administered by Kentucky Retirement Systems, the retired member's retirement shall be voided. The member shall repay all retirement allowances, dependent child payments, and health plan premiums paid by the Kentucky Retirement Systems.]

Section 6. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Form 6000, "Notification of Retirement," June 2019;

(b) Form 6751, "Employer Certification Regarding Reemployment," June 2019;

(c) Form 6752, "Employer Certification of Independent

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Contractor/Leased Employee," June 2019; and

(d) Form 6753, "Employer Certification of Volunteer," June 2019.

(e) Form 6754, "Member Reemployment Certification," June 2019.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Retirement Systems, 1260 Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, from 8 a.m. to 4:30 p.m. [(4) Returning to work for a different participating employer in a nonparticipating position. A retired member who becomes employed in a nonparticipating position shall not be required to have a bona fide separation from service if the retired member becomes employed with a different participating employer than the retired member's employer prior to retirement.

(2) A retired member who becomes employed in a nonparticipating position shall have a three (3) calendar month break in service.

(3) For purposes of this section, all participating employers in the Kentucky Employees Retirement System and the State Police Retirement System shall be treated as the same participating employer.

(4) For purposes of this section, for County Employees Retirement System agencies, each county, as defined by KRS 78.510(3), shall be treated as a separate employer.]

Section 7. (1) Requirements before employment after retirement. The retired member and the reemploying employer shall certify that when the member retired, there was no prearranged agreement to employ the retired member after the member's retirement. The retired member and reemploying employer shall complete and file at the retirement office the Form 6751, Retired Member and Employer Certification Regarding Reemployment.

(2) The retired member shall report in writing to Kentucky Retirement Systems future employment in any capacity with any participating employer.

Section 8. Status as an Employee. (1) A retired member and a Kentucky Retirement Systems participating employer shall file written notice at the retirement office if the retired member has accepted employment with the participating employer under a personal services contract.

(2) If Kentucky Retirement Systems determines that the retired member is an employee of the participating employer, rather than an independent contractor, the retired member shall be subject to Sections 1 through 5 of this administrative regulation.

(3) Kentucky Retirement Systems shall take appropriate action to determine the individual's status as an independent contractor or employee.

Section 9. Leased Employees. (1) A retired member and a participating employer shall file at the retirement office written notice if the retired member is performing work for the participating employer through a private leasing company, a temporary staffing agency, or any other company.

(2) If the retirement system determines that the retired member is an employee of the participating employer, rather than the private leasing company, temporary staffing agency, or other company, the retired member shall be subject to the provisions of Sections 1 through 5 of this administrative regulation.

Section 10. Incorporation by Reference. (1) "Member and Employer Certification Regarding Reemployment", Form 6751, May 2009, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, from 8 a.m. to 4:30 p.m.]

DAVID L. EAGER, Executive Director
APPROVED BY AGENCY: June 12, 2019
FILED WITH LRC: June 12, 2019, at noon
CONTACT PERSON: Mark C. Blackwell, Executive Director

Office of Legal Services, Kentucky Retirement Systems, 1260 Louisville Road, Frankfort, Kentucky 40601, email mark.blackwell@kyret.ky.gov, phone (502) 696-8800 ext. 8645, fax (502) 696-8801.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Mark C. Blackwell

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures and requirements for retired members and participating employers prior to the reemployment of a retiree with a participating employer in Kentucky Retirement Systems.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the procedures and requirements for retired members and participating employers prior to the reemployment of a retiree with a participating employer in Kentucky Retirement Systems.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the procedures and requirements for retired members and participating employers prior to the reemployment of a retiree with a participating employer in Kentucky Retirement Systems.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by establishing the procedures and requirements for retired members and participating employers prior to the reemployment of a retiree with a participating employer in Kentucky Retirement Systems in accordance with KRS 61.637. The regulation outlines certification and notification requirements of both retirees and participating employers.

(2) If 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 will assist in the effective administration of the statutes by implementing the twelve (12) month threshold promulgated by 2019 House Bill 419 as well as further defining the requirements for elected officials pursuant to 2019 House Bill 55.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to implement the twelve (12) month threshold promulgated by 2019 House Bill 419 as well as further defining the requirements for elected officials pursuant to 2019 House Bill 55.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by outlining the processes and procedures for administration of Kentucky Retirement Systems' retired reemployed requirements while implementing the twelve (12) month threshold promulgated by 2019 House Bill 419 as well as further defining the requirements for elected officials pursuant to 2019 House Bill 55.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes by outlining the processes and procedures for administration of Kentucky Retirement Systems' retired reemployed requirements while implementing the twelve (12) month threshold promulgated by 2019 House Bill 419 as well as further defining the requirements for elected officials pursuant to 2019 House Bill 55.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Kentucky Retirement Systems, retirees seeking reemployment with a participating employer within twelve (12) months of their initial retirement date, and employers participating in the Kentucky Employees Retirement System, State Police Retirement System, or the County Employees Retirement System.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Retirees seeking reemployment with a participating employer shall have a bona fide separation from service and break in service. Upon retirement, retired members shall certify that they had no prearranged agreement to return to employment with a participating employer in Kentucky Retirement Systems. Upon hiring a retiree within twelve (12) months of the retiree's initial retirement date, a participating employer shall certify that there was no prearranged agreement to hire the retiree.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Aside from some limited exceptions, the employer shall remit employer contributions on all creditable compensation earned by the employee during the period of reemployment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation is necessary to maintain the tax qualified status of the Kentucky Employees Retirement System, the County Employees Retirement System, and the State Police Retirement System under 26 U.S.C. 401(a), and to comply with the provisions established in 26 C.F.R. 1.401-1(b)(1)(i) and 1.401(a)-1. Moreover, compliance with this regulation will allow retired members to return to work with participating employers without the voiding of their retirement. Participating employers will be permitted to hire retired members.

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

(a) Initially: Kentucky Retirement Systems is already administering KRS 61.637 and no additional cost will arise from implementation of 2019 HB 419 and 55.

(b) On a continuing basis: The employer will be required to remit employer contributions on most retired members pursuant to KRS 61.637(17).

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

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

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

(9) TIERING: Is tiering applied? (Explain why or why not) Tiering is not applied. All employers seeking to hire retired members are subject to the same processes and procedures.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 61.637, 26 U.S.C. 401(a).

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

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

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent

years? None.

(c) How much will it cost to administer this program for the first year? Ultimately, the cost to Kentucky Retirement Systems should be negligible, as KRS 61.637 is already being administered by Kentucky Retirement Systems. Moreover, administrative costs should be reduced by the twelve (12) month threshold for review established by 2019 House Bill 419.

(d) How much will it cost to administer this program for subsequent years? Ultimately, the cost to Kentucky Retirement Systems should be negligible, as KRS 61.637 is already being administered by Kentucky Retirement Systems. Moreover, administrative costs should be reduced by twelve (12) month threshold for review established by 2019 House Bill 419.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

STATEMENT OF EMERGENCY
301 KAR 1:152E

This emergency administrative regulation establishes the requirements for the harvest and sale of Asian carp beyond the requirements of 301 KAR 1:155. Asian carp continue to proliferate and negatively impact Kentucky Lake and Lake Barkley in western Kentucky. They consume the base of the aquatic food chain necessary for recruitment of important sportfish, such as bass and crappie. The department's Asian Carp and Scaled Rough Fish Harvest Program was created to help control the population of these invasive, exotic species. The current program prohibits commercial fishermen from fishing on a Saturday or prior to sunset on a Sunday from April 1 through September 30, as well as Memorial Day, Labor Day, and July 4. The original intent was to minimize conflicts with recreational anglers and boaters. However, both of these user groups, as well as the local tourism industry, and KDFWR biologists now realize that there is an escalated need to remove as many Asian carp from Kentucky and Barkley lakes as soon as possible. This emergency regulation needs to be placed into effect immediately in order to put commercial fishermen on the water for as many days as possible to increase the harvest of these invasive fish species. This emergency administrative regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

MATTHEW G. BEVIN, Governor
RICH STORM, Commissioner

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

301 KAR 1:152E. Harvest and sale of Asian carp[and Scaled Rough Fish Harvest Program].

RELATES TO: KRS 150.010, 150.170, 150.175, 150.445, 150.450(2), (3), 150.990

STATUTORY AUTHORITY: KRS 150.025(1)

EFFECTIVE: May 24, 2019

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish seasons for the taking of fish and wildlife, to regulate creel limits and methods of take, to regulate the buying, selling, or transporting of fish and wildlife, and to make these requirements apply to a limited area. This administrative regulation establishes the requirements for the harvest and sale of[department's] Asian carp beyond the requirements of 301 KAR 1:155[Carp and Scaled Rough Fish Harvest Program].

Section 1. Definitions. (1) "Asian carp" means:

(a) Bighead carp;

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- (b) Black carp;
- (c) Grass carp; or
- (d) Silver carp.
- (2) "By-catch" means any fish that is not an Asian carp or scaled rough fish.

(3) "Program" means Asian Carp and Scaled Rough Fish Harvest Program.

(4) "Program participant" means a commercial fisherman who is:

(a) Enrolled in the Asian Carp and Scaled Rough Fish Harvest Program; and

(b) Fishing in restricted water.

(5)(4) "Restricted water" means those areas, as established in [pursuant to] 301 KAR 1:140, 1:150, and 1:155, where:

(a) Commercial fishing is prohibited; or

(b) Commercial fishing with gill or trammel nets is prohibited.

(6)(5) "Scaled rough fish" means any scaled fish that is not an Asian carp or sport fish as established in [pursuant to] 301 KAR 1:060.

(7)(6) "Whip net set" means a gill or trammel net that is set to encircle and harvest Asian carp and scaled rough fish.

Section 2. Program Participant Qualifications. A commercial fisherman shall:

(1) Contact the department and request to be included in the program; and

(2) Possess a valid Kentucky commercial fishing license.

Section 3. Program Participant Requirements. A program participant shall:

(1) Call the department at 800-858-1549 prior to the requested fishing date and provide the information established in paragraphs (a) through (e) of this subsection:

(a) The participant's name;

(b) The fish buyer's name and phone number;

(c) Date requested;

(d) The location in the restricted water body to be fished; and

(e) The name or location of the boat ramp that will be used;

(2) Harvest a weight ratio of at least sixty-five (65) percent Asian carp to thirty-five (35) percent scaled rough fish over a one (1) month period, except that a commercial fisherman whose license fee has been waived as established in [pursuant to] Section 4 of this administrative regulation shall only harvest Asian carp and not retain any by-catch;

(3) Only fish:

(a) On dates approved by the department; and

(b) At a location approved by the department;

(4) Immediately notify the department if the participant changes the:

(a) Fishing location in the restricted water body; or

(b) Boat ramp being used;

(5) Only use a whip net set:

(a) With a minimum bar mesh size of three (3) inches;

(b) That is always tended by a program participant when set less than three (3) feet below the surface of the water;

(c) That is not left unattended by a program participant for more than six (6) hours when set at least three (3) feet below the surface of the water from April 1 through September 30; and

(d) That is not left unattended by a program participant for more than eight (8) hours when set at least three (3) feet below the surface of the water from October 1 through March 31;

(6) Complete and submit to the department a Daily Harvest and Release Summary Card immediately after each day's fishing;

(7) Be allowed to sell all harvested Asian carp and scaled rough fish as established in Section 2 and 3 of this administrative regulation;

(8) Immediately release all by-catch;

(9) Report all harvest on a Monthly Report of Commercial Fish Harvest form, as established in [pursuant to the requirements of] 301 KAR 1:155; and

(10) Be suspended from the program:

(a) For a three (3) month period beginning on the first day of the next month if the minimum requirements established in subsection (2) of this section are not met; and

(b) For a period of one (1) year beginning on the first day of the next month if the requirements are not met a second time.

Section 4. Commercial Fishing License Fee Waiver. The commercial fishing license fees, as established in 301 KAR 3:022, shall be waived for a program participant [commercial fisherman] who only harvests Asian carp in restricted waters.

Section 5. Department Program Requirements. (1) The department shall:

(a) Maintain a list of program participants and their contact information, which shall be:

1. Provided to known fish buyers; and

2. Updated at least weekly; and

(b) Review all restricted water fishing requests as established in Section 3 of this administrative regulation.

(2) The department shall approve a qualified fishing request by assigning:

(a) A fishing location and boat ramp to a program participant, except that no more than two (2) program participants shall be assigned to the same one-half (1/2) mile section of water; and

(b) The time period when fishing may occur, not to exceed a three (3) consecutive day period.

(3) The department shall not approve a fishing request for reasons established in paragraphs (a) and (b) [through (c)] of this subsection:

(a) Higher than normal by-catch is likely to occur at that location and time; or

(b) Two (2) program participants have already been approved for the same one-half (1/2) mile section of water at the same time[; or

(c) A requested date falls on:

1. ~~Memorial Day;~~

2. ~~Labor Day;~~

3. ~~July 4; or~~

4. ~~A Saturday or prior to sunset on a Sunday from April 1 through September 30].~~

Section 6. Program Disqualification. (1) A program participant whose commercial fishing license becomes revoked or suspended as established in [pursuant to] 301 KAR 1:155 shall be disqualified from participating in the Asian Carp and Scaled Rough Fish Harvest Program while that license is revoked or suspended.

(2) Any participant who is disqualified from participation in the program may appeal the decision in accordance with KRS Chapter 13B.

Section 7. Non-commercial Asian Carp Harvest and Sale. A person harvesting Asian carp using legal fishing methods as established in 301 KAR 1:201 and 1:410:

(1) May sell Asian carp; and

(2) Shall possess a valid Kentucky sport fishing license.

Section 8. Incorporation by Reference. (1) "Daily Harvest and Release Summary Card", 2011 Edition, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Fish and Wildlife Resources, #1 Sportsman's Lane, Frankfort, Kentucky, Monday through Friday, 8:00 a.m. to 4:30 p.m.

RICH STORM, Commissioner

DON PARKINSON, Secretary

APPROVED BY AGENCY: May 22, 2019

FILED WITH LRC: May 24, 2019 at 4 p.m.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Mark Cramer

(1) Provide a brief summary of:

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(a) What this administrative regulation does: This administrative regulation establishes the requirements for the Asian Carp and Scaled Rough Fish Harvest Program, which allows commercial harvest of Asian carp and scaled rough fish in waters currently restricted to commercial fishing. This administrative regulation also provides for the sale of Asian carp harvested with traditional and non-traditional fishing methods.

(b) The necessity of this administrative regulation: The regulation is necessary to provide important mechanisms for the removal of invasive and exotic Asian carp from waters critical to sport fishing and recreational boating.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025(1) authorizes the department to promulgate administrative regulations to set seasons, establish bag or creel limits, to regulate the buying, selling, or transporting of fish and wildlife, and to make these requirements apply to a limited area.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by establishing a process for nuisance fish removal from waters of the Commonwealth.

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

(a) How the amendment will change this existing administrative regulation: This amendment increases the amount of time commercial fishermen can fish under the Asian Carp and Scaled Rough Fish Harvest Program by allowing them to fish on all weekends and holidays during the year. Previously, commercial fishermen could not fish on a Saturday or prior to sunset on a Sunday from April 1 through September 30. They also could not fish on Memorial Day, Labor Day or July 4. This amendment also allows for the sale of Asian carp harvested using traditional and non-traditional fishing methods.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to remove as many Asian carp as possible from waters of the Commonwealth, and is critical for the protection of game and non-game fish species, especially in Kentucky and Barkley lakes in western Kentucky. Increased removal of these invasive fish species will help protect a 1.2 billion dollar tourism industry centered on recreational boating and fishing in western Kentucky and Tennessee.

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect approximately 20 commercial fishermen currently fishing under the Asian Carp and Scaled Rough Fish Harvest Program as well as any new commercial fishermen who join the program. This administrative regulation will also affect all recreational anglers who wish to harvest and sell Asian carp. Additionally, this regulation may positively affect all anglers and recreational boaters in the Mississippi and Ohio rivers, their tributaries, and in Kentucky and Barkley lakes.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Commercial fishermen fishing under the Asian Carp and Scaled Rough Fish Program will now be able to fish on all weekends and holidays. Recreational anglers using traditional and non-traditional fishing methods will now be able to sell the Asian carp they harvest.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost to commercial fishermen or recreational anglers to comply with these amendments other than to purchase the appropriate fishing license.

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

entities identified in question (3): Commercial fishermen will be able to harvest and sell more Asian carp which will benefit them financially. Recreational fishermen will also benefit financially from any Asian carp they sell. The increased harvest of Asian carp will also benefit all anglers and recreational boaters in the Mississippi and Ohio rivers, their tributaries, and in Kentucky and Barkley lakes.

(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 initially.

(b) On a continuing basis: There will be minimal 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: No increase in fees is needed to fund this program.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees were established or increased, directly or indirectly.

(9) TIERING: Is tiering applied? No. All commercial and recreational fishermen wishing to fish under these amended regulations are treated the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department's Fisheries Division and Law Enforcement 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 150.025(1).

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

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

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This regulation will not directly generate revenue for state or local government in subsequent years, but local economies could be positively impacted in the future through removal of Asian carp species.

(c) How much will it cost to administer this program for the first year? There will be minimal cost to the department to administer this program in the first year.

(d) How much will it cost to administer this program for subsequent years? There will be a minimal cost to the department 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:

**STATEMENT OF EMERGENCY
902 KAR 45:090E**

This emergency administrative regulation is being promulgated to address the regulatory changes necessary as a result of the passage of House bill 468 during the 2019 legislative session. House bill 468 modified the definition of a home-based processor by adding nonpotentially hazardous foods to the list of allowable items, and revised the definition of a home-based microprocessor to include the statement "included but not limited to", which allows a home-based microprocessor to produce a broader range of food products. The bill modifies the authorizing statute by adding the authority for the cabinet to further delineate which food products may be produced by a home-based processor and home-based microprocessor through the promulgation of administrative regulations. House bill 468 contained an emergency clause. An ordinary administrative regulation would not allow the agency sufficient time to have an administrative regulation in place for the 2019 farmers market season. This emergency administrative regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to the emergency administrative regulation.

MATTHEW G. BEVIN, Governor
ADAM M. MEIER, Secretary

**CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Public Health Protection and Safety
(Emergency Amendment)**

902 KAR 45:090E. Home-based processors and farmers market home-based microprocessors.

RELATES TO: KRS 217.005-217.215, 217.290, 217.992, 217B.555, 217B.990[217B.500—217B.900], 21 C.F.R. 113.83, 114.10, 114.83, 21 U.S.C 343(w)

STATUTORY AUTHORITY: KRS 194A.050, 217.125(1), 217.137, 217.138

EFFECTIVE: June 14, 2019

NECESSITY, FUNCTION, AND CONFORMITY: KRS 217.125, 217.137, and 217.138 authorize the Secretary of the Cabinet for Health and Family Services to promulgate administrative regulations for the efficient administration and enforcement of home-based processors and home-based microprocessors. This administrative regulation establishes a uniform code for the manufacture and marketing of limited-based Kentucky grown home microprocessed food products at farmers markets, certified roadside stands, or from the microprocessor's farm and for the manufacture and marketing of limited home-based processor food products from the home, at a market, roadside stand, community event, or online.

Section 1. Definitions. (1) "Cabinet" is defined by KRS 217.015(3).

(2) "Certified roadside stand" means a physical location listed with the Kentucky Farm Bureau for the direct-to-consumer marketing of limited Kentucky grown and produced food products.

(3) "Easily cleanable" means that surfaces are readily accessible and made of a material and finish and so fabricated that residue can be effectively removed by normal cleaning methods.

(4) "Equipment" means articles used in the preparation and processing of food.

(5) "Farmer" is defined by KRS 217.015(59).

(6) "Farmers market" or "farmers market temporary food service establishment" is defined by KRS 217.015(60).

(7) "Food contact surfaces" means those surfaces with which food can come in contact, and those surfaces that drain onto surfaces that can come in contact with food.

(8) "Permitted kitchen" means a food service establishment or food processing firm that holds a valid permit to process food, pursuant to the Kentucky Food, Drug and Cosmetic Act, KRS 217.005 to 217.215, and issued by the Cabinet for Health and Family Services.

(9) "Potentially hazardous food" means a food that is natural or synthetic and that requires temperature control because it is in a form capable of supporting the rapid and progressive growth of infectious or toxigenic microorganisms, the growth and toxin production of Clostridium botulinum, or in raw shell eggs, the growth of Salmonella Enteritidis. "Potentially hazardous food" includes:

(a) An animal food (a food of animal origin) that is raw or heat-treated;

(b) A food of plant origin that is heat-treated or consists of raw seed sprouts;

(c) Cut melons; and

(d) Garlic-in-oil mixtures that are not modified in a way that makes the product nonpotentially hazardous.

(10) "Primary ingredients" means an agricultural or horticultural product that:

(a) Has been grown, harvested, and processed by the farmer as a predominant ingredient of a food product with the exception of "flour", as defined by KRS 217.015(17), for use in:

1. "Bread" as defined by KRS 217.015(2); or

2. Other items listed in KRS 217.015(56); and

(b) Does not include oil, vinegar, sugar, and other seasonings or spices used in the production of home processed or microprocessed foods.

(11) "Processing authority" means:

(a) The Food Science Professionals of the University of Kentucky, Department of Agriculture, who review and approve established scheduled processes, for adequate process times and pressures for the size of jar, style of pack, and kind of food being canned, by home-based microprocessors; or

(b) A qualified entity in accordance with 21 C.F.R. 113.83 and 114.83.

(12) "Single-service article" means tableware, carry-out utensils, and other items such as bags, containers, placemats, stirrers, straws, toothpicks, and wrappers that are designed and constructed for one (1) time or one (1) person use after which they are intended for discard.

(13) "Single-use article" means utensils and bulk food containers designed and constructed to be used once and discarded such as wax paper, butcher paper, plastic wrap, formed aluminum food containers, jars, plastic tubs or buckets, bread wrappers, pickle barrels, ketchup bottles, and number ten (10) cans that do not meet the materials, durability, strength, and clean ability specifications for multiuse utensils.

(14) "Utensil" means any food-contact implement used in the storage, preparation, transportation, dispensing, or sale of food.

(15) "Ware-washing" means the cleaning and sanitizing of food-contact surfaces of equipment and utensils such as kitchenware.

Section 2. Limitations on Certain Home-based Processed and Home-based Microprocessed Food Products. (1) A home-based [foød] processor may[shall] produce:

(a)[only these] Foods [as] listed in KRS 217.015(56);

(b) Dried or freeze dried whole fruits or vegetables;

(c) Candy that shall be:

1. Produced without added alcohol; and

2. Made with no bare-hand contact;

(d) Maple syrup;

(e) Pecan pies;

(f) Granola that may be made with dried grains;

(g) Trail or snack mix that may be made with dried fruit, nuts, or seeds; and

(h) Popcorn that may be plain or have added seasonings.

(2) A home-based microprocessor shall produce [only these] foods as authorized by KRS 217.015(57).

(3) The following foods shall not be processed or offered for sale by a home-based processor or home-based microprocessor:

(a) Crème filled pies;

(b) Custard;

(c) Custard pies;

(d) Pies with meringue topping;

(e) Cheesecake;

(f) Cream, custard, or meringue pastries;

- (g) Raw seed sprouts;
- (h) Garlic-in-oil products; and
- (i) Pureed baby foods.

(4) Vacuum packaging of food in a container other than a mason-type jar shall be prohibited.

(5) A jam or jelly processed in less than ten (10) minutes shall be filled into a sterile empty jar. Sterilization shall be accomplished by submerging the jar in boiling water for:

(a) At least ten (10) minutes at an altitude of less than 1,000 feet above sea level; and

(b) One (1) additional minute for each additional 1,000 feet elevation above sea level.

(6) If a boiling-water canner is utilized in the production of food by a home-based processor, the canner shall be deep enough so that at least one (1) inch of briskly boiling water will be over the tops of jars during processing.

(7) If an electric range is used for heating, the boiling-water canner shall have a flat bottom and shall be no more than four (4) inches wider than the element on which it is heated.

Section 3. Standards for Home-based Processing. (1) A home-based processor shall maintain basic hygiene, cleanliness, and sanitation while producing home-based processor products and shall comply with the standards established in paragraphs (a) through (f) of this subsection during production, packaging, and handling of products for sale. The home-based processor shall:

(a) Regularly wash hands with soap and water;

(b) Keep kitchen equipment and utensils used for home-based processing clean and maintained in a good state of repair;

(c) Wash, rinse, and sanitize all food contact surfaces, equipment, and utensils used for food preparation before each use;

(d) Keep children under age twelve (12) and pets or other animals out of the kitchen during home-based processing related activities;

(e) Cease performing any domestic activities in the kitchen, such as family meal preparation, dishwashing, or washing and drying laundry; and

(f) Not produce, package, or handle any home-processed products while infected with a contagious disease or illness.

(2) A home-based processor doing business in the state shall be a resident of Kentucky.

(3) A home-based processor may advertise and accept orders and payments in person, electronically, or via the internet or phone.

(4) A home-based processor shall provide all home-based processed foods direct to the consumer through pick-up or delivery, and at flea markets, farmers markets, festivals, county fairs, craft fairs, and non-profit charity events, or a roadside stand.

(5) Home-based processed food products shall:

(a) Be labeled as required by KRS 217.136(3); and

(b) Contain allergen information as specified by 21 U.S.C. 343(w).

(6) A home-based processor shall not be required to have grown a primary ingredient for each of their products produced.

(7) Beginning January 1, 2020, a home-based processor shall register with the Department for Public Health, Food Safety Branch. A home-based processor shall submit:

(a) A DFS-250 Application for Home-based Processor, available from the Kentucky Food Safety Branch or at University of Kentucky Extension Service Office; and

(b) A fifty (50) dollar registration fee.

(8) The home-based processor registration shall be valid for one (1) year. A home-based processor registration shall expire March 31 of each year and is renewable upon submission of a DFS-250 and accompanied by an annual fee of fifty (50) dollars.

(9) Inspection of a home-based processor facility shall be made upon complaint, utilizing ~~the~~[Form] DFS-252, Home-based Processor/Microprocessor Inspection Report.

Section 4. Home-based Microprocessor Certification. (1) A Kentucky farmer desiring to grow, harvest, process, and market Kentucky grown microprocessed food products and participate in the training program shall submit a DFS-251, Application for Home-based Microprocessor, which is available from the

Department for Public Health, [Kentucky] Food Safety Branch or at University of Kentucky Extension Service Office.

(2) The application for certification shall be submitted to the cabinet and include the following information and attachments:

(a) Name and address, including:

1. The physical address and acreage of the farmland on which the primary food product ingredients are to be grown; and

2. The name and address of the property owner if not owned by the farmer;

(b) The name and address of the primary residence occupied by the farmer;

(c) Type of water source. Sufficient potable water for the needs of the facility shall be provided from a source constructed, maintained, and operated pursuant to applicable requirements established in 401 KAR Chapter 8;

(d) Type of sewage disposal. Sewage, including liquid waste, shall be disposed of by a public sewage system, or if a public sewer system is not available, sewage disposal shall be made into a private sewage disposal system designed, constructed, and operated in accordance with the requirements of 902 KAR Chapter 10 and 401 KAR Chapter 5;

(e) A listing of the food products to be processed and marketed by the farmer;

(f) Verification of attendance and successful completion of the Food Processing School including:

1. Verification of attendance and successful completion of the Food Processing School provided by the University of Kentucky Extension Office in compliance with KRS 217.015(58)(a) by the farmer for the manufacture of the microprocessed food products; or

2. Verification of attendance and successful completion of a food processing school approved pursuant to 21 C.F.R. 114.10; and

(g) Documentation from the processing authority for an established scheduled process for each food item that is to be processed by the home-based microprocessor.

1. Any change in the recipe shall constitute a recipe deviation, and a new review and approval shall be required from the processing authority prior to processing.

2. Each additional product shall have a separate written established scheduled process and shall be submitted to the processing authority for review prior to processing.

3. All established scheduled processes shall be maintained and made available upon request by the cabinet.

(3)(a) Prior to marketing home-based products, the application for home-based microprocessor, along with the required water source approval, shall be submitted to the cabinet.

(b) The cabinet shall notify the applicant if the application is approved or denied.

(c) If the application is approved, the home-based microprocessor may begin marketing home-based products.

(d) If the application is denied:

1. The cabinet shall notify the applicant in writing of the reasons for the denial; and

2. The home-based microprocessor may appeal in accordance with Section 9(5) of this administrative regulation.

(4) Product labels for home-based microprocessed foods shall be labeled in accordance with KRS 217.005 to 217.215 and 21 U.S.C. 343(w). Draft copies of all home-based microprocessed food product labels shall be submitted for review by the cabinet prior to labeling and marketing.

(5) The certification requirements established in this subsection shall apply to a home-based microprocessor.

(a) Each home-based microprocessor certification shall be issued only for the premises and person named in the application and shall be nontransferable.

(b) The certification shall be posted in a conspicuous place in the processing establishment and a copy shall be posted at the point of sale.

(c) Home-based microprocessed food products shall only be marketed by the certificate holder that processed the food product.

(6) Each home-based microprocessor certification shall be valid for one (1) year, unless previously suspended or revoked. A home-based microprocessor certification shall expire March 31 of each year and shall be renewable annually upon submittal of an

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application accompanied by an annual fee of fifty (50) dollars.

(7) Attendance at a food processing school as required by subsection (2)(f) of this section shall be required every three (3) years or upon any change or addition of food products to be processed.

Section 5. Production Standards for Home-based Microprocessors. (1) At all times, including while being stored, prepared, offered, dispensed, or transported, food ingredients and processed products shall be protected from:

- (a) Cross-contamination; and
- (b) Potential contamination by:
 1. Insects;
 2. Insecticides;
 3. Rodents;
 4. Rodenticides;
 5. Unclean equipment or utensils;
 6. Unnecessary hand contact;
 7. Draining;
 8. Overhead leakage or condensation;
 9. Dust;
 10. Coughs;
 11. Sneezes; or
 12. Other agents of public health significance.

(2) Pets and other animals shall not be allowed in the kitchen and shall be kept out of food preparation areas during microprocessing related activities.

(3) Children under age twelve (12) shall not be allowed in the kitchen area during microprocessing related activities.

(4) Smoking or use of any form of tobacco shall not be allowed in the kitchen area during microprocessing related activities.

(5) Laundry facilities may be present in the residential kitchen, but shall not be used during microprocessing related activities.

(6) Home-based microprocessors shall restrict the use of the food preparation area during any processing activity. Cooking facilities, in the residential kitchen, shall not be available for personal use during home-based microprocessing activities.

(7) Vehicles used in transporting home-based microprocessed food products shall be maintained in a safe and sanitary manner in accordance with KRS 217.290. Vehicle compartments used to transport animals shall not be used for transporting home-based microprocessed foods.

(8) Products made by a home-based microprocessor shall not be used or offered for consumption in a retail food establishment or through interstate commerce.

(9) Food Supplies.

(a) The primary ingredients used in home-based microprocessed products shall have been grown by the microprocessor.

(b) All other ingredients in the products shall be in sound condition, safe for human consumption, obtained from a state or federal permitted food manufacturer, and stored and protected separate and apart from personal use food ingredients.

(c) Prior to processing, the temperature of potentially hazardous foods shall be forty-one (41) degrees Fahrenheit or below, or 135 degrees Fahrenheit or above, except during necessary times of preparation.

(d) ~~Only food-grade lime shall be used for soaking foods prior to pickling.~~

~~(e)~~ Jar seals for microprocessed foods shall be inspected within twelve (12) to twenty-four (24) hours after cooling. A container inspected and found to not be properly sealed shall be discarded. Reprocessing of an unsealed jar shall be prohibited.

~~(e)~~~~(f)~~ For each microprocessed food item, the headspace above the food in a jar and below its lid shall be in compliance with the established scheduled process for that food.

~~(f)~~~~(g)~~ Hermetically-sealed packages shall be handled so as to maintain product and container integrity.

~~(g)~~~~(h)~~ A product processed by a home-based microprocessor shall be packaged in food grade material.

- (10)(a) Food shall be prepared:
 1. With a minimum of bare hand contact;
 2. On a food-contact surface; and
 3. With clean utensils that have been sanitized.

(b) Raw fruits and raw vegetables that will be cooked, cut, or combined with other ingredients or that will be otherwise processed into food products by the home-based microprocessor shall first be thoroughly cleaned with potable water.

(11) Equipment and utensils. (a) Equipment.

1. Equipment shall be deemed adequate by the processing authority for the food being processed. Use of boiling water canners shall be prohibited for processing of low-acid canned foods.

2. Open-kettle canning and the processing of freshly-filled jars in a conventional oven, microwave oven, or dishwasher shall be prohibited.

3. All low-acid food shall be sterilized at temperatures of 240 to 250 degrees Fahrenheit, in pressure canners operated at ten (10) to fifteen (15) PSIG as measured by a dial gauge, or weighted gauge if deemed appropriate by the processing authority. The processing authority shall ensure that each weighted-gauge pressure canner utilized by a microprocessor is operated at the correct pressure for the corresponding altitude.

4. A pressure canner shall not have been manufactured prior to year 2000, and the manufacturer shall currently be in business with the ability to provide canner parts and calibration of temperature dial gauges.

5. A pressure canner utilized in the microprocessing of foods shall, at minimum;

~~a.~~~~[.]~~ Be of a sixteen (16) quart capacity; and
~~b.~~ ~~[, which shall] Contain at least~~~~[no more than]~~ seven (7) quart jars during processing.

~~6.~~ Use of pressure saucepans with less than sixteen (16) quart capacities shall be prohibited.

~~7.~~~~[6.]~~ Each temperature dial gauge shall be annually verified for accuracy by the manufacturer of the canner or other qualified laboratory. Verification records shall be maintained by the home-based microprocessor and shall be made available to the cabinet upon request.

~~8.~~~~[7.]~~ A timing device shall be available and used to verify appropriate processing time as designated in the established scheduled process.

~~9.~~~~[8.]~~ Only regular and wide-mouth mason-type, threaded, home-canning jars with self-sealing, two (2) piece canning lids with screw bands shall be used for microprocessed foods. Mayonnaise-type jars, jars with wire bails and glass caps, and one (1) piece zinc porcelain-lined caps shall be prohibited.

(b) Equipment and utensils shall be:

- 1. Constructed and repaired with safe materials, including finishing materials;
- 2. Corrosion resistant and nonabsorbent;
- 3. Maintained in good repair; and
- 4. Smooth, easily cleanable, and durable under conditions of normal use.

(c) Single-service articles shall be made from clean, sanitary, and safe materials.

(d) Equipment, utensils, and single-service articles shall not impart odors, color, taste, or contaminants to food.

(e) Single-service and single-use articles shall not be reused.

(f) Safe plastic or rubber-like materials that are resistant, under normal conditions of use, to scratching, scoring, decomposition, crazing, chipping, or distortion, and are of sufficient weight and thickness to permit cleaning and sanitizing by normal ware-washing methods shall be permitted for repeated use.

Section 6. Sanitation Requirements for Home-based Microprocessors. (1) A farmer or processing assistant shall not process food in a home-based microprocessing facility while there is a likelihood of contaminating food or a food-contact surface, or transmitting a disease to another person, if the individual is:

(a) Infected with a communicable disease that can be passed by food;

(b) A carrier of an organism that causes a communicable disease;

(c) Affected with a boil, infected wound, or acute respiratory infection; or

(d) Has a symptom caused by illness, infection, or other source that is associated with an acute gastrointestinal illness such as

diarrhea, fever, vomiting, jaundice, or sore throat with fever.

(2)(a) Each person engaged in a food preparation and ware-washing operation of a home-based microprocessing facility shall wash his or her hands and exposed portions of arms thoroughly, with soap or detergent and warm water:

1. Before starting work;
2. After smoking;
3. After eating;
4. After handling nonwashed fruits and vegetables;
5. After using the toilet; and
6. As often as is necessary during work to keep hands and forearms clean.

(b) A hand-washing facility with hot and cold potable water shall comply with the requirements of 815 KAR 7:125, and shall be conveniently located.

(c) A supply of hand-cleaning soap or detergent shall be available at each hand-washing facility.

(d) A supply of sanitary towels or a hand-drying device providing heated air shall be conveniently located near each hand-washing facility.

(e) An easily-cleanable waste receptacle shall be conveniently located near the hand-washing facility.

(f) A soap dispenser and disposable towels for use in hand-washing shall be provided at the kitchen sink. This sink shall not be used for hand-washing after toilet use.

(g) Hand-washing facilities, soap, detergent dispensers, hand-drying devices, and all related facilities shall be kept clean and in good repair.

(3) Each worker of a home-based microprocessing facility shall keep his or her fingernails trimmed and clean.

(4) Each worker of a home-based microprocessing facility shall wear clean outer clothing.

(5) Each worker in the food preparation area of a home-based microprocessing facility shall wear a hairnet, hat, scarf, or similar hair covering that effectively restrains head and facial hair.

(6) Each worker of a home-based microprocessing facility shall maintain a high degree of personal cleanliness and shall conform to good hygienic practices during working periods.

(7) Each worker of a home-based microprocessing facility shall consume food or use tobacco only in designated areas. A designated area shall not be located in a food preparation area or in an area where the worker's activity could result in contamination of food, water, equipment, or utensils.

(8) Cleaning and sanitizing of equipment and utensils.

(a) Food utensils and equipment shall be stored in a manner to avoid contamination.

(b) Food-contact surfaces and sinks shall be smooth and easily cleanable.

(c) Food-contact equipment, surfaces, and utensils shall be cleaned and sanitized prior to microprocessing related activities and after each use.

(d) Sinks, basins, or other receptacles used for cleaning of equipment and utensils shall be cleaned and sanitized before use.

(e) Equipment and utensils shall be prerinsed or prescraped and, if necessary, presoaked to remove food particles and soil.

(f) Manual cleaning and sanitizing shall be conducted as established in subparagraphs 1. through 5. of this paragraph.

1. For manual cleaning and sanitizing of cooking equipment, and utensils, three (3) compartments shall be provided and used. A two (2) compartment sink, with an additional portable tub may be used.

2. Each of the following five (5) steps of the ware-washing process shall be completed:

- a. Prerinsing or scraping;
- b. Washing with hot detergent solution;
- c. Rinsing to remove abrasives and cleaning chemicals;
- d. Sanitizing, using a method approved by the applicable provisions of 902 KAR 45:005, Section 2, the Kentucky Food Code; and
- e. Air-drying and draining.

3. Washing, rinsing, and sanitizing solutions shall be maintained in a clean condition.

4. The washing solution shall be maintained at a minimum temperature of at least ninety-five (95) degrees Fahrenheit.

5. Chemical sanitizer shall not have a concentration higher than the maximum permitted by law. A test kit or other device shall be provided to measure the parts per million concentration of the solution.

(g) Mechanical cleaning and sanitizing shall be conducted as established in this subsection. A domestic or home-style dishwasher may be used if the performance criteria established in this subsection are met.

1. The dishwasher shall effectively remove physical solids from all surfaces of dishes.

2. The dishwasher shall sanitize dishes by the application of sufficient accumulative heat.

3. The operator shall provide and use daily a maximum registering thermometer or a heat thermal label to determine that the dishwasher's internal temperature is at least 150 degrees Fahrenheit after the final rinse and drying cycle.

4. The dishwasher shall be installed and operated according to manufacturer's instructions for the highest level possible while sanitizing the kitchen facility's utensils and tableware. A copy of the manufacturer's instructions shall be available on the premises.

(h) There shall be sufficient area or facilities, such as portable dish tubs and drain boards, for the proper handling of:

1. Soiled utensils prior to washing; and
2. Cleaned utensils after sanitizing.

(i) Manually-cleaned equipment, utensils, and tableware shall be air-dried.

(9) Toilet facilities.

(a) Toilet facilities shall be:

1. Installed pursuant to requirements of 815 KAR 7:125;
2. Conveniently located; and
3. Accessible to workers at all times.

(b) A toilet facility, including toilet fixtures and a related vestibule, shall be kept clean and in good repair. A supply of toilet tissue shall be provided at each toilet at all times. Easily cleanable receptacles shall be provided for waste materials.

(10) The floors, walls, ceilings, and attached equipment in food preparation and storage areas and in workers bathrooms of a home-based microprocessor facility shall be fabricated from easily cleanable material, maintained in good repair, and kept clean.

(11) Artificial lighting shall be provided sufficient to facilitate sanitary food handling and cleaning of facilities.

(12) The use and storage of pesticides and rodenticides.

(a) A person shall not apply insecticides or rodenticides except:

1. In accordance with requirements of KRS 217B.500 to 217B.990 and 302 KAR Chapter 29;
2. In accordance with the manufacturer's labeling; and
3. In such a way that food, food-contact surfaces, and the supply of potable water shall not be contaminated.

(b) Open pesticide or rodenticide bait boxes shall not be used.

(c) Pesticides, rodenticides, and other toxic materials shall be stored apart from food, equipment, and utensils. Every container of toxic material shall be clearly labeled for easy identification.

(d) Pesticides and rodenticides shall be stored separated from other toxic and chemical compounds at all times.

(13) Garbage and refuse shall be disposed of often enough and in a manner to prevent the development of objectionable odors and the attraction of pests. If garbage or refuse is burned on the premises, it shall be done by controlled incineration that prevents the escape of particulate matter pursuant to 401 KAR Chapter 63.

Section 7. Microprocessors Utilizing Permitted Kitchens. (1) A microprocessor may elect to process food products utilizing a kitchen that currently holds a valid permit to operate issued by the cabinet.

(2) A microprocessor utilizing a permitted kitchen shall comply with Sections 2, 4, 5, and 6 of this administrative regulation.

(a) A microprocessor utilizing a permitted kitchen shall provide a copy of a signed, written agreement between the facility owner and the farmer that authorizes the use of the permitted kitchen for microprocessing and the name, address, and permit number of the facility.

(b) Microprocessed food products shall not be made during periods of time while the permitted facility is in operation.

(c) Microprocessed food products shall be stored at the

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farmer's primary residence and shall be maintained separate and apart from the personal use food supplies.

(d) Microprocessed food products made in a permitted kitchen shall only be sold at farmers markets, certified roadside stands, or from the microprocessor's farm.

Section 8. Inspections, Notices, Records. (1) Inspections. At least once every four (4) years, the cabinet shall inspect each home-based microprocessor and shall make as many additional inspections and reinspections as are necessary for the enforcement of this administrative regulation.

(2) Inspection records. The cabinet representative inspecting a home-based microprocessor shall record the findings on the [Form] DFS 252, Home-based Processor/Microprocessor Inspection Report, and shall provide a copy of the inspection report to the certificate holder or his representative in charge.

(3) Issuances of notices. If an inspection reveals a violation of this administrative regulation, the cabinet shall notify the certificate holder or the certificate holder's representative in charge. In the notification, the cabinet shall establish:

- (a) The specific violations found; and
(b) A specific and reasonable period of time for the correction of the violations found pursuant to this paragraph. The report of inspection shall state:

1. Failure to comply with a notice from the cabinet or local health department, or with a time limit for correction of a violation, shall result in regulatory action up to and including suspension of the certificate, as provided in KRS 217.126;

2. An opportunity for appeal from an adverse notice or inspection finding shall be provided if a written request is filed with the cabinet within ten (10) days following service of notice, in accordance with 902 KAR 1:400; and

3. Failure to comply with a notice issued in accordance with the provisions of this administrative regulation may result in suspension of the certificate.

(4) Service of notice. A notice provided for under this section shall be properly served if a copy of the DFS-252 inspection report form or other notice has been delivered personally to the certificate holder or person in charge, or the notice has been sent by registered or certified mail, return receipt requested, to the last known address of the certificate holder. A copy of the notice shall be filed with the cabinet.

(5) The cabinet shall maintain a record of all certified home-based microprocessors and shall provide this information to the University of Kentucky Cooperative Extension Service Office and local health departments.

Section 9. Certificate Suspension, Revocation, or Denial. (1) A home-based microprocessor certificate shall be suspended immediately, upon notice to the certificate holder, if:

- (a) The cabinet has reason to believe that an imminent public health hazard exists; or
(b) The certificate holder has interfered with the cabinet in the performance of its duties.

(2) Except as provided in subsection (1) of this section, the cabinet shall allow a certificate holder a reasonable opportunity to correct a violation. The cabinet shall notify, in writing, a certificate holder or operator who fails to comply with a written notice issued under the provisions of this administrative regulation that the certificate shall be suspended at the end of ten (10) days following service of the notice, unless a written request is filed in accordance with 902 KAR 1:400.

(3) Reinstatement of suspended certificate. A person whose certificate has been suspended may make application for a reinspection in accordance with 902 KAR 1:400.

(4) Revocation of certificate. For serious or repeated violations of the requirements of this administrative regulation, or for interference with the cabinet in the performance of its duties, a certificate may be permanently revoked. Before a permanent revocation action is taken, the cabinet shall notify the certificate holder in writing, stating the reasons the certificate is subject to revocation and advising that the certificate shall be permanently revoked at the end of ten (10) days following service of the notice, unless a request for an appeal is filed in accordance with 902 KAR

1:400. A certificate may be suspended for cause pending revocation.

(5) Denial. Any applicant denied the issuance of a certificate by the cabinet within ten (10) days of service of the notice may appeal the certificate denial in accordance with 902 KAR 1:400.

Section 10. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "DFS-250, Application for Home-based Processor", 03/19;
(b) "DFS-251, Application for Home-based Microprocessor", 05/18; and
(c) [(b)] "DFS-252, Home-based Processor/Microprocessor Inspection Report", 05/18.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Cabinet for Health and Family Services, 275 East Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

JEFFREY D. HOWARD, JR., M.D., Commissioner
ADAM M. MEIER, Secretary

APPROVED BY AGENCY: June 12, 2019
FILED WITH LRC: June 14, 2019 at 10 a.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; CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Julie Brooks or Chase Coffey

(1) Provide a brief summary of:

(a) What this administrative regulation does: This emergency administrative regulation establishes the requirements for all home-based processed foods, and distinguishes between a home-based processor and a home-based microprocessor.

(b) The necessity of this administrative regulation: House bill 468, enacted during the 2019 legislative session, modified the definitions of a home-based processor and home-based microprocessor listed in KRS 217.015; and modified KRS 217.136 and KRS 217.137 to authorize the cabinet to further delineate which food products could be produced by a home-based processor and home-based microprocessor through the promulgation of administrative regulations. KRS 217.136 was modified to require a home-based processor to register with the department effective January 1, 2020.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This emergency administrative regulation delineates which foods may be produced by a home-based processor and home-based microprocessor, and adds the registration process for a home-based processor.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This emergency administrative regulation will allow home-based processor and home-based microprocessors who are currently producing foods such as dried herbs and spices, nuts and grains to continue to do so.

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

(a) How the amendment will change this existing administrative regulation: This amendment further delineates the types of foods that can be produced by a home-based processor and a home-based microprocessor; and adds a registration process for a home-based processor.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to address the changes in KRS 217.015, KRS 217.136, and KRS 217.137 as a result of the passage of House Bill 468.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 217.015 adds additional food items that can be produced by a home-based processor and a home-based microprocessor. KRS 217.136 authorizes the cabinet to promulgate administrative regulations to further delineate which food products can be produced by a home-based processor and adds a registration process for a home-based processor. KRS 217.137 authorizes the cabinet to promulgate administrative

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regulations to further delineate which food products can be produced by a home-based microprocessor.

(d) How the amendment will assist in the effective administration of the statutes: This emergency amendment will help to ensure home-based processors and home-based microprocessors who are established to offer dried herbs and spices, nuts, and grains are able to do so during the current farmers' market season. This amendment also requires a home-based processor to register with the Food Safety Branch. While a routine inspection is not required, the registration process will assist in a complaint investigation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are 140 microprocessors currently operating under this administrative regulation. Because the registration of home-based processors was previously removed from this administrative regulation the Food Safety Branch does not know exactly how many home-based processors will be affected by this administrative regulation. Previously there were 776 home-based processors registered with the branch.

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

(a) List the actions that each of the regulated entities identified in questions (3) will have to take to comply with this administrative regulation or amendment: Home-based processors and home-based microprocessors will need to be aware of the expanded food products available for home processing. Home-based processors will need to be aware of the registration process that becomes effective January 1, 2020.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the identities identified in question (3): Beginning January 1, 2020, home-based processors will pay a \$50 registration fee.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Home-based processors and home-based microprocessors will be able to offer an expanded variety of home produced food products.

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

(a) Initially: The current cost to administer all programs under the Food Safety Branch within the Division of Public Health Protection and Safety is \$5,524,622. There is no anticipated increase in cost as a result of this amendment.

(b) On a continuing basis: There is no anticipated increase in cost as a result of this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency funds and revenue generated by the registration process for home-based processors and microprocessors.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. Home-based processors and home-based microprocessors will be assessed a fifty (50) dollar registration fee.

(9) TIERING: Is tiering applied? Yes, tiering has been applied as there are separate requirements for home-based processors and microprocessors. All home-based processors will be required to comply with KRS 217.136 and the applicable provisions of this administrative regulation. Home-based microprocessors will be required to comply with KRS 217.137 and the provisions of this administrative regulation.

Public Health, with inspection of the home-based microprocessors conducted by state Food Manufacturing Section Inspectors. Local health departments may refer any complaints received to the Food Safety Branch. The only other entity that may be impacted will be the Division of Water to approve the water source for microprocessors without a municipal water supply.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 217.136, 217.137.

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

(a) How much 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 776 previously registered home-based processors should generate an estimated \$38,800 in the first year of registration beginning January 1, 2020. The 140 home-based microprocessors will generate an estimated \$7,000 in certification fees. (b) How 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 combined registration fees for home-based processors and home-based microprocessors will generate an estimated \$45,800 in subsequent years.

(c) How much will it cost to administer this program for the first year? The current cost to administer all programs under the Food Safety Branch within the Division of Public Health Protection and Safety is \$5,524,622. There is no anticipated increase in costs to administer the home-based processor and home-based microprocessor registration program this first year.

(d) How much will it cost to administer this program for subsequent years? There is no anticipated increase in costs to administer the home-based processor and home-based microprocessor registration 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:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 21 C.F.R. 113.83, 114.10, 114.83 and 21 U.S.C. 343(w)

2. State compliance standards. KRS 217.138 establishes the home-based microprocessor certification program. KRS 217.135 authorizes the secretary to establish a standard of identity of any food or class of food promulgated under authority of the federal act.

3. Minimum or uniform standards contained in the federal mandate. Individuals seeking certification as a microprocessor are required to complete the training program pursuant to 21 C.F.R. 113.83, 114.10 and 114.83 offered by the University of Kentucky Cooperative Extension Service as the processing authority. The Federal, Food, Drug, and Cosmetic Act (21 U.S.C. 343(w)) requires foods be labeled with the common or usual name of a major food allergen.

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.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter 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? This program is administered by the Food Safety Branch within the Department for

**STATEMENT OF EMERGENCY
907 KAR 3:170E**

This emergency administrative regulation is being promulgated to implement comprehensive telehealth policy changes that will allow for a provider to receive Medicaid reimbursement for any appropriate telehealth service that is within the provider's scope of practice and licensure. This emergency administrative regulation is needed pursuant to KRS 13A.190(1)(a)2. to prevent a loss of federal and state funds and pursuant to KRS 13A.190(1)(a)4. to protect human health. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. This emergency administrative regulation has the same number as an administrative regulation filed within the previous nine (9) months. This administrative regulation differs from the administrative regulation filed within the previous nine (9) months by including a new definition for "place of service"; excluding asynchronous store and forward technology from the definition of telehealth; requiring that telehealth services provided be within a provider's scope of professional licensure and practice; allowing store and forward transfers only for radiology services; removing overly broad references to "other healthcare activity" as allowable for telehealth service reimbursement; clarifying referral requirements for telehealth services; clarifying certain medical record documenting requirements; implementing a telehealth service reimbursement requirement that is at least 100 percent of the amount paid for a comparable in-person service; clarifying that telehealth services are subject to cost-sharing; ensuring that medical record requirements comply with existing Medicaid law; making drafting and formatting changes to comply with KRS Chapter 13A; and establishing an implementation date of July 1, 2019. The amendments were necessary to incorporate changes requested by multiple stakeholders, and to ensure that Kentucky's provider networks are capable of meeting anticipated recipient need following the implementation of an SUD 1115 Waiver that is part of the Kentucky HEALTH 1115 Waiver project and ongoing substance use disorder treatment standard enhancements required by the 2018 Regular Session's HB 124. The ordinary administrative regulation is not identical to this emergency administrative regulation, as this emergency administrative regulation includes an additional Section 7 to establish an implementation date of July 1, 2019.

MATTHEW G. BEVIN, Governor
ADAM M. MEIER, Secretary

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

907 KAR 3:170E. Telehealth service[consultation] coverage and reimbursement.

RELATES TO: KRS 194A.060, 194A.125, 205.510(15), 205.559, 205.560, 422.317, 434.840-434.860, 42 C.F.R. 415.174, 415.184, 431.300-431.307, 440.50

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.559(2), (7), 205.560

EFFECTIVE: June 14, 2019

NECESSITY, FUNCTION, AND CONFORMITY: In accordance with KRS 194A.030(2), 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. KRS 205.559 establishes the requirements regarding Medicaid reimbursement of telehealth providers and KRS 205.559(2) and (7) require the cabinet to promulgate an administrative regulation relating to telehealth services[consultations] and reimbursement. This administrative regulation establishes the Department for Medicaid Services' coverage and reimbursement policies relating to telehealth services[consultations] in accordance with KRS 205.559.

Section 1. Definitions. (1) [~~"Advanced practice registered nurse" or "APRN" is defined by KRS 314.011(7).~~

(2) [~~"Certified nutritionist" is defined by KRS 310.005(12).~~

(3) [~~"Chiropractor" is defined by KRS 312.015(3).~~

(4) [~~"Community mental health center" or "CMHC" means a facility that provides a comprehensive range of mental health services to Medicaid recipients of a designated area in accordance with KRS 210.370 to 210.485.~~

(5) [~~"Department" means the Department for Medicaid Services or its designated agent.~~

(2) [(6) [~~"Diabetes self-management training consultation" means the ongoing process of facilitating the knowledge, skill, and ability necessary for diabetes self-care.~~

(7) [~~"Direct physician contact" means that the billing physician is physically present with and evaluates, examines, treats, or diagnoses the recipient.~~

(8) [~~"Encounter" means one (1) visit by a recipient to a telehealth spoke site where the recipient receives a telehealth consultation in real time, during the visit, from a telehealth provider or telehealth practitioner at a telehealth hub site.~~

(9) [~~"Face-to-face" means[~~except as established in Section 4(4)(g) of this administrative regulation~~].~~

(a) In person; and

(b) Not via telehealth.

(3) [(40)] "Federal financial participation" is defined by[~~in~~] 42 C.F.R. 400.203.

(4) [(11) [~~"GT modifier" means a modifier that identifies a telehealth consultation which is approved by the healthcare common procedure coding system (HCPCS).~~

(12) [~~"Health care provider" means a Medicaid provider who is:~~

(a) Currently enrolled as a Medicaid provider in accordance with 907 KAR 1:672; and

(b) Currently participating as a Medicaid provider in accordance with 907 KAR 1:671.

(13) [~~"Hub site" means a telehealth site:~~

(a) Where the telehealth provider or telehealth practitioner performs telehealth; and

(b) That is considered the place of service.

(14) [~~"Legally-authorized representative" means a Medicaid recipient's parent or guardian if a recipient is a minor child, or a person with power of attorney for a recipient.~~

(15) [~~"Licensed clinical social worker" means an individual meeting the licensure requirements established in KRS 335.100.~~

(16) [~~"Licensed dietitian" is defined by KRS 310.005(11).~~

(17) [~~"Licensed marriage and family therapist" is defined by KRS 335.300(2).~~

(18) [~~"Licensed professional clinical counselor" is defined by KRS 335.500(3).~~

(19) [~~"Medical necessity" or "medically necessary" means a covered benefit is determined to be needed in accordance with 907 KAR 3:130 or pursuant to the process established by KRS 304.38-240.~~

(5) [~~"Place of service" means anywhere the patient is located at the time a telehealth service is provided, and includes telehealth services provided to a patient located at the patient's home or office, or a clinic, school, or workplace.~~

(6) [~~"Telehealth" is defined by KRS 205.510(15).~~

(7) [~~"Telehealth care provider" means a Medicaid provider who is:~~

(a) Currently enrolled as a Medicaid provider in accordance with 907 KAR 1:672;

(b) Currently participating as a Medicaid provider in accordance with 907 KAR 1:671;

(c) Operating within the scope of the provider's professional licensure; and

(d) Operating within the provider's scope of practice.

(8) [~~"Telehealth service" means any service that is provided by telehealth and is one (1) of the following:~~

(a) Event;

(b) Encounter;

(c) Consultation, including a telehealth consultation as defined by KRS 205.510(16);

(d) Visit;

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(e) Store and forward transfer, for radiology services only;

(f) Remote patient monitoring;

(g) Referral; or

(h) Treatment. [(20) "National Provider Identifier" or "NPI"

means a standard unique health identifier for health care providers which:

(a) Is required by 42 C.F.R. 455.440; and

(b) Meets the requirements of 45 C.F.R. 162.406.

(21) "Occupational therapist" is defined by KRS 319A.010(3).

(22) "Optometrist" means an individual licensed to engage in the practice of optometry in accordance with KRS 320.210(2).

(23) "Physical therapist" is defined by KRS 327.010(2).

(24) "Physician" is defined by KRS 311.550(12).

(25) "Physician assistant" is defined by KRS 311.840(3).

(26) "Psychologist" is defined by KRS 319.010(9).

(27) "Registered nurse" is defined by KRS 314.011(5).

(28) "Speech-language pathologist" is defined by KRS 334A.020(3).

(29) "Spoke site" means a telehealth site where the recipient receiving the telehealth consultation is located.

(30) "Telehealth consultation" is defined by KRS 205.510(15).

(31) "Telehealth practitioner" means an individual who is:

(a) Authorized to perform a telehealth consultation in accordance with this administrative regulation;

(b) Employed by or is an agent of a telehealth provider; and

(c) Not the individual or entity who:

1. Bills the department for a telehealth consultation; or

2. Is reimbursed by the department for a telehealth consultation.

(32) "Telehealth provider" means a health care provider who:

(a) Performs a telehealth consultation at a hub site; or

(b) Is the employer of or entity that contracts with a telehealth practitioner who performs a telehealth consultation:

1. At a hub site; and

2. That is billed under the telehealth provider's national provider identifier.

(33) "Telehealth site" means a hub site or spoke site that has been approved as part of a telehealth network established in accordance with KRS 194A.125.

(34) "Telepresenter" means an individual operating telehealth equipment at a spoke site to enable a recipient to receive a telehealth consultation.

(35) "Transmission cost" means the cost of the telephone line and related costs incurred during the time of the transmission of a telehealth consultation.

(36) "Two (2) way interactive video" means a type of advanced telecommunications technology that permits a real time telehealth consultation to take place between a recipient and a telepresenter at the spoke site and a telehealth provider or telehealth practitioner at the hub site.]

Section 2. General Policies. (1)(a) Except as provided in paragraph (b) of this subsection, the coverage policies established in this administrative regulation shall apply to:

1. Medicaid services for individuals not enrolled in a managed care organization; and

2. A managed care organization's coverage of Medicaid services for individuals enrolled in the managed care organization for the purpose of receiving Medicaid or Kentucky Children's Health Insurance Program services.

(b) A managed care organization shall [not be required to] reimburse the same amount for a telehealth service[consultation] as the department reimburses unless a different payment rate is negotiated in accordance with Section 3(1)(a)2. of this administrative regulation], but may reimburse the same as the department reimburses if the managed care organization chooses to do so.]

(2) A telehealth service[consultation] shall not be reimbursed by the department if:

(a) It is not medically necessary;

(b) The equivalent service is not covered by the department if provided in a face-to-face setting; or

(c) [It requires a face-to-face contact with a recipient in accordance with 42 C.F.R. 447.371;

(d) The telehealth care provider of the telehealth service[consultation] is:

1. Not currently enrolled in the Medicaid program pursuant to 907 KAR 1:672;

2. Not currently participating in the Medicaid program pursuant to 907 KAR 1:671;

3. Not in good standing with the Medicaid program;

4. Currently listed on the Kentucky DMS Provider Terminated and Excluded Provider List [of Excluded Providers], which is available

at <https://chfs.ky.gov/agencies/dms/dpi/pe/Pages/terminated.aspx> [http://chfs.ky.gov/dms/provEnr]; or

5. Currently listed on the United States Department of Health and Human Services, Office of Inspector General List of Excluded Individuals and Entities, which is available at <https://oig.hhs.gov/exclusions/>]; or

(e) It is provided by a telehealth practitioner or telehealth provider not recognized or authorized by the department to provide the telehealth consultation or equivalent service in a face-to-face setting].

(3)(a) [A telehealth provider shall:

1. Be an approved member of the Kentucky Telehealth Network; and

2. Comply with the standards and protocols established by the Kentucky Telehealth Board.

(b) To become an approved member of the Kentucky Telehealth Network, a provider shall:

1. Send a written request to the Kentucky Telehealth Board requesting membership in the Kentucky Telehealth Network; and

2. Be approved by the Kentucky Telehealth Board as a member of the Kentucky Telehealth Network.

(4)(a) A telehealth consultation referenced in Section 3 or 4 of this administrative regulation shall be provided to the same extent and with the same coverage policies and restrictions that apply, except as established in Section 4(4)(g) and 4(5) of this administrative regulation to the equivalent service if provided in a face-to-face setting.

(b) If a telehealth coverage policy or restriction is not stated in this administrative regulation but is stated in another administrative regulation within Title 907 of the Kentucky Administrative Regulations, the coverage policy or restriction stated elsewhere within Title 907 of the Kentucky Administrative Regulations shall apply.

(5)(a) A telehealth service[consultation] shall be subject to utilization review for:

1. Medical necessity;

2. Compliance with this administrative regulation; and

3. Compliance with applicable state and federal law.

(b) The department shall not reimburse for a telehealth service if the department determines that a telehealth service[consultation] is not:

1. [Not] Medically necessary; [is not]

2. Compliant with this administrative regulation;

3. Applicable to this administrative regulation; [is] or [is not]

4. Compliant with applicable state or federal law [the department shall not reimburse for the telehealth consultation].

(c) The department shall recoup the reimbursement for a previously reimbursed telehealth service if the department determines that a telehealth service[consultation] that it has already reimbursed for] was not:

1. Medically necessary; [was not]

2. Compliant with this administrative regulation;

3. Applicable to this administrative regulation; [is] or [was not]

4. Compliant with applicable state or federal law [the department shall recoup the reimbursement for the telehealth consultation from the provider].

(4) A telehealth service shall have the same referral requirements as a face-to-face service.

(5) Within forty-eight (48) hours of the telehealth service, a provider shall document within the patient's medical record that a service was provided via telehealth, and follow all documentation requirements established by Section 4 of this administrative regulation. [(6) A telehealth consultation shall require:

(a) The use of two (2) way interactive video;

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- (b) A referral by a health care provider; and
- (c) A referral by a recipient's lock-in provider if the recipient is locked in pursuant to:
 1. 42 C.F.R. 431.54; and
 2. 907 KAR 1:677.]

Section 3. Telehealth Reimbursement. (1)(a)1. The department shall reimburse an eligible telehealth care provider for a telehealth service in an amount that is at least 100 percent of the amount paid for a comparable in-person service.

2. A managed care organization and provider may establish a different rate for telehealth reimbursement via contract as allowed pursuant to KRS 205.5591(5).

(b) A telehealth service reimbursed pursuant to this section shall be subject to cost-sharing pursuant to 907 KAR 1:604.

(2) A provider shall appropriately denote telehealth services by place of service, modifiers, or other means as designated by the department or as required in a managed care organization's contract with the provider or member. [Consultation Coverage in a Setting That is Not a Community Mental Health Center. (1) The policies in this section shall apply to a telehealth consultation provided in a setting that is not a community mental health center.

(2) The following telehealth consultations shall be covered by the department as follows:

(a) A physical health evaluation or management consultation provided by:

1. A physician including a physician:
 - a. With an individual physician practice;
 - b. Who belongs to a group physician practice; or
 - c. Who is employed by a federally-qualified health center, federally-qualified health center look-alike, rural health clinic, or primary care center;
2. An advanced practice registered nurse including an advanced practice registered nurse:
 - a. With an individual advanced practice registered nurse practice;
 - b. Who belongs to a group advanced practice registered nurse practice; or
 - c. Who is employed by a physician, federally-qualified health center, federally-qualified health center look-alike, rural health clinic, or primary care center;
3. An optometrist; or
4. A chiropractor;

(b) A mental health evaluation or management service provided by:

1. A psychiatrist;
2. A physician in accordance with the limit established in 907 KAR 3:005;
3. An APRN in accordance with the limit established in 907 KAR 1:102;
4. A psychologist:
 - a. With a license in accordance with KRS 319.010(6);
 - b. With a doctorate degree in psychology;
 - c. Who is directly employed by a psychiatrist; and
 - d. If:

(i) The psychiatrist by whom the psychologist is directly employed also interacts with the recipient during the encounter; and

(ii) The telehealth consultation is billed under the NPI of the psychiatrist by whom the psychologist is directly employed;

5. A licensed professional clinical counselor:
 - a. Who is directly employed by a psychiatrist; and
 - b. If:

(i) The psychiatrist by whom the licensed professional clinical counselor is directly employed also interacts with the recipient during the encounter; and

(ii) The telehealth consultation is billed under the NPI of the psychiatrist by whom the licensed professional clinical counselor is directly employed;

6. A licensed clinical social worker:
 - a. Who is directly employed by a psychiatrist; and
 - b. If:

(i) The psychiatrist by whom the licensed clinical social worker is directly employed also interacts with the recipient during the

encounter; and

(ii) The telehealth consultation is billed under the NPI of the psychiatrist by whom the licensed clinical social worker is directly employed; or

7. A licensed marriage and family therapist:
 - a. Who is directly employed by a psychiatrist; and
 - b. If:

(i) The psychiatrist by whom the licensed marriage and family therapist is directly employed also interacts with the recipient during the encounter; and

(ii) The telehealth consultation is billed under the NPI of the psychiatrist by whom the licensed marriage and family therapist is directly employed;

- (c) Individual or group psychotherapy provided by:

1. A psychiatrist;
2. A physician in accordance with the limit established in 907 KAR 3:005;
3. An APRN in accordance with the limit established in 907 KAR 1:102;

4. A psychologist:

- a. With a license in accordance with KRS 319.010(6);
- b. With a doctorate degree in psychology;
- c. Who is directly employed by a psychiatrist; and

d. If:

(i) The psychiatrist by whom the psychologist is directly employed also interacts with the recipient or recipients during the encounter; and

(ii) The telehealth consultation is billed under the NPI of the psychiatrist by whom the psychologist is directly employed;

5. A licensed professional clinical counselor:

- a. Who is directly employed by a psychiatrist; and
- b. If:

(i) The psychiatrist by whom the licensed professional clinical counselor is directly employed also interacts with the recipient or recipients during the encounter; and

(ii) The telehealth consultation is billed under the NPI of the psychiatrist by whom the licensed professional clinical counselor is directly employed;

6. A licensed clinical social worker:

- a. Who is directly employed by a psychiatrist; and
- b. If:

(i) The psychiatrist by whom the licensed clinical social worker is directly employed also interacts with the recipient or recipients during the encounter; and

(ii) The telehealth consultation is billed under the NPI of the psychiatrist by whom the licensed clinical social worker is directly employed; or

7. A licensed marriage and family therapist:

- a. Who is directly employed by a psychiatrist; and
- b. If:

(i) The psychiatrist by whom the licensed marriage and family therapist is directly employed also interacts with the recipient or recipients during the encounter; and

(ii) The telehealth consultation is billed under the NPI of the psychiatrist by whom the licensed marriage and family therapist is directly employed;

- (d) Pharmacologic management provided by:

1. A physician in accordance with the limit established in 907 KAR 3:005;
2. An APRN in accordance with the limit established in 907 KAR 1:102; or

3. A psychiatrist;

(e) A psychiatric, psychological, or mental health diagnostic interview examination provided by:

1. A psychiatrist;
2. A physician in accordance with the limit established in 907 KAR 3:005;
3. An APRN in accordance with the limit established in 907 KAR 1:102;

4. A psychologist:

- a. With a license in accordance with KRS 319.010(6);
- b. With a doctorate degree in psychology;
- c. Who is directly employed by a psychiatrist; and

d. If:

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~~(i) The psychiatrist by whom the psychologist is directly employed also interacts with the recipient during the encounter; and~~

~~(ii) The telehealth consultation is billed under the NPI of the psychiatrist by whom the psychologist is directly employed;~~

~~5. A licensed professional clinical counselor:~~

~~a. Who is directly employed by a psychiatrist; and~~

~~b. If:~~

~~(i) The psychiatrist by whom the licensed professional clinical counselor is directly employed also interacts with the recipient during the encounter; and~~

~~(ii) The telehealth consultation is billed under the NPI of the psychiatrist by whom the licensed professional clinical counselor is directly employed;~~

~~6. A licensed clinical social worker:~~

~~a. Who is directly employed by a psychiatrist; and~~

~~b. If:~~

~~(i) The psychiatrist by whom the licensed clinical social worker is directly employed also interacts with the recipient during the encounter; and~~

~~(ii) The telehealth consultation is billed under the NPI of the psychiatrist by whom the licensed clinical social worker is directly employed; or~~

~~7. A licensed marriage and family therapist:~~

~~a. Who is directly employed by a psychiatrist; and~~

~~b. If:~~

~~(i) The psychiatrist by whom the licensed marriage and family therapist is directly employed also interacts with the recipient during the encounter; and~~

~~(ii) The telehealth consultation is billed under the NPI of the psychiatrist by whom the licensed marriage and family therapist is directly employed;~~

~~(f) Individual medical nutrition therapy consultation services provided by a:~~

~~1. Licensed dietitian:~~

~~a. Who is directly employed by a physician, federally qualified health care center, rural health clinic, primary care center, a hospital's outpatient department, or the Department for Public Health; and~~

~~b. If the telehealth consultation is billed under the:~~

~~(i) NPI of the physician, federally qualified health care center, rural health clinic, hospital's outpatient department, or primary care center by whom the licensed dietitian is directly employed; or~~

~~(ii) Department for Public Health if the licensed dietitian works for the Department for Public Health; or~~

~~2. Certified nutritionist:~~

~~a. Who is directly employed by a physician, federally qualified health care center, rural health clinic, primary care center, a hospital's outpatient department, or the Department for Public Health; and~~

~~b. If the telehealth consultation is billed under the:~~

~~(i) NPI of the physician, federally qualified health care center, rural health clinic, hospital's outpatient department, or primary care center by whom the certified nutritionist is directly employed; or~~

~~(ii) Department for Public Health if the certified nutritionist works for the Department for Public Health;~~

~~(g) Individual diabetes self-management training consultation if:~~

~~1. Ordered by a:~~

~~a. Physician;~~

~~b. APRN directly employed by a physician; or~~

~~c. Physician assistant directly employed by a physician;~~

~~2. Provided by a:~~

~~a. Physician;~~

~~b. APRN directly employed by a physician;~~

~~c. Physician assistant directly employed by a physician;~~

~~d. Registered nurse directly employed by a physician; or~~

~~e. Licensed dietitian directly employed by a physician, federally qualified health care center, rural health clinic, primary care center, a hospital's outpatient department, or the Department for Public Health; and~~

~~3. The telehealth consultation is billed under the:~~

~~a. NPI of the physician, federally qualified health care center, rural health clinic, hospital's outpatient department, or primary care~~

~~center by whom the provider is directly employed; or~~

~~b. Department for Public Health if the provider works for the Department for Public Health;~~

~~(h) An occupational therapy evaluation or treatment provided by an occupational therapist who is directly employed by a physician:~~

~~1. If direct physician contact occurs during the evaluation;~~

~~2. If the telehealth consultation is billed under the physician's NPI; and~~

~~3. In accordance with the limits established in 907 KAR 3:005;~~

~~(i) An occupational therapy evaluation or treatment provided by an occupational therapist who is directly employed by or is an agent of a nursing facility:~~

~~1. If the telehealth consultation is billed under the nursing facility's NPI; and~~

~~2. In accordance with the limits established in 907 KAR 1:065;~~

~~(j) An occupational therapy evaluation or treatment provided by an occupational therapist who is directly employed by or is an agent of a home health agency:~~

~~1. If the telehealth consultation is billed under the home health agency's NPI; and~~

~~2. In accordance with the limits established in 907 KAR 1:030;~~

~~(k) A physical therapy evaluation or treatment provided by a physical therapist who is directly employed by a physician:~~

~~1. If direct physician contact occurs during the evaluation;~~

~~2. If the telehealth consultation is billed under the physician's NPI; and~~

~~3. In accordance with the limits established in 907 KAR 3:005;~~

~~(l) A physical therapy evaluation or treatment provided by a physical therapist who is directly employed by or is an agent of a hospital's outpatient department:~~

~~1. If the telehealth consultation is billed under the hospital's outpatient department's NPI; and~~

~~2. In accordance with the limits established in 907 KAR 10:014;~~

~~(m) A physical therapy evaluation or treatment provided by a physical therapist who is directly employed by or is an agent of a home health agency:~~

~~1. If the telehealth consultation is billed under the home health agency's NPI; and~~

~~2. In accordance with the limits established in 907 KAR 1:030;~~

~~(n) A physical therapy evaluation or treatment provided by a physical therapist who is directly employed by or is an agent of a nursing facility:~~

~~1. If the telehealth consultation is billed under the nursing facility's NPI; and~~

~~2. In accordance with the limits established in 907 KAR 1:065;~~

~~(o) A speech therapy evaluation or treatment provided by a speech-language pathologist who is directly employed by a physician:~~

~~1. If direct physician contact occurs during the evaluation or treatment;~~

~~2. If the telehealth consultation is billed under the physician's NPI; and~~

~~3. In accordance with the limits established in 907 KAR 3:005;~~

~~(p) A speech therapy evaluation or treatment provided by a speech-language pathologist who is directly employed by or is an agent of a hospital's outpatient department:~~

~~1. If the telehealth consultation is billed under the hospital's outpatient department's NPI; and~~

~~2. In accordance with the limits established in 907 KAR 10:014;~~

~~(q) A speech therapy evaluation or treatment provided by a speech-language pathologist who is directly employed by or is an agent of a home health agency:~~

~~1. If the telehealth consultation is billed under the home health agency's NPI; and~~

~~2. In accordance with the limits established in 907 KAR 1:030;~~

~~(r) A speech therapy evaluation or treatment provided by a speech-language pathologist who is directly employed by or is an agent of a nursing facility:~~

~~1. If the telehealth consultation is billed under the nursing facility's NPI; and~~

~~2. In accordance with the limits established in 907 KAR 1:065;~~

~~(s) A neurobehavioral status examination provided by:~~

~~1. A psychiatrist;~~

2. A physician in accordance with the limit established in 907 KAR 3:005; or

3. A psychologist:

a. With a license in accordance with KRS 319.010(6);

b. With a doctorate degree in psychology; and

c. Who is directly employed by a physician or a psychiatrist:

(i) In accordance with the limits established in 907 KAR 3:005;

(ii) If the physician or psychiatrist by whom the psychologist is directly employed also interacts with the recipient during the encounter; and

(iii) If the telehealth consultation is billed under the NPI of the physician or psychiatrist by whom the psychologist is directly employed; or

(i) End-stage renal disease monitoring, assessment, or counseling consultations for a home dialysis recipient provided by:

1. A physician directly employed by a hospital's outpatient department if the telehealth consultation is billed under the hospital's outpatient department's NPI; or

2. An APRN directly employed by a hospital's outpatient department if the telehealth consultation is billed under the hospital's outpatient department's NPI.

Section 4. Telehealth Consultation Coverage in a Community Mental Health Center. (1) The policies in this section shall apply to a telehealth consultation provided via a community mental health center.

(2) The limits, restrictions, exclusions, or policies:

(a) Which apply to a service provided face-to-face in a community mental health center shall apply to a telehealth consultation or service provided via telehealth via a community mental health center; and

(b) Established in 907 KAR 1:044 shall apply to a telehealth consultation or service provided via:

1. Telehealth; and

2. A community mental health center.

(3) The department shall not reimburse for a telehealth consultation provided via a community mental health center if:

(a) The consultation is not billed under the community mental health center's national provider identifier; or

(b) The person who delivers the telehealth consultation is not:

1. Directly employed by the community mental health center; or

2. An agent of the community mental health center.

(4) The following telehealth consultations provided via a community mental health center shall be covered by the department as follows:

(a) A psychiatric diagnostic interview examination provided:

1. In accordance with 907 KAR 1:044; and

2. By:

a. A psychiatrist; or

b. An APRN who:

(i) Is certified in the practice of psychiatric mental health nursing; and

(ii) Meets the requirements established in 201 KAR 20:057;

(b) A psychological diagnostic interview examination provided:

1. In accordance with 907 KAR 1:044; and

2. By:

a. A psychiatrist; or

b. A psychologist with a license in accordance with KRS 319.010(6);

(c) Pharmacologic management provided:

1. In accordance with 907 KAR 1:044; and

2. By:

a. A physician;

b. A psychiatrist; or

c. An APRN who:

(i) Is certified in the practice of psychiatric mental health nursing; and

(ii) Meets the requirements established in 201 KAR 20:057;

(d) Group psychotherapy provided:

1. In accordance with 907 KAR 1:044; and

2. By:

a. A psychiatrist;

b. A psychologist with a license in accordance with KRS 319.010(6);

c. A licensed professional clinical counselor;

d. A licensed marriage and family therapist;

e. A licensed clinical social worker;

f. A psychiatric registered nurse; or

g. An APRN who:

(i) Is certified in the practice of psychiatric mental health nursing; and

(ii) Meets the requirements established in 201 KAR 20:057;

(e) Mental health evaluation or management emergency services provided:

1. In accordance with 907 KAR 1:044; and

2. By:

a. A psychiatrist;

b. A psychologist with a license in accordance with KRS 319.010(6);

c. A licensed professional clinical counselor;

d. A licensed marriage and family therapist;

e. A licensed clinical social worker;

f. A psychiatric medical resident;

g. A psychiatric registered nurse; or

h. An APRN who:

(i) Is certified in the practice of psychiatric mental health nursing; and

(ii) Meets the requirements established in 201 KAR 20:057;

(f) A mental health assessment provided:

1. In accordance with 907 KAR 1:044; and

2. By a psychologist with a license in accordance with KRS 319.010(6); or

(g) Individual psychotherapy provided:

1. In accordance with 907 KAR 1:044 except that "face-to-face" shall include two (2) way interactive video for the purposes of individual psychotherapy provided via a community mental health center; and

2. By:

a. A psychiatrist;

b. A psychologist with a license in accordance with KRS 319.010(6);

c. A licensed professional clinical counselor;

d. A licensed marriage and family therapist;

e. A licensed clinical social worker;

f. A psychiatric registered nurse; or

g. An APRN who:

(i) Is certified in the practice of psychiatric mental health nursing; and

(ii) Meets the requirements established in 201 KAR 20:057.

(5) If a provision established in 907 KAR 1:044 or the material incorporated by reference into 907 KAR 1:044 is in contrast with subsection (4)(g)1. of this section, the policy established in subsection (4)(g)1 of this section shall supersede the contrary statement.

Section 5. Reimbursement. (1)(a) The department shall reimburse a telehealth provider who is eligible for reimbursement from the department for a telehealth consultation an amount equal to the amount paid for a comparable in-person service in accordance with:

1. 907 KAR 3:010 if the service was provided:

a. By a physician; and

b. Not in the circumstances described in subparagraphs 3., 4., 5., or 6. of this paragraph;

2. 907 KAR 1:104 if the service was provided:

a. By an advanced practice registered nurse; and

b. Not in the circumstances described in subparagraphs 3., 4., 5., or 6. of this paragraph;

3. 907 KAR 1:055 if the service was provided and billed through a federally-qualified health center, federally-qualified health center look-alike, rural health clinic, or primary care center;

4. 907 KAR 10:015 if the service was provided and billed through a hospital outpatient department;

5. 907 KAR 1:031 if the service was provided and billed through a home health agency; or

6. 907 KAR 1:065 if the service was provided and billed through a nursing facility.

(b)1. Reimbursement for a telehealth consultation provided by

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a practitioner who is employed by a provider or is an agent of a provider shall be a matter between the provider and the practitioner.

2. The department shall not be liable for reimbursing a practitioner who is employed by a provider or is an agent of a provider.

(c) A managed care organization shall not be required to reimburse the same amount for a telehealth consultation as the department reimburses, but may reimburse the same amount as the department reimburses if the managed care organization chooses to do so.

(2) A telehealth provider shall bill for a telehealth consultation using the appropriate two (2) letter "GT" modifier.

(3) The department shall not require the presence of a health care provider requesting a telehealth consultation at the time of the telehealth consultation unless it is requested by a telehealth provider or telehealth practitioner at the hub site.

(4) The department shall not reimburse for transmission costs.

Section 6. Confidentiality and Data Integrity. (1) A telehealth consultation shall be performed on a secure telecommunications line or utilize a method of encryption adequate to protect the confidentiality and integrity of the telehealth consultation information.

(2) Both a hub site and a spoke site shall use authentication and identification to ensure the confidentiality of a telehealth consultation.

(3) A telehealth provider or telehealth practitioner of a telehealth consultation shall implement confidentiality protocols that include:

(a) Identifying personnel who have access to a telehealth transmission;

(b) Usage of unique passwords or identifiers for each employee or person with access to a telehealth transmission; and

(c) Preventing unauthorized access to a telehealth transmission.

(4) A telehealth provider's or telehealth practitioner's protocols and guidelines shall be available for inspection by the department upon request.

Section 7. Informed Consent. (1) Before providing a telehealth consultation to a recipient, a telehealth provider or telehealth practitioner shall document written informed consent from the recipient and shall ensure that the following written information is provided to the recipient in a format and manner that the recipient is able to understand:

(a) The recipient shall have the option to refuse the telehealth consultation at any time without affecting the right to future care or treatment and without risking the loss or withdrawal of a Medicaid benefit to which the recipient is entitled;

(b) The recipient shall be informed of alternatives to the telehealth consultation that are available to the recipient;

(c) The recipient shall have access to medical information resulting from the telehealth consultation as provided by law;

(d) The dissemination, storage, or retention of an identifiable recipient image or other information from the telehealth consultation shall comply with 42 U.S.C. 1301 et seq., 45 C.F.R. Parts 160, 162, 164, KRS 205.566, 216.2927, and any other federal law or regulation or state law establishing individual health care data confidentiality policies;

(e) The recipient shall have the right to be informed of the parties who will be present at the spoke site and the hub site during the telehealth consultation and shall have the right to exclude anyone from either site; and

(f) The recipient shall have the right to object to the video taping of a telehealth consultation.

(2) A copy of the signed informed consent shall be retained in the recipient's medical record and provided to the recipient or the recipient's legally-authorized representative upon request.

(3) The requirement to obtain informed consent before providing a telehealth consultation shall not apply to an emergency situation if the recipient is unable to provide informed consent and the recipient's legally-authorized representative is unavailable.]

Section 4.[8.] Medical Records. (1) [A request for a telehealth consultation from a health care provider and the medical necessity for the telehealth consultation shall be documented in the recipient's medical record.

(2) A health care provider shall keep a complete medical record of a telehealth consultation provided to a recipient and follow applicable state and federal statutes and regulations for medical recordkeeping and confidentiality in accordance with KRS 194A.060, 422.317, 434.840 – 434.860, 42 C.F.R. 431.300 to 431.307, and 45 C.F.R. 164.530(j).

(3)(a)] A medical record of a telehealth service[consultation] shall be maintained in compliance with 907 KAR 1:672 and 45 C.F.R. 164.530(j).

(2)[(b)] A health care provider shall have the capability of generating a hard copy of a medical record of a telehealth service[consultation].[(4) Documentation of a telehealth consultation by the referring health care provider shall be included in the recipient's medical record and shall include:

(a) The diagnosis and treatment plan resulting from the telehealth consultation and a progress note by the referring health care provider if present at the spoke site during the telehealth consultation;

(b) The location of the hub site and spoke site;

(c) A copy of the document signed by the recipient indicating the recipient's informed consent to the telehealth consultation;

(d) Documentation supporting the medical necessity of the telehealth consultation; and

(e) The referral order and complete information from the referring health care provider who requested the telehealth consultation for the recipient.

(5)(a) A telehealth provider's or telehealth practitioner's diagnosis and recommendations resulting from a telehealth consultation shall be documented in the recipient's medical record at the office of the health care provider who requested the telehealth consultation.

(b) Except as established in paragraph (c) of this subsection, a telehealth provider or telehealth practitioner shall send a written report regarding a telehealth consultation within thirty (30) days of the consultation to the referring health care provider.

(c) If a community mental health center was the referring health care provider and the provider of the telehealth consultation for a recipient, the requirement in paragraph (b) of this subsection shall not apply.]

Section 5[9]. Federal Financial Participation. A policy established in this administrative regulation shall be null and void if the Centers for Medicare and Medicaid Services:

(1) Denies federal financial participation for the policy; or

(2) Disapproves the policy.

Section 6[10]. Appeal Rights. (1) An appeal of a department determination regarding a Medicaid beneficiary shall be in accordance with 907 KAR 1:563.

(2) An appeal of a department determination regarding Medicaid eligibility of an individual shall be in accordance with 907 KAR 1:560.

(3) A provider may appeal a department-written determination as to the application of this administrative regulation in accordance with 907 KAR 1:671.

(4) An appeal of a managed care organization's determination regarding a Medicaid beneficiary shall be in accordance with 907 KAR 17:010.

Section 7. Delayed Implementation Date. The provisions of this administrative regulation shall be implemented beginning July 1, 2019.

CAROL H. STECKEL, Commissioner
ADAM M. MEIER, Secretary

APPROVED BY AGENCY: June 11, 2019

FILED WITH LRC: June 14, 2019 at 10 a.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; CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Jonathan Scott and Chase Coffey

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes Department for Medicaid Services (DMS) policies relating to telehealth. The coverage policies in this administrative regulation apply to a managed care organization's (MCO's) coverage of Medicaid services for individuals enrolled in the MCO for the purpose of receiving Medicaid or Kentucky Children's Health Insurance Program services. An MCO is only required to reimburse according to this administrative regulation depending on the rates negotiated with providers.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish DMS policies relating to telehealth in accordance with KRS 194A.125 and KRS 205.559.

(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 DMS telehealth policies.

(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 DMS telehealth policies.

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

(a) How the amendment will change this existing administrative regulation: The amendments to this administrative regulation provide new definitions for "telehealth", "telehealth service", "place of service", and "telehealth care provider". A new section relates to telehealth reimbursement. The administrative regulation is amended to allow for telehealth reimbursement of at least 100% of the amount paid for a comparable in-person service. The administrative regulation also requires cost-sharing for a telehealth service. Providers are required to appropriately denote telehealth services, and to document them in the patient's medical record. The administrative regulation also clarifies that referral requirements are the same as for face-to-face (non-telehealth) services. In addition, many of the previous provisions are being deleted. Lastly, changes to comply with the drafting and formatting requirements of KRS Chapter 13A have also been made.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to ensure that policies stated in the administrative regulation are consistent with policies approved by CMS for federal funding. In addition, these amendments incorporate changes made by 2018's SB 112.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by complying with KRS 205.559 and conforming the administrative regulation's policies to those approved by CMS, ensuring federal funding for the policies. In addition, these amendments incorporate changes made by 2018's SB 112.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the authorizing statutes by conforming the administrative regulation's policies to those approved by CMS, ensuring federal funding for the policies. In addition, these amendments incorporate changes made by 2018's SB 112.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: The Department for Medicaid Services, MCOs, any enrolled and credentialed provider who could provide appropriate telehealth services, and Medicaid members who may access telehealth services. The number of providers who will provide telehealth services and the number of Medicaid members who will access telehealth services is not known and cannot be predicted.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: To be reimbursed for a telehealth service, a provider will have to comply with the policies and requirements established in this administrative regulation. Participation is optional, not mandatory.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). No cost is imposed on the entities regulated by the administrative regulation as participation is optional.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Those who opt to perform telehealth services in compliance with this administrative regulation will be reimbursed for services rendered.

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

(a) Initially: The department anticipates that it will incur no additional expenses in the implementation of these amendments in the first year of operation.

(b) On a continuing basis: The department anticipates that it will incur no additional expenses in implementing these amendments on a continuing basis.

(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under the Social Security Act, Title XIX and matching funds of general fund appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Neither an increase in fees nor 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 neither establishes nor increases any fees.

(9) Tiering: Is tiering applied? Tiering was not applied as telehealth service standards are applied equally to all affected individuals.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Medicaid Services (DMS) will be impacted by the amendment.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This amendment is authorized by KRS 194A.010, 194A.030(2), 194A.125, 205.520(3), 205.559

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

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

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

(c) How much will it cost to administer this program for the first year? The department anticipates no additional costs in administering these amendments in the first year.

(d) How much will it cost to administer this program for subsequent years? The department anticipates no additional costs in administering these amendments in subsequent years.

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

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

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 C.F.R. 431.300-431.307, 440.50.
2. State compliance standards. KRS 205.559, 205.5591 and 205.560 require DMS to expand telehealth services and policies to ensure proper use and security and promote access to health care.
3. Minimum or uniform standards contained in the federal mandate. The federal requirements in 42 C.F.R. 431-300-431.307 establish requirements relating to the safeguarding of electronic health information. 42 C.F.R. 440.50 allow for the provision of telehealth by providers within the Medicaid program.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The administrative regulation does not impose stricter than federal requirements.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The administrative regulation does not impose stricter than federal requirements.

ADMINISTRATIVE REGULATIONS AS AMENDED BY PROMULGATING AGENCY
AND REVIEWING SUBCOMMITTEE

ARRS = Administrative Regulation Review Subcommittee
IJC = Interim Joint Committee

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Education Professional Standards Board
(As Amended at ARRS, June 11, 2019)

16 KAR 8:030. Continuing education option for[~~certificate renewal and~~] rank change.

RELATES TO: KRS 161.020, 161.028, 161.030, 161.1211
STATUTORY AUTHORITY: KRS 161.020, 161.028(1)(a), (f), (q), 161.030, 161.095, 161.1211

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.095 requires the Education Professional Standards Board to promulgate an administrative regulation establishing procedures for a teacher to maintain a certificate by successfully completing meaningful continuing education. KRS 161.028(1)(f) and 161.030 authorize the board to issue and renew certification for professional school personnel, and KRS 161.028(1)(q) authorizes the board to charge reasonable certification fees. KRS 161.1211 establishes certificate ranks and requires the board to issue rank classifications. This administrative regulation establishes the procedures for the continuing education option for[~~certificate renewal and~~] rank change.

~~Section 1. [Procedures for the first and second renewal of the professional teaching certificate established in 16 KAR 2:010 shall require completion of:~~

- ~~(1) The continuing education option established in this administrative regulation; or~~
- ~~(2) A planned fifth-year program established in 16 KAR 8:020.~~

~~Section 2.] The Continuing Education Option shall only be used to obtain either Rank II or Rank I.~~

Section 2. The Continuing Education Option shall require the completion of Plan I or Plan II of this administrative regulation.

Section 3. Plan I. [Program Requirements.] (1) Plan I shall have the following program requirements: [The continuing education option shall consist of four (4) phases:]

(a) Plan I shall consist of four (4) phases:

1. Phase one (1): Completion of an instructional seminar established in subsection 2(b) of this section, [Section 4 of this administrative regulation] and development of a plan for job-embedded professional development;

2. [(b)] Phase two (2): Content exploration and research;

3. [(e)] Phase three (3): Student instruction and assessment; and

4. [(d)] Phase four (4): Professional demonstration and publication.

[(2)] In addition to the completion of the four (4) phases established in paragraph (a) of this subsection[subsection (1)(a) through (d) of this section], a candidate for Plan I [the Continuing Education Option] shall:

a.] develop a leadership project aligned to the job-embedded professional development, [required by subsection (1)(a) of this section; and

(a) Develop a leadership project aligned to the job-embedded professional development required by subsection (1)(a) of this section.

(b) Complete a minimum of six (6) graduate credit hours, with an average grade point average of three and zero-tenths (3.0) aligned to the job-embedded professional development required by subsection (1)(a) of this section.]

[(2)] [Section 4. (1)] A candidate for Plan I [the continuing education option] for [certificate renewal and] rank change shall:

- (a) Attend a board-approved program orientation meeting; and
- (b) Successfully complete a board-approved seminar on how

to build a plan for job-embedded professional development.

[(2)](a)1. A Kentucky school district, group of Kentucky school districts, or Kentucky postsecondary institution with an accredited educator preparation program may make application to the Education Professional Standards Board for approval to sponsor a seminar on how to build a plan for job-embedded professional development.

2. The Education Professional Standards Board may sponsor a seminar on how to build a plan for job-embedded professional development in a district or group of districts in which a seminar is not otherwise offered.

(b) The seminar on how to build a plan for job-embedded professional development shall be led by a continuing education option coach.

(c) The seminar on how to build a plan for job-embedded professional development may be a blend of:

1. Web-based instruction; and
2. Face-to-face cohort meetings.

(d) The Education Professional Standards Board may provide Web-based instruction through an on-line module[at www.KYEducators.org].

(e) A seminar sponsor shall offer face-to-face cohort meetings at least two (2) times per month during the plan building seminar.

[(3)] Following completion of phase one (1) of Plan I [the continuing education option], a seminar sponsor shall continue face-to-face cohort meetings on a monthly basis. [(4) Completion of the first phase of the Continuing Education Option shall allow the candidate to receive first renewal of the candidate's certificate beginning July 30, 2010.]

(5) Payment of seminar tuition.

(a)1. Tuition for the on-line module provided by the Education Professional Standards Board shall be \$150.

2. The on-line module fee shall be paid to the Education Professional Standards Board at the time of enrollment.

(b)1. Tuition for the cohort meetings shall be \$1,100.

2. The cohort meeting fee shall be paid to the board-approved seminar sponsor.

(c)1. Seminar tuition shall be nonrefundable.

2. A cohort meeting fee may be transferred to another seminar sponsor upon agreement between both sponsors.

(6)(a) Upon completion of the seminar, the [Continuing Education Option] candidate shall design an individual job-embedded professional development plan.

(b) The job-embedded professional development plan shall:

1. Focus on a professional growth need identified by the teacher with consideration given to the needs identified in the school's consolidated plan, student assessment results, and community resources;

2. Include goals correlated to:

a. Each of the teacher standards[ten (10) Kentucky Teacher Standards] established in 16 KAR 1:010;

b. The performance indicators[Kentucky Teacher Standards Advanced Level Performance] in the CEO Plan I Professional Development Portfolio Rubric; and

c. The teacher's individual professional growth needs established in subparagraph 1. of this paragraph;

3. Include a timeline in which the candidate shall complete all phases of Plan I [the continuing education option]. The timeline shall not:

a. Be less than one (1) year[eighteen (18) months]; or

b. Be more than four (4) years; and

4. Be reviewed by the continuing education option coach for the seminar cohort.

(c) The continuing education option coach shall:

1. Review the plans using the CEO Plan I Professional Development Plan Scoring Rubric; and

2. Provide guidance to the candidate for submitting the plan to

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the Education Professional Standards Board for scoring.

(d)1. The candidate shall submit the plan to the Education Professional Standards Board for review.

2. The candidate may resubmit the plan for an additional scoring if the continuing education scoring team has provided evidence of a deficiency in the plan.

3. The candidate shall submit a scoring fee of \$455 to the Education Professional Standards Board with the plan.

4. If a candidate submits a plan for additional scoring, the candidate shall submit a rescoring fee of fifty (50) dollars to the Education Professional Standards Board with the plan.

(7)(a) The candidate shall participate in a job-embedded professional development experience with documented outcomes that demonstrate the accomplishment of the established goals.

(b) A job-embedded professional development experience may include university graduate credit or undergraduate content course credits that meet the goals established in the candidate's job-embedded professional growth plan.

(c) A job-embedded professional development experience shall include a combination of:~~[1.a. A minimum of six (6) university graduate credits; or~~

~~b. With approval from Education Professional Standards Board staff, a minimum of six (6) university graduate or undergraduate content course credits that meet the goals established in the candidate's job-embedded professional growth plan;]~~

~~1.[2.] Research;~~

~~2.[3.] Field experience;~~

~~3.[4.] Professional development activities;~~

~~4.[5.] Interdisciplinary networking and consultations; and~~

~~5.[6.] A leadership project.~~

(8)(a) The evidence of accomplishment of the goals identified in the plan shall be documented by the candidate in a portfolio.

(b) The candidate shall present the portfolio to the Education Professional Standards Board for review and scoring.

(c) The documentation in the portfolio shall provide evidence:

1. That all performance indicators~~[Kentucky teacher standards Advanced Level Performance Indicators]~~, as listed in the CEO Plan I Professional Development Portfolio Rubric, have been met;

2. Of the effects on student learning; and

3. Of the professional growth over time in:

a. Content knowledge;

b. Instructional and student assessment practices; and

c. Professional demonstration and publication skills.

(d) The portfolio shall be presented using a variety of media, which may include electronic recordings.~~[(e) The portfolio shall be submitted to the Education Professional Standards Board at least one (1) year in advance of the expiration date of the teacher's certificate.]~~

(e)~~[(f)]~~ The portfolio shall be submitted in either:

1. A traditional paper format with other media; or

2. An electronic format.

(f)~~[(g)]~~ A portfolio shall not exceed three (3) four (4) inch binders in size or its electronic equivalent.

(9)~~[Section 5. (1)]~~ Initial application for Plan I~~[the continuing education option program]~~ shall be made through a seminar sponsor approved by the Education Professional Standards Board.

(10)~~[(2)]~~ The approved seminar sponsor shall report all enrolled applicants to the Education Professional Standards Board.

(11)~~[Section 6(1)]~~ A team of two (2) scorers approved by the Education Professional Standards Board shall review and score the continuing education portfolio.

(12)~~[(2)]~~ The scorers shall be selected by the Education Professional Standards Board from a cadre of educators representing teachers, principals, central office instructional personnel, and higher education faculty.

(13)~~[(3)]~~ The two (2) person scoring team shall:~~[(a) Include a teacher certified in the same grade range and content area as the continuing education option candidate;]~~

(a)~~[(b)]~~ Score the candidate's portfolio using the CEO Plan I Professional Development Portfolio Rubric;

(b)~~[(c)]~~ 1. Recommend the teacher for rank change~~[certificate renewal]~~ to the Education Professional Standards Board~~[prior to the expiration date of the certificate]~~; or

2. Report results to the Education Professional Standards

Board using the scoring rubric to indicate which standards were not met; and

(c)~~[(d)]~~ Receive training from the Education Professional Standards Board to score the portfolios in a consistent and reliable manner.

(14)(a)~~[(4)(a)]~~ If the two (2) person scoring team cannot reach consensus in the review process, a third scorer shall score the portfolio.

(b) An average of the scores shall determine whether the portfolio contained evidence that the teaching standards~~[ten (10) Kentucky Teacher Standards for Preparation and Certification]~~ established in 16 KAR 1:010 were met.

(15)(a)~~[(5)(a)]~~ If the teacher's portfolio does not contain evidence that the teaching standards~~[all ten (10) Kentucky Teacher Standards established]~~ in 16 KAR 1:010 have been met, the teacher may resubmit a partial portfolio for rescoring, which shall contain documented evidence on the unmet standard or standards.

(b) The rescoring process shall follow the same procedures as the initial scoring process established in this section.

(c) The teacher shall receive feedback from the initial scoring regarding additional evidence that may be needed to show that goals were accomplished and that all teaching standards~~[Kentucky Teacher Standards established]~~ in 16 KAR 1:010 were met.~~[Section 7. A teacher following the continuing education option to the fifth year program for certificate renewal and rank change shall complete the program by the end of the second certificate renewal period.]~~

(16)~~[Section 8. Payment of Fee for Scoring the Portfolio. (1)]~~ A scoring fee of \$1,400 shall be assessed to each Plan I~~[continuing education option] candidate.~~

(17)~~[(2)]~~ The fee shall be used to pay expenses for the actual cost of administration of the Plan I~~[continuing education option] program~~ including the costs associated with the following:

(a) The evaluation of approved seminar provider programs;

(b) Training the continuing education option coaches who lead the seminars;

(c) Training and compensating the portfolio reading team members; and

(d) The initial scoring of the portfolio.

(18)~~[(3)]~~ Payment shall be made to the Education Professional Standards Board.

(19)~~[(4)]~~ The full fee shall be submitted with the portfolio for scoring.

(20)~~[(5)]~~ The initial scoring fee shall provide for one (1) scoring of all parts of the portfolio.

(21)(a)~~[(6)(a)]~~ A fee of \$140 shall be assessed for each unmet standard that requires rescoring.

(b) The rescoring fee, if applicable, shall be submitted to the Education Professional Standards Board with the revised portfolio.

(22)~~[Section 9. (1)]~~ Portfolios shall be scored by the Education Professional Standards Board on an annual basis.

(23)~~[(2)]~~ A candidate shall have been enrolled in the continuing education option program for at least twelve (12)~~[eighteen (18)]~~ months prior to submission of the portfolio to the Education Professional Standards Board for scoring.

(24)~~[(3)]~~ A candidate shall submit a portfolio to the Education Professional Standards Board for initial scoring between July 1 and July 15.

(25)~~[(4)]~~ The date of portfolio submission shall be either:

(a) The day the portfolio is hand-delivered to the Education Professional Standards Board offices; or

(b) The date of the postmark.

(26)(a)~~[(5)(a)]~~ A portfolio that requires rescoring shall be resubmitted during one (1) of the rescoring windows of October 1 through 15 or January 1 through 15.

(b) Portfolios not submitted within the rescoring window shall be resubmitted in accordance with the schedule established in subsection (24)~~[(3)]~~ of this section.

(27)~~[(6)]~~ All portfolios shall become the property of the Education Professional Standards Board.

(28)(a)~~[(7)(a)]~~ The Education Professional Standards Board shall provide electronic tracking of all portfolios to identify cases of plagiarism.

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(b) Instances of plagiarism shall be reported to the Education Professional Standards Board for disciplinary action.

Section 4[2]. Plan II. (1) Plan II shall require the completion of a continuing education program approved by the Education Professional Standards Board.

(2) Plan II programs shall require the candidate to participate in a job-embedded professional development experience with documented outcomes included in a capstone project.

(a) A job-embedded professional development experience shall:

1. Focus on a professional growth need identified by the provider with consideration given to the needs identified in the school or district's consolidated plan, student assessment results, and community resources;

2. Include goals correlated to each of:

a. The teaching standards established in 16 KAR 1:010; or

b. The standards for teacher leader established in 16 KAR 1:016; and

3. Require the candidate to demonstrate that all standards identified in subparagraph 2 of this subsection have been met.

(b) A job-embedded professional development experience may include university graduate credit or undergraduate content course credits that meet the goals established in paragraph (a) of this subsection.

(c) A job-embedded professional development experience shall include a combination of:

1. Research;

2. Field-experience; and

3. Professional development activities.

(d) A job-embedded professional development experience shall cover the areas of:

1. Content exploration and research;

2. Student instruction and assessment; and

3. Professional development and publication.

(3) The Plan II program shall include mentoring of the candidate and oversight by the provider.

(4) The capstone project shall provide evidence:

(a) That standards identified in subsection (2)(a)2. of this section have been met;

(b) Of positive effects on student learning; and

(c) Of professional growth over time in:

1. Content knowledge;

2. Instruction and assessment practices; and

3. Professional demonstration and publication skills.

(5) The program provider shall document how the capstone project will be embedded in the program, how it will be scored, and what steps will be taken to protect against plagiarism.

(6) Providers shall report instances of plagiarism to the Education Professional Standards Board for disciplinary action.

(7) The timeline for completion of the Plan II program shall not:

(a)[1.] Be less than one (1) year; or

(b)[2.] Be more than four (4) years.

(8) Upon a candidate's successful completion of the Plan II program, the provider shall recommend the candidate to the Education Professional Standards Board for rank change.

(9) If a candidate is unsuccessful, the provider may work with the candidate to help the candidate successfully complete any deficient areas.

(10) A Kentucky school district, group of Kentucky school districts, or a Kentucky post-secondary institution with an accredited educator preparation program may submit a Plan II program to the Education Professional Standards Board for approval. A Plan II program must be approved by the Education Professional Standards Board prior to operation.

(11) Plan II program submissions shall document:

(a)[1.] How the provider will meet the requirements of this section;

(b)[2.] The criteria for successful completion of the submitted program;

(c)[3.] How the provider will address unsuccessful candidates; and

(d)[4.] How the capstone project will be embedded and scored.

Section 5.[40.] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "CEO Plan I Professional Development Plan Scoring Rubric", 2019[2009]; and

(b) "CEO Plan I Professional Development Portfolio Rubric", 2019[2009];

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Education Professional Standards Board, 300 Sower Boulevard, 5th[400 Airport Road, 3rd Floor], Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

SARAH BURNETT, Board Chair

APPROVED BY AGENCY: April 8, 2019

FILED WITH LRC: April 15, 2019 at noon

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.

**FINANCE AND ADMINISTRATION CABINET
Department for Facilities and Support Services
(As Amended at ARRS, June 11, 2019)**

200 KAR 3:020. Use of state-owned facilities and grounds.

RELATES TO: KRS 42.019, 42.425, 56.010, 56.463

STATUTORY AUTHORITY: KRS 42.019(1), 42.425(1)(c), 56.010, 56.463(8)

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation establishes uniform rules for the governance of state facilities and grounds. While all state facilities and grounds are owned by the people of the Commonwealth at large, it is sometimes detrimental to the effective carrying-out of the people's business for persons, or groups of persons, to disregard reasonable conditions established for use of state facilities and state grounds. The purpose of this administrative regulation is to balance the interests of the citizens of the commonwealth at large with the interests of individual citizens, or groups of citizens, to use state facilities and grounds in a reasonable fashion in order to redress their grievances and coordinate various uses of public buildings and Grounds, to preserve Historic Properties, to ensure the health and safety of the public and state employees while on state property, and to protect the public from unnecessary financial losses. KRS 42.019(1) ~~requires~~**[directs—that]** the Division of Historic Properties ~~to oversee the~~**[shall be responsible for]** management and preservation of state-owned historic properties. KRS 42.425(1)(c) entrusts the Department for Facilities and Support Services with primary responsibility for developing and implementing policies applicable to all state agencies to ensure effective planning for and efficient operation of state office buildings. KRS 56.010 ~~requires~~**[states—that]** the Finance and Administration Cabinet ~~is empowered~~ to institute civil proceedings in the name of the Commonwealth for any trespass or injury to state property under its control. KRS 56.463(8) ~~requires~~**[authorizes]** the Finance and Administration Cabinet to ~~adopt rules and~~ promulgate administrative regulations as may be necessary to govern the acquisition, control, and disposition of the ~~commonwealth's~~ real property.

Section 1. Definitions. (1) "Agency" means a "budget unit," **as** defined by KRS 48.010(9).

(2) ~~["Agency application" means a form created and maintained by a state agency that allows individuals, organizations, and entities to request the ability to conduct an event at a facility or on grounds assigned to that agency.~~

(3) "Applicant" means a visitor who has submitted an Application to Use ~~State~~**[commonwealth]** Facilities ~~and Grounds~~**[and all Visitors present at a State Facility or on State Grounds pursuant to an approved application].**

(3)[(4)] "Application" means ~~the~~**[an]** Application to Use ~~State~~**[commonwealth]** Facilities ~~and Grounds~~ form created and maintained by the Division of Historic Properties that allows

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individuals, organizations, and entities to request the ability to conduct an event at historic properties.

~~(4) [(5)]~~ "Cabinet" means the Finance and Administration Cabinet.

~~(5) [(6)]~~ "Commissioner" means the Commissioner of the Department for Facilities and Support Services.

~~(6) "Demonstration activity" means any gathering of twelve (12) or more visitors demonstrating, parading, picketing, speech making, holding vigils, sit-ins, or rallies, or conducting other activities for the purpose of demonstrating approval or disapproval of governmental policies or practices (or the lack thereof), expressing a view on public issues, or bringing into public notice any issue or other matter.~~

(7) "Department" means the Department for Facilities and Support Services.

(8) "Division" means the Division of Historic Properties, established by [pursuant to] KRS 42.425(1)(d) [45.425(1)(d)(4)].

(9) "Event" means any demonstration activity, performance, ceremony, presentation, meeting, or rally held in a state facility or on state grounds. ~~[(10) "Guest" means an individual who has booked or paid for overnight accommodations at a State Facility or on State Grounds, or an individual who has been provided with living accommodations by the state in connection to his or her employment with the Commonwealth.]~~

~~(10) [(11)]~~ "Historic properties" means state-owned historic properties under the management and preservation authority of the Division of Historic Properties, pursuant to KRS 42.019.

(11) "Normal business hours" means:

(a) The hours in which a facility is declared or posted as open and accessible to individuals other than employees or agents of the commonwealth; and

(b) Any time period during which a facility hosts a legislative session, public meeting, or court session.

~~(12) [(11)] [(12)]~~ "Organization" means any group or association of individuals joined together to accomplish shared goals or to advance shared interests or values, inclusive of its employees, agents, invitees, or guests.

~~(13) [(12)] [(13)]~~ "Public meeting" means a "meeting," as defined by KRS 61.805(1).

~~[(13)] [(14)]~~ "Normal business hours" means the hours in which a facility is declared or posted as open and accessible to individuals other than employees or agents of the commonwealth.

~~(14) [(15)]~~ "Rally" means a gathering of twelve (12) [four (4)] or more visitors for the purpose of actively promoting a cause.

~~(15) [(16)]~~ "Solicit" and "solicitation" are defined by KRS 367.650(4).

~~(16) [(17)]~~ "Spontaneous event" means an event where twelve (12) [four (4)] or more visitors gather to exercise their First Amendment rights in facilities and on grounds open to the general public in response to a triggering event that has occurred within the preceding calendar week, or is currently occurring. Regularly scheduled events, or events that are advertised by any means seven (7) or more calendar days prior to the starting date of the event are presumptively not "spontaneous events."

~~(17) [(18)]~~ "State facilities" or "facilities" means any buildings [building] owned or managed by the Finance and Administration Cabinet pursuant to KRS 56.463.

~~(18) [(19)]~~ "State grounds" or "grounds" means any lands owned or managed by the Finance and Administration Cabinet pursuant to KRS 56.463.

~~(19) [(20)]~~ "Tenant" means an individual or organization, except for an agency that is:

(a) [excepting commonwealth agencies,] Occupying land or property rented from the commonwealth; and

(b) Limited to the specific state facility or state grounds where the land or property is located.

~~(20) "Triggering event" means a previously unknown or unpredicted event where, because of its unknown or unpredicted nature, a group of visitors could not reasonably be expected to submit an application seven (7) days in advance.~~

~~(21) [(20)] [(24)]~~ "Visitor" means:

(a) Any person, organization, or entity present at a State Facility or on State Grounds that is not employed or contracted to perform work there on behalf of the commonwealth;

~~(b) [.] A person or organization employed or contracted to perform work on behalf of the commonwealth [is a visitor] if present at a state facility or on state grounds for reasons other than performing work on behalf of the commonwealth; and~~

~~(c) [The term "visitor" includes those] Persons present at state facilities or state grounds by virtue of an approved application.~~

Section 2. Request to Use State Facilities or Grounds.
~~(1) [Within all areas assigned to it, a state agency may specify an agency application and approval process for public use of its facilities, so long as:~~

~~(a) The specified process does not conflict with the requirements of this administrative regulation, or with other state or federal law; and~~

~~(b) the agency prominently posts the agency application and approval process on its Web site.~~

~~(2) Each visitor seeking to hold an event at a state facility or on state grounds [historic property] shall submit a completed "Application to Use State [Commonwealth] Facilities and Grounds" to the division at least seven (7) [ten (10)] calendar days prior to the anticipated date of the event.~~

~~(a) Applications shall [may] not be submitted, and an event shall [may] not be scheduled, more than 365 calendar days prior to the date of an event.~~

~~(b) An applicant [or related visitors, organizations, or entities] may only make one (1) application for one (1) event at a time.~~

~~(c) Applications shall be reviewed and approved on a first come, first served basis, except that state sponsored activities shall be given priority over applications received by the division on the same date as a request by an agency regarding a state-sponsored event.~~

~~(d) [The division may impose fees for the use of specific state facilities or grounds by visitors, as well as fees for the use of equipment at state facilities or on state grounds.~~

~~(e) The division shall [may] deny an application if:~~

- ~~1. The application is incomplete;~~
- ~~2. The proposed event requests space allocated for a state sponsored activity, a previously scheduled event, the normal operation of state business, or a legislative session;~~
- ~~3. The proposed event poses a safety or security risk;~~
- ~~4. Applicant [or related visitors, organizations, or entities] has made material misrepresentations regarding the nature or scope of an event or solicitation, inclusive of misrepresentations contained in prior applications; or~~
- ~~5. Applicant [or related visitors, organizations, or entities] has failed to pay costs or damages due for a prior event.~~

~~(f) [(f)] If an application is approved, the division shall issue a written approval specifying:~~

- ~~1. The property or portion of property for which approval is granted;~~
- ~~2. The date and time period for which approval is granted;~~
- ~~3. Any fee or costs to be paid for use of state property or equipment;~~
- ~~4. The amount of any advance deposit required; and~~
- ~~5. Whether proof of liability insurance shall be required for the requested use.~~

~~(g) [(g)] If an application is denied, the division shall issue a written denial specifying:~~

- ~~1. The Section 2(1)(d) [(2)(e)] provision the denial is based upon;~~
- ~~2. If the application is incomplete, a description of the missing information;~~
- ~~3. If the applicant has made prior misrepresentations, a description of the misrepresentation; and~~
- ~~4. If the applicant has failed to pay costs or damages for a prior event, a description of the costs or damages and the amount remaining due.~~

~~(h) [(h)] [(g)] Any written approval to use Commonwealth~~

facilities is non-transferable and the purpose, time, place, or other conditions specified for use ~~shall~~**may** not be changed without the written consent of the division.

~~(h)(4)(h)~~ **Except as provided by paragraph (i) of this subsection,** the division may revoke prior approval to hold an event at a ~~state~~ historic property if the property is requested for a state sponsored activity. If the division revokes prior approval for an applicant to use a historic property, it shall either:

1. Provide a refund of any fee paid for the use of the state property, or
2. Provide alternate dates that the facility is available for use.

(i) The division may relocate a previously approved event at a historic property as established in the Rules for Use of State Facilities and Grounds.

(j) The division shall not reschedule or relocate a previously approved event at a historic property less than three (3) days prior to the scheduled event date except as established in the Rules for Use of State Facilities and Grounds.

~~(2)(3)~~ Except for spontaneous events, visitors who make use of a state facility or state grounds without **written approval**~~a permit~~:

(a) May be charged a fee equal to the amount normally charged for approved uses, **if applicable**; and

(b) May be removed from a state facility or state grounds if their use interferes with a use approved by the division, or with a state sponsored activity.

(3) Each visitor seeking to hold an event at a state facility or on state grounds, other than a demonstration activity, shall submit a completed Rental Application and Lease Agreement.

(4) An agency may adapt the Rental Application and Lease Agreement for its own use as follows:

(a) Inserting the Rental Application and Lease Agreement onto agency-specific letterhead;

(b) Altering the Rental Application and Lease Agreement to reflect contact information for the agency; and

(c) Inserting the following information regarding the areas assigned to agency use available to rent:

1. Identification of available areas;

2. Capacity of available areas;

3. Whether food or drink may be consumed in available areas;

4. Equipment available to rent; and

5. Hours when available areas may be rented.

(5) An agency that adapts the Rental Application and Lease Agreement for its own use shall enter into a written agreement with the commissioner addressing:

(a) Which facilities and grounds are covered by the Rental Application and Lease Agreement;

(b) The agency responsible for processing Rental Application and Lease Agreement submissions; and

(c) Disposition of fees collected.

Section 3. Conditions Governing Use of State Facilities and Grounds. (1) General conditions governing all state facilities and grounds to which visitors, applicants, and other persons visiting under application agree to abide.

(a) Visitors shall comply with the Rules for Use of State Facilities and Grounds.

(b) Visitors shall agree to be, and are, responsible for any vandalism, damage, breakage, loss, or other destruction caused by that individual,~~for~~ organization, ~~or~~ entity. In regards to ~~state~~ historic properties, costs may include costs for the services of specialists in relevant historical restoration skills.

(c)(b) An agency agrees to reimburse, and shall reimburse, the department for any damage caused to state facilities assigned to its use.

(d)(e) This administrative regulation is not intended to waive or preclude recovery by an agency from visitors for damages caused by them.

(e)(f) Visitors shall indemnify and hold harmless the Commonwealth of Kentucky, its departments, agents, employees, and contractors from and against any and all suits, damages, claims, or liabilities due to personal injury or death; damage to or

loss of property; or for any other injury or damage arising out of or resulting from the use of state facilities or grounds, except as provided by in KRS Chapter ~~49~~**44**.

(f)(e) Visitors ~~shall not dig, excavate, or use~~**are prohibited from digging, excavating, or using** metal detectors.

(g)(f) Visitors ~~shall not post or affix~~**are prohibited from posting or affixing** signs, announcements, or other documents on any exterior or interior wall, ceiling, floor, door, window, or other surface not specifically designated for that purpose.

(h)(g) Visitors ~~shall~~**must** promptly remove items or materials owned or used by them after an exhibit, event, or visitation. Failure to do so may result in the department billing the ~~individual, organization, or entity~~**individuals or organizations** with the costs of disposal, inclusive of use of staff time, which the ~~individual, organization, or entity agrees~~**individuals or organizations agree** to be responsible for as a condition of ~~using the~~**their use of** state ~~facility or grounds~~**facilities**.

(i)(h) Smoking ~~shall not be~~**is not** permitted in state facilities or on state grounds.

(j)(i) Visitors ~~shall~~**may** not wear masks or hoods ~~that~~**which** conceal the identity of the wearer, ~~except for~~**with the exception of** religious dress of a generally recognized religion or minor children celebrating Halloween.

(k)(j) Public use of state facilities by visitors shall not interfere with the conduct of normal public business, including ~~but not limited to,~~ any legislative session, court proceedings, or any other public business.

(l)(k) Use of state facilities and state grounds by visitors shall conform to any applicable limits or requirements contained in the Kentucky Building Code, ~~815 KAR 7:120~~, the Kentucky Standards of Safety contained in 815 KAR 10:060, orders of the State Fire Marshall, and local fire codes, inclusive of any applicable occupancy limits.

(m)(l) Visitors shall not ~~be permitted to~~ obstruct passageways in a manner that would impair the normal conduct of state business or the safe evacuation of people in the event of a fire or similar emergency.

(n)(m) Use or parking of a motorized vehicle on lawns, sidewalks, or terraces shall be restricted to emergency, maintenance, construction, development, delivery, or authorized building access purposes as determined by the department.

(o)(n) The operation of aircraft, other than at designated landing areas, ~~shall be~~**is** prohibited.

(p)(o) The mass release of birds, butterflies, or other living creatures ~~shall be~~**is** prohibited.

(q)(p) In addition to any use limitations imposed by this administrative regulation, within areas assigned to its use, an agency may impose such additional use restrictions as are necessary and proper to ensure:

1. Efficient operation and conduct of state business;
2. The safety of state employees and visitors;
3. The security of public assets and data; and
4. Restrictions necessary to conform to requirements of state and federal law.

(r)(q) The following items ~~shall be~~**are** prohibited, unless owned or controlled by the state:

1. Hot-air balloons and similar lighter-than-air objects and aircraft;
2. Powered aircraft, including ~~but not limited to,~~ drones~~,~~ and remotely-operated aircraft;
3. Remotely controlled toys and vehicles;
4. Rockets and similar missiles; and
5. Fireworks and other explosive items.

(s)(r) The following items ~~shall not be~~**are not** permitted in any state facility ~~or on any state grounds~~, unless ~~the~~**such** items are owned or controlled by the state:

1. Any equipment, apparatus, or machinery that fails to conform with local fire codes;
2. Skateboards, roller skates, rollerblades, bicycles, mopeds, motor bicycles, motorcycles, and hoverboards; exclusive of mobility devices used by a disabled individual; and
3. Any personal property that interferes with any electrical or mechanical system in a state facility.

(t)(s) The terms of this administrative regulation shall not

apply to:

1. **Tourism, Arts, and Heritage Cabinet administered facilities and properties**~~(Guests of the state)~~;

2. Tenants of state facilities;
3. Inmates and other incarcerated persons; or
4. Other individuals in the care, custody, or control of the state.

(2) Operating hours and access requirements.

(a) The commissioner, in consultation with agencies using each facility, shall establish normal business hours to designate when state facilities and grounds are open for public access. The commissioner may delegate authority to set normal business hours for all state facilities and grounds or for specific state facilities and grounds.

(b) Normal business hours of operation shall be posted at public entrances of state facilities and prominently posted on state grounds.

(c) Public entrances, operating hours, and scope of access ~~may be changed~~**are subject to change** due to maintenance, emergency, disaster, safety threats, and similar concerns as determined by the commissioner.

(d) For purposes of public security and safety, all packages, backpacks, purses, bags, briefcases, or other similar items brought into a state facility **shall be**~~are~~ subject to search.

(e) ~~A~~**No** visitor ~~shall not~~**may** enter or remain on state facilities or grounds after normal business hours of operation without express approval, except state employees, contract workers for the state, or members of the public who are:

1. Meeting with an agency or legislator in regard to a public matter;
2. Attending a scheduled public meeting; or
3. Escorted by a state employee for the purpose of conducting state business.

~~(f) [For purposes of this administrative regulation, any time period during which a state facility hosts a legislative session, public meeting, or court session shall be considered normal business hours in addition to any regular posted hours of operation.]~~

~~(g)~~ Visitors present at a state facility or on state grounds may be given up to thirty (30) minutes after normal business hours have ended to vacate the state facility or state grounds before being subject to immediate removal.

~~(g)~~ **If (h) When** an agency allows individuals to remain in a state facility after normal business hours, it may be found to be jointly liable for damage caused by unescorted visitors.

~~(h)~~**(i)** Visitors ~~shall~~**may** not camp or remain overnight in state facilities or on state grounds.

~~(i)~~**(j)** As a condition to their use of, or presence on, state facilities and grounds, applicant and visitors agree that state and local law enforcement officers may physically remove them from state facilities and grounds if they remain longer than thirty (30) minutes after normal business hours have ended and waive any claim against ~~the~~**said** law enforcement officers and the commonwealth unless undue force is used resulting in serious ~~physical~~**bodily** injury ~~as defined by KRS 500.080(15)~~.

(3) Commercial activity.

(a) The following commercial activity **shall be**~~is~~ prohibited in state facilities or on state grounds:

1. Selling, displaying, or vending commercial products;
2. Solicitation; and
3. Advertising.

~~(b)~~ The~~above~~ restrictions **in paragraph (a) of this subsection** regarding commercial activity shall not apply to:

1. State agencies;
2. State-affiliated or approved charitable fund-raising campaigns;
3. Individuals or organizations who have contracted with the state to conduct commercial activity at state facilities or on state grounds;
4. Nominal employee activity, ~~if provided that~~ it otherwise conforms with applicable employee ethics restrictions and does not interfere with state business; and
5. Notice boards specifically set ~~[-]~~aside for public posting.

(4) Administration of usage conditions.

(a) In addition to any civil or criminal penalties provided for

under Kentucky law, visitors who violate the restrictions contained in this administrative regulation, agree to be, and **shall be**~~are~~ subject to immediate removal from state grounds and facilities as follows:

1. ~~If~~**When** a violation concerns damage to state facilities or grounds, or disruption of state business, the commissioner or agency head of the affected agency may request removal by officers of the Kentucky State Police, contract security staff, or other state or local law enforcement officers; or

2. ~~If~~**When** a violation concerns a safety concern or threat, removal may be done at the request of the commissioner or agency head of the affected agency, or upon exercise of independent discretion of the Kentucky State Police, contract security staff assigned to the state facility or grounds, or other state and local law enforcement offices.

(b) The commissioner, agency head of a tenant agency, officers of the Kentucky State Police, contract security staff, or other state or local law enforcement officers may place limitations on the area in which an event may be conducted, or may direct the clearing of an area or separation of groups, in order to ensure compliance with applicable health and safety standards, to maintain public order, and to ensure that normal public business may be conducted.

~~(c)~~**Nothing in** This administrative regulation shall ~~not~~**be interpreted as**:

1. ~~Prohibit~~**Prohibiting** the regular conduct of agency operations in a state facility or on state grounds after normal business hours regarding state facilities or grounds assigned to the agency's use; ~~or [-]~~

2. ~~Limit~~**Limiting** the ability of an agency to make full and unencumbered use of state facilities or grounds assigned to them, subject to any specific conditions placed upon their use by the department.

Section 4. Additional Conditions Regarding Access and Use for Historic Properties. (1) **Visitors to historic properties shall comply with the additional restrictions regarding the use of the capitol grounds and state historic properties included in the Rules for Use of State Facilities and Grounds.**

(2) A visitor seeking to hold an event at a historic property shall comply with the requirements in the Areas Available for Governmental and Business-Oriented Events and Rental Use form.

(3) A visitor seeking to hold an event at the capitol shall also submit the Capitol Event Information Form to the division [of Historic Properties, established by KRS 42.425, may impose additional restrictions and use guidelines as are necessary and proper to ensure the responsible management, use, and preservation of state historic properties for the benefit of future generations].

(2) The Department of Parks and Kentucky Horse Park may advise and consult the division in regard to any restrictions or use guidelines relating to state shrines or museums. ~~[(3) Any additional restrictions or use guidelines imposed by the Division of Historic Properties shall be prominently posted for public viewing on the Web site of the division, as well as being readily available to the public, in hardcopy form, at the main business office of the division.]~~

Section 5. Enforcement. (1) Authority to initiate civil proceedings in the name of the Commonwealth for any trespass or injury to state property under the cabinet's control shall be vested with the cabinet's Office of General Counsel.

(2) The cabinet's Office of General Counsel may delegate authority to initiate civil proceedings to counsel for an agency affected by a trespass or injury to state property, to another~~state~~ agency, or to outside counsel.

(3) Nothing in this regulation is intended to waive or restrict in any way any normal criminal or civil remedies available under law that relates to improper trespass on, or misuse of, state facilities; disruption of public business; nuisance; or any other legal remedy otherwise available to the Commonwealth or its subdivisions.

(4) Nothing in this regulation is intended to limit, waive, or otherwise alter the authority the rules for the operation and parking

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of motor vehicles on state grounds, as enumerated in 200 KAR 3:010.

Section 6. ~~Incorporation[; Documents Incorporated]~~ by Reference.

(1) The following material is incorporated by reference:

(a) "Application to Use ~~State[Commonwealth]~~ Facilities and Grounds", June 2019;

(b) "Rental Application and Lease Agreement", June 2019;

(c) "Rules for Use of State Facilities and Grounds", June 2019;

(d) "Areas Available for Governmental and Business-Oriented Events and Rental Use", June 2019; and

(e) "Capitol Event Information Form", June 2019.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Finance and Administration Cabinet, Office of General Counsel, Capital Annex Room 392, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m.

**TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(As Amended at ARRS, June 11, 2019)**

301 KAR 2:030. Commercial guide license.

RELATES TO: KRS 150.170, 150.412, 164.772

STATUTORY AUTHORITY: KRS 150.025, 150.175(11), 150.190

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025 authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife, to regulate bag limits and methods of take, and to make these requirements apply statewide or to a limited area. KRS 150.175(11) authorizes the department to issue a commercial guide license, which authorizes the holder to guide hunting and fishing parties. KRS 150.190 authorizes the department to ensure that an applicant for a commercial guide license is qualified to act as a commercial guide. This administrative regulation establishes the requirements for a commercial guide license~~and a guide helper~~.

Section 1. Definitions. (1) "Commercial guide" means a person who advertises, or offers services for remuneration, to aid others in taking wildlife, excluding classroom instruction or seminars.

(2) "Fishing guide helper" means a person who assists a commercial guide and is in the same boat or is directly alongside of the commercial guide if standing on a stream or river bank and while guiding others in the taking of fish. [(3) "Hunting guide helper":

(a) Means a person who is acting on behalf of a commercial guide license holder, is registered with the department, and whose actions in the field assist in the taking of game animals; and

(b) Does not include a person assisting only in the recovery and removal of dead game, or tracking wounded game.]

Section 2. Commercial Guide License Requirements and Application. (1) A person shall possess a valid Kentucky commercial guide license in order to commercially guide others in the taking of wildlife.

(2) A commercial guide license shall be valid from March 1 through the last day of February.

(3) An applicant for a commercial guide license shall:

(a) Be eighteen (18) years of age or older;

(b) Have not been convicted of any state or federal fish or wildlife violation during the previous three (3) years;

(c) Have not been convicted of a felony;

(d) Possess a valid fishing license and trout permit if applicable; and

(e) Possess a valid hunting license and all applicable game permits.

(4) An elk permit shall not be required to be purchased by a commercial guide~~or hunting guide helper~~ in order to guide clients in the taking of elk.

(5) Except as established in subsection (6) of this section, in

order to obtain a commercial guide license, a person shall submit to the department:

(a) A completed Commercial Guide License Application Form to the Director's Office, Division of Law Enforcement, #1 Sportsman's Lane, Frankfort, Kentucky 40601;

(b) A Law Information Network of Kentucky National Crime Information Center (LINK/NCIC) background check obtained through the Kentucky State Police;

(c) Proof of a valid and current[up to date] certification in:

1. Cardiopulmonary resuscitation (CPR); and

2. First aid;

(d) Proof of completion of a boater education course upon applying for a commercial guide license for fishing in a boat; and

(e) Proof of completion of a hunter education course upon applying for a commercial guide license for hunting. A commercial guide applicant who guides hunters by boat shall also submit proof of completion of a boater education course~~]; and~~

~~(f) A ten (10) dollar registration fee for each hunting guide helper to be used by the commercial guide].~~

(6) A commercial guide applicant who possesses a valid United States Coast Guard Captain's License, or Six-pack["six pack"], and will guide on a United States Coast Guard regulated waterway may submit a copy of this license in lieu of the boater education course requirements established in subsection (5)(d) of this section and in lieu of the CPR and first aid requirements, as established in subsection (5)(c) of this section, upon applying for a commercial guide license.

(7) While guiding, a commercial guide shall have in possession all required licenses and permits.

(8) While guiding on private land, a commercial guide shall provide at the request of a conservation officer a name and phone number of the person granting the guide permission to be on the property.

(9) A commercial guide shall not facilitate, promote, or assist a client in the violation of any state or federal fish and wildlife law or regulation.

Section 3. Guide Helper. (1) A commercial fishing guide may utilize fishing guide helpers~~and hunting guide helpers~~.

(2) A fishing guide helper shall have in possession while assisting a commercial guide a valid Kentucky fishing license and applicable permits.

~~(3) [A hunting guide helper shall have in possession while assisting a commercial guide:~~

~~(a) A valid Kentucky hunting license and applicable game permits;~~

~~(b) Proof of completion of a hunter education course;~~

~~(c) Proof of completion of a boater education course if helping a commercial guide by boat; and~~

~~(d) A hunting guide helper certification card.~~

~~(4) Effective March 1, 2016, a hunting guide helper shall be required to provide proof of a valid and up-to-date certification in:~~

~~(a) Cardiopulmonary resuscitation (CPR); and~~

~~(b) First aid.~~

~~(5) A hunting guide helper shall be registered with the department by the licensed commercial guide he or she represents.~~

~~(6) A hunting guide helper shall:~~

~~(a) Be at least eighteen (18) years old;~~

~~(b) Not be convicted of a state or federal fish or wildlife violation during the previous three (3) years; and~~

~~(c) Not have been convicted of a felony.~~

~~(7) A commercial fishing guide[license holder] shall be responsible for any violation of this administrative regulation by a helper who is registered by the commercial guide.~~

Section 4. Commercial Guide License Prohibitions and Revocation. (1) A commercial guide or guide helper shall not participate in the taking of fish or game beyond the bag limit or creel limit of the person or persons being guided, except that a commercial guide or guide helper may take a daily bag or creel limit of fish or game while guiding.

(2) The department shall revoke and not renew the commercial guide license~~or hunting guide helper certification,~~ for a period of

~~three (3) years~~~~one (1) year~~, of a person convicted of any state or federal fish or game violation.

(3) The department shall permanently revoke the commercial guide license~~or hunting guide helper certification~~ of a person convicted of a felony.

(4) An individual whose commercial guide license~~or hunting guide helper certification~~ has been denied or revoked may request an administrative hearing pursuant to KRS Chapter 13B within fifteen (15) days of receipt of the notice of revocation or denial.

Section 5. Incorporation by Reference. (1) "Commercial Guide License Application Form", 2019[2016] edition, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Fish and Wildlife Resources, #1 Sportsman's Lane, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

RICH STORM, Commissioner
DON PARKINSON, Secretary

APPROVED BY AGENCY: April 11, 2019

FILED WITH LRC: April 12, 2019 at 2 p.m.

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

LABOR CABINET
Department of Workers' Claims
(As Amended at ARRS, June 11, 2019)

803 KAR 25:270. Pharmaceutical formulary.

RELATES TO: KRS 342.0011(13), 342.020, 342.035.

STATUTORY AUTHORITY: 342.035, 342.260, 342.265, 342.270, 342.275.

NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.260(1) requires the commissioner to promulgate administrative regulations necessary to carry on the work of the department and the work of administrative law judges so long as those administrative regulations are consistent with KRS Chapter 342 ~~and/or~~ KRS Chapter 13A. KRS 342.035 requires the commissioner to develop or adopt a pharmaceutical formulary and promulgate administrative regulations to implement the developed or adopted pharmaceutical formulary. This administrative regulation establishes the formulary and provides guidance to implement the adopted formulary.

Section 1. Definitions. (1) "Carrier" or "Insurance Carrier" means any insurer authorized to insure the liability of employers arising under Chapter 342 of the Kentucky Revised Statutes, an employer authorized by the commissioner to pay directly the compensation provided in Chapter ~~342[42]~~ of the Kentucky Revised Statutes as those liabilities are incurred, a self-insured group, and any person acting on behalf of or as an agent of the insurer, self-insured employer, or self-insured group.

(2) "Commissioner" means the commissioner charged in KRS 342.228 to administer the Department of Workers' Claims and whose duties are stated in KRS 342.230.

(3) "~~Compound~~" ~~or~~ "~~Compounding~~" [~~Compound/compounding~~] means the process of combining, mixing, or altering ingredients to create a medication that is tailored to meet the needs of an individual patient.

(4) "Department" or "Department of Workers' Claims" means the governmental agency whose responsibilities are provided in KRS 342.228.

(5) "Dispense" means to deliver a drug to an ultimate user pursuant to the lawful order of a medical provider, including the packaging, labeling, or compounding necessary to prepare the drug for delivery.

(6) "Drug" means a substance recognized as a drug in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or any supplement to them,

which is intended for use in the diagnosis, care, mitigation, treatment, or prevention of disease in man.

(7) "Employee" means those natural persons constituting an employee subject to the provisions of the Act as defined in KRS 342.640 and the employee's legal counsel.

(8) "Employer" means those persons constituting an employer as defined in KRS 342.630, the employer's insurance carrier, self-insured group or other payment obligor, third party administrator, other person acting on behalf of the employer in a workers' compensation matter, and the employer's legal counsel.

(9) "Formulary" or "Pharmaceutical Formulary" means the pharmaceutical formulary developed or adopted by the commissioner pursuant to KRS 342.035(8)(b).

(10) "Medical Provider" means a natural person who has prescriptive authority for drugs under the professional licensing laws of Kentucky, another state, or federal law, unless that person's license has been revoked, suspended, restricted, or probated.

(11) "N" or "N status" means the drug is a non-preferred drug.

(12) "Natural person" means a biological human being.

(13) "Non-prescription drug" or "over-the-counter-drug" means a drug that may be sold without a prescription.

(14) "Person" means an individual, corporation, government, ~~or~~ governmental subdivision, ~~or~~ agency, business, estate, trust, partnership, association, or any other legal entity.

(15) "Pharmacist" means a natural person lawfully licensed to engage in the practice of the profession of pharmacy.

(16) "Preauthorization" means the process whereby payment for a medical service or course of treatment is assured in advance by a carrier.

(17) "Prescription" or "prescribed" means a written, electronic, or oral order for a drug, signed, ~~or~~ given, or authorized by a medical provider and intended for use in the diagnosis, care, mitigation, treatment, or prevention of disease in man.

(18) "Prescription Drug" means:

(a) A substance for which federal or state law requires a prescription before the substance may be legally dispensed to the public;

(b) A drug that under federal law is required, before being dispensed or delivered, to be labeled with the statement: "Caution: federal law prohibits dispensing without prescription"; "Rx only"; or another legend that complies with federal law; or

(c) A drug that is required by federal or state statute or regulation to be dispensed on prescription or that is restricted to use by a medical provider only.

(19) "Refill" means a prescription for the same drug, at the same dose or strength, ~~and~~ in the same quantity and frequency, and with the same instructions as was initially prescribed.

(20) "Utilization Review" is defined by 803 KAR 25:190~~means utilization review as defined in 803 KAR 25:190 §1(6)].~~

(21) "Y" or "Y status" means the drug is a preferred drug.

Section 2. Purpose and Adoption. (1) The purpose of the formulary is to facilitate the safe and appropriate use of prescription drugs in the treatment of work-related injury and occupational disease.

(2) The commissioner adopts the current edition and any future published updates of the ODG formulary currently published by MCG Health. The commissioner shall review the formulary not less than annually and update or amend this administrative regulation, if necessary, to ensure that the formulary is consistent with the provisions of KRS 342.020 and 342.035.

(3) The formulary shall be made available by the department. Subsequent updates shall be effective on the first day of the month following the update.

(4) To the extent this administrative regulation or the formulary conflict with any state or federal statute or regulation limiting prescriptive authority, including KRS ~~218A.020(3), 218A.172, 314.011(8)]~~~~218A.172, 218A.020(3), 314.011(8)]~~ and 201 KAR 9:260, the statute or administrative regulation limiting prescriptive authority shall apply.

Section 3. Application. (1) An employer or its payment obligor

is liable for payment of up to a seven (7)-day supply of a "Y" drug dispensed to or prescribed for an injured employee within seven (7) days of a work-related injury in treatment of that work-related injury even if the employer ultimately denies liability for the claim. Payment by the employer or its payment obligor pursuant to this subsection does not waive the employer's right to contest its liability for the claim or benefits to be provided.

(2) Unless the employer, in good faith, denies the claim as not compensable, drugs assigned "Y" status in the formulary on the date the prescription is issued shall be filled without the need for preauthorization and without delay if prescribed for and appropriate for the work injury or occupational disease. Utilization review shall not be required for a "Y" drug but may be conducted retrospectively to determine medical reasonableness and necessity. A denial of a "Y" drug based on retrospective utilization review shall apply only to refill prescriptions of that drug after the date of the utilization review.

(3) Unless the employer, in good faith, denies the claim as not compensable, drugs assigned "N" status in the formulary on the date the prescription is issued shall require preauthorization. A prescription for a drug with an "N" status issued without articulated sound medical reasoning does not constitute a request for preauthorization nor a request for payment. Within two (2) business days of presentation of a prescription for a drug with an "N" status without articulated sound medical reasoning, the insurance carrier shall notify the medical provider and injured employee that preauthorization is required for the prescribed drug.

~~(4) [Except as provided in subsection (1) of this Section, prescription drugs dispensed for outpatient use by any person other than a pharmacist require preauthorization.]~~

~~(5)]~~ Any prescription drug not listed in the formulary shall require preauthorization. Any non-prescription drug shall not require preauthorization.

~~(5)](6)]~~ Compound medications require preauthorization even if all of the components of the compound are listed as "Y" drugs in the formulary.

~~(6)](7)]~~ Medical providers are required to prescribe in accordance with the formulary unless the medical provider can sufficiently articulate sound medical reasoning for deviating from the formulary, which may include:

(a) Documentation that reasonable alternatives allowable in the formulary have been adequately trialed and failed;

(b) The clinical rationale that justifies the proposed treatment plan, including criteria that will constitute a clinically meaningful benefit; or

(c) Any other circumstances that reasonably preclude the approved formulary options.

~~(7)](8)]~~ Before an employer denies authorization for a drug that requires preauthorization, the employer must consider any sound medical reasoning furnished by the medical provider for prescribing that drug.

Section 4. Preauthorization. (1) Requests for preauthorization shall be subject to utilization review unless the employer waives utilization review.

(2) Except as modified in this section, 803 KAR 25:190 Sections 5, 7, and 8 apply to all prescriptions for which preauthorization is required under this administrative regulation. If the medical provider has provided sound medical reasoning for the prescription, the employer shall not deny a prescribed drug based solely on the status of the drug in the formulary.

(3) If as a result of utilization review the carrier denies a request for preauthorization, the medical provider may request reconsideration of the denial to include a peer-to-peer conference with a utilization review physician. The request for a peer-to-peer conference shall be made by electronic communication and shall provide:

(a) A telephone number for the reviewing physician to call;

(b) A date for the conference not less than two (2) business days after the date of the request; and

(c) A one (1) - hour period during which the requesting medical provider (or its designee) will be available to participate in the conference between the hours of 8:00 a.m. and 6:00 p.m. (Eastern Time), Monday through Friday.

(4) The peer-to-peer conference must be conducted by a physician of the same specialty as the medical provider requesting reconsideration.

(5) Failure of the reviewing physician to participate in the peer-to-peer conference during the date and time specified shall result in the approval of the request for preauthorization and approval of the requested prescription. Failure of the requesting medical provider or its designee to participate in the peer-to-peer conference during the time he or she specified availability may result in denial of the request for reconsideration.

(6) Pursuant to 803 KAR 25:190 Section 8(1)(c), a written reconsideration decision shall be rendered within ten (10) days of date of the peer-to-peer conference. The written decision shall be entitled "FINAL UTILIZATION REVIEW DECISION".

(7) If a Final Utilization Review Decision is rendered denying authorization for a prescribed drug before an award has been entered by or agreement approved by an administrative law judge, the requesting medical provider or the injured employee may file a medical dispute pursuant to 803 KAR 25:012. If a Final Utilization Review Decision is rendered denying authorization for a prescribed drug after an award has been entered by or agreement approved by an administrative law judge, the employer shall file a medical dispute pursuant to 803 KAR 25:012.

(8) Pursuant to KRS 342.285(1), a decision of an administrative law judge on a medical dispute is subject to review by the workers' compensation board under the procedures set out in 803 KAR 25:010, Section 22.

Section 5. Effective Dates. (1) For claims with a date of injury or last exposure on or after January 1, 2019, the formulary applies to all drugs that are prescribed or dispensed on or after July 1, 2019, for outpatient use.];]

(2) For claims with a date of injury or last exposure prior to January 1, 2019, the formulary applies as follows:

(a) For a prescription that is not a refill prescription, the formulary applies to all drugs prescribed or dispensed on or after July 1, 2019, for outpatient use;

(b) For a refill prescription of a drug initially prescribed prior to July 1, 2019, the formulary applies to all drugs prescribed or dispensed on or after January 1, 2020, for outpatient use.

This is to certify that the commissioner has reviewed and recommended this administrative regulation prior to its adoption, as required by KRS 342.260 and 342.035.

ROBERT L. SWISHER, Commissioner

APPROVED BY AGENCY: March 14, 2019

FILED WITH LRC: March 14, 2019 at 4 p.m.

CONTACT PERSON: B. Dale Hamblin, Jr., Assistant General Counsel, Workers' Claims Legal Division, Prevention Park, 657 Chamberlin Avenue, Frankfort, Kentucky 40601, phone (502) 782-4404, fax (502) 564-0681, email dale.hamblin@ky.gov.

**PUBLIC PROTECTION CABINET
Department of Alcoholic Beverage Control
(As Amended at ARRS, June 11, 2019)**

804 KAR 7:020. Alcoholic beverage inventory[~~Stock~~] during prohibited alcoholic beverage sales[~~suspension of license~~] period.

RELATES TO: KRS 243.480, 243.490, 243.500, 243.540, 244.085

STATUTORY AUTHORITY: KRS 241.060, 243.480, 243.490, 243.500, 244.085

NECESSITY, FUNCTION, AND CONFORMITY: KRS 241.060(1) authorizes the board to promulgate administrative regulations regarding matters over which the board has jurisdiction. KRS 244.085(5)(b) authorizes minors on the premises of a retail drink licensee if all alcoholic beverage inventory is kept in a separate, locked department when minors are on the premises. KRS 243.480, 243.490, and 243.500 authorize the board to suspend or revoke licenses authorizing alcoholic beverage sales

but make~~[There being]~~ no specific provision for the handling or custody of the retail licensee's alcoholic beverage inventory during a suspension period or the period following license revocation when a licensee may transfer its inventory pursuant to KRS 243.540(2)~~[stock of a retail licensee, this administrative regulation is necessary to inform the licensee that his stock of alcoholic beverages, during the period of suspension, should be under lock and key or the entire business closed]. This administrative regulation defines "locked department" and provides that during periods alcohol sales are prohibited a retail licensee shall either keep all alcoholic beverage inventory in a separate, locked department or close the entire business.~~

Section 1. Definition.~~[For purposes of KRS 244.085(5) and this administrative regulation,]~~ "Locked department" means any area, including rooms, windows, displays, show cases, and shelves, which contains alcoholic beverage inventory and which is secured by a lock and key so that consumers do not have access to the inventory. Locked departments may have sliding or hinged doors or nets and be constructed of any material which prevents consumer access to alcoholic beverage inventory~~[(1) Since the Alcoholic Beverage Control Law makes no specific provision for the disposition of the stock of merchandise during the period a retail license is suspended, it is therefore ordered that the retail licensee must keep the entire stock of merchandise in a separate locked department or close his place of business during the period of the suspension.~~

~~(2) Failure to comply with this administrative regulation will subject the licensee to possible revocation].~~

Section 2. Alcoholic Beverage Inventory During License Suspension.~~[(1)]~~ During the period a retail licensee is prohibited from selling alcoholic beverages pursuant to a license suspension, all alcoholic beverage inventory shall be kept in a separate, locked department or the licensed place of business shall be closed.

Section 3. Inventory Following License Revocation.~~[(1)]~~ During the period in which a former retail licensee is permitted to possess and transfer alcoholic beverage inventory pursuant to KRS 243.540(2), all alcoholic beverage inventory shall be kept in a separate, locked department, or the place of business shall be closed, until the alcoholic beverage inventory is actually transferred.

CAROL BETH MARTIN, Acting Commissioner

K. GAIL RUSSELL, Secretary

APPROVED BY AGENCY: April 15, 2019

FILED WITH LRC: April 15, 2019 at 11 a.m.

CONTACT PERSON: Marc Manley, Executive Adviser, 1003 Twilight Trail, Frankfort, Kentucky 40601, phone 502-782-1045, fax 502-564-7479, email marc.manley@ky.gov.

ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING
OR RECEIPT OF WRITTEN COMMENTS

ENERGY AND ENVIRONMENT CABINET
Department for Natural Resources
Division of Mine Permits
(Amended After Comments)

405 KAR 10:001. Definitions for 405 KAR Chapter 10.

RELATES TO: KRS Chapter 350, 7 C.F.R. Part 657, 30 C.F.R. Parts 700.5, 701.5, 707.5, 730-733, 735, 761.5, 762.5, 773.5, 800.5, 843.5, 917, 40 C.F.R. Part 136, 30 U.S.C. Chapter 25, 1253, 1255, 1291

STATUTORY AUTHORITY: KRS 350.028, 350.465, 350.500 - 350.521, 7 C.F.R. Part 657, 30 C.F.R. Parts 700.5, 701.5, 707.5, 730-733, 735, 761.5, 762.5, 773.5, 800.5, 843.5, 917, 40 C.F.R. Part 136, 30 U.S.C. 1253, 1255, 1291

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 350 requires the cabinet to promulgate administrative regulations pertaining to surface coal mining and reclamation operations under the permanent regulatory program. This administrative regulation establishes definitions for terms used in 405 KAR Chapter 10.

Section 1. Definitions. (1) "Acquisition" means the purchase, lease, or option on the land for the purpose of conducting or allowing through resale, lease, or option the action of conducting surface coal mining and reclamation operations.

(2) "Active Acre" means an acre of land or fraction thereof, permitted and bonded for surface disturbance pursuant to a surface coal mining permit as of July 1, 2013. Active acre does not include:

(a) Acreage contained in a permit for which the entire permit has not been initially disturbed by the permittee after permit issuance;

(b) Acreage contained in a permit, or increment thereof, that has completed initial reclamation and received a minimum of a Phase 1 bond release; or

(c) Undisturbed acreage completely released from liability as a result of a bond release or bond reduction.

(3) "Actuarial soundness" is defined by KRS 350.500(1).

(4) "Adjacent area" means land located outside the affected area or permit area, depending on the context in which "adjacent area" is used, where air, surface, or groundwater, fish, wildlife, vegetation, or other resources protected by KRS Chapter 350 could be adversely impacted by surface coal mining and reclamation operations.

(5) "Affected area" means any land or water area that is used to facilitate, or is physically altered by, surface coal mining and reclamation operations. The affected area includes:

(a) The disturbed area;

(b) Any area upon which surface coal mining and reclamation operations are conducted;

(c) Any adjacent lands the use of which is incidental to surface coal mining and reclamation operations;

(d) All areas covered by new or existing roads used to gain access to, or for hauling coal to or from, surface coal mining and reclamation operations, except as established in this definition;

(e) Any area covered by surface excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, or shipping areas;

(f) Any areas upon which are sited structures, facilities, or other property or material on the surface resulting from, or incident to, surface coal mining and reclamation operations;

(g) The area located above underground workings associated with underground mining activities;

(h) Auger mining or in situ mining; and

(i) Every road used for the purposes of access to, or for hauling coal to or from, surface coal mining and reclamation operations, unless the road:

1. Was designated as a public road pursuant to the laws of the

jurisdiction in which it is located;

2. Is maintained with public funds and constructed in a manner similar to other public roads of the same classification within the jurisdiction; and

3. There is substantial (more than incidental) public use.

(6) "Applicant" means any person seeking a permit, permit revision, permit amendment, permit renewal, or transfer, assignment, or sale of permit rights from the cabinet to conduct surface coal mining and reclamation operations pursuant to KRS Chapter 350 and all applicable administrative regulations.

(7) "Cabinet" is defined by KRS 350.010(10).

(8) "C.F.R." means Code of Federal Regulations.

(9) "Coal" means combustible carbonaceous rock, classified as anthracite, bituminous, subbituminous, or lignite by ASTM Standard D 388-77.

(10) "Coal mined and sold" means coal severed or removed as a result of surface coal mining operations and subsequently sold, transferred, or used by the permittee or operator.

(11) "Collateral bond" means an indemnity agreement in a sum certain payable to the cabinet executed by the permittee and supported by the deposit with the cabinet of cash, negotiable certificates of deposit, or an irrevocable letter of credit of any bank organized and authorized to transact business in the United States.

(12) "Cropland" means land used for the production of adapted crops for harvest, alone or in a rotation with grasses and legumes, and includes row crops, small grain crops, hay crops, nursery crops, orchard crops, and other similar specialty crops.

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

(14) "Department" means the Department for Natural Resources.

(15) "Disturbed area" means an area where vegetation, topsoil, or overburden is removed or upon which topsoil, spoil, coal processing waste, underground development waste, or noncoal waste is placed by surface coal mining operations. Those areas are classified as "disturbed" until reclamation is complete and the performance bond or other assurance of performance required by 405 KAR Chapter 10 is released.

(16) "Dormancy fee" means the annual fee established in KRS 350.518(2)(f).

(17) "FDIC" means Federal Deposit Insurance Corporation.

(18) "Federal lands" means any lands, including mineral interests, owned by the United States, without regard to how the United States acquired ownership of the lands or which agency manages the lands. It does not include Indian lands.

(19) "Final disposition" means the status of an enforcement action taken by the cabinet pursuant to KRS Chapter 350 for which a final secretary's order has been entered and the time for appeal has expired or all appeals have been exhausted, or an agreed order has been entered.

(20) "FSLIC" means Federal Savings and Loan Insurance Corporation.

(21) "Full-cost bonding" means performance bonds that have been submitted by a permittee for its surface coal mining operation permits in lieu of participation and membership in the Kentucky Reclamation Guaranty Fund.

(22) "Historically used for cropland" means land that:

(a) Has been used for cropland for any five (5) years or more out of the ten (10) years immediately preceding the:

1. Application; or

2. Acquisition of the land for the purpose of conducting surface coal mining and reclamation operations;

(b) Would likely have been used as cropland for any five (5) out of the last ten (10) years immediately preceding the acquisition or the application but for some fact of ownership or control of the land unrelated to the productivity of the land; or

(c) The cabinet determines, on the basis of additional cropland history of the surrounding land and the land under consideration, are clearly cropland but fall outside the specific five (5) years in ten (10) criterion.

(23) "Impoundment" means a closed basin, naturally formed or artificially built, which is dammed or excavated for the retention of water, sediment, or waste.

(24) "KRGF" means the Kentucky Reclamation Guaranty Fund.

(25) "Land use" means specific functions, uses, or management-related activities of an area, and could be identified in combination when joint or seasonal uses occur and could include land used for support facilities that are an integral part of the use. In some instances, a specific use can be identified without active management.

(26) "Long term treatment" means the use of any active or passive water treatment necessary to meet water quality effluent standards, but does not include Total Suspended Solids or Total Dissolved Solids, at the time a permit or any affected permit increment attains phase one (1) bond release standards as determined by the cabinet pursuant to 405 KAR 10:040.

(27) "Member" means a permittee in the Kentucky Reclamation Guaranty Fund.

(28)~~(27)~~ "Non-production fee" means the annual fee established in KRS 350.518(2)(e).

(29)~~(28)~~ "Notice of noncompliance and order for remedial measures" means a written document and order prepared by an authorized representative of the cabinet that establishes with specificity the violations of KRS Chapter 350, 405 KAR Chapters 7 through 24, or permit conditions that the authorized representative of the cabinet determines to have occurred based upon an inspection, and the necessary remedial actions, if any, and the time schedule for completion thereof, necessary and appropriate to correct the violations.

(30)~~(29)~~ "Operations" is defined by KRS 350.010(6).

(31)~~(30)~~ "Operator" is defined by KRS 350.010(8).

(32)~~(31)~~ "Opt-out" means the decision by a permittee to not participate in the KRGF and to provide full-cost bonding pursuant to 405 KAR 10:080.

(33)~~(32)~~ "Order for cessation and immediate compliance" means a written document and order issued by an authorized representative of the cabinet when:

(a) A person to whom a notice of noncompliance and order for remedial measures was issued has failed, as determined by a cabinet inspection, to comply with the terms of the notice of noncompliance and order for remedial measures within the time limits set therein, or as subsequently extended; or

(b) The authorized representative finds, on the basis of a cabinet inspection, any condition or practice or any violation of KRS Chapter 350, 405 KAR Chapters 7 through 24, or any condition of a permit or exploration approval that:

1. Creates an imminent danger to the health or safety of the public; or
2. Is causing or can reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources.

(34)~~(33)~~ "ORGF" means the Office of the Reclamation Guaranty Fund.

(35)~~(34)~~ "Owned or controlled" and "owns or controls" mean any one (1) or a combination of the relationships established in paragraphs (a) and (b) of this definition:

- (a)1. Being a permittee of a surface coal mining operation;
2. Based on instruments of ownership or voting securities, owning of record in excess of fifty (50) percent of an entity; or
3. Having any other relationship that gives one (1) person authority directly or indirectly to determine the manner in which an applicant, an operator, or other entity conducts surface coal mining operations; and

(b) One (1) of the following relationships, which constitutes ownership or control unless a person demonstrates that the person subject to the presumption does not in fact have the authority directly or indirectly to determine the manner in which the relevant surface coal mining operation is conducted:

1. Being an officer or director of an entity;
2. Being the operator of a surface coal mining operation;
3. Having the ability to commit the financial or real property assets or working resources of an entity;
4. Being a general partner in a partnership;
5. Based on the instruments of ownership or the voting

securities of a corporate entity, owning of record ten (10) through fifty (50) percent of the entity; or

6. Owning or controlling coal to be mined by another person under a lease, sublease, or other contract and having the right to receive the coal after mining or having authority to determine the manner in which that person or another person conducts a surface coal mining operation.

~~(36)~~~~(35)~~ "Performance bond" means a surety bond, a collateral bond, or a combination thereof, or bonds filed pursuant to the provisions of the Kentucky Reclamation Guaranty Fund (405 KAR 10:070, KRS 350.595, and 350.500 – 350.521), by which a permittee assures faithful performance of all the requirements of KRS Chapter 350, 405 KAR Chapters 7 through 24, and the requirements of the permit and reclamation plan.

~~(37)~~~~(36)~~ "Permit" means written approval issued by the cabinet to conduct surface coal mining and reclamation operations.

~~(38)~~~~(37)~~ "Permit area" means the area of land, indicated on the approved map submitted by the permittee with an application, required to be covered by the permittee's performance bond pursuant to 405 KAR Chapter 10 and that includes the area of land upon which the permittee proposes to conduct surface coal mining and reclamation operations pursuant to the permit, including all disturbed areas. Areas adequately bonded under another valid permit, pursuant to 405 KAR Chapter 10, could be excluded from the permit area.

~~(39)~~~~(38)~~ "Permittee" means an operator or a person holding or required by KRS Chapter 350 or 405 KAR Chapters 7 through 24 to hold a permit to conduct surface coal mining and reclamation operations during the permit term and until all reclamation obligations imposed by KRS Chapter 350 and 405 KAR Chapters 7 through 24 are satisfied.

~~(40)~~~~(39)~~ "Person" is defined by KRS 350.010(9).

~~(41)~~~~(40)~~ "Person having an interest which is or may be adversely affected" or "person with a valid legal interest" includes any person:

(a) Who uses any resource of economic, recreational, aesthetic, or environmental value that could be adversely affected by coal exploration or surface coal mining and reclamation operations, or by any related action of the cabinet; or

(b) Whose property is or could be adversely affected by coal exploration or surface coal mining and reclamation operations, or by any related action of the cabinet.

~~(42)~~~~(41)~~ "Prime farmland" means those lands defined by the Secretary of Agriculture in 7 C.F.R. 657 and that have been "historically used for cropland".

~~(43)~~~~(42)~~ "Reclamation" is defined by KRS 350.010(12).

~~(44)~~~~(43)~~ "Secretary" is defined by KRS 350.010(11).

~~(45)~~~~(44)~~ "SMCRA" means Surface Mining Control and Reclamation Act, 30 U.S.C. Chapter 25 of 1977 (PL 95-87), as amended.

~~(46)~~~~(45)~~ "Surety bond" means an indemnity agreement in a sum certain, payable to the cabinet and executed by the permittee, which is supported by the performance guarantee of a corporation licensed to do business as a surety in the Commonwealth of Kentucky.

~~(47)~~~~(46)~~ "Surface coal mining and reclamation operations" is defined by KRS 350.010(3).

~~(48)~~~~(47)~~ "Surface coal mining operations" is defined by KRS 350.010(1).

~~(49)~~~~(48)~~ "Suspended solids" or nonfilterable residue, expressed as milligrams per liter, means organic or inorganic materials carried or held in suspension in water which are retained by a standard glass fiber filter in the procedure outlined by the U.S. EPA's regulations for waste water and analyses (40 C.F.R. 136).

~~(50)~~~~(49)~~ "Ton" means 2,000 pounds avoirdupois (.90718 metric ton).

~~(51)~~~~(50)~~ "Topsoil" means the A and E soil horizon layers of the four (4) master soil horizons.

~~(52)~~~~(51)~~ "U.S. EPA" means United States Environmental Protection Agency.

~~(53)~~~~(52)~~ "Voluntary Bond Pool" is defined by KRS 350.500(5).

~~(54)~~~~(53)~~ "Willfully" and "willful violation" mean that a person acted either intentionally, voluntarily, or consciously, and with intentional disregard or plain indifference to legal requirements, in

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authorizing, ordering, or carrying out an act or omission that constituted a violation of SMCRA, KRS Chapter 350, 405 KAR Chapters 7 through 24, or a permit condition, or that constituted a failure or refusal to comply with an order issued pursuant to SMCRA, KRS Chapter 350, or 405 KAR Chapters 7 through 24.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: June 12, 2019

FILED WITH LRC: June 12, 2019 at 3 p.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.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides for the defining of certain essential terms used in 405 KAR Chapter 10.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to clearly define the terms to be used in 405 KAR Chapter 10.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS Chapter 350 provides the department the authority to promulgate administrative regulations to implement a permanent program to regulate coal mining in the commonwealth. This administrative regulation defines terms used in 405 KAR Chapter 10.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides definitions to be used in 405 KAR Chapter 10 and will assist in the accurate interpretation of those 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 adds a definition for "long term treatment". The amendment made in response to comment removes the exclusion of TSS and TDS from the definition.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to clearly define what is meant by the term "long term treatment" when used in 405 KAR Chapter 10. This amendment was necessary to respond to a comment received on the administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the authorizing statutes by defining the word "long term treatment" to be used in 405 KAR Chapter 10. The amendment made in response to comment conforms to the authorizing statutes by amending the definition.

(d) How the amendment will assist in the effective administration of the statutes: KRS 350.028 provides the department the authority to enforce a permanent regulatory program in the commonwealth. These amendments are necessary to comply with requested changes to the cabinet's permanent program related to long term treatment bonding. The amendment in response to comment removes language that excluded TSS and TDS from the definition of long-term treatment.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This provision would apply to any entity that operates surface coal mine operation that is conducting long-term treatment within Kentucky. This provision would also apply to the Department for Natural Resources and the Division of Water.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities listed in question (3) above will need to use the definition for the term "long term treatment" correctly in interpreting the amendments to 405 KAR 10:015.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is not a standard cost increase associated with the proposed amendments. As it relates the amendments in 405 KAR 10:015 and this administrative regulation as a whole, any additional cost to a permittee performing long term treatment will be reflected in the amount of the financial assurance instrument which is going from a multiplier of 20 to 25 for annual treatment costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities listed in question (3) above will have a clear definition for the term "long term treatment".

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

(a) Initially: There will be no costs to the department associated with implementation of this amendment.

(b) On a continuing basis: There will be no costs to the department associated with implementation of this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The funding for implementation of the amendments to this administrative regulation will be a combination of general funds and restricted funds.

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

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

(9) TIERING: Is tiering applied? No. All entities that operate a coal mine will be required to use the same definition of "long term treatment".

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Division of Mine Permits, Division of Mine Reclamation and Enforcement, and the Division of Water.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 350.028, 350.465, 350.500 - 350.521, 7 C.F.R. Part 657, 30 C.F.R. Parts 700.5, 701.5, 707.5, 730-733, 735, 761.5, 762.5, 773.5, 800.5, 843.5, 917, 40 C.F.R. Part 136, 30 U.S.C. 1253, 1255, 1291.

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

(a) How much 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 amended administrative regulation will not generate any new revenue for the state or local government.

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

(c) How much will it cost to administer this program for the first year? There will not be a cost increase associated with the amendments to this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? Future costs would remain essentially unchanged related to this amendment.

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

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

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

expenditures.

Other Explanation: There is no further explanation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 30 C.F. R. 701.5
2. State Compliance Standards. KRS 350.028 and KRS 350.060.
3. Minimum or uniform standards contained in the federal mandate. 30 C.F. R. 701.5 defines terms that are to be used in the process of interpreting the applicable chapter in the Code of Federal Regulations.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. The amendments will bring Kentucky's mining program closer in line with the federal program.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. NA

PUBLIC PROTECTION CABINET
Department of Insurance
(Amended After Comments)

806 KAR 47:010. Fraud prevention~~[Designation of a contact person].~~

RELATES TO: KRS 304.2-140, 304.47-010, 304.47-020, 304.47-040, 304.47-050, 304.47-080

STATUTORY AUTHORITY: KRS 304.2-110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 authorizes the Commissioner of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code [~~as defined in KRS 304.1-040~~]. This administrative regulation establishes insurer requirements and a comprehensive process for reporting and investigating fraudulent insurance acts [~~for the designation of primary contact persons to communicate with the Division of Insurance Fraud Investigation~~].

Section 1. Definitions.

(1) "Division" is defined by KRS 304.47-010(6);

(2) "Special investigative unit" or "SIU" means a unit to investigate fraudulent insurance acts as required by KRS 304.47-080.

Section 2. Scope. This administrative regulation shall apply to all insurers admitted to do business in the Commonwealth that are not otherwise exempted by KRS 304.47-080(1).

Section 3. Primary Anti-fraud Contacts. To facilitate communication with the division, an [Every] insurer shall designate [at least] two (2) primary contact persons, one (1) of whom shall be the head of the SIU, [but not more than four (4) primary contact persons] who shall communicate with the division [of Insurance Fraud Investigation] on matters relating to the reporting, investigation, and prosecution of suspected fraudulent insurance acts, as defined in KRS 304.47-020.

Section 4[2]. Special Investigative Units and Anti-fraud Plans. [Every insurer shall notify the Division of Insurance Fraud Investigation in writing of the names, addresses, and telephone numbers of:]

(1) An insurer shall maintain an SIU to fulfill the requirements of KRS 304.47-080.[The insurer's primary contact persons; and]

(2) In conjunction with its SIU, an insurer shall:[The primary person responsible for the insurer's investigative unit.]

(a) Implement systematic and effective methods to detect and investigate suspected fraudulent insurance claims;

(b) Educate and train all claims handlers to identify possible insurance fraud;

(c) Develop policies for the SIU to cooperate, coordinate, and

communicate with:

1. The insurer's claims handlers, legal personnel, technical support personnel, and database support personnel; and

2. The division and other relevant law enforcement agencies.

(d) Develop and submit to the division a written anti-fraud plan, which shall include:

1. Acknowledgment of duty to report to the division, including mandatory reporting of the determination that a suspected fraudulent act has been committed [suspected fraud] within fourteen (14) days;

2. SIU contact information;

3. SIU investigative ethics;

4. Procedures to detect and deter fraud; and

5. Continuing education plans for SIU staff.

Section 5. Compliance Report.

(1) Within ninety (90) days of admission, and at least once every two (2) years, an insurer shall submit to the division a written report setting forth the manner in which the insurer is complying with Section 4 of this administrative regulation. The report shall also include:

(a) The total number of SIU investigative staff responsible for cases in Kentucky, and whether any such staff also investigate cases in other jurisdictions; and either

(b) If the insurer formed the SIU in house and solely governs it, the year that the SIU was formed; or

(c) If the insurer has contracted SIU services through another company, the identity of the company providing SIU services and the initial year of the contract between the insurer and the company.

(2) Within thirty (30) days of a material change of the information provided in the compliance report, the insurer shall amend the compliance report and resubmit it to the division.

Section 6. Reporting Fraudulent Insurance Acts.

(1) All persons identified in KRS 304.47-050(2) shall report suspected fraudulent insurance acts to the division within fourteen (14) days of determination that a suspected fraudulent act has been committed. Reports submitted to a person or entity other than the division shall not satisfy the reporting duty of KRS 304.47-050(2). Reports shall be submitted by:

(a) Completing a report on the department's electronic services portal at <https://insurance.ky.gov/eservices/default.aspx>; or

(b) Submitting a completed Uniform Suspected Insurance Fraud Reporting Form.

(2) All persons identified in KRS 304.47-050(1) may report suspected fraudulent insurance acts to the division by:

(a) Completing a report on the department's electronic services portal at <https://insurance.ky.gov/eservices/default.aspx>; or

(b) Submitting a completed Uniform Suspected Insurance Fraud Reporting Form.

Section 7. Incorporation by Reference.

(1) The "Uniform Suspected Insurance Fraud Reporting Form," 03/2019, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Insurance, 215 W. Main St., Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

K. GAIL RUSSELL, Acting Secretary

NANCY G. ATKINS, Commissioner

APPROVED BY AGENCY: June 14, 2019

FILED WITH LRC: June 14, 2019, at 11 a.m.

CONTACT PERSON: Patrick O'Connor II, Deputy Commissioner, Policy, P.O. Box 517, 215 West Main Street, Frankfort, Kentucky 40602, phone (502) 564-6026, fax (502) 564-1453, 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 insurer requirements and creates a comprehensive process for reporting and investigating fraudulent insurance acts. The administrative regulation requires insurers to establish a Special Investigative Unit, identify primary anti-fraud contacts, submit anti-fraud plans and reports to the Department of Insurance division of insurance fraud investigation, and sets forth the process for all persons reporting to the department.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to carry out requirements of KRS 304 Subtitle 47. The administrative regulation facilitates insurer and public communications with the Division regarding suspected fraudulent insurance acts.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110 authorizes the Commissioner to promulgate administrative regulations necessary to carry out and enforce the provisions of the Kentucky Insurance Code. KRS 304.47-040 establishes the division of insurance fraud investigations.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation facilitates communication between insurers and the division, making it easier for both to fulfill their statutory duties regarding insurance fraud.

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

(a) How the amendment will change this existing administrative regulation: This administrative regulation amendment incorporates necessary substantive provisions from 806 KAR 47:010, 806 KAR 47:020, and 806 KAR 47:030, combining them into a single administrative regulation for administrative efficiency. The amended administrative regulation will now serve as a comprehensive guide to the reporting and investigating of fraudulent insurance acts while eliminating unnecessary duplication, repetition, and complexity.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation amendment will make it easier for insurers to comply with their statutory duties. Additionally, this amendment will make it easier for the Division to uphold its statutory duty to investigate fraudulent insurance acts. Lastly, this amendment will make it clearer of how someone, although not obligated to do so, can report fraudulent insurance acts to the Division.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 304.2-110 authorizes the Commissioner to promulgate administrative regulations necessary to carry out and enforce the provisions of the Kentucky Insurance Code.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation amendment serves as a comprehensive guide for insurers regarding the reporting and investigating of fraudulent insurance acts. Additionally, this amendment offers guidance of how someone, although not obligated to do so, can report fraudulent insurance acts to the Division.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation amendment will affect insurers doing business in the Commonwealth, and the general public to the extent they report fraudulent insurance acts.

(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: Insurers will have to become familiar with the revised regulatory scheme and ensure that anti-fraud plans and compliance reports satisfy all revised requirements. The general public will not have to take any action to comply.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: This administrative regulation amendment should create no cost to regulated entities or the general public.

(c) As a result of compliance, what benefits will accrue to the entities: Insurers will have an easier time complying with a single administrative regulation governing the reporting and investigating of insurance fraud.

(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 costs to implement this administrative regulation amendment.

(b) On a continuing basis: There will be no continuing costs to implement this administrative regulation amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is necessary to implement and enforce this administrative regulation amendment.

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

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

(9) TIERING: Is tiering applied? No. Tiering is not applied because this administrative regulation amendment applies equally to all regulated entities.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation amendment will impact the Insurance Fraud Investigation division of the Kentucky Department of Insurance.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.2-110 authorizes the Commissioner make reasonable rules and regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

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

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

(c) How much will it cost to administer this program for the first year? There is no cost associated with administering this administrative regulation amendment for the first year.

(d) How much will it cost to administer this program for subsequent years? There is no cost associated with administering this administrative regulation amendment for subsequent years.

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

Revenues (+/-): Neutral.

Expenditures (+/-): Neutral.

Other Explanation: None.

**ENERGY AND ENVIRONMENT CABINET
Public Service Commission
(Amended After Comments)**

807 KAR 5:056. Fuel adjustment clause.

RELATES TO: KRS Chapter 278

STATUTORY AUTHORITY: KRS 278.040(3)[~~278.030(1)~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 278.040(3) provides that the Public Service Commission may promulgate administrative regulations to implement the provisions of KRS Chapter 278. KRS 278.030(1) provides that all rates received by an electric utility subject to the jurisdiction of the Public Service Commission shall be fair, just, and reasonable. KRS 278.030(2) provides that every utility shall furnish adequate, efficient, and reasonable service. This administrative regulation prescribes the requirements with respect to the implementation of automatic fuel adjustment clauses by which electric utilities may immediately recover increases in fuel costs ~~subjected~~[~~subject~~] to later scrutiny by the Public Service Commission

Section 1. Fuel Adjustment Clause. Fuel adjustment clauses which are not in conformity with the principles set out below are not in the public interest and may result in suspension of those parts of such rate schedules:

(1) The fuel adjustment clause shall provide for periodic adjustment per KWH of sales equal to the difference between the fuel costs per KWH sale in the base period and in the current period according to the following formula:

$$F(m) F(b)$$

Adjustment Factor = -----

$$S(m) S(b)$$

Where F(b) is the ~~cost~~[~~expense~~] of ~~fossil~~ fuel in the base period, F(m) is the cost of fuel in the current period, S(b) is sales in the base period, and S(m) is sales in the current period[~~(b) and Current (m) periods; and S is sales in the base (b) and current (m) periods~~], all as defined below.

(2) F(b)[B]/S(b)[B] shall be so determined that on the effective date of the commission's approval of the utility's application of the formula, the resultant adjustment will be equal to zero.

(3) Fuel costs (F) shall be the most recent actual monthly cost, based on weighted average inventory costing, of:

(a) Fossil fuel consumed in the utility's own plants, and the utility's share of fossil and nuclear fuel consumed in jointly owned or leased plants, plus the cost of fuel which would have been used in plants suffering forced generation or transmission outages, but less the cost of fuel related to substitute generation; plus

(b) The actual identifiable fossil and nuclear fuel costs associated with energy purchased for reasons other than identified in paragraph (c) of this subsection, but excluding the cost of fuel related to purchases to substitute for the forced outages; plus

(c) The net energy cost of energy purchases, [irrespective of the designation assigned to such transaction and] exclusive of capacity or demand charges [irrespective of the designation assigned to such transaction], [~~irrespective of the designation assigned to such transaction~~] when such energy is purchased on an economic dispatch basis. Included therein may be such costs as the charges for economy energy purchases and the charges as a result of scheduled outage, all such kinds of energy being purchased by the buyer to substitute for its own higher cost energy; and less

(d) The cost of fossil fuel recovered through intersystem sales including the fuel costs related to economy energy sales and other energy sold on an economic dispatch basis. [~~(e) All fuel costs shall be based on weighted average inventory costing.~~]

(4) Forced outages are all nonscheduled losses of generation or transmission which require substitute power for a continuous period in excess of six (6) hours. Where forced outages are not[as] the[a] result of faulty equipment, faulty manufacture, faulty design, faulty installations, faulty operation, or faulty maintenance, but are Acts of God, riot, insurrection or acts of the public enemy, then the utility may, upon proper showing, with the approval of the commission, include the fuel cost of substitute energy in the adjustment. [~~Until such approval is obtained.~~] In making the

calculations of fuel cost (F) in subsection (3)(a) and (b) of this section, the forced outage costs to be subtracted shall be no less than the fuel cost related to the lost generation until such approval is obtained.

(5) Sales (S) shall be all KWH's sold, excluding intersystem sales. Utility used energy shall not be excluded in the determination of sales (S). Where, for any reason, billed system sales cannot be coordinated with fuel costs for the billing period, sales may be equated to ~~the sum of~~:

- (a) Generation; plus
- (b) Purchases; plus
- (c) Interchange-in; less
- (d) Energy associated with pumped storage operations; less
- (e) Intersystem sales referred to in subsection (3)(d) above;

less

(f) Total system losses. [~~Utility used energy shall not be excluded in the determination of sales (S).~~]

(6) The cost of fossil fuel shall only include the cost of the fuel itself and necessary charges for transportation of the fuel from the point of acquisition to the unloading point, as listed in Account 151 of FERC Uniform System of Accounts for Public Utilities and Licensees, [~~include no items other than the invoice price of fuel~~] less any cash or other discounts. [~~The invoice price of fuel includes the cost of the fuel itself and necessary charges for transportation of the fuel from the point of acquisition to the unloading point, as listed in Account 151 of FERC Uniform System of Accounts for Public Utilities and Licensees.~~]

Section 2. Filing Requirements. (1)[(7) At the time the fuel clause is initially filed.] If a utility initially proposes a fuel adjustment clause [or proposes to reset the base period fuel costs used in a fuel adjustment clause], the utility shall submit copies of each fossil fuel purchase contract not otherwise on file with the commission and all other agreements, options, amendments, modifications, and [or] similar such documents, [~~and all amendments and modifications thereof~~] related to the procurement of fuel supply [~~and~~] or purchased power [in addition to any other documents and information required by 807 KAR 5:001 and 807 KAR 5:011]. [~~Incorporation by reference is permissible.~~]

(2) Any changes in the contracts or other documents filed pursuant to subsection (1) of this section, including price escalations, and [or] any new agreements entered into after the initial submission, shall be submitted at the time they are entered into.

(3) Where fuel is purchased from utility-owned or controlled sources, or the contract contains a price escalation clause, those facts shall be noted, and the utility shall explain and justify them in writing. [~~Fuel charges which are unreasonable shall be disallowed and may result in the suspension of the fuel adjustment clause. The commission on its own motion may investigate any aspect of fuel purchasing activities covered by this administrative regulation.~~]

(8) Any tariff filing which contains a fuel clause shall conform that clause with this administrative regulation within three (3) months of the effective date of this administrative regulation. The tariff filing shall contain a description of the fuel clause with detailed cost support.

(4)[(9)] The monthly fuel adjustment shall be filed with the commission ten (10) days before it is scheduled to go into effect, along with all the necessary supporting data to justify the amount of the adjustment [~~which shall include data and information as may be required by the commission~~].

(5)[(10)] Copies of all documents required to be filed with the commission under this administrative regulation shall be open and made available for public inspection at the office of the Public Service Commission pursuant to the provisions of KRS 61.870 to 61.884.

Section 3. Review of Fuel Adjustment Clauses (1) Fuel charges which are unreasonable shall be disallowed and may result in the suspension of the fuel adjustment clause.

(2) The commission on its own motion may investigate any aspect of fuel purchasing activities covered by this administrative regulation.

(3)[(11)] At six (6) month intervals, the commission will conduct

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a formal review and may conduct public hearings on a utility's past fuel adjustments. The commission will order a utility to charge off and amortize, by means of a temporary decrease of rates, any adjustments it finds unjustified due to improper calculation or application of the charge or improper fuel procurement practices.

(4)(42) Every two (2) years following the initial effective date of each utility's fuel clause, the commission will conduct a formal[~~in a public hearing will~~] review and evaluate past operations of the clause, disallow improper expenses and, to the extent appropriate, reestablish the fuel clause charge in accordance with Section 1[subsection] (2) of this administrative regulation[section]. The commission may conduct a public hearing if it finds that a hearing is necessary for the protection of a substantial interest or is in the public interest.

(5) For any contracts entered into[Beginning] three (3) months or more after the effective date of this regulation, the commission shall, in determining the reasonableness of fuel costs in procurement contracts and fuel procurement practices, evaluate the reasonableness of fuel costs in contracts and competing bids based on the cost of the fuel less any coal severance tax imposed by any jurisdiction upon coal physically removed from the earth[any tax collected under KRS 143.020].

This is to certify that the Public Service Commission approved promulgation of this administrative regulation, as amended after comment, pursuant to KRS 278.040(3), on June 14, 2019.

GWEN R. PINSON, Executive Director
MICHAEL J. SCHMITT, Chairman

APPROVED BY AGENCY: June 14, 2019

FILED WITH LRC: June 14, 2019 at noon

CONTACT PERSON: John E.B. Pinney, Acting General Counsel, Kentucky Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky 40601, phone (502) 564-3940, fax (502) 564-7279, email Jeb.Pinney@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: John E.B. Pinney

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation prescribes the requirements with respect to the implementation of automatic fuel adjustment clauses by which electric utilities may immediately recover increases in fuel costs subject to later scrutiny by the Kentucky Public Service Commission.

(b) The necessity of this administrative regulation: This regulation promotes reliable electric service at reasonable rates by creating a mechanism by which fluctuations in fuel costs, which are a significant and volatile cost in electric generation, may be reflected in customer bills in a timely manner, subject to commission oversight, without a more burdensome general rate adjustment proceeding.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 278.040(3) provides that the commission may promulgate administrative regulations to implement the provisions of KRS Chapter 278. KRS 278.030(1) provides that all rates received by an electric utility subject to the jurisdiction of the commission shall be fair, just, and reasonable. KRS 278.030(2) provides that every utility shall furnish adequate, efficient, and reasonable service. Administrative regulation number, 807 KAR 5:056, limits regulatory lag by prescribing a mechanism by which fluctuations in fuel prices, which are a significant and volatile cost in electric generation, may be reflected in customer bills in a timely manner, subject to commission oversight, without a more burdensome general rate adjustment proceeding.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation limits regulatory lag by prescribing a mechanism by which fluctuations in fuel prices, which are a significant and volatile cost in electric generation, may be reflected in customer bills in a timely manner, subject to commission oversight, without a more burdensome general rate adjustment proceeding.

(2) If this is an amendment to an existing administrative

regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The proposed amendments after comments: (1) keep the original language of the regulation in Section 1(3)(c); (2) clarifies the language in Section 2(1) regarding the filing requirements for utilities; (3) clarify that the proposed amendments in Section 3(5) will only apply to contracts entered into three (3) months or more after the effective date of the regulation; and (4) clarify that the proposed amendments in Section 3(5) will apply to coal severance taxes or other similar taxes imposed by all jurisdictions.

(b) The necessity of the amendments after comment to this administrative regulation: (1) the original proposed changes to Section 1(3)(c) inadvertently changed the meaning of the section, and, in response to several comments, the Commission will keep the original language of the section. (2) Some of the proposed changes to Section 1(7) [Re-codified as Section 2(1)], according to some of the comments, may inadvertently cause some confusion regarding what documents need to be filed. The amendments after comment clarify the filing requirements. (3) The original proposed amendment to Section 3(5) caused concern among the commenters that the regulation, once effective, would apply to fuel contracts into which the utility had already entered. The first proposed amendment after comment in Section 3(5) clarifies that the regulation, once effective, will only apply to fuel contracts entered into three (3) or more months after the effective date of the amended regulation. (4) The second proposed amendment after comment in Section 3(5) is made to address several concerns of the commenters. The proposed amendment after comment will remove the coal severance or similar tax collected by the state from which the coal originates and is being made to ensure that the reasonableness of fuel costs are reviewed on a more level basis regardless of the state of origin.

(c) How the amendment conforms to the content of the authorizing statutes: Administrative regulation number, 807 KAR 5:056, continues to limit regulatory lag by prescribing a mechanism by which fluctuations in fuel prices, whether up or down, may be reflected in customer bills in a timely manner, subject to commission oversight, without a more burdensome general rate adjustment proceeding. The amendments clarify the application of 807 KAR 5:056, remove unnecessary regulatory burdens in its application, and ensure customers continue to receive adequate, efficient, and reasonable service through the utilities' timely recovery of volatile costs for fuel from diverse sources. The proposed amendments after comment are consistent with the content of the authorizing statutes.

(d) How the amendment will assist in the effective administration of the statutes: The proposed amendments after comment further clarify the application of 807 KAR 5:056, remove the uncertainty of some of the original proposed amendments, remove unnecessary regulatory burdens in its application, and ensure customers continue to receive adequate, efficient, and reasonable service through the utilities' timely recovery of volatile costs for fuel from diverse sources.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The regulation will affect regulated electric generation and distribution utilities in the Commonwealth of which there are approximately 25.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The amendments will allow the commission to review fuel adjustment clauses without a hearing and should thereby ease the burden on regulated entities. The commission does not anticipate the regulated entities having to take additional actions to comply with the amendments.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Zero Dollars; no fiscal impact.

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

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entities identified in question (3): The amendment clarifies potential ambiguous provisions in the regulation and thereby should ease compliance, and it eliminates the requirement that hearings be conducted, which should ease the burden on the regulated entities while allowing the commission to maintain its oversight of fuel adjustment clauses.

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

- (a) Initially: Zero Dollars; no fiscal impact.
- (b) On a continuing basis: Zero Dollars; no fiscal impact.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The commission does not anticipate this amendment increasing its enforcement cost. The amendment should, if anything, nominally reduce the number of hearings the commission conducts each year. The commission currently funds enforcement of this regulation through its general operating budget funded through annual assessments paid by regulated utilities pursuant to KRS 278.130, *et. seq.*, and this amendment has no effect on that funding.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied to this regulation, because it would not be appropriate. This regulation simply creates a mechanism by which fluctuations in fuel costs incurred by each utility may be passed through to customer bills in a timely manner. Although the utilities to which this regulation applies vary in size and location, they function in a similar manner. Moreover, the amounts that are flowed through the fuel adjustment clauses, whether they result in increases or decreases in customer bills, will vary based on the size of the utility. The commission's review of the fuel adjustment clauses of smaller utilities will be less burdensome by virtue of the fact that there is less to review. However, while the total amounts flowed through the fuel adjustment clauses vary based on the size of the utility, the fuel costs will make up approximately the same percentage of the utilities expense and their customer bills regardless of the size of the utility, so there would be no basis for reviewing the amounts passed through fuel adjustment clauses more or less frequently based on the size of the utility.

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

FEDERAL MANDATE ANALYSIS COMPARISON

- (1) Federal statute or regulation constituting the federal mandate: None.
- (2) State compliance standards: N/A
- (3) Minimum or uniform standards contained in the federal mandate: N/A
- (4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? N/A
- (5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. N/A

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What 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 impact.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 278.040

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. Zero Dollars; no fiscal impact.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Zero Dollars; no fiscal impact.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Zero Dollars; no fiscal impact.

(c) How much will it cost to administer this program for the first year? Zero Dollars; no fiscal impact.

(d) How much will it cost to administer this program for subsequent years? Zero Dollars; no fiscal impact.

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

PROPOSED AMENDMENTS

PERSONNEL CABINET
(Amendment)

101 KAR 2:230. Kentucky Employee Mediation and Workplace Resolution Programs

RELATES TO: KRS 18A.030(2)(i), 18A.110
 STATUTORY AUTHORITY: KRS 18A.110(7)(i)
 NECESSITY, FUNCTION, AND CONFORMITY: [KRS 18A.025(3)(c)2.c. requires the Personnel Cabinet to provide dispute resolution assistance to state employees and state agencies.] KRS 18A.110 authorizes the Secretary of Personnel to promulgate administrative regulations that develop programs to improve the work effectiveness of state employees. This administrative regulation establishes the operational procedures for the Kentucky Employee Mediation and Workplace Resolution Programs [mediation program].

Section 1. Establishment of the Kentucky Employee Mediation Program (KEMP). (1) The Personnel Cabinet shall establish and administer the Kentucky Employee Mediation Program to coordinate mediations and the State Government Mediator Pool, as established in subsection (4) of this section [Section 4 of this administrative regulation], in state agencies and provide them with additional services.

(2) Eligibility for services.

(a) An employee or supervisor may request mediation services through the Kentucky Employee Mediation Program in order to resolve workplace issues. The request shall be made using the Mediation Request Form.

(b) Participation by all parties involved in the mediation sessions shall be voluntary. Each party shall sign an [the] agreement to mediate and the original, signed agreement shall be kept in the mediation file.

(c) Employees shall be entitled to obtain mediation services without interference, coercion, or reprisal.

(d) Participation in mediation sessions shall not require the use of accrued leave time if the employee has obtained prior approval of the supervisor or appointing authority.

(e) Participation in mediation shall not preclude an agency from taking disciplinary or corrective action as needed in dealing with job behavior or job performance problems.

(f) Participation in a mediation shall not affect the filing timeframes for a grievance with the cabinet or agency or an appeal with the Personnel Board.

(3) Mediation session procedures.

(a) Mediation sessions shall be conducted by mediators in the State Government Mediator Pool who do not work in the participant's employing agency.

(b) Mediation sessions shall be scheduled by the Kentucky Employee Mediation Program after receipt of the request to mediate and confirmation of agreement to participate at a time convenient for all participants.

(c) The Kentucky Employee Mediation Program shall provide the participants with the names of all mediators assigned to the session [name of the certified mediator]. The participants may request another mediator if the appointed mediator has a conflict of interest. [The scheduled mediation session may be rescheduled with written approval by participating parties.]

(d) The participants shall ensure that all parties who have the authority to approve and implement the final mediation agreement are present at the mediation.

(e) Participation in mediation shall constitute an agreement by the parties that all offers of compromise, promises and statements made in the course of the mediation session shall not be offered as evidence or argument at any subsequent hearing or trial of the subject matter of the dispute.

(f) The content of the mediation sessions shall remain confidential as permitted by state and federal law.

(g) All contents of the official mediation file, including original, signed final agreements, shall be the property of the

Kentucky Employee Mediation Program.

(h) Certified mediators shall not be subject to participation in any subsequent proceedings regarding the mediated matter.

(i) The Kentucky Employee Mediation Program or the mediator may decline the request for mediation for reasonable cause, issue a continuance of the mediation, or terminate a mediation session.

(j) Final mediation agreements shall be reduced to writing and signed by the mediator and participants.

(k) All final mediation agreements or reports from mediations referred by the Personnel Board shall be filed with the board by the Kentucky Employee Mediation Program.

(l) The Kentucky Employee Mediation Program shall not oversee compliance with final mediation agreements.

(m) Upon request and following the conclusion of the mediation session, the Kentucky Employee Mediation Program may provide written confirmation of participation to the participant's supervisors or appointing authority.

(4) State Government Mediator Pool.

(a) The Kentucky Employee Mediation Program shall establish and provide oversight for the State Government Mediator Pool including training, certification, and technical assistance services.

(b) The State Government Mediator Pool shall consist of state government employees who volunteer to serve and who have been certified by the Kentucky Employee Mediation Program.

(c) The Kentucky Employee Mediation Program shall establish specific certification criteria based on completion of the following:

1. Minimum of fifty (50) [forty (40)] hours of general mediation training, to include classroom training, mediation observation, mediation participation, or professional continuing education as approved by the program manager;

2. Minimum of six (6) hours of continuing education per year; and

3. Minimum of twenty (20) hours of actual mediation experience; and

(d) Compliance with the Kentucky Employee Mediation Program's Standards of Professional Conduct.

(d) The Kentucky Employee Mediation Program shall not certify any person as a mediator if the criteria of paragraph (c) of this subsection [3 of this section] are not met.

(e) A mediator [Mediators] may use state time to conduct mediation sessions with the approval of the appointing authority. The mediator's employing agency shall pay [reimbursing] travel expenses in accordance with the provisions of 200 KAR 2:006.

(f) The Kentucky Employee Mediation Program shall maintain a current listing of certified state government mediators.

Section 2. Establishment of the Kentucky Employee Workplace Resolution Program. (1) The Personnel Cabinet shall establish and administer the Kentucky Employee Workplace Resolution Program to improve the work effectiveness of state employees.

(2) Eligibility for services.

(a) An employee in a supervisory or managerial role may request workplace resolution services for their section, branch, or division. The request shall be made to the Workplace Resolution Program by email.

(b) Participation by all parties in the Workplace Resolution Program shall be voluntary.

(c) Employees shall be entitled to participate in workplace resolution services without interference, coercion, or reprisal.

(d) Participation in workplace resolution sessions shall not require the use of accrued leave time if the employee has obtained prior approval of the supervisor or appointing authority.

(e) Participation in workplace resolution shall not preclude an agency from taking disciplinary or corrective action as needed in dealing with job behavior or job performance problems.

(f) Participation in workplace resolution shall not affect the filing timeframes for a grievance with the cabinet or agency or an appeal with the Personnel Board.

(3) Workplace resolution session procedures.

(a) Workplace resolution sessions shall be conducted by mediators in the State Government Mediator Pool, as set forth in Section 1(4)(b) of this administrative regulation, who do not work in the participant's employing agency.

(b) A mediator may use state time to conduct workplace resolution sessions with the approval of the appointing authority. The mediator's employing agency shall pay travel expenses in accordance with the provisions of 200 KAR 2:006.

(c) Workplace resolution sessions shall be scheduled by the Workplace Resolution Program after receipt of the request for the service and confirmation of agreement to participate at a time convenient for all participants.

(d) All parties who have the authority to approve and implement any recommendations shall participate in the process.

(e) The content of the workplace resolution sessions shall remain confidential as permitted by state and federal law.

(f) All contents of the workplace resolutions file shall be the property of the Workplace Resolution Program.

(g) Certified mediators shall not be subject to participation in any subsequent proceedings regarding the matter that is the subject of workplace resolution sessions.

(h) The Workplace Resolution Program or the mediator may decline the request for workplace resolution for reasonable cause, issue a continuance of the workplace resolution proceedings, or terminate a workplace resolution session.

(i) The Workplace Resolution Program shall not oversee compliance of any final workplace resolution program recommendations, and any workplace resolution program recommendations are optional and not mandatory.

(j) Upon request and following the conclusion of any workplace resolution session, the Workplace Resolution Program may provide written confirmation of participation to the participant's supervisors or appointing authority.

Section 3.[5-] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Mediation Request Form", June 2019[February 2008]; and

(b) ["Agreement to Mediate", February 2008; and

(c) "KEMP Standards of Professional Conduct", February 2008.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Personnel Cabinet, 501 High Street, 3rd[2nd] Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.[The material may also be obtained from the cabinet's Web site at www.personnel.ky.gov/.]

THOMAS B. STEPHENS, Secretary

APPROVED BY AGENCY: June 10, 2019

FILED WITH LRC: June 14, 2019 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 22, 2019 at 10:00 a.m. at 501 High Street, 3rd floor, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until 11:59 p.m. on July 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: Rosemary Holbrook, Executive Director, Office of Legal Services, 501 High Street, 3rd floor, Frankfort, Kentucky 40601, phone (502) 564-7430, fax (502) 564-0224, email RosemaryG.Holbrook@ky.gov.

Contact person: Rosemary Holbrook

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes the operational procedures for the Kentucky Employee Mediation and Workplace Resolution Programs.

(b) The necessity of this administrative regulation: KRS 18A.110 authorizes the Secretary of Personnel to promulgate administrative regulations that develop programs to improve the work effectiveness of state employees. This regulation is necessary to establish the operational procedures for the Kentucky Employee Mediation and Workplace Resolution Programs.

(c) How this administrative regulation conforms to the content of the authorizing statutes: Pursuant to KRS 18A.110, the Personnel Cabinet Secretary may promulgate administrative regulations that develop programs to improve the work effectiveness of state employees. This regulation sets forth the operational procedures of the Kentucky Employee Mediation and Workplace Resolution Programs, two programs meant to improve the work effectiveness of state employees.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation ensures the consistent administration of the Kentucky Employee Mediation and Workplace Resolution Programs, two programs meant to improve the work effectiveness of state employees.

(2) If 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 regulation is amended to clarify existing mediation requirements and adjust mediator certification criteria. In addition, a new section is added to establish operational procedures for a second program meant to improve work effectiveness, the Kentucky Employee Workplace Resolution Program.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to establish uniform operational procedures for the Kentucky Employee Workplace Resolution Program.

(c) How the amendment conforms to the content of the authorizing statutes: Pursuant to KRS 18A.110, the Personnel Cabinet Secretary may promulgate administrative regulations that develop programs to improve the work effectiveness of state employees. This amendment sets forth the operational procedures of the Kentucky Employee Mediation and Workplace Resolution Programs, two programs meant to improve the work effectiveness of state employees.

(d) How the amendment will assist in the effective administration of the statutes: This regulation ensures the consistent administration of the Kentucky Employee Mediation and Workplace Resolution Programs, two programs meant to improve the work effective of state employees.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All KRS Chapter 18A agencies and their employees are 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: No additional action is required.

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

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

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

(a) Initially: This regulation, as amended, is not anticipated to generate any new or additional costs.

(b) On a continuing basis: This regulation, as amended, is not anticipated to generate any new or additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This regulation, as amended, is not anticipated to generate any new or additional costs.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This regulation, as amended, is not anticipated to generate any new or additional fees.

(9) TIERING: Is tiering applied? No. This regulation, as amended, treats all impacted employees the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? All state agencies with employees covered under KRS Chapter 18A.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 18A.110(7)(i).

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

(a) How much 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 are no estimated additional costs to administer the amendments to this regulation.

(d) How much will it cost to administer this program for subsequent years? There are no estimated additional costs to administer the amendments to this regulation.

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

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

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
(Amendment)

103 KAR 1:010. Protests.

RELATES TO: KRS 49.220, 49.250, 131.010, 131.030, 131.081, 131.110, 131.180

STATUTORY AUTHORITY: KRS 131.130

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the Kentucky Department of Revenue to promulgate administrative regulations for the administration and enforcement of all tax laws of this state. This administrative regulation provides guidance regarding a taxpayer's protest rights and outlines procedures to facilitate the filing, processing, and disposition of a protest.

Section 1. Definition. "Notice" means a letter, memorandum, or other document from the department that:

- (1) Notifies the taxpayer that tax has been assessed and is due, or a request for refund has been partially denied or denied in full; and
(2) Explains the taxpayer's right to protest the assessment,

refund denial, or refund reduction, and the time period for filing a protest.

Section 2. Protest - Assessments. (1) Taxpayers will be notified of additional tax assessments by mail. Payment including interest from the original due date, in the absence of protest, shall be made within sixty (60)[forty-five (45)] days from the date of the notice informing the taxpayer that tax is owed.

(2) A written protest may be filed by the taxpayer, or other persons representing the taxpayer, against additional assessments. The department may require the taxpayer to furnish a "Declaration of Representative," Form 20A100 if a representative is serving on behalf of the taxpayer. The time period for submitting a supporting statement may be extended as provided in KRS 131.110(1).

(3) A taxpayer or taxpayer representative may submit a written protest and supporting statements to the department by one (1) of the following methods:

(a) Hand delivery to the department at 501 High Street, Frankfort, Kentucky 40601, or a department Taxpayer Service Center location as listed on the department's Web site;

(b) By the United States postal service or express mail service to the address listed in the notice; or

(c) Electronically to an email address, if provided, listed in the assessment or notice.

(4) When determining if the protest was timely filed, the department shall record the submission as:

(a) The date stamped as received by the department, if hand delivered;

(b) The postmark date from the United States post office, if the postal service is used, but excluding the date from a postage meter;

(c) The delivery confirmation date when received by the department, if an express mail service is used; or

(d) The electronic date and time received, if electronically delivered. If the protest is submitted to the department electronically, the taxpayer shall also mail a copy of the protest and supporting statements to the department at the address listed in the notice.

(5) The department shall acknowledge receipt of the taxpayer's protest in writing within ninety (90) calendar days from the date received by the department.

(6) Scheduling options for a conference shall be communicated to the taxpayer by the department within forty-five (45) days of the taxpayer's written request for a conference.

Section 3. Protest - Refund Denials. (1) The department shall send the taxpayer a notice by mail of any denial or partial denial of any refund applied for, including a refund claimed upon any return.

(2) The department shall include with each notice of the denial: (a) References to the statutes and administrative regulations that are the basis for the denial; and

(b) The date by which the taxpayer may protest the denial.

(3) If the taxpayer disagrees with the disallowance of any refund, the taxpayer may file a written protest and supporting statements with the department by the methods set forth in Section 2 of this administrative regulation.

(4) If the taxpayer or taxpayer representative has submitted all supporting statements and documentation requested by the department, but has not received a determination regarding the refund request from the department within 180 calendar days from the date the request was submitted, the taxpayer may file a protest on the claim as if the refund has been denied by the department.

Section 4. Protest – Transfer (1) Unless the assessment results from an audit performed by the Office of Field Operations, the department shall attempt to resolve the protest within the taxing area from which the assessment was issued.

(2) If the protest cannot be resolved by the taxing area, the taxing area shall transfer the protest to the Division of Protest Resolution.

(3) A taxpayer may request in writing that a protest be transferred to the Division of Protest Resolution by the methods outlined in Section 2 of this administrative regulation for

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consideration by the department.

(4) The taxing area shall complete the transfer within forty-five (45) days of receipt of the taxpayer's written request to transfer the protest to the Division of Protest Resolution.

(5) The Division of Protest Resolution shall acknowledge receipt of the protest in writing to the taxpayer within forty-five (45) days of the transfer. The acknowledgement shall contain:

(a) The name and contact information of the department employee assigned to the taxpayer's protest; and

(b) The name and contact information of the employee's direct supervisor.

Section 5. Final Ruling. If the department cannot resolve the protest after transfer to the Division of Protest Resolution, the department shall issue a final ruling to the taxpayer.

Section 6. Failure by the department to meet any of the deadlines imposed by this administrative regulation:

(1) May justify a waiver of penalties; and

(2) Shall not be interpreted to allow a reduction in any tax, interest, or fees assessed by the department.

DANIEL BORK, Commissioner

APPROVED BY AGENCY: June 6, 2019

FILED WITH LRC: June 7, 2019 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 25, 2019 at 10:00 a.m. in Room 9B, State Office Building, 501 High Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through July 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: Lisa Swiger, Tax Policy Research Consultant II, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky 40601, (502) 564-9526 (telephone), (502) 564-3875(fax), Lisa.Swiger@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lisa Swiger

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation amends 103 KAR 1:010 to conform to changes made in HB 354 of the 2019GA which changed the amount of time a taxpayer has to protest a Notice of Tax Due from the Department of Revenue under KRS 131.110 from 45 days to 60 days.

(b) The necessity of this administrative regulation: KRS 13A requires that all regulations containing outdated or incorrect information be deemed deficient each December and potentially voided. The amendments made within this administrative regulation are necessary to be compliant with KRS 13A and to provide the most current and up to date information regarding the time period to file a protest with the department for those who may seek guidance from 103 KAR 1:010.

(c) How this administrative regulation conforms to the content of the authorizing statutes: See (1)(a).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The amendment to this administrative regulation will insure that the most up to date and correct information is provided to taxpayers of the Commonwealth.

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

(a) How the amendment will change this existing administrative regulation: See (1)(a).

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Any taxpayer wishing to file a protest of a tax bill received from the department would potentially be impacted by the change made 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 only actions required to comply are to file a timely protest within 60 days of the due date on the Notice of Tax Due from the department rather than within 45 days.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will have 15 additional days to meet the deadline of time to file a protest than they had under the previous provisions of KRS 131.110 and this administrative regulation.

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

(a) Initially: There are no additional costs associated with this amendment. Any applicable cost will be absorbed by the current department budget.

(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.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No.

(9) TIERING: Is tiering applied? Tiering is not applied. The updating of this administrative regulation will impact any taxpayer utilizing the guidance within equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Only the Finance and Administration Cabinet, Department of Revenue will be impacted.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS Chapter 13A, 131.110 and 131.130(1).

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There will be no effect on expenditures and revenues for government agencies because of amending 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? No additional revenue will be generated by this amendment.

(b) How much revenue will this administrative regulation

generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? None. Any programming charges associated with changing the timeframe to file a protest printed on a Notice of Tax Due issued by the department will be covered by a current maintenance agreement.

(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 (+/-): 0.00
Expenditures (+/-): 0.00
Other Explanation:

**FINANCE AND ADMINISTRATION CABINET
Department of Revenue
(Amendment)**

103 KAR 1:060. Electronic fund transfer.

RELATES TO: KRS 131.155[, 131.180, 131.183, 131.990]

STATUTORY AUTHORITY: KRS 131.130[(4)], 131.155[(2), (3)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the Department of Revenue[Cabinet] to promulgate administrative regulations for the administration and enforcement of all tax laws of this state. KRS 131.155(3) requires the Department of Revenue[Cabinet] to promulgate administrative regulations establishing electronic fund transfer requirements for the payment of taxes and fees administered by the department[cabinet.] KRS 131.155(3)[(2)] authorizes the Department of Revenue[Cabinet] to prescribe means of electronic fund transfer of taxes and fees. This administrative regulation establishes requirements relating to the remittance of funds to the department[Revenue Cabinet] via electronic fund transfer.

Section 1. Definitions. (1) "Credit method" means the method of payment where the taxpayer or his authorized agent initiates the transfer of funds from the taxpayer or agent controlled account in a financial institution to the designated Commonwealth bank account to satisfy taxes or fees due.

(2) "Debit method" means the method of payment where the taxpayer or his authorized agent authorizes the Department of Revenue[Cabinet] or its authorized agent to initiate the transfer of a set amount of funds on a set date from a taxpayer or agent-controlled account in a financial institution to satisfy taxes or fees due based on required information transmitted to the department[cabinet.] prior to the department[cabinet.] effecting the transfer.

(3) "Lookback period" means the twelve (12) month period ending on September 30 of the year immediately preceding the current calendar year. For example, the lookback period for calendar year 2001 is the period beginning on October 1, 1999 and ending on September 30, 2000.

Section 2. Reporting and Payment Requirements. (1) Any taxpayer whose average payment per reporting period during the lookback period for the sales and use tax required to be collected or paid under KRS Chapter 139 exceeds \$25,000 or any employer whose average payment per reporting period during the lookback period for the income tax required to be withheld under KRS 141.310 exceeds \$25,000 shall submit to the department[cabinet.] a properly executed Revenue Form 10A070 "Authorization Agreement for Electronic Funds Transfer" stating the method requested to be used and upon written approval of the method by the department[cabinet.] shall pay the tax by electronic fund transfer using the debit method or other method approved by the department[cabinet.] including the credit method, provided the method complies with the guidelines set out in subsection (3) of this section.

(2) Persons required by KRS 131.155(2) to remit funds by electronic fund transfer on behalf of other taxpayers shall conform to the provisions of subsection (1) of this section. In addition, such persons shall, for each taxpayer represented and for each payment period, provide the information necessary to properly credit the account as required in subsection (3) of this section.

(3) Execution of any electronic fund transfer transaction shall conform to the guidelines and procedures of each participating financial institution. Any electronic transfer of funds must provide information necessary to properly credit the taxpayer account, including:

- (a) Taxpayer account number;
- (b) Type tax code;
- (c) Tax period end date;
- (d) Amount of transfer;
- (e) Date of payment transfer; and
- (f) Any other information deemed necessary by the department[cabinet.] to properly credit the account.

(4) The department[cabinet.] may withdraw approval to utilize the credit method or any method employed other than the debit method if the taxpayer or his authorized agent fails to provide required information necessary to effect the transfer and credit funds to the proper taxpayer account.

(5) Any taxpayer or employer may volunteer to pay the tax by electronic fund transfer by making a written request to the department[cabinet.] and, if approved by the department[cabinet.], shall be subject to the same requirements as any taxpayer or employer required to electronically transfer the tax. The taxpayer or employer shall comply with the electronic fund transfer[fund] requirements until a written request to change methods is filed and approved by the department[cabinet.]

Section 3. Alternative Payment Method. (1) A taxpayer or authorized agent for a taxpayer or taxpayers shall make a request to remit funds by electronic means other than the previously approved method. This request may be either written or oral.

(2) Approval of such method shall be at the discretion of the department[cabinet.] and limited to demonstration of extreme circumstances.

(3) The following information shall be provided with the request or upon approval of the request:

- (a) Reason for requesting alternate remittance method; and
- (b) Method of remittance proposed.

Section 4. Procedures. (1) Due date of electronic fund transfer.

(a) The due date of any electronic fund transfer for any tax shall be governed by the applicable law and regulations pertaining to that tax.

(b) The initiation date recorded in the automated clearing house system by the originating financial depository institution for any electronic fund transfer shall be the payment date.

(2) Manner of electronic fund transfer. Separate electronic fund transfers shall be made for each type tax account number designated as an electronic fund transfer account under the provisions of KRS Chapter 131.

(3) Overpayment or underpayment of tax. Any overpayment of tax may be applied toward the amount due for the next tax period or may be refunded upon request by the taxpayer or employer. If the amount of tax liability for a taxable period exceeds the total amount electronically transferred for the same period, the taxpayer or employer shall pay the additional tax due.

Section 5. Change in Reporting and Payment Requirements for Electronic Fund Transfer. After the department[cabinet.] makes a determination regarding a taxpayer's or employer's reporting and payment requirements for electronic fund transfer, the taxpayer or employer shall comply with the requirements until a written request to change is filed with and approved by the department[cabinet.]

Section 6. Penalties and Interest. Any taxpayer or employer who fails to comply with the provisions of this administrative regulation shall be subject to penalties as provided in KRS 131.180 and 131.990 and interest as provided in KRS 131.183.

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Section 7. This administrative regulation shall apply to any taxable or payroll period beginning after December 31, 2000.

Section 8. Incorporation by Reference. (1) Revenue Form 10A070 "Authorization Agreement for EFT", January 2001, is incorporated by reference.

(2) This form may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Revenue, 501 High Street, Frankfort, Kentucky 40601, or at any Kentucky Department of Revenue Taxpayer Service Center, Monday through Friday, 8 a.m. to 4:30 p.m. [Revenue Cabinet, 200 Fair Oaks Lane, Frankfort, Kentucky 40620, or at any Kentucky Revenue Cabinet Taxpayer Service Center, Monday through Friday, 8 a.m. to 4:30 p.m.]

DANIEL BORK, Commissioner

APPROVED BY AGENCY: June 6, 2019

FILED WITH LRC: June 7, 2019 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 25, 2019 at 10:00 a.m. in Room 9B, State Office Building, 501 High Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through July 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: Lisa Swiger, Tax Policy Research Consultant II, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky 40601, (502) 564-9526 (telephone), (502) 564-3875(fax), Lisa.Swiger@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lisa Swiger

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation amends 103 KAR 1:060 to remove outdated references to the Revenue "Cabinet" structure and replace them with the correct references to the Kentucky Department of Revenue.

(b) The necessity of this administrative regulation: KRS 13A requires that all regulations containing outdated or incorrect information be deemed deficient. The amendments made within this administrative regulation are necessary to be compliant with KRS 13A.

(c) How this administrative regulation conforms to the content of the authorizing statutes: See (1)(b).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The amendment to this administrative regulation will insure that the most up to date and correct information is provided to taxpayers of the Commonwealth.

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

(a) How the amendment will change this existing administrative regulation: See (1)(a).

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Any taxpayer wishing to make a payment

via electronic fund transfer for the payment of taxes and fees administered by the Department.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Other than potentially updating address information for the Department, there are no actions required.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will have the most recent contact information regarding the Department of Revenue.

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

(a) Initially: There are no additional costs associated with this amendment. Any applicable cost will be absorbed by the current department budget.

(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.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No.

(9) TIERING: Is tiering applied? Tiering is not applied. The updating of this administrative regulation will impact any taxpayer utilizing the guidance within equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Only the Finance and Administration Cabinet, Department of Revenue will be impacted.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS Chapter 13A and 131.130.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There will be no effect on expenditures and revenues for government agencies because of amending this administrative regulation.

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

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

(c) How much will it cost to administer this program for the first year? None.

(d) How much will it cost to administer this program for subsequent years? None.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
(Amendment)

103 KAR 2:005. Life expectancy table.

RELATES TO: KRS 140.100

STATUTORY AUTHORITY: KRS 131.130(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations for the administration and enforcement of all tax laws of this state. KRS 140.100(2) requires the application of the appropriate United States life mortality tables when ascertaining the value of future, contingent, or limited estates which includes life estates and annuities. This administrative regulation establishes the appropriate United States life mortality table as required by KRS 140.100(2).

Section 1. The United States[Decennial] Life Tables published by the United States Department of Health and Human Services, National Center for Health Statistics, shall be utilized when computing the value of a beneficiary's life estate, annuity, remainder interest, or any other interest in the estate which is based on the life expectancy of the beneficiary or some other person.

Section 2. For inheritance tax purposes, the value of future, contingent, or limited estates shall be computed using Table 1, Life Table for the Total Population: United States as published in United States Life Tables. The latest version published as of January 1 of the year of the decedent's death shall be used.; 1999–2001, as published in United States Decennial Life Tables for 1991–2001, United States Life Tables, Vol. 57, No. 1 (Aug. 5, 2008).

Section 3. Incorporation by Reference. (1) "Table 1, Life Table for the Total Population: United States, 1999–2001, as published in United States Decennial Life Tables for 1991–2001, United States Life Tables, Vol. 57, No. 1", Aug. 5, 2008, is incorporated by reference.

(2) ~~This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Revenue, 501 High Street, Frankfort, Kentucky 40620, Monday through Friday, 8 a.m. to 5 p.m.]~~

DANIEL BORK, Commissioner

APPROVED BY AGENCY: June 6, 2019

FILED WITH LRC: June 7, 2019 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 25, 2019 at 10:00 a.m. in Room 9B, State Office Building, 501 High Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through July 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: Lisa Swiger, Tax Policy Research Consultant II, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky 40601, (502) 564-9526 (telephone), (502) 564-3875(fax), Lisa.Swiger@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lisa Swiger

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation amends 103 KAR 2:005 to remove Section 3: Incorporated by Reference removing an outdated reference material. This regulation also updates the life expectancy table to a more current version.

(b) The necessity of this administrative regulation: Amending this administrative regulation allows a more current version of the life expectancy table to be used.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 131.130(1) grants the Department of Revenue the authority to promulgate administrative regulations as it deems necessary for the administration of Kentucky's tax laws.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: See (1)(b).

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

(a) How the amendment will change this existing administrative regulation: See (1)(a).

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Any taxpayer or taxpayer representative wishing to reference a list of rescinded policies pertaining to inheritance tax.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There are no actions required.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will have a comprehensive list of certain rescinded policies one location.

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

(a) Initially: There are no additional costs associated with this amendment. Any applicable cost will be absorbed by the current department budget.

(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.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No.

(9) TIERING: Is tiering applied? Tiering is not applied. The updating of this administrative regulation will impact any taxpayer utilizing the guidance within equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Only the Finance and Administration Cabinet, Department of Revenue will be impacted.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 131.130(1).

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There will be no effect on expenditures and revenues for government agencies because of amending this administrative regulation.

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

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

(c) How much will it cost to administer this program for the first year? None.

(d) How much will it cost to administer this program for subsequent years? None.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**FINANCE AND ADMINISTRATION CABINET
Department of Revenue
(Amendment)**

103 KAR 2:030. Policies and circulars relating to inheritance tax.

RELATES TO: KRS 131.130~~(4)~~

STATUTORY AUTHORITY: KRS 131.130~~(4)~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations necessary for the administration and enforcement of all tax laws in Kentucky. The Department of Revenue has many policies and circulars that predate the enactment of KRS Chapter 13A and conflict with, or are redundancies of, current tax laws. This administrative regulation formally rescinds the previously issued policies and circulars relating to taxes administered by the Department's Office of Sales and Excise Taxes.

Section 1. These policies merely restate or summarize the requirements or provisions of the inheritance and estate tax statutes of KRS Chapter 140 as well as other pertinent parts of KRS Chapters 6, 21, 61, 131, 161, 164, 304, 342, 395, and 411. The following policies are hereby formally rescinded and shall be null, void, and unenforceable:

(1) Revenue Policy 92P010 (6/1/83), relating to deferred payment of inheritance tax (KRS 131.183 and 140.222);

(2) Revenue Policy 92P015 (12/1/86), relating to deferred payment of inheritance tax when beneficiary dies (KRS 140.222, 140.224 and 395.195);

(3) Revenue Policy 92P020 (6/1/83), relating to the statutory limit for collection of inheritance tax (KRS 140.160 and 140.210);

(4) Revenue Policy 92P025 (9/1/87), relating to filing requirement (KRS 140.160(2), 140.190, 140.210(2), and 140.220);

(5) Revenue Policy 92P026 (9/1/87), relating to filing requirements (KRS 140.010, 140.190, and 140.210);

(6) Revenue Policy 92P029 (12/1/92), relating to interest for late payments of inheritance tax (KRS 131.010, 131.175, and 140.210);

(7) Revenue Policy 92P030 (12/1/92), relating to penalty for undervaluation of assets (KRS 131.010, 131.180, 140.210, and 140.991);

(8) Revenue Policy 92P031 (12/1/92), relating to penalties for late filing and late payment of inheritance tax (KRS 131.010, 131.180, 140.160, 140.210, and 140.991);

(9) Revenue Policy 92P035 (8/16/95), relating to valuation of

real estate (KRS 131.110 and 140.165);

(10) Revenue Policy 92P040 (Revised 12/1/86), relating to power of appointment-taxation of remainder interest (KRS 140.040 and 140.110 (1));

(11) Revenue Policy 92P050 (Revised 7/13/90), relating to power of appointment in donor's and donee's estates (KRS 140.040 and 140.080(1)(a));

(12) Revenue Policy 92P060 (6/1/83), relating to assessment of real property for inheritance tax purposes (KRS 140.165. and 140.330);

(13) Revenue Policy 92P080 (Revised 7/10/90), relating to qualified real estate (KRS 140.300(4)(c) and case law);

(14) Revenue Policy 92P090 (6/1/83), relating to qualified real estate (KRS 140.300(4)(b) and case law);

(15) Revenue Policy 92P100 (6/1/83), relating to qualified real estate (KRS 140.320);

(16) Revenue Policy 92P110 (6/1/83), relating to qualified real estate (KRS 140.300 and 140.320);

(17) Revenue Policy 92P115 (12/1/86), relating to conveyance of "Qualified Real Estate" (KRS 140.300 through 140.360);

(18) Revenue Policy 92P116 (12/1/86), relating to conveyance of "Qualified Real Estate" (KRS 140.300 through 140.360);

(19) Revenue Policy 92P117 (12-1-86), relating to conveyance of "Qualified Real Estate" (KRS 140.300 through 140.360) rescinded in 103 KAR 2:020 (May, 2007);

~~(20)~~ Revenue Policy 92P120 (Revised 7/10/90), relating to taxability of jointly held property (KRS 140.050 and case law);

~~(21)~~~~(20)~~ Revenue Policy 92P130 (Revised 11/20/90), relating to taxability of jointly held government bonds (KRS 140.050, and case law);

~~(22)~~~~(24)~~ Revenue Policy 92P140 (6/1/83), relating to taxability of bequest of inheritance tax (KRS 140.010 and case law);

~~(23)~~~~(22)~~ Revenue Policy 92P150 (6/1/83), relating to taxability of partnership property located in another state (KRS 140.010 and case law);

~~(24)~~~~(23)~~ Revenue Policy 92P160 (Revised 6/30/88), relating to partnership property located in Kentucky owned by a nonresident decedent (KRS 140.010 and case law);

~~(25)~~~~(24)~~ Revenue Policy 92P165 (12/1/86), relating to credit life insurance (KRS 140.030(2), 140.090(1), and case law);

~~(26)~~~~(25)~~ Revenue Policy 92P166 (9/1/87), relating to assignment of life insurance proceeds (KRS 140.090(1) and case law);

~~(27)~~~~(26)~~ Revenue Policy 92P167 (9/1/87), relating to paid-up life insurance policies (KRS 140.030(2) and 304.1-030);

~~(28)~~~~(27)~~ Revenue Policy 92P170 (6/1/83), relating to remainder interests (KRS 140.010);

~~(29)~~~~(28)~~ Revenue Policy 92P180 (1/29/88), relating to trusts (KRS 140.020 and case law);

~~(30)~~~~(29)~~ Revenue Policy 92P190 (6/1/83), relating to transfer with retained possession, enjoyment or income therefrom (KRS 140.020);

~~(31)~~~~(30)~~ Revenue Policy 92P200 (Revised 12/1/86), relating to transfers in contemplation of death (KRS 140.020);

~~(32)~~~~(34)~~ Revenue Policy 92P210 (Revised 9/1/87), relating to Life estates-wills (KRS 140.100 and case law);

~~(33)~~~~(32)~~ Revenue Policy 92P220 (12/1/86), relating to wrongful death (KRS 140.010, 140.090(1), KRS 411.130);

~~(34)~~~~(33)~~ Revenue Policy 92P235 (11/14/88), relating to Kentucky public employee's retirement plans (KRS 6.525, 21.470, 61.690, 140.063(1)(c), 161.700, and 164.2871);

~~(35)~~~~(34)~~ Revenue Policy 92P245 (9/1/87), relating to deferred compensation (KRS 140.010, 140.020, and case law);

~~(36)~~~~(35)~~ Revenue Policy 92P250 (6/1/83), relating to federal civil service retirement plan annuities (KRS 140.063);

~~(37)~~~~(36)~~ Revenue Policy 92P255 (11/1/97), relating to death benefits (KRS 61.705, 140.090(1), 161.655, and 342.720);

~~(38)~~~~(37)~~ Revenue Policy 92P260 ((12/1/86), relating to deduction of interest on federal estate taxes (KRS 140.090);

~~(39)~~~~(38)~~ Revenue Policy 92P261 (9/1/87), relating to deductions (KRS 140.010 and 140.090(1));

~~(40)~~~~(39)~~ Revenue Policy 92P262 (9/1/87), relating to deductions (KRS 140.090(1));

~~(41)~~~~(40)~~ Revenue Policy 92P263 (9/1/87), relating to

deduction of interest on installment obligations (KRS 140.090(1)(h) and 395.195);

~~(42)~~~~(44)~~ Revenue Policy 92P264 (11/14/88), relating to deduction of selling expenses (KRS 140.090(1)(h) and 395.195);

~~(43)~~~~(42)~~ Revenue Policy 92P265 (12/1/86), relating to exemption of annuities payable to a beneficiary (KRS 140.063);

~~(44)~~~~(43)~~ Revenue Policy 92P270 (6/1/83), relating to casualty losses (KRS 140.090);

~~(45)~~~~(44)~~ Revenue Policy 92P280 (6/1/83), relating to power of appointment-minor beneficiary (KRS 140.040 and 140.080);

~~(46)~~~~(45)~~ Revenue Policy 92P290 (6/1/83), relating to power of appointment in donee's estate (KRS 140.040 and case law);

~~(47)~~~~(46)~~ Revenue Policy 92P300 (6/1/83), relating to power of appointment in donee's estate (KRS 140.040, 140.090, and case law);

~~(48)~~~~(47)~~ Revenue Policy 92P310 (6/1/83), relating to classification of beneficiaries-remarried daughter-in-law (KRS 140.070);

~~(49)~~~~(48)~~ Revenue Policy 92P311 (9/1/87), relating to classification of beneficiaries-spouse of stepchild (KRS 140.070);

~~(50)~~~~(49)~~ Revenue Policy 92P330 (Revised 11/20/90), relating to classification of beneficiaries great-nieces, great nephews, nieces, and nephews by marriage (KRS 140.070);

~~(51)~~~~(50)~~ Revenue Policy 92P335 (9/1/87), relating to nonresident beneficiaries (KRS 140.010, 140.070, and 140.080);

~~(52)~~~~(51)~~ Revenue Policy 92P336 (Revised 7/13/90), relating to exemption for the mentally disabled (KRS 140.080(1));

~~(53)~~~~(52)~~ Revenue Policy 92P340 (Revised 12/1/86), relating to contested wills (KRS 140.010 and 140.090(1));

~~(54)~~~~(53)~~ Revenue Policy 92P345 (3/1/88), relating to federal income tax refund or liability (KRS 140.010 and 140.090(1));

~~(55)~~~~(54)~~ Revenue Policy 92P350 (Revised 12/1/96), relating to previously-taxed property (KRS 140.095); and

~~(56)~~~~(55)~~ Revenue Policy 92P360 (6/20/89), relating to confidentiality of tax returns (KRS 131.190(1) and 140.160).

Section 2. Revenue Circular 92C200 (revised 7/1/89), Relating to Custody and Control of Securities, Deposits or Other Property by Financial Institutions (KRS 140.250), is no longer valid as KRS 140.250 was repealed in 2000 Ky. Act Ch. 151, sec. 7 effective July 13, 2000. Accordingly, Revenue Circular 92C200 is hereby rescinded and shall be null, void, and unenforceable.

Section 3. Revenue Policy 92P070 (Revised 12/1/86), Relating to Contested Wills, merely restates or summarizes the requirements or provisions of the inheritance and estate tax statutes of KRS Chapter 140, 394, and case law. Accordingly, Revenue Policy 92P070 is hereby rescinded and shall be null, void, and unenforceable.

DANIEL BORK, Commissioner

APPROVED BY AGENCY: June 6, 2019

FILED WITH LRC: June 7, 2019 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 25, 2019 at 10:00 a.m. in Room 9B, State Office Building, 501 High Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through July 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: Lisa Swiger, Tax Policy Research Consultant II, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky 40601, (502) 564-9526 (telephone), (502) 564-3875(fax), Lisa.Swiger@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lisa Swiger

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation amends 103 KAR 2:030 to add one additional rescinded policy, Revenue Policy 92P117, to the comprehensive list of rescinded policies and circulars contained in this administrative regulation.

(b) The necessity of this administrative regulation: Amending this administrative regulation will allow a taxpayer or interested party to find all rescinded policies and circulars pertaining to inheritance tax in one location.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 131.130(1) grants the Department of Revenue the authority to promulgate administrative regulations as it deems necessary for the administration of Kentucky's tax laws.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: See (1)(b).

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

(a) How the amendment will change this existing administrative regulation: See (1)(a).

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Any taxpayer or taxpayer representative wishing to reference a list of rescinded policies pertaining to inheritance tax.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There are no actions required.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will have a comprehensive list of certain rescinded policies one location.

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

(a) Initially: There are no additional costs associated with this amendment. Any applicable cost will be absorbed by the current department budget.

(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.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No.

(9) TIERING: Is tiering applied? Tiering is not applied. The updating of this administrative regulation will impact any taxpayer utilizing the guidance within equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

and Administration Cabinet, Department of Revenue will be impacted.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 131.130(1).

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There will be no effect on expenditures and revenues for government agencies because of amending this administrative regulation.

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

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

(c) How much will it cost to administer this program for the first year? None.

(d) How much will it cost to administer this program for subsequent years? None.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**FINANCE AND ADMINISTRATION CABINET
Department of Revenue
(Amendment)**

103 KAR 5:160. Property valuation administrator office employees: payment of leave upon separation.

RELATES TO: KRS 132.370

STATUTORY AUTHORITY: KRS 131.130(1), 132.370(9)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 132.370(9) requires the Department of Revenue[Cabinet] to promulgate administrative regulations which allow property valuation administrators and their deputies to receive lump-sum payments for accrued annual leave and compensatory time when separated from employment because of termination by the employer, resignation, retirement, or death. This administrative regulation establishes the procedure for receiving the lump-sum payments.

Section 1. Payment of Annual Leave and Compensatory Time Upon Separation. (1) If a property valuation administrator or deputy property valuation administrator is separated from employment as a result of termination, resignation, retirement, or death, he or she shall be paid in a lump sum for accumulated annual leave. The accumulated annual leave for which he or she is paid shall not exceed the amounts established by 101 KAR 3:015 Section 1(2)(i). [~~2(h)~~] Following payment of annual leave upon separation, leave remaining after the payment of the maximum provided shall be removed from the balance.

(2) A property valuation administrator or deputy property valuation administrator who reverts to the classified or unclassified service, or resigns or is terminated one (1) day and is employed the next workday, shall retain his or her accumulated annual leave in the receiving agency.

(3) A property valuation administrator or deputy property valuation administrator may request in writing that his or her accumulated annual leave not be paid upon resignation, and that all or part of the amount of his or her accumulated annual leave that does not exceed the amount established by this section be waived, if the successor employer has agreed to credit him or her with an equal amount of annual leave.

(4) Upon separation from state service, a property valuation

administrator or deputy property valuation administrator shall be paid for all unused compensatory time as established by 101 KAR 3:015, Section 5 (2)(g). [~~at the greater of the:~~

(a) Regular hourly rate of pay; or

(b) Average regular rate of pay for the final three (3) years of employment.]

(5) Upon the death of a property valuation administrator or deputy property valuation administrator, his or her estate shall be entitled to receive a lump sum for the unused portion of his or her accumulated annual leave and compensatory time.

DANIEL BORK, Commissioner

APPROVED BY AGENCY: June 6, 2019

FILED WITH LRC: June 7, 2019 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 25, 2019 at 10:00 a.m. in Room 9B, State Office Building, 501 High Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through July 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: Lisa Swiger, Tax Policy Research Consultant II, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky 40601, (502) 564-9526 (telephone), (502) 564-3875(fax), Lisa.Swiger@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lisa Swiger

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation amends 103 KAR 5:160 to conform to changes to Personnel Cabinet regulation 101 KAR 3:015, Section 5 (2)(g) regarding the payment of leave for PVA's and their deputies upon separation of employment.

(b) The necessity of this administrative regulation: To update 103 KAR 5:160 to conform to recent changes to 101 KAR 3:015.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 131.130(1) provides authority for the department to promulgate regulations as needed to for the administration of the tax laws of the Commonwealth of Kentucky.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will insure that the Department of Revenue is in compliance with KRS 13A, and provide the most recent information regarding the payment of leave balances upon separation of employment for a PVA or deputy PVA.

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

(a) How the amendment will change this existing administrative regulation: See (1)(a).

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Only county PVA's and their deputies.

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

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
(Amendment)

103 KAR 8:110. Apportioned vehicles.

RELATES TO: KRS 132.487
STATUTORY AUTHORITY: KRS 131.130, 132.487,
136.188(2)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations for the administration of all tax laws. KRS 136.188(2)(a)[enacted by the 2006 GA] requires the Department of Revenue to promulgate an administrative regulation designating an authoritative source of depreciation values for the determination of the annual fee imposed on apportioned motor vehicles by KRS 136.188(1). This administrative regulation establishes the authoritative source of depreciation values for determining the annual fee on apportioned motor vehicles.

Section 1. ~~The~~Effective January 1, 2007, the] publication titled "Marshall Valuation Service" from Marshall & Swift/Boeckh, LLC, shall be the designated authoritative source of vehicle depreciation values for the determination of the annual fee imposed on apportioned motor vehicles by KRS 136.188(1).~~Section 2. Incorporation by Reference. (1) "Marshall Valuation Service", Marshall & Swift/Boeckh, LLC, 2006 edition, is incorporated by reference.~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Property Valuation, Department of Revenue, Finance and Administration Cabinet, 200 Fair Oaks Lane, Frankfort, Kentucky 40620, Monday through Friday, 8 a.m. to 4:30 p.m.]~~

DANIEL BORK, Commissioner

APPROVED BY AGENCY: June 6, 2019

FILED WITH LRC: June 7, 2019 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 25, 2019 at 10:00 a.m. in Room 9B, State Office Building, 501 High Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through July 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: Lisa Swiger, Tax Policy Research Consultant II, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky 40601, (502) 564-9526 (telephone), (502) 564-3875(fax), Lisa.Swiger@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lisa Swiger

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation amends 103 KAR 8:110 to remove Section 2: Incorporated by Reference that contained references to an outdated 2006 version of a valuation manual.

(b) The necessity of this administrative regulation: To update 103 KAR 8:110 to remove an outdated incorporated by reference citation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 131.130(1) provides authority for the department to promulgate regulations as needed to for the administration of the tax laws of the Commonwealth of Kentucky.

(a) List 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 will be no required actions to take other than the understanding of how leave balances will be distributed in a lump-sum payment per the formation provided by 101 KAR 3:015.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): None.

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

(a) Initially: There are no new costs associated with the promulgation of this administrative regulation. Current department funding will be utilized for implementation.

(b) On a continuing basis: None.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: None.

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

(8) State whether this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees are directly or indirectly increased.

(9) TIERING: Is tiering applied? Tiering is not applied. This administrative regulation will require all PVA's impacted by its provisions to adhere to the same guidelines.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What 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 120 county PVA offices and the Department of Revenue will be impacted.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS Chapter 13A, 131.130 and 101 KAR 3:015.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There will be no effect on expenditures and revenues for government agencies because of amending this administrative regulation to provide more recent and up to date information.

(a) How much 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:

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will insure that the Department of Revenue is in compliance with KRS 13A.

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

(a) How the amendment will change this existing administrative regulation: See (1)(a).

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Automotive dealers and automotive owners.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: None.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): None.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): None.

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

(a) Initially: There are no new costs associated with the promulgation of this administrative regulation. Current department funding will be utilized for implementation.

(b) On a continuing basis: None.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: None.

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

(8) State whether this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees are directly or indirectly increased.

(9) TIERING: Is tiering applied? Tiering is not applied. This administrative regulation will require all taxpayers previously impacted by its provisions to adhere to the same guidelines.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Only the Finance and Administration Cabinet, Department of Revenue will be impacted.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS Chapter 13A and 131.130.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There will be no effect on expenditures and revenues for government agencies because of amending this administrative regulation to provide more recent and up to date information.

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

(b) How much revenue will this administrative regulation generate for the state or local government (including cities,

counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? None.

(d) How much will it cost to administer this program for subsequent years? None.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
(Amendment)

103 KAR 8:130. Ad valorem taxation of machinery actually engaged in the manufacturing of coal, crushed stone, sand, gravel and hot asphalt.

RELATES TO: KRS 132.020, 132.200

STATUTORY AUTHORITY: KRS 131.130(1)

NECESSITY, FUNCTION AND CONFORMITY: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations necessary for the administration and enforcement of all tax laws in Kentucky. [~~KRS 132.020(4)(i) establishes the ad valorem tax rate based on the value of the machinery actually engaged in manufacturing. KRS 132.200(4) provides that machinery actually engaged in manufacturing shall be subject to taxation for state purposes only.~~] This administrative regulation explains the property tax classification found in KRS 132.020(1) and 132.200(4) for "machinery actually engaged in manufacturing" as it pertains to coal, crushed stone, sand, gravel and hot mix asphalt [~~the coal industry~~].

Section 1. Definitions. (1) "Manufacturing machinery" means machinery actually engaged in manufacturing that is subject to the state ad valorem tax of fifteen (15) cents upon each \$100 of value provided in KRS 132.020(1) and exempt under KRS 132.200(4) from ad valorem taxation by any county, city, school or other taxing district in which it has a taxable situs.

(2) "Processing area" means the area of a coal preparation plant or coal load out facility where operational steps and methods are used to wash, size, blend, crush, load, or chemically treat coal to get a final marketable product.

Section 2. Machinery Actually Engaged in Manufacturing as it Pertains to Coal. (1) Machinery actually used in mining or a similar operation that is engaged in manufacturing.

~~(a) [Machinery Actually Engaged in Extraction, Severance, Dredging, or Mining of Coal. Machinery used in the extraction, severance, dredging, or mining of coal shall not be classified as manufacturing machinery for purposes of KRS Chapter 132.~~

~~Section 3. Machinery Actually Used In Mining or a Similar Operation that is Engaged in Manufacturing. (1) Machinery actually used in the crushing, sizing, blending, chemical treating, and washing of coal shall be classified as manufacturing machinery.~~

~~(b) [(2)] Coal manufacturing shall begin when machinery and equipment is used to convey the raw coal into the crushing, sizing, blending and washing facilities and shall include machinery and equipment moving the coal between the manufacturing processes within the processing area including in-process staging.~~

~~(c) [(3)] Machinery and equipment used to blend different product grades, prior to the point of the coal being loaded on transport for removal from the processing area, shall be classified as manufacturing machinery.~~

~~(d) [(4)] Manufacturing shall end with the loading of coal for final transport to the end user.~~

~~[(a)] The loading of coal for final transport to the end user shall only be classified as manufacturing if blending or chemical treatment~~

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occurs during the loading process.

(e)[(5)] Machinery actually used in crushing, sizing, blending and washing shall include structures housing the crushing, sizing, blending or washing machinery.

(f)[(6)] Machinery whose purpose shall be classified as to move, stage or load the coal when it is utilized subsequent to receiving or dumping of the coal into one (1) of these processes and prior to completion of the sizing, crushing, blending or washing process is manufacturing machinery.

(2) Equipment used in mining or a similar operation that is not engaged in manufacturing.

(a)[Section 4. Equipment Used in Mining or a Similar Operation that is not Engaged in Manufacturing. (1)] The manufacturing process shall exclude coal hauled via a licensed truck outside the processing area.

(b)[(2)] Other machinery actually used in extraction, severance, dredging, or mining operations shall not be classified as manufacturing machinery regardless of where in the operation it is located.

Section 3. Machinery Actually Engaged in Manufacturing of Crushed Stone, Sand, and Gravel. (1) "Machinery actually engaged in manufacturing" includes the following:

(a) Machinery actually used in the conveying, crushing, screening, washing, drying, blending, and stockpiling of stone, sand, or gravel to a product of the appropriate gradation and specification required for sale or final use:

(b) Machinery and equipment actually used to size, crush, screen, blend, de-dust or wash the stone, sand, or gravel, including all necessary housing, electrical, and support systems:

(c) Machinery and equipment actually used to convey or maintain proper material flow of the stone, sand, or gravel to and between the crushing, sizing, screening, blending, dedusting, and washing facilities; or

(d) Machinery and equipment actually used to reassemble, remix, and blend the crushed stone, sand, or gravel into different product grades.

(2) Manufacturing of crushed stone, sand, or gravel.

(a) Manufacturing of crushed stone, sand, and gravel shall commence with the initial sizing of the stone (shot rock), sand, or gravel after it has been removed from its natural deposit, and shall continue with the loading, hauling, pumping, or conveying to the primary crusher or screen.

(b) Manufacturing shall continue with the further sizing, classifying, crushing, screening, blending, dedusting, and washing of the stone, sand, or gravel.

(c) Manufacturing of stone, sand, or gravel shall end when the product meets and maintains the appropriate gradation, specifications, or blends.

(d) The loading of stone, sand, or gravel for final transport to the end user shall only be classified as manufacturing if blending occurs during the loading process.

Section 4. Machinery Actually Engaged in Manufacturing of Hot Mix Asphalt. (1) "Machinery actually engaged in manufacturing" shall include the following:

(a) Machinery and equipment actually used to load raw materials into an asphalt plant's cold feed bins, including the cold feed bins; the blending of aggregates; the movement of material across screen decks into dryers or drums, including the dryer and drums; and surge facilities, silos, and load control systems;

(b) Machinery and equipment actually used to transport or convey the material through or between the cold feed bins, the screen decks, the dryer or drum, the surge facilities, silos, and load control systems;

(c) Machinery and equipment actually used to heat, dry, mix, and blend the aggregates with the liquid asphalt, including all necessary housing, electrical, controls, liquid asphalt tanks, and energy supply systems; or

(d) Machinery and equipment actually used to load, adhere, remix, place, and compact the hot mix asphalt.

(2) Manufacturing of Hot Mix Asphalt.

(a) Manufacturing of hot mix asphalt shall commence with the loading of raw materials to the cold feed bins.

(b) Manufacturing shall continue with the blending of aggregates on the conveyor belts, through the flow of material across the screen decks, and into the dryer or drum for further blending or mixing.

(c) Manufacturing shall continue through the surge facilities, silos, and load control systems.

(d) Manufacturing of hot mix asphalt shall end when either:

a. The hot mix asphalt is loaded for delivery to a retail customer; or

b. When the hot mix asphalt is placed and compacted as directed by the customer; and

c. It meets the requirements set forth by the applicable customer or regulatory specifications.

(e) The loading of hot asphalt for final transport to the end user shall only be classified as manufacturing if blending occurs during the loading process.

DANIEL BORK, Commissioner

APPROVED BY AGENCY: June 6, 2019

FILED WITH LRC: June 7, 2019 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 25, 2019 at 10:00 a.m. in Room 9B, State Office Building, 501 High Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through July 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: Lisa Swiger, Tax Policy Research Consultant II, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky 40601, (502) 564-9526 (telephone), (502) 564-3875(fax), Lisa.Swiger@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lisa Swiger

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation amends 103 KAR 8:130 to consolidate 103 KAR 8:130, 103 KAR 8:140 and 103 KAR 8:150 into one regulation. The language contains almost identical language regarding the ad valorem taxation of machinery engaged in the manufacturing of coal, crushed stone, sand, gravel and hot asphalt. Combining the language from these three administrative regulations will provide guidance in one location on the taxation of machinery engaged in manufacturing for ad valorem purposes in Kentucky. (See the NECESSITY, FUNCTION & CONFORMITY statement.)

(b) The necessity of this administrative regulation: To streamline the requirements into one regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 131.130(1) grants the Department of Revenue the authority to promulgate administrative regulations as it deems necessary for the administration of Kentucky's tax laws.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will insure that the Department of Revenue is in compliance with KRS 13A.

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

(a) How the amendment will change this existing administrative regulation: See (1)(a).

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Manufacturers of coal, crushed stone, sand, gravel, and hot asphalt.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: None.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): None.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): None.

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

(a) Initially: There are no new costs associated with the promulgation of this administrative regulation. Current department funding will be utilized for implementation.

(b) On a continuing basis: None.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: None.

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

(8) State whether this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees are directly or indirectly increased.

(9) TIERING: Is tiering applied? Tiering is not applied. This administrative regulation will require all taxpayers previously impacted by its provisions to adhere to the same guidelines.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Only the Finance and Administration Cabinet, Department of Revenue will be impacted.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS Chapter 13A and 131.130.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There will be no effect on expenditures and revenues for government agencies because of amending this administrative regulation to provide more recent and up to date information.

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

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

(c) How much will it cost to administer this program for the first year? None.

(d) How much will it cost to administer this program for subsequent years? None.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**FINANCE AND ADMINISTRATION CABINET
Department Of Revenue
(Amendment)**

103 KAR 16:200. Consolidated Kentucky corporation income tax return.

RELATES TO: KRS 141.201[141.200]

STATUTORY AUTHORITY: KRS 131.130[(4)], 141.050[(4)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the department to promulgate administrative regulations to administer and enforce Kentucky's tax laws. KRS 141.050(4) requires the Department of Revenue to promulgate administrative regulations and ~~rules~~[~~prescribe the forms and reports~~] necessary for the proper administration of KRS Chapter 141. This administrative regulation establishes terms, forms, and procedures required for the implementation of KRS 141.201[141.200], with respect to elective consolidated returns.

Section 1. Definitions. (1) "Affiliated group" is defined by KRS 141.201(2)(a)[~~"Combined return" means a Kentucky corporation income tax return by which Kentucky taxable income is reported and attributed to members of a unitary business group using the unitary business concept.~~].

(2) "Common parent corporation" means the member of an affiliated group:

(a) That directly owns stock meeting the requirements of Section 1504(a)(2) of the Internal Revenue Code, 26 U.S.C. 1504(a)(2), in at least one (1) other member of the affiliated group; and

(b) Whose stock is not owned directly by any other member of the affiliated group as required by Section 1504(a)(2) of the Internal Revenue Code, 26 U.S.C. 1504(a)(2).

(3) "Consolidated return" is defined by KRS 141.201(2)(b).

(4) "Election period" is defined by KRS 141.201(2)(e)[141.200(2)(e)].

(5)[(4)] "Exempt from taxation" means the corporations listed in KRS 141.040(1)(a) for taxable years beginning prior to January 1, 2021 and KRS 141.040 (1)(b) for taxable years beginning on or after January 1, 2021.

(6) "Provider" is defined by KRS 141.121(1)(e)[through (h)].

(5) "~~Unitary business concept~~" means a method of determining taxable income within a state based on the unitary business group's activities within that state.

(6) "~~Unitary business group~~" means a group of related corporations which share or exchange value as evidenced by the existence of the following characteristics:

(a) The operation of one (1) corporation is dependent upon, or contributes to, the operation of another corporation;

(b) There is a unity of ownership, operation, and use among the corporations; or

(c) The corporations exhibit functional integration, centralization of management, and economies of scale.]

Section 2. Election to File a Consolidated Return. (1) General rule.

(a) An election to file a consolidated return shall be made by the common parent corporation on behalf of all members of the affiliated group by filing "Election to File Consolidated Kentucky Corporation Income and Limited Liability Entity Tax Return", Form 722. The Form 722 shall be attached to the return beginning with the initial election year and for each year thereafter for which the election is effective. The initial election, and all subsequent elections must be made[Revenue Form 722,] on or before the date prescribed by KRS 141.160 for filing the return, or as extended pursuant to KRS 141.170, for the first taxable year for which each forty-eight (48) month[the] election is made.

(b) ~~If an~~[~~Except as provided by subsections (2) and (3) of this section, if~~] "Election to File Consolidated Kentucky Corporation Income and Limited Liability Entity Tax Return", [Revenue] Form

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722, is not filed within the period prescribed by paragraph (a) of this subsection, an affiliated group shall be deemed not to have made an election.

(2) Taxable years following an election period.

(a)]:

~~1. an affiliated group shall be deemed not to have made an election; and~~

~~2. Each member of the affiliated group subject to tax pursuant to KRS 141.040 shall file a separate return pursuant to KRS 141.200(3) for taxable years that begin prior to January 1, 2005.~~

~~(2) Transition rules.~~

~~(a) For a taxable year beginning prior to December 31, 1995 and ending on or after December 31, 1995, if an affiliated group filed a consolidated return and did not file "Election to File Consolidated Kentucky Corporation Income Tax Return", it may elect to file a consolidated return beginning with the taxable year if it mails "Election to File Consolidated Kentucky Corporation Income Tax Return" no later than February 15, 1998, to the Department of Revenue, Corporation Tax Section, P.O. Box 1302, Frankfort, Kentucky 40602-1302.~~

~~(b) For a taxable year ending on or after December 31, 1995, and prior to April 5, 1996, if the members of an affiliated group filed separate returns or a combined return, the affiliated group:~~

~~1. May elect to file a consolidated return beginning with the taxable year by filing "Election to File Consolidated Kentucky Corporation Income Tax Return", no later than February 15, 1998; and~~

~~2. Shall file a consolidated return amending the separate or combined returns no later than February 15, 1998.~~

~~(3) Taxable years following an election period.~~

~~(a) Except as provided in paragraphs (b) and (d) of this subsection, for any taxable year beginning after the expiration of the election period that ends prior to January 1, 2005, each member of the affiliated group subject to Kentucky corporation income tax in accordance with KRS 141.040 shall file a separate return unless the affiliated group elects to file a consolidated return on, or prior to, the due date of the return due for a taxable year that ends prior to January 1, 2005.~~

~~(b) The filing of a consolidated return on or before the date prescribed by KRS 141.160 for filing the return, or as extended pursuant to KRS 141.170 for the first taxable year that begins after the expiration of an election period, shall not:~~

~~1. Constitute a new election to file a consolidated return; or[and]~~

~~2. Establish a new election period.~~

~~(b) The cessation of the existence of an affiliated group shall constitute the expiration of the election period.~~

~~(3)[(c) If the expiration of an election period occurs because an affiliated group ceases to exist, each member of the affiliated group subject to Kentucky corporation income tax in accordance with KRS 141.040 shall file a separate return beginning with the first taxable year immediately following the date the affiliated group ceases to exist unless it becomes a member of another affiliated group which has elected to file a consolidated return.~~

~~(d) Any election period that expires after January 1, 2005 shall result in the members of the affiliated group being subject to the provisions of KRS 141.200(9) to (14).~~

~~(4) Effect of an election.~~

~~(a) An election to file a consolidated return shall be an irrevocable election binding on both the department[cabinet] and the affiliated group for the election period.~~

~~(b) The administrative provisions of 26 C.F.R. 1.1502-75(a) to (c) shall not apply for Kentucky purposes.~~

Section 3. Corporations Included in a Consolidated Return. (1) If a consolidated federal return is filed. If a member of the affiliated group electing to file a consolidated Kentucky return pursuant to Section 2 of this administrative regulation is included in a consolidated federal return for the taxable year, the Kentucky return shall include the corporations that:

(a) Were included in the consolidated federal return for the taxable year; and

(b) Are not exempt from taxation.

(2) If a consolidated federal return is not filed. If no member of

an affiliated group electing to file a consolidated Kentucky return pursuant to Section 2 of this administrative regulation is included in a consolidated federal return for the taxable year, the Kentucky return shall include the members of the affiliated group [as defined in Section 1504(a) of the Internal Revenue Code, 26 U.S.C. 1504(a) and related federal regulations] that are not exempt from taxation.

Section 4.[Carryover or Carryback of Items of Loss, Deduction or Credit. (1) Carryover or carryback between a separate return and a consolidated return. If a separate return was filed for taxable years prior to the taxable years for which a consolidated return is filed, and a carryover or carryback occurs between the separate return and the consolidated return, the carryover or carryback amount shall be:

(a) Limited as provided by Section 1502 of the Internal Revenue Code, 26 U.S.C. 1502, and related federal regulations; and

(b) Adjusted for the differences between KRS Chapter 141 and the Internal Revenue Code.

(2) Carryover or carryback between a combined return and a consolidated return.

(a) A combined return shall be deemed a consolidated return for the purpose of determining a carryover or carryback amount, if a:

1. Combined return using the unitary business concept was filed for taxable years ending on or before December 30, 1995;

2. Consolidated return is filed for taxable years ending on or after December 31, 1995; and

3. Carryover or carryback occurs between the combined return and the consolidated return.

(b) The carryover or carryback amount shall be:

1. Limited as provided by Section 1502 of the Internal Revenue, 26 U.S.C. 1502, Code and related federal regulations; and

2. Adjusted for the differences between KRS Chapter 141 and the Internal Revenue Code.

Section 5.] Deferred Intercompany Transactions. If, during a year when a separate or combined return was filed, a gain or loss on a deferred intercompany transaction was deferred for federal purposes, and was not deferred for Kentucky purposes, the gain or loss, when recognized for federal purposes, shall be adjusted for Kentucky purposes to reflect the prior reporting of the transaction.

Section 5. Consolidated Return Filing. (1) An affiliated group that includes one (1) or more members that are providers and other members that are not providers, shall utilize two (2) apportionment factor calculations.

(a) Income of members of an affiliated group that are providers shall be combined and apportioned using a three (3) factor formula in accordance with KRS 141.121(3) and KRS 141.901.

(b) Income of members of an affiliated group that are not providers shall be combined and apportioned using a single receipts factor formula in accordance with KRS 141.120 (9).

(c) The apportioned income of provider members and non-provider members of an affiliated group shall then be consolidated and reported on the Kentucky corporation income and limited liability entity tax return of the affiliated group.

Section 6. Limited Liability Entity Tax on a Consolidated Return. The receipts used to compute the limited liability entity tax are provided pursuant to KRS 141.0401(1).[6. Corporation Income Tax Computation for Taxable Years Beginning on or After January 1, 2005 During the Ninety-Six (96) Month Election Period. For taxable years beginning on or after January 1, 2005, the amendments to KRS 141.040 enacted by 2005 Ky. Acts ch. 168 shall apply to the computation of the tax due under KRS 141.040 for the affiliated group.

Section 7. Required Forms. (1) "Kentucky Corporation Income Tax Return", Revenue Form 720, shall be filed as required by 103 KAR 1:050, including with all applicable schedules, and shall contain the following:

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- (a) Information identifying the affiliated group;
- (b) The taxable income computation;
- (c) The income tax computation;
- (d) The license tax computation for tax periods ending prior to December 31, 2005;
- (e) The tax payment summary; and
- (f) The signature of a principal officer or chief accounting officer.

(2) "Kentucky Corporation Income Tax Return", Revenue Form 720, Schedule A, Apportionment and Allocation, shall be attached to Revenue Form 720, if applicable, and shall contain the:

- (a) Computation of the apportionment fraction;
- (b) Apportionment and allocation of income;
- (c) Beginning and end of year balances of Kentucky real and tangible property; and
- (d) Beginning and end of year balances of total real and tangible property.

(3) "Kentucky Affiliations and Payment Schedule", Revenue Form 851-K, shall be attached to "Kentucky Corporation Income Tax Return", Revenue Form 720, and shall contain the:

- (a) Name of each member of the affiliated group subject to Kentucky corporation license tax pursuant to KRS 136.070;
- (b) Six (6) digit Kentucky Account Number for each corporation listed pursuant to paragraph (a) of this subsection; and
- (c) Amount remitted for each corporation.

(4)(a) A copy of the Federal Form 7004, "Application for Automatic 6 Month Extension of Time to File Certain Business Income Tax, Information, and Other Returns", or "Application for Six (6) Month Extension of Time to File Kentucky Corporation Income Tax Return", Revenue Form 41A720SL, shall be filed to obtain an extension of time to file "Kentucky Corporation Income Tax Return", Revenue Form 720, pursuant to the provisions of KRS 131.081(11), 131.170 and 141.170. Revenue Form 41A720SL shall contain the:

1. Name of each member of the affiliated group subject to Kentucky corporation license tax pursuant to KRS 136.070;
2. Six (6) digit Kentucky Account Number for each corporation listed pursuant to subparagraph 1. of this paragraph; and
3. Amount remitted for each corporation.

(b) An application for extension filed pursuant to paragraph (a) of this subsection shall constitute an extension for each member of the affiliated group subject to Kentucky corporation license tax pursuant to KRS 136.070.

Section 8. Filing a Consolidated Return. "Kentucky Corporation Income Tax Return", Revenue Form 720, shall be filed as required by 103 KAR 1:050, including with all applicable schedules, and shall:

- (1) Be filed by the common parent corporation for the affiliated group; and
- (2) Contain the following forms, if applicable, attached in the following order:
 - (a) "Election to File Consolidated Kentucky Corporation Income Tax Return", Revenue Form 722;
 - (b) "Kentucky Affiliations and Payment Schedule", Revenue Form 851-K;
 - (c) "Kentucky Corporation Income Tax Return," Revenue Form 720, Schedule A "Apportionment and Allocation Schedule";
 - (d) A copy of pages 1 and 4 of Federal Form 1120, U.S. Corporation Income Tax Return;
 - (e) Federal Form 851, Affiliations Schedule;
 - (f) Forms necessary to support credits reported on the consolidated return;
 - (g) The schedules of gross income and deductions for each member of the affiliated group prepared in columnar form in accordance with 26 C.F.R. 1.1502-76;
 - (h) Balance sheets for each member of the affiliated group prepared in columnar form in accordance with 26 C.F.R. 1.1502-76;
 - (i) The schedules of receipts, property and payroll for each member of the affiliated group shall be prepared in columnar form; and
 - (j) A copy of "Application for Six (6) Month Extension of Time to File Kentucky Corporation Income Tax Return", Revenue Form

41A720SL or a copy of Federal Form 7004, Application for Automatic 6-Month Extension of Time To File Certain Business Income Tax, Information, and Other Returns.

Section 9. Method of Filing a Kentucky License Tax Return. (1) If the common parent corporation is subject to Kentucky license tax pursuant to KRS 136.070 for tax periods that end prior to December 31, 2005, "Kentucky Corporation Income Tax Return", Revenue Form 720, reporting the consolidated return computation shall report the separate Kentucky license tax computation for the common parent corporation.

(2) If a member of the affiliated group other than the common parent corporation is subject to Kentucky license tax pursuant to KRS 136.070, a separate "Kentucky Corporation Income Tax Return", Revenue Form 720, reporting the license tax computation, shall be submitted with, but not attached to, the Consolidated Return submitted by the common parent corporation.

(3) If the common parent corporation qualifies and elects the consolidated license tax provision of KRS 136.071, "Kentucky Corporation Income Tax Return", Revenue Form 720, shall report the consolidated income tax computation for the members of the affiliated group and the consolidated license tax computation for those corporations that are considered as one (1) pursuant to KRS 136.071.

(4) If a member of the affiliated group other than the common parent corporation qualifies and elects the consolidated license tax provision of KRS 136.071, "Kentucky Corporation Income Tax Return", Revenue Form 720, shall:

- (a) Report the consolidated license tax computation for those corporations that are considered as one (1) pursuant to KRS 136.071; and
- (b) Be submitted with, but not attached to, the consolidated return submitted by the common parent corporation].

DANIEL BORK, Commissioner

APPROVED BY AGENCY: June 6, 2019

FILED WITH LRC: June 7, 2019 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 25, 2019 at 10:00 a.m. in Room 9B, State Office Building, 501 High Street, Frankfort Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through July 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: Todd Renner, Executive Director, Office of Tax Policy and Regulation, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky 40601, (502) 782-6081 (telephone), (502) 564-3875(fax), 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: This regulation provides updated guidance on the filing of consolidated corporation income tax returns available under the election provisions of KRS 141.201, as amended by 2018 HB 487 and 2019 HB 354.
 - (b) The necessity of this administrative regulation: This regulation removes outdated guidance from the regulation and provides new language to comply with current law.
 - (c) How this administrative regulation conforms to the content of the authorizing statutes: It removes outdated guidance from regulatory language and provides new language to comply with current law.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will provide guidance to insure that corporations electing to file a consolidated return under KRS 141.201 will do so accurately.

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

(a) How the amendment will change this existing administrative regulation: See (1)(a).

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Corporations electing to file a consolidated corporation income tax return for taxable years beginning on or after January 1, 2019 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: In order for an affiliated group to make a valid election, the election shall be made in accordance with Section two (2) 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): None.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Corporations electing to file a consolidated corporation income tax return make a choice on what type of Kentucky income tax return is filed.

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

(a) Initially: Indeterminable since the Department of Revenue cannot predict how many taxpayers will elect to file a consolidated return.

(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: The cost to implement will be paid for out of the department's existing budget.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees are established or increased by this administrative regulation.

(9) TIERING: Is tiering applied? Tiering was not applied because all corporation income taxpayers have the option to elect to file a consolidated return 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 Department of Revenue.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 131.130 and KRS 141.050.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

Unknown.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Unknown.

(c) How much will it cost to administer this program for the first year? Minimal costs to administer for the first year. The exact amount is indeterminable since the Department of Revenue cannot predict how many taxpayers will elect to file a consolidated return.

(d) How much will it cost to administer this program for subsequent years? Minimal costs to administer in subsequent years since the Department of Revenue cannot predict how many taxpayers will elect to file a consolidated return.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
(Amendment)

103 KAR 16:250. 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. This administrative regulation establishes methods of computing a corporation's net operating loss deduction and application of the deduction to subsequent taxable years on taxable net income as authorized by KRS 141.011, 141.200(1)(c), [141.200(1)(b)] and KRS 141.202(5).

Section 1. Definitions. (1) "Carryforward" has the same meaning as carryover as used in KRS 141.202.

(2) "Combined group" is defined by KRS 141.202(2)(a).

(3)[(2)] "Combined group filer" means a group of corporations filing in accordance with KRS 141.202.

(4)[(3)] "Combined group return" means a return filed under KRS 141.202(3).

(5)[(4)] "Corporation" is defined by:

(a) KRS 141.202(2)(b) for a combined group return; [or]

(b) KRS 141.010(4) for a separate return for periods beginning on or after January 1, 2018; or

(c) KRS 141.201(2)(d) for an elective consolidated return.

(6)[(5)] "Doing business in this state" is defined by KRS 141.010(7).

(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.

(8)[(7)] "Elective consolidated return" means a return defined under KRS 141.201(2)(b).

(9)[(8)] "Net operating loss" or "NOL" means net operating loss defined under Section 172 of the Internal Revenue Code as adjusted for differences between KRS Chapter 141 and the Internal Revenue Code.

(10)[(9)] "Nexus consolidated filer" means a corporation as defined under KRS 141.010(4) or 141.900(24), filing in accordance with KRS 141.200(8), (9), (10) and (11).

(11)[(10)] "Nexus consolidated return" means a return defined under KRS 141.200(9)(g).

(12)[(11)] "Separate return" is defined by KRS 141.201(2)(c).

(13)[(12)] "Separate return filer" means a corporation filing in accordance with KRS 141.201(3).

Section 2. Computation and Application of Net Operating Loss.

(1) Combined group filers, elective consolidated filers, and separate return filers shall compute net operating loss for Kentucky

purposes in the following manner:

(a) For elective consolidated filers, the net operating loss shall be multiplied by the group's apportionment factor provided by KRS 141.120 or 141.121;

(b) For combined group filers, the net operating loss of each taxpayer member shall be computed in accordance with KRS 141.202(5)(c);

(c) For separate returns filers, the net operating loss shall be multiplied by the apportionment factor provided by KRS 141.120 or KRS 141.121; and

(d) The apportioned net operating loss shall be available for carryforward.~~[For combined group returns and elective consolidated returns, the net operating loss shall be multiplied by the group's apportionment factor provided by KRS 141.120 or 141.121;~~

~~(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) The apportioned net operating loss shall be available for carryforward.]~~

(2) Elective consolidated filer net operating loss carryforward to a combined group return or separate returns. 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 the last elective consolidated return may carry that loss forward to combined group returns or separate returns. 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. of this subparagraph to the first combined group return or separate return due after the elective consolidated return.

~~(b)[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) Nexus consolidated filer 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 establishes how those nexus consolidated net operating losses shall be treated.

(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. 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 ~~allocated~~[assigned] to the members by the nexus consolidated group's apportionment factor for each year a net operating loss exists to determine the post-apportioned net operating loss carryforward that member may carry forward ~~to~~[in] the future. The apportionment factor calculation is provided by KRS 141.120, 141.121, or 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 ~~or after the member leaves the nexus consolidated group.~~

~~(b)[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 be doing business in this state in the year in which the loss is generated.~~

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).

~~(3) Taxpayer members of a combined group return that utilize the net operating loss of another taxpayer member that was not a member of the same combined group return in the year in which the net operating loss was originally incurred shall be subject to the fifty (50) percent limitation as required in KRS 141.202 (5)(c)3. or 4.~~

Section 4. Net operating losses by corporations included in a combined group return shall be determined in accordance with KRS 141.202(5)(c).~~[Net Operating Losses by Corporations Included in a Combined Group Return. This section 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 (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. 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, except where otherwise noted in this administrative regulation.

Section 6. Examples for the computation and application of net

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operating losses. The following examples relate to the net operating loss computations found in Sections 2 through 4 of this administrative regulation:

(1) Example 1 – Member Leaves Nexus Consolidated Group Parent Corporation and its three (3) 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. The nexus consolidated group [Parent Corporation] has a pre-apportioned nexus group NOL carryforward of \$85,000 (\$5,000 from year 1, \$40,000 from year 2, and \$40,000 from year 3 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 allocated [("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) Determine the pre-apportioned group NOL carryforward: \$85,000 (see Figure 1-1).

(b) Determine which [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. Year 3 Losses Remaining: \$40,000
2. Year 2 Losses Remaining: \$40,000
3. Year 1 Losses Remaining: \$5,000

(c) 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	\$25,000	\$25,000	\$15,000
Total Losses of all Loss Corporations	\$45,000	\$40,000	\$40,000
Allocation Percentage	55.56%	62.5%	37.5%
Remaining Loss In Group Carryforward	\$5,000	\$40,000	\$40,000
Allocated Remaining Sub A Loss	\$2,777	\$25,000	\$15,000
Sub B Loss	\$10,000	\$10,000	\$10,000
Total Losses of all Loss Corporations	\$45,000	\$40,000	\$40,000
Allocation Percentage	22.22%	25.0%	25.0%
Remaining Loss In Group Carryforward	\$5,000	\$40,000	\$40,000
Allocated Remaining Sub B Loss	\$1,111	\$10,000	\$10,000

Sub C Loss	\$5,000	-	-
Total Losses of all Loss Corporations	\$45,000	\$40,000	\$40,000
Allocation Percentage	11.11%	-	-
Remaining Loss In Group Carryforward	\$5,000	\$40,000	\$40,000
Allocated Remaining Sub C Loss	\$556	-	-
Parent Corporation Loss	\$5,000	\$5,000	\$15,000
Total Losses of all Loss Corporations	\$45,000	\$40,000	\$40,000
Allocation Percentage	11.11%	12.5%	37.5%
Remaining Loss In Group Carryforward	\$5,000	\$40,000	\$40,000
Allocated Remaining Parent Loss	\$556	\$5,000	\$15,000

	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: $\$25,000/\$45,000 \times \$5,000 = \$2,777$
- Sub B: $\$10,000/\$45,000 \times \$5,000 = \$1,111$
- Sub C: $\$5,000/\$45,000 \times \$5,000 = \556
- Parent Corporation: $\$5,000/\$45,000 \times \$5,000 = \556

(d) Multiply the pre-apportioned NOL carryforward amounts allocated [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 to [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-Appportioned NOL Carryforward Per Year	\$638	\$7,000	\$4,800
Accumulating Total Sub A Carryforward	\$638	\$7,638	\$12,438

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

(e) Add the pre-apportioned NOL carryforward amounts allocated to the remaining members in the group to calculate the nexus consolidated group's carryforward amount (see Figure 1-5).

	Year 1	Year 2	Year 3
Remaining Sub B Loss	\$1,111	\$10,000	\$10,000
Remaining Sub C Loss	\$556	-	-
Remaining Parent Loss	\$556	\$5,000	\$15,000
Group Carryforward Per Year	\$2,223	\$15,000	\$25,000
Accumulating Group Carryforward	\$2,223	\$17,223	\$42,223

[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 postapportioned NOL of \$12,438

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(\$638+\$7,000+\$4,800) to Year 4 (see Figure 1-4).]

(2) Example 2 – Remaining Nexus Consolidated Group Dissolves

(1) 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. The group has a preapportioned [Parent Corporation has a preapportioned nexus group]NOL carryforward of \$42,223 at the end of Year 3 (see Figure 1-3). Group apportionment factors for each year are given below (see Figure 2-2). [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)	N/A	N/A	N/A	\$20,000
Nexus Group NOL Adjustment	N/A	N/A	N/A	10,000
Group Taxable Income	N/A	N/A	N/A	30,000
Group NOL Generated	\$2,223*	\$15,000*	\$25,000*	\$10,000
Accumulating Group Carryforward [Cumulative Carryforward]	\$2,223	\$17,223	\$42,223	\$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) Determine the pre-apportioned group NOL carryforward: \$52,223 (see Figure 2-1).

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

1. Year 4 Losses Remaining: \$40,000
2. Year 3 Losses Remaining: \$12,223

(c) 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	\$10,000	\$10,000

Total Losses of all Loss Corporations	\$25,000	\$40,000
Allocation Percentage	40%	25%
Remaining Loss in Group Carryforward	\$12,223	\$40,000
Allocated Remaining Sub B Loss	\$4,890	\$10,000
Parent Corporation Loss	\$15,000	\$30,000
Total Losses of all Loss Corporations	\$25,000	\$40,000
Allocation Percentage	60%	75%
Remaining Loss in Group Carryforward	\$12,223	\$40,000
Allocated Remaining Parent Loss	\$7,333	\$30,000
Group NOL Per Year	\$12,223	\$40,000
Accumulating Group NOL	\$12,223	\$52,223

	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) Multiply the pre-apportioned NOL carryforward amounts allocated[assigned] to each member that is leaving the group by the nexus consolidated group's apportionment factor[factors] in each year an NOL exists to determine the post-apportioned NOL that member may carry forward to [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
Accumulating Sub B Post-Apportioned NOL Carryforward	\$1,564	\$3,264
Parent Corporation NOL Carryforward	\$7,333	\$30,000
Nexus Group Apportionment Factor	32%	17%
Parent Corp Post-Apportioned NOL Carryforward	\$2,346	\$5,100
Accumulating Parent Post-Apportioned NOL Carryforward	\$2,346	\$7,446

	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.

(1) 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. The group has a post-apportioned [Parent Corporation has a post-apportioned elective consolidated group] NOL carryforward of \$23,500 at the end of Year 3 (see Figure 3-1).

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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%
Taxable Net Income/(Loss)	(\$22,500)	(\$4,000)	\$3,000
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 allocated [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) Determine the post-apportioned group NOL carryforward: \$23,500 (see Figure 3-1).
- (b) Determine which [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. Year 3 No NOL Generated
 2. Year 2 Losses Remaining: \$4,000
 3. Year 1 Losses Remaining: \$19,500
- (c) 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	\$25,000	\$25,000
Total Losses of all Loss Corporations	\$45,000	\$40,000
Allocation Percentage	55.56%	62.5%
Remaining Loss in Group Carryforward	\$19,500	\$4,000
Allocated Remaining Sub A Loss Per Year	\$10,833	\$2,500
Accumulating Sub A Loss	\$10,833	\$13,333
REMAINING GROUP		
Sub B Loss	\$10,000	\$10,000
Total Losses of all Loss Corporations	\$45,000	\$40,000
Allocation Percentage	22.22%	25%
Remaining Loss in Group Carryforward	\$19,500	\$4,000
Allocated Remaining Sub B Loss Per Year	\$4,333	\$1,000
Sub C Loss	\$5,000	-
Total Losses of all Loss Corporations	\$45,000	\$40,000
Allocation Percentage	11.11%	-
Remaining Loss in Group Carryforward	\$19,500	\$4,000
Allocated Remaining Sub C Loss Per Year	\$2,167	-
Parent Corporation Loss	\$5,000	\$5,000
Total Losses of all Loss Corporations	\$45,000	\$40,000
Allocation Percentage	11.11%	12.5%
Remaining Loss in Group Carryforward	\$19,500	\$4,000
Allocated Remaining Parent Corporation Loss Per Year	\$2,167	\$500
Remaining Group NOL Per Year	\$8,667	\$1,500
Accumulating Remaining Group NOL Carryforward	\$8,667	\$10,167

	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
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* Sub A: $\$25,000/\$45,000 \times \$19,500 = \$10,833$
 Sub B: $\$10,000/\$45,000 \times \$19,500 = \$4,333$
 Sub C: $\$5,000/\$45,000 \times \$19,500 = \$2,167$
 Parent Corporation: $\$5,000/\$45,000 \times \$19,500 = \$2,167$
 ** Sub A: $\$25,000/\$40,000 \times \$4,000 = \$2,500$
 Sub B: $\$10,000/\$40,000 \times \$4,000 = \$1,000$
 Parent Corporation: $\$5,000/\$40,000 \times \$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 either file separately or as part of a combined group in Year 5. The elective consolidated group has a post-apportioned NOL carryforward of \$13,167 at the end of Year 4. [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)	N/A	N/A	N/A	(\$10,000)
Group Apportionment Factor	N/A	N/A	N/A	30%
NOL Remaining per year* [Generated (Used/ Remaining 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.
 ** Year 1 NOL of \$8,667 is already reduced by the \$3,000 NOL utilized in year 3 (See Figure 3-1)

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) Determine the post-apportioned group NOL carryforward: \$13,167 (see Figure 4-1).
- (b) Determine which [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. Year 4 Losses Remaining: \$3,000
 2. Year 3 No NOL Generated
 3. Year 2 Losses Remaining: \$1,500
 4. Year 1 Losses Remaining: \$8,667
- (c) 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			\$15,000
Total Losses of all Loss Corporations			\$35,000
Allocation Percentage			42.85%

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Remaining Loss in Group Carryforward			\$3,000
Allocated Remaining Sub B Loss Per Year	\$4,333	\$1,000	\$1,286
Accumulating Sub B NOL Carryforward	\$4,333	\$5,333	\$6,619
Allocated Remaining Sub C Loss Per Year	\$2,167	-	-
Accumulating Sub C NOL Carryforward	\$2,167	\$2,167	\$2,167
Parent Corporation Loss			\$20,000
Total Losses of all Loss Corporations			\$35,000
Allocation Percentage			57.15%
Remaining Loss in Group Carryforward			\$3,000
Allocated Remaining Parent Loss Per Year	\$2,167	\$500	\$1,714
Accumulating Parent NOL Carryforward	\$2,167	\$2,667	\$4,381
Accumulating Group NOL Carryforward	\$8,667	\$10,167	\$13,167

* See Figure 3-2 from Example 3

NOTE: Year 3 is omitted from Figure 4-2. The \$3,000 NOL utilized in Year 3 was accounted for in the Year 1 remaining losses.

	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: $\$15,000/\$35,000 \times \$3,000 = \$1,286$

Parent Corporation: $\$20,000/\$35,000 \times \$3,000 = \$1,714$

** 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).]

(5) Example 5: Sharing of Kentucky Net Operating Losses within a Combined Group.

(a) Parent Corporation and its three subsidiaries, Sub A, Sub B, and Sub C, file a combined return in 2019, the first year in which a combined return is required. All entities have nexus in Kentucky and are taxpayer members of the combined group. The combined group has apportionable group net income of \$50,000 in 2019. The 2019 apportionment factors for the members of the group are shown in Figure 5-1 below. The members also report the following apportioned NOL carryforwards from 2017 and 2018 (Figure 5-1).

Figure 5-1

	Parent	Sub A	Sub B	Sub C
2019 Group Income	\$50,000	\$50,000	\$50,000	\$50,000
2019 Apportionment Factor	20%	10%	10%	5%
2019 Taxable Income	\$10,000	\$5,000	\$5,000	\$2,500
2017 NOL Carryforward*	\$2,000	\$12,000	\$3,500	\$0
2018 NOL Carryforward*	\$5,000	\$0	\$1,700	\$0

* 2017 (and earlier years) NOL can be applied against 100 percent of taxable income. 2018 (and later years) NOL is limited to eighty

(80) percent of net income.

The following calculation determines the maximum allowable NOL deduction available to each entity (See Figure 5-2). This amount may exceed (or be less than) the actual amount of prior year NOL available within the group. The maximum allowable NOL deduction available to each entity is the sum of:

1. NOLs generated by the entity in 2017 and previous years; plus

2. NOLs generated by the entity in 2018, up to a maximum of eighty (80) percent of the entity's 2019 taxable income; plus

3. NOLs generated by other taxpayer members of the group in years before a combined return was required, up to a maximum of fifty (50) percent of the 2019 taxable income of the entity that is utilizing the NOL. (Note that losses from years in which a combined report was required may be shared between taxpayer members of the combined group without reference to the fifty (50) percent limitation, provided that the entities sharing the losses were members of the combined group in the year the loss was generated).

Figure 5-2

NOL Limitations	Parent	Sub A	Sub B	Sub C
2017 and Prior NOLs (Up to 100% of 2019 taxable income)	\$ 10,000	\$5,000	\$5,000	\$2,500
Max Amount of Allowable 2018 NOL (Up to 80% of 2019 Taxable Income)	\$ 8,000	\$ 4,000	\$4,000	\$2,000
Max of Allowable Shared Amount (Up to 50% of 2019 Taxable Income)	\$ 5,000	\$ 2,500	\$2,500	\$1,250

The following steps determine the utilization of the available NOL by each entity and each entity's resulting taxable income and NOL carryforward to 2020 (See Figure 5-3).

Subtract the entity's available 2017 (and earlier) NOL amount from the entity's 2019 taxable income on a first-in-first-out basis (i.e. most recent losses remain), up to 100 percent[100%] of 2019 taxable income:

Subtract the entity's 2018 NOL up to the maximum allowable 2018 NOL (eighty (80) percent of 2019 taxable income) from the amount remaining after Step 1:

Subtract the NOL amounts available to be shared from other taxpayer members of the combined group up to the maximum allowable shared amount (50% of 2019 taxable income) from the amount remaining after Step 2.

In no case can the utilization of NOLs reduce taxable income below zero (0). If group NOLs exceed available income, the remaining NOL may be carried forward.

Figure 5-3

	Parent	Sub A	Sub B	Sub C
2019 Taxable Income	\$10,000	\$ 5,000	\$5,000	\$2,500
Less: Entity's 2017 NOL	(\$ 2,000)	(\$5,000)	(\$3,500)	\$0
Taxable Income Remaining	\$ 8,000	\$0	\$1,500	\$2,500
Less: Entity's 2018 NOL	(\$ 5,000)	N/A	(\$1,500)	\$0
Taxable Income Remaining	\$ 3,000	\$0	\$ 0	\$2,500
Less: Shared NOL	(\$ 3,000)	N/A	N/A	(\$1,250)
Net Taxable Income After NOL	\$0	\$0	\$0	\$ 1,250
NOL Carryforward to 2020	\$0	\$ 2,750*	\$200**	\$0

*After sharing of NOLs, Sub A carries forward \$2,750 of its 2017

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NOL into 2020.

**Sub B carries forward \$200 of its 2018 NOL into 2020 (\$1,700 - \$1,500)

(6) Example 6: Sharing of Kentucky Net Operating Losses within a Combined Group that includes a Non-Taxpayer Member.

(1) Parent Corporation and its three subsidiaries, Sub A, Sub B, and Sub C, file a combined return in 2020. Sub A does not have nexus in Kentucky and is included in the group under the unitary principle. The combined group has apportionable group net income of \$50,000 in 2020. The 2020 apportionment factors for the members of the group are shown below. The members also report the following post-apportioned NOL carryforwards from 2018, a year in which each entity filed separately, and 2019, a year in which the group filed a combined return (Figure 6-1).

Figure 6-1

	Parent	Sub A	Sub B	Sub C
2020 Group Income	\$50,000	\$50,000	\$50,000	\$50,000
2020 Apportionment Factor	20%	0%	10%	5%
2020 Taxable Income	\$10,000	\$0	\$5,000	\$2,500
2018 NOL Carryforward	\$0	\$12,000	\$0	\$0
2019 NOL Carryforward	\$7,500		\$5,000	\$1,000

The maximum allowable NOL deduction available to each entity is equal to eighty (80) percent of its taxable income (See Figure 6-2).

Figure 6-2

NOL Limitations	Parent	Sub B	Sub C
80% of 2020 Taxable Income	\$8,000	\$4,000	\$2,000

Figure 6-3 shows the utilization of the available NOL deduction by each entity and each entity's resulting taxable income and NOL carryforward to 2021. As the 2019 NOLs were generated in a year in which a combined report was required, they can be shared among taxpayer members of the group, subject to the eighty (80) percent limitation. Since Sub A does not have Kentucky nexus in 2020, it is not a taxpayer member and therefore its 2018 NOLs cannot be utilized by other group members. Sub A cannot utilize its 2018 losses until it has Kentucky source income.

Figure 6-3

	Parent	Sub A	Sub B	Sub C
2019 Taxable Income	\$10,000	\$0	\$5,000	\$2,500
Less: Entity's Own 2019 NOL	(\$ 7,500)	n/a	(\$4,000)	(\$1,000)
Taxable Income Remaining	\$ 2,500	\$0	\$1,000	\$1,500
Less: Shared NOL	(\$ 500)	N/A	\$ 0	(\$ 500)
Taxable Income Remaining	\$ 2,000	\$0	\$1,000	\$1,000
2018 NOL Remaining	\$0	\$12,000	\$0	\$0
2019 NOL Remaining	\$0	\$0	\$0**	\$0

**Figure 6-4 shows how Sub B's NOLs were shared among the group.

Figure 6-4

Sub B 2019 NOL	\$5,000
Offset Max of 80% of Sub B 2020 Income	(\$4,000)
NOL Remaining	\$1,000
Utilized by Parent (up to 80% limit)	(\$ 500)
NOL Remaining	\$ 500
Utilized by Sub C	(\$ 500)
NOL Remaining	\$ 0

DANIEL BORK, Commissioner

APPROVED BY AGENCY: June 6, 2019

FILED WITH LRC: June 7, 2019 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 25, 2019 at 10:00 a.m. in Room 9B, State Office Building, 501 High Street, Frankfort Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through July 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: Todd Renner, Executive Director, Office of Tax Policy and Regulation, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky 40601, (502) 782-6081 (telephone), (502) 564-3875 (fax), 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: This administrative regulation provides guidance on the computation of a corporation's net operating loss deduction and application of the deduction to subsequent taxable years.

(b) The necessity of this administrative regulation: This amended administrative regulation is needed to provide guidance for computing a corporation's net operating loss deduction on corporation income tax returns filed by combined group filers, elective consolidated return filers, nexus consolidated filers and separate return filers.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation provides guidance for computing a corporation's net operating loss deduction and also removes outdated guidance from regulatory language.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will insure that the Department of Revenue is in compliance with KRS 141.201, KRS 141.202, KRS 141.011, KRS 141.120, and KRS 13A.

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

(a) How the amendment will change this existing administrative regulation: This regulation provides guidance for computing a corporation's net operating loss deduction under law changes enacted by the 2019 General Assembly in HB 458, and also removes outdated guidance from regulatory language.

(b) The necessity of the amendment to this administrative regulation: This regulation provides guidance for computing a corporation's net operating loss deduction under law changes enacted in 2018 HB 487 and 2019 HB 458.

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c). This regulation provides guidance for computing a corporation's net operating loss deduction and also removes outdated guidance from regulatory language.

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d). This regulation will insure that the Department of Revenue is in compliance with KRS 141.201, KRS 141.202, KRS 141.011, KRS 141.120, KRS 141.121, and KRS 13A.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Corporations claiming a net operating loss deduction are 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: Corporations will have to follow the amendments to this regulation regarding the computation of the net operating loss deduction taken by combined group filers, elective consolidated filers, nexus consolidated filers and separate return filers.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Indeterminable.

(c) As a result of compliance, what benefits will accrue to the entities identified in question. More accurate corporation income tax returns will result.

(3): A greater chance of correctly computing the net operating loss deduction will occur.

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

(a) Initially: Minimal costs for the Department of Revenue to administer

(b) On a continuing basis: Minimal costs for the Department of Revenue 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 funding for implementation and enforcement will come from the Department of Revenue's baseline budget.

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

(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 because all corporation income taxpayers with a net operating loss deduction will be able to correctly compute the deduction under this amended administrative regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Revenue.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 131.130, KRS 141.011, KRS 141.120, KRS 141.121, KRS 141.200, KRS 141.201, and KRS 141.202

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 small increase of expenditures for the Department of Revenue.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None. The impact on revenues generated by the corporation income tax is indeterminable. The enactment of combined reporting, effective for taxable years beginning on or after January 1, 2019, is a significant change.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Indeterminable.

(c) How much will it cost to administer this program for the first year? An indeterminable increase in expenses for the Department of Revenue will occur in the first year.

(d) How much will it cost to administer this program for subsequent years? Indeterminable.

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

regulation.

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

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
(Amendment)

103 KAR 26:010. Nontaxable service enterprises[Service enterprises in general].

RELATES TO: KRS 139.010, 139.200
STATUTORY AUTHORITY: KRS 131.130,
139.010[~~131.130(4)~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations necessary for the administration and enforcement of all tax laws in Kentucky. This administrative regulation establishes sales and use tax requirements for nontaxable service enterprises[service enterprises in general].

Section 1. (1) Persons engaged in the business of rendering nontaxable services[service] shall be classified as consumers, not retailers, of the tangible personal property, digital property, and taxable services specifically enumerated in KRS 139.200, which they use incidentally in rendering the service. Tax shall apply to the sale of tangible personal property, digital property, and taxable services specifically enumerated in KRS 139.200 to consumers.

(2) The list in this subsection shall serve as general examples of nontaxable service enterprises:

- (a) Advertising agencies;
- (b) Automobile detailers;
- (c) Banks;
- (d) Barbers;
- (e) Beauty shop operators;
- (f) Shoe shiners;
- (g) Taxidermists;
- (h) Tire repairers; and
- (i) Similar enterprises.[Banks;
- (e) Barbers;
- (d) Beauty shop operators;
- (e) Bootblacks;
- (f) Cleaners;
- (g) Launderers;
- (h) Shoe repairmen;
- (i) Taxidermists;
- (j) Tire repairers; and
- (k) Similar enterprises.]

Section 2. (1) Persons rendering nontaxable professional services shall be classified as consumers, not retailers, of the tangible personal property, digital property, and taxable services specifically enumerated in KRS 139.200, which they use incidentally in rendering their services.

(2) The list in this subsection shall serve as general examples of persons rendering nontaxable professional services:

- (a) Accountants;
- (b) Architects;
- (c) Audience research service providers;
- (d) Cable television service providers;
- (e) Construction information service providers;
- (f) Doctors;
- (g) Engineers; and
- (h)[(g)] Lawyers.

Section 3. If a person engaged in the business of rendering nontaxable services also regularly engages in the business of selling tangible personal property, digital property or taxable services to consumers, that person shall be classified as a retailer with respect to these[the] sales, and shall obtain permits, file returns, and remit tax on those sales.

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Section 4. Persons rendering services specifically enumerated in KRS 139.200 are retailers subject to sales tax[measured by the sales].

Section 5.[4.] (1) This administrative regulation shall replace Revenue Policies 51P440, 51P441, and 51P442.

(2) Revenue Policies 51P440, 51P441, and 51P442 are hereby rescinded and shall be null, void, and unenforceable.

DANIEL P. BORK, Commissioner

APPROVED BY AGENCY: June 6, 2019

FILED WITH LRC: June 7, 2019 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 25, 2019, at 10:00 a.m. in Room 9B, State Office Building, 501 High Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through July 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: Lisa Swiger, Tax Policy Research Consultant II, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky 40601, (502) 564-9526 (telephone), (502) 564-3875 (fax), Lisa.Swiger@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lisa Swiger

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation is an amendment that updates regulatory language to conform to recent statutory language revisions.

(b) The necessity of this administrative regulation: The amendment is necessary to update outdated regulatory language and information currently contained in the regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The proposed amendment updates regulatory language to conform with KRS 131.130 and KRS 131.131.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The proposed amendment updates regulatory language to address outdated information currently contained in the 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: The amendment will change the existing administrative regulation by updating the administrative regulation title, updating the statutory authority, specifying the regulation is related to nontaxable service enterprises, updating the types or properties and services consumed by nontaxable service enterprises, updating examples provided and specifying that service providers detailed under KRS 139.200 are subject to sales tax.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to remove outdated regulatory language and information currently contained in the regulation. Statutory references are updated.

(c) How the amendment conforms to the content of the authorizing statutes: The proposed amendment updates regulatory language to conform with KRS 131.130 and KRS 131.131.

(d) How the amendment will assist in the effective administration of the statutes: The proposed amendment updates regulatory language to address outdated information currently contained in the regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this

administrative regulation: All individuals, businesses, organizations, or state and local governments that access the amended regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No actions are necessary to comply with the amendment.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Anyone who accesses the amended regulation will benefit from the updated information contained therein.

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

(a) Initially: There is no expected cost to implement the proposed amendment. Current staff and budgeted funding will absorb the implementation of this administrative regulation.

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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current departmental staff and funding will be used to implement and enforce this proposed amendment.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are directly or indirectly established or increased by the proposed amendment.

(9) TIERING: Is tiering applied? Tiering is not applicable as the proposed amended regulation will be applied equally to all entities impacted 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 Finance and Administration Cabinet, Department of Revenue.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 131.130 and KRS 131.131.

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? No revenues are expected to be generated by updating this administrative regulation.

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
(Amendment)

103 KAR 27:140. Publishers of newspapers, magazines and periodicals.

RELATES TO: KRS 139.010

STATUTORY AUTHORITY: KRS 131.130(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations for the assessment, collection, refunding, administration, and enforcement of Kentucky tax laws. This administrative regulation interprets the sales and use tax law as it applies to sales of newspapers, magazines and periodicals.

Section 1. Newspapers. (1) Sales of newspapers by the publisher are sales of tangible personal property or digital property. The tax applies to the gross receipts of the publisher from such sales in all cases, unless the sale is for delivery or access outside of this state.

(2) Newstands, drug stores, street vendors, and other businesses selling to consumers are the retailers of newspapers sold by them. Proceeds from the sale thereof shall be included in the gross receipts of the retailer subject to the tax[where the publisher receives directly from the consumer the full retail sales price of the newspaper, unless the sale is for delivery outside of this state.

~~(2) The sales of newspapers by the publisher to carriers, newsboys, street vendors, and operators of newsstands and similar places are sales for resale the proceeds of which are not subject to the tax.~~

~~(3) Newsstands, drug stores and other places of business with a fixed location are the retailers of newspapers sold by them. Proceeds from the sale thereof shall be included in the gross receipts of the retailer subject to the tax.~~

Section 2. Magazines and Periodicals. (1) Sales of magazines, periodicals and all publications other than newspapers, whether made "over the counter," or by subscription, are subject to the sales or use tax. Subscription includes both hard copies and digital editions.

(2) Receipts from subscriptions for magazines, periodicals, and trade journals, ~~[which subscriptions are]~~ taken within the state of Kentucky, sent to a publication house outside of the state of Kentucky, and ~~[the publication is]~~ thereafter mailed directly or transferred electronically to the subscriber within the state of Kentucky, are subject to the sales tax. Where such publications are printed within the state of Kentucky and sold subject to delivery, or transferred electronically for access outside the state of Kentucky, such sales would not be subject to the sales tax.

(3) Persons who distribute trade publications, journals and the like free of charge to the reader thereof are regarded as consumers of publications which they distribute.

DANIEL P. BORK, Commissioner

APPROVED BY AGENCY: June 6, 2019

FILED WITH LRC: June 7, 2019 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 25, 2019, at 10:00 a.m. in Room 9B, State Office Building, 501 High Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through July 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: Lisa Swiger, Tax Policy Research Consultant II, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky 40601, (502) 564-9526 (phone), (502) 564-3875 (fax), Lisa.Swiger@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lisa Swiger

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation is an amendment that updates regulatory language to clarify the previous guidance contained and to specify the types of property sold.

(b) The necessity of this administrative regulation: The amendment is necessary to update outdated regulatory language, to clarify the previous guidance contained and to specify the types of property sold.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The proposed amendment updates regulatory language to conform with KRS 131.130 and KRS 131.131.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The proposed amendment updates regulatory language to address outdated information currently contained in the 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: The amendment will change this existing administrative regulation by adding an authorizing sentence to the "Necessity, Function and Conformity" section, adding "digital property" as a type of property sold, specifying sales made in interstate commerce are not subject to the tax, clarifying the tax treatment related to newsstands, drugstores, street vendors, and other businesses, removing the notation related to "fixed location", and updating language.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to remove outdated regulatory language to clarify the previous guidance contained and to specify the types of property sold.

(c) How the amendment conforms to the content of the authorizing statutes: The proposed amendment updates regulatory language to conform with KRS 131.130 and KRS 131.131.

(d) How the amendment will assist in the effective administration of the statutes: The proposed amendment updates regulatory language to address outdated information currently contained in the regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All individuals, businesses, organizations, or state and local governments that access the amended regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No actions are necessary to comply with the amendment.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Anyone who accesses the amended regulation will benefit from the updated information contained therein.

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

(a) Initially: There is no expected cost to implement the proposed amendment. Current staff and budgeted funding will absorb the implementation of this administrative regulation.

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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current departmental staff and funding will be used to implement and enforce this proposed amendment.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are directly or indirectly established or increased by the proposed amendment.

(9) TIERING: Is tiering applied? Tiering is not applicable as the proposed amended regulation will be applied equally to all entities impacted 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 Finance and Administration Cabinet, Department of Revenue.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 131.130 and KRS 131.131.

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? No revenues are expected to be generated by updating this administrative regulation.

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

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

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

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

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

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
(Amendment)

103 KAR 31:030. Direct pay authorization.

RELATES TO: KRS 139.010, 139.240, 139.250, 139.260, 139.540, 139.550, 139.590, 139.660, 139.710, 139.720

STATUTORY AUTHORITY: KRS 131.130, 139.260, 139.660, 139.720

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1), 139.260, and 139.710 authorized the Department of Revenue to promulgate administrative regulations for the: (1) assessment, collection, refunding, administration, and enforcement of Kentucky tax laws; and (2) direct pay authorization. This administrative regulation establishes the requirements and procedures for the direct payment of Kentucky sales and use tax on purchases of tangible personal property, digital property, or the services specifically enumerated in KRS 139.200(g) through (q)

according to the provisions of KRS 139.260(3), ~~or digital property~~ excluding energy and energy producing fuels.

Section 1. Definitions. (1) "Direct pay authorization" or "DPA" means an authorization issued by the Department of Revenue that permits a taxpayer to report Kentucky sales and use tax directly to the ~~department~~~~[cabinet]~~ on all purchases of tangible personal property, digital property, or the services specifically enumerated in KRS 139.200(g) through (q) according to the provisions of KRS 139.260(3), ~~and digital property,~~ excluding energy and energy-producing fuels.

(2) "Distribution facility" means a specific location which is used to receive, hold, and ship business inventory.

(3) "Industrial processing" is defined in KRS 139.010(17).

(4) "Manufacturing" as [is] defined by KRS 139.010(20)~~[(46)]~~.

Section 2. Qualifications. An applicant shall:

(1) Be a person engaged in:

(a) Manufacturing;

(b) Industrial processing; ~~[Extracting minerals, ores, clay, stone, coal, or natural gas;]~~

(c) Operating a transportation company; or

(d) Operating a distribution facility; and

(2) Hold a valid Kentucky retail sales and use tax permit; and

(3) Have a record of timely payment of taxes administered by the ~~department~~~~[cabinet]~~;

(4) Maintain records in such a manner that, as applicable, the amount of tangible property, digital property, and the services specifically enumerated in KRS 139.200(g) through (q) according to the provisions of KRS 139.260(3), ~~and digital property~~ purchased from:

(a) A Kentucky seller or retailer may be properly reported; or

(b) An out-of-state seller or retailer for storage, use, or other consumption in Kentucky or elsewhere can be verified; and

(5) Be engaged in business in Kentucky, and own property, other than office furniture and Equipment, that is located in more than one (1) state; or

(6)(a) Have been [in] engaged in business in Kentucky in excess of twenty-four (24) months; and

(b) Have purchased digital property, tangible personal property, or the services specifically enumerated in KRS 139.200(g) through (q) according to the provisions of KRS 139.260(3), ~~or tangible personal property,~~ excluding energy and energy-producing fuels, of at least \$10,000,000~~[ten (10) million dollars]~~ for use in its~~[his]~~ Kentucky operations in the preceding calendar or fiscal year, as applicable.

Section 3. Application. (1) An applicant shall apply to the department for a DPA by submitting a fully completed Revenue Form 51A112, "Application for Direct Pay Authorization".

(2) The application shall include:

(a) If an applicant is engaged in business and has property, other than office furniture and equipment, located in more than one (1) state, the location of the applicant's home office, and plants or places of business;

(b) If the applicant is not engaged in business and does not have property, other than office furniture and equipment, located in more than one (1) state, the amount of tangible property, digital property, and the services specifically enumerated in KRS 139.200(g) through (q) according to the provisions of KRS 139.260(3), ~~or digital property~~ purchased for use in the applicant's Kentucky business operations in the last calendar or fiscal year, as applicable;

(c) Statements relating to records and documentation required by Sections 2(3) and (4) and 7 of this administrative regulation;

(d) Most recent year's financial statement certified by the applicant's chief financial officer or a certified public accountant; and

(e) A detailed description of the records maintained to document that the amount of taxable purchases is properly reported.

Section 4. Requirements. A DPA holder shall:

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(1) Furnish all of ~~its~~[his]-sellers or retailers, excluding sellers or retailers of energy and energy-producing fuels, with a copy of Revenue Form 51A110, "Direct Pay Authorization";

(2) Report and remit the sales or use tax on all taxable purchases of digital property, tangible personal property, or the services specifically enumerated in KRS 139.200(g) through (q) according to the provisions of KRS 139.260(3).~~[OR tangible personal property,]~~ excluding energy and energy-producing fuels, that would have been remitted by the ~~applicant's~~[DPA holder's ~~seller or~~] retailer if the DPA had not been granted; and

(3) Report all taxable purchases in accordance with KRS 139.540, 139.550, and 139.590.

Section 5. Seller or Retailer Responsibility. (1) ~~A seller or retailer~~ [Vendor Responsibility. (1) A vendor] shall be relieved of the duty of collecting and paying the sales or use tax if ~~it~~[he]:

(a) Accepts a copy of a company's DPA; and

(b) Retains the copy in ~~its~~[his] records pursuant to KRS 139.720(2).

(2) A seller or retailer shall:

(a) Include sales for which a DPA has been accepted in Line 1, Gross Receipts, of Revenue Form 51A102, "Sales and Use Tax Return"; and

(b) Take a corresponding deduction on Line 19, which shall be labeled "DPA Sales".

Section 6. Limitations. A DPA holder shall not:

(1) Issue the DPA to a construction contractor; or

(2) Allow a contractor to use the holder's DPA to purchase, lease, or rent tangible personal property, digital property, or purchase taxable services.

Section 7. Records. A DPA holder shall maintain records pursuant to KRS 139.720(2) and 103 KAR 31:020.

Section 8. Bond Requirement. Upon demand of the department, the applicant or holder of a direct pay authorization shall execute pursuant to KRS 139.660, a bond or an indemnity agreement securing the payment of the sales or use taxes to the department in an amount not less than \$75,000 and not greater than three (3) times the estimated monthly liability.

Section 9. Transfer of Authorization. (1) A DPA shall not be transferable upon the sale, lease, or other transfer of the business.

(2) A DPA holder shall notify the department within ten (10) days of the effective date of the sale, lease, or other transfer of the business.

Section 10. Termination. (1) The department shall terminate a DPA if the DPA holder:

(a) Fails or ceases to be an eligible taxpayer;

(b) Fails to timely file its sales and use tax returns and timely pay any tax due; or

(c) Fails to comply with any of the provisions of this administrative regulation.

(2)(a) The department shall notify a DPA holder of the termination by certified mail at ~~its~~[his] last known address.

(b) Upon receipt of the notification of termination, a DPA holder shall notify all sellers or retailers within thirty (30) days of the date of termination.

(3) The effective date of the termination shall be the date of the mailing of the termination notice.

Section 11. ~~[Protests. The denial or termination of a DPA may be protested pursuant to KRS 131.110.~~

~~Section 12.]~~ Forms. The forms listed herein may be inspected, copied, or obtained, subject to applicable copyright law, at:

(1) The Kentucky Department of Revenue, 501 High Street, Frankfort, Kentucky ~~40601~~[40620];

(2) At a Kentucky Taxpayer Service Center during business hours; or

(3) On the department Web site at <http://revenue.ky.gov>.

DANIEL P. BORK, Commissioner

APPROVED BY AGENCY: June 6, 2019

FILED WITH LRC: June 7, 2019 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 25, 2019 at 10:00 a.m. in Room 9B, State Office Building, 501 High Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through July 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: Lisa Swiger, Tax Policy Research Consultant II, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky 40601, (502) 564-9526 (telephone), (502) 564-3875(fax), Lisa.Swiger@ky.gov(email).

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lisa Swiger

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation is an amendment that updates regulatory language to conform to recent statutory language revisions.

(b) The necessity of this administrative regulation: The amendment is necessary to update outdated regulatory language and information currently contained in the regulation. Repealed statutory references are removed and replaced with the updated statutory reference.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The proposed amendment updates regulatory language to conform with KRS 131.130 and KRS 131.131.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The proposed amendment updates regulatory language to address outdated information currently contained in the 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: See (1)(a).

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All individuals, businesses, organizations, or state and local governments that access the amended regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No actions are necessary to comply with the amendment.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Anyone who accesses the

amended regulation will benefit from the updated information contained therein.

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

(a) Initially: There is no expected cost to implement the proposed amendment. Current staff and budgeted funding will absorb the implementation of this administrative regulation.

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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current departmental staff and funding will be used to implement and enforce this proposed amendment.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are directly or indirectly established or increased by the proposed amendment.

(9) TIERING: Is tiering applied? Tiering is not applicable as the proposed amended regulation will be applied equally to all entities impacted 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 Finance and Administration Cabinet, Department of Revenue.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 131.130 and KRS 131.131.

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? No revenues are expected to be generated for any state or local government agency by updating this administrative regulation.

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

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

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

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

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

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
(Amendment)

103 KAR 31:111. Sales and purchases for resale.

RELATES TO: KRS 139.010, 139.200, 139.260, 139.270, 139.280, 139.290, 139.300, 139.430, 139.440, 139.760, 139.990

STATUTORY AUTHORITY: KRS 131.130(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations necessary for the administration and enforcement of all tax laws in Kentucky. This administrative

regulation establishes requirements to consolidate and clarify various provisions of the sales and use tax law as they relate to the authorized issuance of resale certificates by purchasers and acceptance thereof by retailers and sellers.

Section 1. A resale certificate shall either be a "single purchase certificate" or a "blanket certificate". (1) A "Single purchase certificate" shall include an itemization by the purchaser of the tangible personal property, digital property, or services specifically numerated in KRS 139.200(g) through (q) according to the provisions of KRS 139.260(3)~~[property]~~ to be purchased. A single purchase certificate may only be used for a single purchase of applicable property and services~~[tangible personal property or digital property]~~ for resale and shall not be used for subsequent purchases.

(2) A "Blanket certificate" shall include a general description by the purchaser of the kind of tangible personal property, digital property, or services specifically numerated in KRS 139.200(g) through (q) according to the provisions of KRS 139.260(3) property to be purchased for resale in the regular course of business. A purchaser who has executed a blanket certificate shall not be required to execute additional certificates of resale for individual purchases if:

(a) There is no change in the character of the purchaser's operation; and

(b) The purchases are of applicable property and services~~[tangible personal property or digital property]~~ of the kind usually purchased by the purchaser for resale.

Section 2. The resale certificate issued by the purchaser shall be in the form of either the "Resale Certificate", Form 51A105, the "Streamlined Sales and Use Tax Agreement - Certificate of Exemption", Revenue Form 51A260, or the Multistate Tax Commission's "Uniform Sales and Use Tax Exemption/Resale Certificate - Multijurisdiction".

Section 3. If the purchaser is not required to hold a permit because the purchaser is a nonresident purchaser not required to register in Kentucky, the purchaser may issue a fully completed:

(1) Streamlined Sales and Use Tax Agreement - Certificate of Exemption (Revenue Form 51A260); or

(2) Resale Certificate (Revenue Form 51A105). If the purchaser issues a "Resale Certificate", Form 51A105, the purchaser shall note on the face of the certificate that the purchaser is a nonresident purchaser not required to register and obtain a permit in Kentucky. The certificate shall bear the purchaser's signature, name, address, and any other information requested on the form. The purchaser shall clearly mark on the certificate whether it is a single purchase certificate or a blanket certificate.

Section 4. (1) If the retailer or seller has not obtained a completed resale certificate in a timely manner according to the provisions of KRS 139.270, the burden of proving that a sale is exempt as a sale for resale shall be upon the retailer or seller. The retailer or seller may offer proof to the department that the sale in question is not subject to tax in accordance with 103 KAR 1:010.

(2)(a) For example, if a retailer or seller only receives a completed resale certificate from a restaurant business for silverware ~~[and other table settings only]~~ after the 120 day period required under KRS 139.270, the burden of proof shall be considered "not met" and the retailer or seller shall remain liable for the tax. The items in this example are for use within the restaurant business rather than for resale.

(b) If the retailer or seller receives a completed resale certificate in the course of a department audit for purchases of disposable utensils~~[cups]~~ from the same restaurant business, the burden of proof shall be considered "met" because the product is of the type resold in the normal course of the restaurant business.

Section 5. Forms. The forms listed herein may be inspected, copied, or obtained, subject to applicable copyright law, at:

(1) The Kentucky Department of Revenue, 501 High Street, Frankfort, Kentucky 40601~~[40620]~~;

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- (2) At a Kentucky Taxpayer Service Center during business hours; or
- (3) On the department website at <http://revenue.ky.gov>.[-]

DANIEL P. BORK, Commissioner
 APPROVED BY AGENCY: June 6, 2019
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Contact Person: Lisa Swiger

- (1) Provide a brief summary of:
 - (a) What this administrative regulation does: This administrative regulation is an amendment that updates regulatory language to conform to recent statutory language revisions.
 - (b) The necessity of this administrative regulation: The amendment is necessary to remove outdated regulatory language and information currently contained in the regulation. Statutory references are updated.
 - (c) How this administrative regulation conforms to the content of the authorizing statutes: The proposed amendment updates regulatory language to conform with KRS 131.130 and KRS 131.131.
 - (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The proposed amendment updates regulatory language to address outdated information currently contained in the 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: The amendment will change this existing administrative regulation by specifying the types of property and services eligible for purchase under the resale certificate, adding KRS 139.200 to the "RELATES TO" section, and clarifying the example provided.
 - (b) The necessity of the amendment to this administrative regulation: See (1)(b).
 - (c) How the amendment conforms to the content of the authorizing statutes: See (1)(c).
 - (d) How the amendment will assist in the effective administration of the statutes: See (1)(d).
- (3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All individuals, businesses, organizations, or state and local governments that access the amended regulation.

- (4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
 - (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No actions are necessary to comply with the amendment.

- (b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost to comply with the amended regulation.
- (c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Anyone who accesses the amended regulation will benefit from the updated information contained therein.
- (5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
 - (a) Initially: There is no expected cost to implement the proposed amendment. Current staff and budgeted funding will absorb the implementation of this administrative regulation.
 - (b) On a continuing basis: There is no cost expected on a continual basis.
 - (6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current departmental staff and funding will be used to implement and enforce this proposed amendment.
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 - (8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are directly or indirectly established or increased by the proposed amendment.
 - (9) TIERING: Is tiering applied? Tiering is not applicable as the proposed amended regulation will be applied equally to all entities impacted 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 Finance and Administration Cabinet, Department of Revenue.
 2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 131.130 and KRS 131.131.
 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? No additional revenues are expected to be generated for any state or local government agency by updating this administrative regulation.
 - (b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.
 - (c) How much will it cost to administer this program for the first year? No additional costs will be incurred in the first year of this regulation being in effect.
 - (d) How much will it cost to administer this program for subsequent years? No additional costs will be incurred in subsequent years.
- Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

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

FINANCE AND ADMINISTRATION CABINET
Kentucky Retirement Systems
(Amendment)

105 KAR 1:200. Retirement procedures and forms.

RELATES TO: KRS 16.576, 16.577, 16.645, 61.590, 61.595, 61.623, 61.637, 61.680, 61.705, 78.545

STATUTORY AUTHORITY: KRS 61.590(1), 61.645(9)(e) [61.645(9)(g)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.645(9)(e) [61.645(9)(g)] authorizes the Board of Trustees of Kentucky Retirement Systems to promulgate administrative regulations necessary or proper in order to carry out the provisions of KRS 61.510 to 61.705, 16.505 to 16.652, and 78.510 to 78.852. KRS 61.590(1) requires that a member or beneficiary eligible to receive retirement benefits have on file at the retirement office each form required by the board. This administrative regulation establishes the procedures and forms for application for and receipt of retirement benefits by members of the Kentucky Retirement Systems.

Section 1. (1)(a) The member shall submit a Form 6000, Notification of Retirement, to the retirement systems no earlier than six (6) months prior to the member's desired effective retirement date. The retirement systems shall not process an invalid Form 6000, Notification of Retirement. If the member submits a Form 6000, Notification of Retirement, that is incomplete or is incorrect, the retirement systems shall find the Form 6000, Notification of Retirement, to be invalid and shall notify the member of the actions necessary for completion or correction. [~~The retirement systems shall not process an invalid Form 6000, Notification of Retirement.~~]

(b) The retirement systems shall not process a Form 6000, Notification of Retirement, until the member certifies on the Form 6000 that there is no prearranged agreement to reemploy with a participating employer in Kentucky Retirement Systems.

(2) The member shall designate the beneficiary of the member's retirement allowance on the Form 6000, Notification of Retirement.

(3) The Form 6000, Notification of Retirement, shall be dated and the member's signature shall be witnessed.

(4)(a) The member shall designate on the Form 6000, Notification of Retirement, all other state administered retirement systems from which the member is simultaneously retiring with reciprocity.

(b) If the member fails to retire from all state administered retirement systems simultaneously or with an effective retirement date within one (1) month of the member's effective retirement date in the Kentucky Employees Retirement System, the County Employees Retirement System, or the State Police Retirement System, the member shall not retire with reciprocity after the member's effective retirement date.

(5)(a) The member may designate a federal tax withholding preference on the Form 6000, Notification of Retirement.

(b) If the member fails to designate a federal tax withholding preference, the retirement systems shall withhold federal tax based on married status with three (3) exemptions.

(c) A recipient of a monthly retirement allowance may submit a Form 6017, Federal Income Tax Withholding Preference for Periodic Payments to establish or change the recipient's federal tax withholding preference.

(d) A recipient of a monthly retirement allowance may establish or change the recipient's tax withholding preference via Retiree Self Service on the Web site maintained by Kentucky Retirement Systems.

(6)(a) The member may designate a beneficiary of the \$5,000 Death Benefit on the Form 6000, Notification of Retirement.

(b) A retired member may file a Form 6030, Death Benefit Designation, to designate or change the beneficiary of the \$5,000 death benefit at any time after the retired member begins receiving a monthly retirement allowance.

(c) If the member does not designate a beneficiary of the \$5,000 death benefit, the member's estate shall be the beneficiary.

(d) If the member files a Form 6030, Death Benefit

Designation, to change the beneficiary of the \$5,000 death benefit that is incomplete or incorrect, the member's beneficiary designation on file at the retirement office shall remain in effect.

(7)(a) The member shall authorize the direct deposit of the member's retirement allowance on the Form 6000, Notification of Retirement.

(b) The member shall attach to the Form 6000, Notification of Retirement:

1. A voided personalized check for the account to which the retirement allowance is being deposited; or

2. Verification from the financial institution receiving the electronic fund transfer.

(c) A recipient of a monthly retirement allowance may change the designated financial institution or account by filing a Form 6130, Authorization for Deposit of Retirement Payment, at the retirement office in Frankfort.

(d) A recipient of a monthly retirement allowance may establish or change the recipient's designated financial institution or account via Retiree Self Service on the Web site maintained by Kentucky Retirement Systems.

(e) The member shall submit a Form 6135, Request for Payment by Check, if the member does not currently have an account with a financial institution or the member's financial institution does not participate in the electronic funds transfer program.

(8)(a) The member's employer shall complete Section H of the Form 6000, Notification of Retirement. If the employer does not complete Section H of the Form 6000, Notification of Retirement, the retirement systems shall only utilize the information reported by the member's employer and former employers to the retirement systems in accordance with KRS 61.675 and 78.625 and shall not include any additional sick leave, compensatory time, or projected salary increases in its calculations of the member's retirement allowance or eligibility to retire.

(b) Section H of the Form 6000, Notification of Retirement, shall be signed by a person designated by the employer on file at the retirement office.

Section 2. (1)(a) The member shall provide the retirement ~~systems~~[system] with a copy of the member's birth certificate or other verification of date of birth of the member and, if a survivorship payment option is selected, a copy of the birth certificate or other verification of date of birth of the beneficiary named on the member's Form 6000, Notification of Retirement.

(b) If the member's or beneficiary's name is no longer the same as the name listed on the birth certificate or other verification of date of birth, the systems shall require the member or beneficiary to submit a marriage license, court order, or legally-binding documentation of the name change.

(2) The retirement ~~systems~~[system] shall accept one (1) or more of the following as proof of date of birth of the member or beneficiary:

(a) Age record of the Social Security Administration;

(b) Immigration and naturalization service records;

(c) Birth certificate;

(d) Military discharge;

(e) U.S. passport;

(f) Driver's license issued by the Commonwealth of Kentucky;

or

(g) Other reliable proof of date of birth that may be used by the courts to verify the person's date of birth.

Section 3. (1) The retirement ~~systems~~[system] shall provide an estimate of the member's retirement allowance based on the salary reported to the ~~systems~~[system] and information provided by the member's employer.

(2) The payment options and amounts available to the member shall be printed on the Form 6010, Estimated Retirement Allowance, and provided to the member with a place to designate the member's choice of payment option.

(3)(a) The member shall designate a desired payment option and sign and date the Form 6010, Estimated Retirement Allowance.

(b) The member's signature on the Form 6010, Estimated

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Retirement Allowance, shall be witnessed and the Form 6010, Estimated Retirement Allowance, returned to the retirement office as required by subsection (4)(b) or (5) of this section.

(4)(a) The member shall terminate employment with all employers participating in the Kentucky Employees Retirement System, the County Employees Retirement System, and the State Police Retirement System no later than the month before the member's effective retirement date if the member is retiring pursuant to KRS 61.590(5)(a) or (c).

(b) The retirement office shall process the first payment in the month following the month in which the completed Form 6010, Estimated Retirement Allowance, and all other applicable forms and documents as provided in this administrative regulation, have been filed at the retirement office but not before the member's effective retirement date.

(5) If the member is retiring pursuant to KRS 61.590(5)(c), the member shall return the Form 6010, Estimated Retirement Allowance, within six (6) months of the member's effective retirement date as provided on the member's Form 6000, Notification of Retirement to retain the effective date of retirement shown on the form.

(6) If the member fails to return the Form 6010, Estimated Retirement Allowance, within six (6) months of the member's effective retirement date, the member's Form 6000, Notification of Retirement, shall be void and the member shall be required to submit a new Form 6000, Notification of Retirement and select a new effective retirement date. The member shall not select an effective retirement date prior to the date the Form 6000, Notification of Retirement is submitted.

(7) If a member who is approved for disability retirement benefits fails to return the member's Form 6010, Estimated Retirement Allowance within six (6) months of the date the member is notified that the member's disability application has been approved, then the member's Form 6000, Notification of Retirement, and the approval of the member's application for disability retirement benefits shall be considered void. The member may file a subsequent Form 6000, Notification of Retirement, to re-apply for disability retirement benefits.

(8) If a member's Form 6000, Notification of Retirement, is withdrawn, invalid, or voided, the beneficiary or beneficiaries and contingent beneficiary or beneficiaries designated on the last Form 2035, Beneficiary Designation, on file at the retirement office shall remain in full force and effect.

Section 4. (1) The retirement office shall not process a monthly retirement allowance until the member has filed at the retirement office: ~~[(a) A Form 2001, Membership Information;]~~

~~[(b)]~~ A properly signed, witnessed, and dated Form 6010, Estimated Retirement Allowance;

~~[(e)]~~ A copy of the member's birth verification;

~~[(d)]~~ A copy of the birth verification for the beneficiary if selecting a survivorship option; and

~~[(e)]~~ 1. A completed Form 6130, Authorization for Deposit of Retirement Payment; or

2. A completed Form 6135, Request for Payment by Check.

(2) The retirement office shall not process a lump sum retirement benefit until:

(a) The member has filed at the retirement office: ~~[1. A Form 2001, Membership Information Form;]~~

1. ~~[2.]~~ A properly signed, witnessed, and dated Form 6010, Estimated Retirement Allowance; and

2. ~~[3.]~~ A Form 6025, Direct Rollover/Direct Payment Election Form for a Member or a Spouse Beneficiary of an Eligible Rollover Distribution; and

(b) The member's employer has filed at the retirement office proof of the member's employment termination and reported all creditable compensation and accumulated sick leave.

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

(a) Form 6000, "Notification of Retirement", May 2019 ~~[May 2015];~~

(b) Form 6010, "Estimated Retirement Allowance", May 2015;

(c) Form 6130, "Authorization for Deposit of Retirement

Payment", July 2015 ~~[May 2015];~~

(d) Form 6017, "Federal Income Tax Withholding Preference for Periodic Payments", May 2018 ~~[May 2015];~~

(e) Form 6030, "Death Benefit Designation", May 2015;

(f) Form 6135, "Request for Payment by Check", July 2015 ~~[May 2015];~~ ~~[(g) Form 2001 "Membership Information", May 2015;]~~

~~[(h)]~~ ~~[(i)]~~ Form 2035, "Beneficiary Designation", May 2015; and

~~[(j)]~~ ~~[(k)]~~ Form 6025, "Direct Rollover/Direct Payment Election Form for a Member or a Spouse Beneficiary of an Eligible Rollover Distribution", May 2015.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Retirement Systems, ~~[Perimeter Park West,]~~ 1260 Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

DAVID L. EAGER, Executive Director

APPROVED BY AGENCY: June 12, 2019

FILED WITH LRC: June 12, 2019 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 22, 2019 at 10:00 a.m. at the Kentucky Retirement Systems, 1270 Louisville Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until July 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: Mark C. Blackwell, Executive Director Office of Legal Services, Kentucky Retirement Systems, 1260 Louisville Road, Frankfort, Kentucky 40601, phone (502) 696-8800 ext. 8645, fax (502) 696-8801, email mark.blackwell@kyret.ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Mark C. Blackwell

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the processes and procedures for a member to apply for retirement with Kentucky Retirement Systems.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the processes and procedures for a member to apply for retirement with Kentucky Retirement Systems.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the authorizing statute by establishing the processes and procedures for a member to apply for retirement with Kentucky Retirement Systems in accordance with KRS 61.590.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by establishing the processes and procedures for a member to apply for retirement with Kentucky Retirement Systems in accordance with KRS 61.590.

(2) If 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 inserts the requirement that a member certify that no prearranged agreement existed prior to retirement between the member and a participating employer to return to employment pursuant to KRS 61.590(1)(b), which was added by 2019 Kentucky Laws Ch. 161 (HB 419).

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to insert the requirement that a member certify that no prearranged agreement existed prior to retirement between the member and a participating employer to

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return to employment pursuant to KRS 61.590(1)(b), which was added by 2019 Kentucky Laws Ch. 161 (HB 419).

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by inserting the requirement that a member certify that no prearranged agreement existed prior to retirement between the member and a participating employer to return to employment pursuant to KRS 61.590(1)(b), which was added by 2019 Kentucky Laws Ch. 161 (HB 419).

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes by inserting the requirement that a member certify that no prearranged agreement existed prior to retirement between the member and a participating employer to return to employment pursuant to KRS 61.590(1)(b), which was added by 2019 Kentucky Laws Ch. 161 (HB 419).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Kentucky Retirement Systems and members applying to retire.

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

(a) List 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 member will have to certify that there was no prearranged agreement prior to retirement with a participating employer to return to employment. Kentucky Retirement Systems is prohibited from paying retirement benefits until the certification is completed.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Neither the member nor Kentucky Retirement Systems should incur additional cost due to the amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The member will no longer have to complete a certification upon reemployment.

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

(a) Initially: The only cost will be the administrative expenses of Kentucky Retirement Systems, which should not increase.

(b) On a continuing basis: There will be no continuing cost aside from Kentucky Retirement Systems' normal administrative expenses.

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

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

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

(9) TIERING: Is tiering applied? Tiering is not applied. All members are subject to the same processes and procedures.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Only Kentucky Retirement Systems and members applying for retirement are impacted by this regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 61.590.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for

the first full year the administrative regulation is to be in effect. None.

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

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

(c) How much will it cost to administer this program for the first year? The administration of this regulation will not increase Kentucky Retirement Systems' normal administrative expenses in connection with processing retirement applications.

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FINANCE AND ADMINISTRATION CABINET
Kentucky Retirement Systems
(Amendment)

105 KAR 1:390. Employment after retirement.

RELATES TO: KRS 16.505(15), 61.510, 61.590, 61.637, 78.510(3), (18), 26 U.S.C. 401(a), 26 C.F.R. 1.401-1, 1.401(a)-1

STATUTORY AUTHORITY: KRS 61.645(9)(e)(g), 61.637(18)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.645(9)(e)(g) requires the Board of Trustees of Kentucky Retirement Systems to promulgate administrative regulations necessary or proper in order to carry out the purposes and provisions of KRS 61.510[61.545] to 61.705, 16.505 [16.540] to 16.652, and 78.510[78.520] to 78.852. KRS 61.637(18) requires Kentucky Retirement Systems to promulgate regulations to implement the requirements of KRS 61.637. This administrative regulation concerns the administration of KRS 61.637 in conjunction with federal law regarding bona fide separation from service and changes in employment relationship if a retired member returns to employment with a Kentucky Retirement Systems participating employer [after retirement]. 26 C.F.R. 1.401-1(a)(2) requires that a qualified plan expressly provide in its statutes and administrative regulations (plan documents) how it shall administer its plan in accordance with federal law in order to maintain the tax qualified [tax-qualified] status of the plan. This administrative regulation is necessary to maintain the tax qualified status of the Kentucky Employees Retirement System, the County Employees Retirement System, and the State Police Retirement System under 26 U.S.C. 401(a), and to comply with the provisions established in 26 C.F.R. 1.401-1(b)(1)(i) and 1.401(a)-1.

Section 1. Definitions. (1) "Initial retirement date" means the member's effective retirement date as described [defined] in KRS 61.590(5).

(2) "Participating employer" means any [an] employer that participates in one of the systems administered by Kentucky Retirement Systems.

(3) "Participating position", for the purpose of this administrative regulation, means a regular full-time position as defined in KRS 61.510(21) and 78.510(21) or a regular full-time officer position as defined in KRS 16.505(22).

(4)[(3)] "Reemployment", for purposes of this administrative regulation [KRS 61.637], means the retired member's first date of employment with a participating employer following his or her initial retirement date, [- as long as the retiree has not had a cessation of membership as provided in KRS 61.535 and 61.550.]

Section 2. Form 6000 Certification. (1) In order to retire with Kentucky Retirement Systems, an eligible member shall submit a

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Form 6000, Notification of Retirement. The Form 6000, Notification of Retirement, shall comply with the requirements of KRS 61.590 and 105 KAR 1:200.

(2) Kentucky Retirement Systems shall not process a Form 6000, Notification of Retirement, until the member certifies on the Form 6000 that there is no prearranged agreement for reemployment with a participating employer after the member's initial retirement date. ["Reemployed"; for purposes of this administrative regulation, shall not include a transfer to another position with the same employer.]

Section 3. Employment after Retirement. (1) A retired member who is reemployed with a participating employer in any position shall have:

(a) A bona fide separation from service as provided in subsection (2) of this section; and

(b) A break in service as provided in subsection (3) of this section.

(2)(a) "Bona fide separation from service" as provided in this section shall include a cessation of the employment relationship between the member and the member's employer without a prearranged agreement when the member retires that he or she will return to work for any participating employer in any capacity.

(b) "Prearranged agreement" as provided in this section shall not include reemployment accepted more than twelve (12) calendar months after the member's initial retirement date.

(c) An elected official's retirement shall be voided due to the existence of a prearranged agreement if, within twelve (12) months of initial retirement, the official is reelected and takes office in the same position from which the official retired.

(3) "Break in service" as provided in this section shall require that:

(a) A member who retired from a hazardous position shall have a one (1) calendar month break in service before returning to work with any participating employer in a hazardous participating position.

(b) Except as provided in (3)(a) of this section, a member who retired from a hazardous or nonhazardous position shall have a three (3) calendar month break in service before returning to work with any participating employer.

(4)(a) If a retired member seeks reemployment with a participating employer within twelve (12) months of his or her initial retirement date, the participating employer shall certify that there was no prearranged agreement. The participating employer shall file at the retirement office a completed Form 6751, Employer Certification Regarding Reemployment.

(b) The retired member shall file at the retirement office a completed Form 6754, Member Reemployment Certification.

(5) Kentucky Retirement Systems shall issue a final determination to the retired member no later than thirty (30) days after receipt of all required forms and additional requested information. If Kentucky Retirement Systems determines that the retired member failed to have a bona fide separation from service or a break in service and returned to work with any participating employer, the retired member's retirement shall be voided and he or she shall repay all retirement allowances, dependent child payments, and health plan premiums paid by the Kentucky Retirement Systems. [(1) Returning to work in a participating position. A retired member who is reemployed in a participating position shall have:

(a) A bona fide separation from service as provided in subsection (2) of this section; and

(b) A break in service as provided in subsection (3) of this section.

(2) "Bona fide separation from service" as provided in this section shall include a cessation of the employment relationship between the member and the member's employer without a prearranged agreement when the member retires that the member will return to work for any participating employer in any capacity. "Bona fide separation from service" shall also exclude a prearranged agreement to return to work for any participating employer as a leased employee.

(3) "Break in service" as provided in this section shall require that:

(a) A member who retired from a hazardous position shall have a one (1) calendar month break in service before returning to work with a participating employer in a hazardous participating position.

(b) A member who retired from a nonhazardous position shall have a three (3) calendar month break in service before returning to work with a participating employer in a hazardous participating position.

(c) A member who retired from a hazardous or a non-hazardous position shall have a three (3) calendar month break in service before returning to work with a participating employer in a non-hazardous participating position.

(4) If the member does not have a bona fide separation from service and a break in service and returns to work with any participating employer, the retired member's retirement shall be voided. The member shall repay all retirement allowances, dependent child payments, and health plan premiums paid by the Kentucky Retirement Systems.]

Section 4. Independent Contractors and Leased Employees.

(1)(a) Both the retired member and the participating employer shall file written notice at the retirement office if, within twelve (12) months of the retired member's initial retirement date, the retired member provides services to a participating employer as an independent contractor or as a leased employee.

(b) The participating employer shall file at the retirement office a Form 6752, Employer Certification of Independent Contractor/Leased Employee.

(c) The retired member shall file at the retirement office a completed Form 6754, Member Reemployment Certification as well as a complete copy of any contract under which services are provided by the retired member to the participating employer.

(2) Kentucky Retirement Systems shall issue a final determination to the retired member no later than thirty (30) days after receipt of all required forms and requested information. If Kentucky Retirement Systems determines that the retired member is an employee of the participating employer, rather than an independent contractor or leased employee through a leasing company, staffing agency, or other entity, the retired member shall be subject to the provisions of Section 3 of this administrative regulation and shall be required to have a "bona fide separation from service" and "break in service." [(4) Returning to work for a participating employer in a nonparticipating position. A retired member who is employed by a participating employer in a nonparticipating position shall have:

(a) A bona fide separation from service as provided in subsection (2) of this section; and

(b) A break in service as provided in subsection (3) of this section.

(2) "Bona fide separation from service" as provided in this section means a cessation of the employment relationship between the member and the member's last employer without a prearranged agreement when the member retires that the member will return to work for the member's last employer in any capacity. "Bona fide separation from service" shall also exclude a prearranged agreement to return to work for the member's last employer as a leased employee.

(a) For purposes of this section, all participating employers in the Kentucky Employees Retirement System and the State Police Retirement System shall be treated as the same participating employer.

(b) For purposes of this section, County Employees Retirement System agencies, each county, as defined by KRS 78.510(3), shall be treated as a separate employer.

(3) "Break in service" as provided in this section shall require that a member who retired from a hazardous or nonhazardous position and becomes employed in a nonparticipating hazardous or nonhazardous position shall have a three (3) calendar month break in service before returning to work with a participating employer.]

Section 5. Volunteers. (1)(a) Both the retired member and participating employer shall file written notice at the retirement office if, within twelve (12) months of the retired member's initial retirement date, the retired member seeks to volunteer with a participating employer.

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(b) The participating employer shall file at the retirement office a completed Form 6753, Employer Certification of Volunteer.

(c) The retired member shall file at the retirement office a completed Form 6754, Member Reemployment Certification.

(2) Kentucky Retirement Systems shall issue a final determination to the retired member no later than thirty (30) days after receipt of all required forms and requested information. If Kentucky Retirement Systems determines that the retired member is an employee of the participating employer, rather than a volunteer, the retired member shall be subject to the provisions of Section 3 of this administrative regulation and shall be required to have a "bona fide separation from service" and "break in service." [(4) Returning to work with the same employer in a position required to participate in a retirement system. A retired member who is reemployed in a position required to participate in a different retirement system not administered by Kentucky Retirement Systems shall have:

(a) A bona fide separation from service as provided in subsection (2) of this section; and

(b) A break in service as provided in subsection (3) of this section.

(2) "Bona fide separation from service" as provided in this section means a cessation of the employment relationship between the member and a participating employer without a prearranged agreement when the member retires that the member will return to work for the same employer in any capacity. "Bona fide separation from service" shall also exclude a prearranged agreement to return to work for the same employer as a leased employee.

(a) For purposes of this section, all participating employers in the Kentucky Employees Retirement System and the State Police Retirement System shall be treated as the same participating employer.

(b) For purposes of this section, County Employees Retirement System agencies, each county, as defined by KRS 78.510(3), shall be treated as a separate employer.

(3) "Break in service" as provided in this section shall require that:

(a) A member who retired from a hazardous position and becomes employed by the same employer in a hazardous position required to participate in a retirement system not administered by Kentucky Retirement Systems, shall have a one (1) calendar month break in service before returning to work with a participating employer.

(b) A member who retired from a nonhazardous position and becomes employed by the same employer in a hazardous position required to participate in a retirement system not administered by Kentucky Retirement Systems, shall have a three (3) calendar month break in service before returning to work with a participating employer.

(c) A member who retired from a nonhazardous position and becomes employed by the same employer in a participating non-hazardous or hazardous position in a retirement system not administered by Kentucky Retirement Systems, shall have a three (3) calendar month break in service before returning to work with a participating employer.

(4) If the member does not have a bona fide separation from service and a break in service and returns to work with the same employer in a position required to participate in a retirement system not administered by Kentucky Retirement Systems, the retired member's retirement shall be voided. The member shall repay all retirement allowances, dependent child payments, and health plan premiums paid by the Kentucky Retirement Systems.]

Section 6. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Form 6000, "Notification of Retirement," June 2019;

(b) Form 6751, "Employer Certification Regarding Reemployment," June 2019;

(c) Form 6752, "Employer Certification of Independent Contractor/Leased Employee," June 2019; and

(d) Form 6753, "Employer Certification of Volunteer," June 2019.

(e) Form 6754, "Member Reemployment Certification," June 2019.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Retirement Systems, 1260 Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, from 8 a.m. to 4:30 p.m. [(4) Returning to work for a different participating employer in a nonparticipating position. A retired member who becomes employed in a nonparticipating position shall not be required to have a bona fide separation from service if the retired member becomes employed with a different participating employer than the retired member's employer prior to retirement.

(2) A retired member who becomes employed in a nonparticipating position shall have a three (3) calendar month break in service.

(3) For purposes of this section, all participating employers in the Kentucky Employees Retirement System and the State Police Retirement System shall be treated as the same participating employer.

(4) For purposes of this section, for County Employees Retirement System agencies, each county, as defined by KRS 78.510(3), shall be treated as a separate employer.]

Section 7. (1) Requirements before employment after retirement. The retired member and the reemploying employer shall certify that when the member retired, there was no prearranged agreement to employ the retired member after the member's retirement. The retired member and reemploying employer shall complete and file at the retirement office the Form 6751, Retired Member and Employer Certification Regarding Reemployment.

(2) The retired member shall report in writing to Kentucky Retirement Systems future employment in any capacity with any participating employer.

Section 8. Status as an Employee. (1) A retired member and a Kentucky Retirement Systems participating employer shall file written notice at the retirement office if the retired member has accepted employment with the participating employer under a personal services contract.

(2) If Kentucky Retirement Systems determines that the retired member is an employee of the participating employer, rather than an independent contractor, the retired member shall be subject to Sections 1 through 5 of this administrative regulation.

(3) Kentucky Retirement Systems shall take appropriate action to determine the individual's status as an independent contractor or employee.

Section 9. Leased Employees. (1) A retired member and a participating employer shall file at the retirement office written notice if the retired member is performing work for the participating employer through a private leasing company, a temporary staffing agency, or any other company.

(2) If the retirement system determines that the retired member is an employee of the participating employer, rather than the private leasing company, temporary staffing agency, or other company, the retired member shall be subject to the provisions of Sections 1 through 5 of this administrative regulation.

Section 10. Incorporation by Reference. (1) "Member and Employer Certification Regarding Reemployment", Form 6751, May 2009, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, from 8 a.m. to 4:30 p.m.]

DAVID L. EAGER, Executive Director

APPROVED BY AGENCY: June 12, 2019

FILED WITH LRC: June 12, 2019, at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A

public hearing on this administrative regulation shall be held on July 22, 2019 at 9:00 a.m. at the Kentucky Retirement Systems, 1270 Louisville Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing of their intent to attend. If no

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notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until July 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: Mark C. Blackwell, Executive Director Office of Legal Services, Kentucky Retirement Systems, 1260 Louisville Road, Frankfort, Kentucky 40601, email mark.blackwell@kyret.ky.gov, phone (502) 696-8800 ext. 8645, fax (502) 696-8801.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Mark C. Blackwell

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures and requirements for retired members and participating employers prior to the reemployment of a retiree with a participating employer in Kentucky Retirement Systems.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the procedures and requirements for retired members and participating employers prior to the reemployment of a retiree with a participating employer in Kentucky Retirement Systems.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the procedures and requirements for retired members and participating employers prior to the reemployment of a retiree with a participating employer in Kentucky Retirement Systems.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by establishing the procedures and requirements for retired members and participating employers prior to the reemployment of a retiree with a participating employer in Kentucky Retirement Systems in accordance with KRS 61.637. The regulation outlines certification and notification requirements of both retirees and participating employers.

(2) If 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 will assist in the effective administration of the statutes by implementing the twelve (12) month threshold promulgated by 2019 House Bill 419 as well as further defining the requirements for elected officials pursuant to 2019 House Bill 55.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to implement the twelve (12) month threshold promulgated by 2019 House Bill 419 as well as further defining the requirements for elected officials pursuant to 2019 House Bill 55.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by outlining the processes and procedures for administration of Kentucky Retirement Systems' retired reemployed requirements while implementing the twelve (12) month threshold promulgated by 2019 House Bill 419 as well as further defining the requirements for elected officials pursuant to 2019 House Bill 55.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes by outlining the processes and procedures for administration of Kentucky Retirement Systems' retired reemployed requirements while implementing the twelve (12) month threshold promulgated by 2019 House Bill 419 as well as further defining the requirements for elected officials pursuant to 2019 House Bill 55.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this

administrative regulation: Kentucky Retirement Systems, retirees seeking reemployment with a participating employer within twelve (12) months of their initial retirement date, and employers participating in the Kentucky Employees Retirement System, State Police Retirement System, or the County Employees Retirement System.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Retirees seeking reemployment with a participating employer shall have a bona fide separation from service and break in service. Upon retirement, retired members shall certify that they had no prearranged agreement to return to employment with a participating employer in Kentucky Retirement Systems. Upon hiring a retiree within twelve (12) months of the retiree's initial retirement date, a participating employer shall certify that there was no prearranged agreement to hire the retiree.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Aside from some limited exceptions, the employer shall remit employer contributions on all creditable compensation earned by the employee during the period of reemployment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation is necessary to maintain the tax qualified status of the Kentucky Employees Retirement System, the County Employees Retirement System, and the State Police Retirement System under 26 U.S.C. 401(a), and to comply with the provisions established in 26 C.F.R. 1.401-1(b)(1)(i) and 1.401(a)-1. Moreover, compliance with this regulation will allow retired members to return to work with participating employers without the voiding of their retirement. Participating employers will be permitted to hire retired members.

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

(a) Initially: Kentucky Retirement Systems is already administering KRS 61.637 and no additional cost will arise from implementation of 2019 HB 419 and 55.

(b) On a continuing basis: The employer will be required to remit employer contributions on most retired members pursuant to KRS 61.637(17).

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

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

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

(9) TIERING: Is tiering applied? (Explain why or why not) Tiering is not applied. All employers seeking to hire retired members are subject to the same processes and procedures.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 61.637, 26 U.S.C. 401(a).

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for

the first full year the administrative regulation is to be in effect. The employer will have to remit employer contributions on certain employees.

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

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

(c) How much will it cost to administer this program for the first year? Ultimately, the cost to Kentucky Retirement Systems should be negligible, as KRS 61.637 is already being administered by Kentucky Retirement Systems. Moreover, administrative costs should be reduced by the twelve (12) month threshold for review established by 2019 House Bill 419.

(d) How much will it cost to administer this program for subsequent years? Ultimately, the cost to Kentucky Retirement Systems should be negligible, as KRS 61.637 is already being administered by Kentucky Retirement Systems. Moreover, administrative costs should be reduced by twelve (12) month threshold for review established by 2019 House Bill 419.

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

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

**GENERAL GOVERNMENT CABINET
Kentucky Board of Dentistry
(Amendment)**

201 KAR 8:540. Dental practices and prescription writing.

RELATES TO: KRS 218A.205(3), 313.060, 313.085, 422.317, 42 U.S.C. 300ee-2 note

STATUTORY AUTHORITY: KRS 218A.205(3), 313.060(1)

NECESSITY, FUNCTION, AND CONFORMITY: ~~42 U.S.C. 300ee-2 note requires each state to institute the guidelines issued by the United States Centers for Disease Control and Prevention or guidelines that are equivalent to those promulgated by the Centers for Disease Control and Prevention concerning recommendations for preventing the transmission of the human immunodeficiency virus and the hepatitis B virus during exposure-prone invasive procedures.~~ KRS 313.060(1) requires the board to promulgate administrative regulations relating to dental practices that shall include minimal requirements for documentation and Centers for Disease Control and Prevention compliance. 42 U.S.C. 300ee-2 note requires each state to institute the guidelines issued by the United States Centers for Disease Control and Prevention or guidelines that are equivalent to those promulgated by the Centers for Disease Control and Prevention concerning recommendations for preventing the transmission of the human immunodeficiency virus and the hepatitis B virus during exposure-prone invasive procedures. KRS 218A.205(3)(a) and (b) require the board, in consultation with the Kentucky Office of Drug Control Policy, to establish mandatory prescribing and dispensing standards related to controlled substances. This administrative regulation establishes requirements for preventing the transmission of the human immunodeficiency virus and the hepatitis B virus during exposure-prone invasive procedures and includes minimal requirements for documentation and Centers for Disease Control and Prevention compliance. This administrative regulation also establishes mandatory prescribing and dispensing standards related to controlled substances.

Section 1. Applicability. A dentist who is authorized to prescribe, dispense or administer a controlled substance shall comply with the standards of acceptable and prevailing dental practice for prescribing, dispensing or administering a controlled substance established in this administrative regulation. ~~Definitions.~~

~~(1) "Invasive procedure" means a procedure that penetrates hard or soft tissue.~~

~~(2) "Oral surgery" means any manipulation or cutting of hard or soft tissues of the oral or maxillofacial area and associated procedures, by any means, as defined by the American Dental Association, utilized by a dentist licensed by 201 KAR Chapter 8 and within the dentist's scope of training and practice.]~~

Section 2. Professional [Minimum Documentation] Standards for Documentation of [all] Dental Patients. (1) Each patient's dental records shall be kept by the dentist for a minimum of:

(a) Seven (7) years from the date of the patient's last treatment;

(b) Seven (7) years after the patient's eighteenth [(18)] birthday, if the patient was seen as a minor; or

(c) Two (2) years following the patient's death.

(2) Each dentist shall comply with KRS 422.317 regarding the release of patient records.

(3) The dentist shall keep accurate, readily accessible, and complete records which include:

(a) The patient's name;

(b) The patient's date of birth;

(c) The patient's medical history and documentation of the physical exam of the oral and perioral tissues;

(d) The date of treatment;

(e) The [tooth number, surfaces, or] areas to be treated;

(f) The material used in treatment;

(g) Local or general anesthetic used, route of administration [the type], and the amount;

(h) Sedation [Sleep or sedation dentistry] medications used, the [type, and the] amount, [;] monitoring techniques, and the names of qualified personnel that monitor the patient;

(i) Diagnostic, therapeutic, and laboratory results, if any;

(j) The findings and recommendations of the dentist and a description of each evaluation or consultation, if any;

(k) Treatment objectives;

(l) Any and all treatments performed and provided;

(m) All medications, including date, type, dosage, and quantity prescribed or dispensed; and

(n) [(m)] Any post treatment instructions.

(4) Prior to prescribing or administering a Schedule II controlled substance, the dentist shall obtain the signature of the patient or a legal guardian on a consent form authorizing the treatment plan, including the use of controlled substances.

Section 3. Prescribing and Administration of Controlled Substances [Prescription Writing Privileges]. (1) In accordance with KRS 313.035, a dentist may prescribe, dispense and administer any non-controlled drug necessary within the scope of the dentist's practice if the dentist:

(a) ~~Is~~ is licensed pursuant to KRS Chapter 313. [201 KAR 8:532;]

(2) In accordance with KRS 313.035, a dentist may administer and prescribe controlled substances necessary within the scope of the dentist's practice if the dentist:

(a) [(b)] Has obtained a registration [license] from the Drug Enforcement Administration; and

(b) [(e)] Has enrolled with and utilizes the Kentucky All Schedule Prescription Electronic Reporting System as required by KRS 218A.202.

(3) [(2)] A dentist shall not compound any scheduled drugs or dispense [any Schedule I, Schedule II, or Schedule III] controlled substances [containing Hydrocodone] for use by the patient outside the office setting.

(4) A dentist shall obtain and document all relevant information in a patient's medical and dental records in a legible manner and in sufficient detail to enable the board to determine whether the dentist is conforming to professional standards.

(5) [Section 4. Prescribing of Controlled Substances by Dentist.

(4)] Prior to the initial prescribing or administration of a Schedule II [any] controlled substance, each dentist shall:

(a) Obtain [Except as provided in subsection (2) of this section,] and review a KASPER report for [all available data on the patient;] the twelve (12) month period immediately preceding the patient

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encounter and appropriately utilize that data in the evaluation and treatment of the patient.

(b) Document relevant information in the patient's record;

(c) Consider the available information to determine if it is medically appropriate and safe to administer or prescribe a controlled substance;

(d) Obtain a complete medical history and conduct a physical examination of the oral or maxillofacial area of the patient and document the information in the patient's medical record;

(e) Make a written treatment plan stating the objectives of the treatment and further diagnostic examinations required;

(f) Discuss the risks and benefits of the use of controlled substances with the patient, the patient's parent if the patient is an unemancipated minor child, or the patient's legal guardian or health care surrogate, including the risk of tolerance and drug dependence; and

(g) Obtain written consent for the treatment.

(6) Pursuant to KRS 218A.172, the requirements set forth within this section shall not apply when prescribing or administering a controlled substance:

(a) As part of the patient's hospice or end of life treatment;

(b) To a patient admitted to a licensed hospital as an inpatient, or observation patient, during and as part of a normal and expected part of the patient's course of care at that hospital.

(c) For the treatment of pain is associated with cancer or with the treatment of cancer; or

(d) As necessary to treat a patient in an emergency situation.

(7) A dentist shall not issue a prescription for more than a three (3) day supply of a Schedule II controlled substance to treat pain as an acute medical condition unless the following conditions have been met:

(a) The dentist, in his or her professional judgment, believes that more than a three (3) day supply of a Schedule II controlled substance is medically necessary to treat the patient's pain as an acute medical condition;

(b) The dentist has documented in the patient's dental record the acute medical condition and lack of alternative treatment options which justifies deviation from the three (3) day supply limit established in this subsection; and

(c) The patient and the dentist have attested by signature in the patient's dental record that alternative pain relief methods using non-opioid medications were explained to the patient and that the patient understands the risk of dependency when prescribed more than a three (3) day supply of a Schedule II controlled substance.

(d) A dentist licensed in Kentucky shall not act to avoid the three (3) day supply limit established in subsection (4) of this section by prescribing or administering a Schedule II controlled substance to a patient on consecutive or multiple occasions. [(2) A dentist shall not be required to obtain and review a KASPER report if:

(a) 1. The dentist prescribes a Schedule III controlled substance or one (1) of the Schedule IV controlled substances listed in subsection (3) of this section after the performance of oral surgery; and

2. No more than a seventy-two (72) hour supply of the controlled substance is prescribed;

(b) The dentist prescribes or dispenses a Schedule IV or V controlled substance not listed in subsection (3) of this section; or

(c) 1. The dentist prescribes pre-appointment medication for the treatment of procedure anxiety; and

2. The prescription is limited to a two (2) day supply and has no refills.

(3) A dentist shall obtain and review a KASPER report before initially prescribing any of the following Schedule IV controlled substances:

(a) Ambien;

(b) Anorexics;

(c) Ativan;

(d) Klonopin;

(e) Librium;

(f) Nubain;

(g) Oxazepam;

(h) Phentermine;

(i) Soma;

(j) Stadol;

(k) Stadol NS;

(l) Tramadol;

(m) Versed; and

(n) Xanax.]

(8) [(4)] A dentist may provide one (1) refill within thirty (30) days of the initial prescription for the same controlled substance for the same amount or less or prescribe a lower schedule drug for the same amount without a clinical reevaluation of the patient by the dentist.

(9) [(5)] A patient who requires additional prescriptions for a controlled substance shall be clinically reevaluated by the dentist, and the provisions of this section for the prescription of controlled substances[-] shall be followed. If the course of treatment extends beyond three (3) months, the dentist shall obtain and review a new KASPER report. The dentist shall provide any new information about the treatment and modify or terminate treatment as appropriate.

(10) Any violation of this section shall be considered a violation of KRS 218A.205(3), KRS 313.060, and KRS 313.085, and shall constitute a legal basis for disciplinary action pursuant to KRS 313.035.

Section 4[5]. Penalties and Investigations. (1) A licensee convicted of a felony offense related to[~~prescribing and dispensing of~~] a controlled substance shall, at a minimum, be [~~permanently~~]banned from prescribing or dispensing a controlled substance.

(2) A licensee convicted of a misdemeanor offense relating to the prescribing of a controlled substance shall, at a minimum, have a five (5) year ban from prescribing or dispensing a controlled substance.

(3) A licensee disciplined by a licensing board of another state relating to the improper, inappropriate, or illegal prescribing or dispensing of controlled substances shall, at a minimum, have the same disciplinary action imposed by this state or the disciplinary action prescribed in subsection (1) or (2) of this section, whichever is greater.

(4) A licensee who is disciplined in another state or territory for an act or omission which would constitute a violation of Section 4 of this administrative regulation[who holds a Kentucky license] and fails to notify the board in writing of the disciplinary action within thirty (30) days of the finalization of the action shall be subject to a fine of \$1,000 for each failure to report.

(5) If a licensee has been convicted of or has entered a plea of guilt, an Alford plea, or a plea for nolo contendere to any felony offense relating to a controlled substance; has successfully participated in and completed a diversion program; and whose case has been dismissed and the record of that offense expunged; the board may, in its discretion, reinstate the licensee's prescribing and dispensing privileges contingent upon the licensee entering into an agreed order with terms and conditions deemed necessary by the board to implement a minimum five (5) year period of probation.

(6) The board may privately admonish a licensee who fails to register for an account with the Kentucky All Schedule Prescription Electronic Reporting System or who fails to meet the requirements of[Section 4 of] this administrative regulation. If a licensee is privately admonished by the board under this subsection, the licensee shall[receive a private admonishment from the board and] be given no more than thirty (30) days to become compliant after which time the dentist may[shall] be fined up to[a minimum of \$500 to a maximum of] \$10,000 for failure to be registered with KASPER. A licensee who fails to utilize KASPER prior to prescribing a controlled substance may be fined up to \$250 per incident by the board.

(7) [(6)] The Law Enforcement Committee of the Board shall produce a charging decision on the complaint within 120 days of the receipt of the complaint, unless[an extension for a definite period of time is requested by a law enforcement agency due to an ongoing criminal investigation.]

(a) An investigation pertaining to the prescribing or dispensing of a controlled substance make it impossible to timely present the grievance to the designated review committee, person, or Law

Enforcement Committee; or

(b) The board holds a complaint pertaining to the prescribing or dispensing of a controlled substance in abeyance to permit a law enforcement agency, upon the agency's request, to perform or complete an investigation.

(c) If a charging decision is not produced within 120 days of the date of receipt of the complaint under this subsection, the investigative report shall plainly state the circumstances pursuant to paragraphs (a) and (b) of this subsection that prevented the timely production of the charging decision.

Section 5[6]. Infection Control Compliance. (1) Each licensed dentist in the Commonwealth of Kentucky shall:

(a) Adhere to the standard precautions outlined in the Guidelines for Infection Control in Dental Health-Care Settings published by the Centers for Disease Control and Prevention; and

(b) Ensure that any person under the direction, control, supervision, or employment of a licensee whose activities involve contact with patients, teeth, blood, body fluids, saliva, instruments, equipment, appliances, or intra-oral devices adheres with those same standard precautions.

(2) The board or its designee shall perform an infection control inspection of a dental practice or office utilizing the Infection Control Inspection Checklist, if the board and its staff become aware of a violation, or a reliable allegation of a violation, of the Guidelines for Infection Control in Dental Health-Care Settings which may pose imminent public risk.

(3)(a) Any dentist who is found deficient upon an initial infection control inspection shall have thirty (30) days to be in compliance with the guidelines and submit a written plan of correction to the board.

(b) The dentist may receive a second inspection after the thirty (30) days have passed and may be required to pay reasonable expenses to the board or its designee to conduct the inspection, not to exceed the amount of the fine required for failure of a second inspection pursuant to this chapter.

(c) If the dentist fails the second inspection, he or she shall be immediately temporarily suspended pursuant to KRS 313.085 until proof of compliance is provided to the board and the dentist pays the fine as prescribed in this chapter[201-KAR 8-520].

(4) Any licensed dentist, licensed dental hygienist, [~~registered dental assistant,~~] or dental assistant [~~in training for registration~~] who performs invasive procedures may seek counsel from the board if he or she tests seropositive for the human immunodeficiency virus or the hepatitis B virus.

(5) Upon the request of a licensee or registrant, the executive director of the board or designee shall convene a confidential expert review panel to offer counsel regarding under what circumstances, if any, the individual may continue to perform invasive procedures.

Section 6[7]. Termination of a Patient-Doctor Relationship. In order for a licensed dentist to terminate the patient-doctor relationship, the dentist shall:

(1) Provide written notice to the patient of the termination;

(2) Provide emergency treatment for the patient for thirty (30) days from the date of termination; and

(3) Retain a copy of the letter of termination in the patient records.

Section 7[8]. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Guidelines for Infection Control in Dental Health-Care Settings", December 2003, or the latest version issued by the Centers for Disease Control on Infection Control in Dental Health Care Setting; and

(b) "Infection Control Inspection Checklist", July 2010.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Dentistry, 312 Whittington Parkway, Suite 101, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. through 4:30 p.m. This material is also available on the board's Web site at <http://dentistry.ky.gov>.

JEFF ALLEN, Executive Director

APPROVED BY AGENCY: June 14, 2019

FILED WITH LRC: June 14, 2019 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this Amendment shall be held on July 25 at 9:00 a.m. Eastern Time at the Kentucky Board of Dentistry, 312 Whittington Parkway, Suite 101, Louisville, Kentucky 40222. 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 an opportunity to comment on the proposed Amendment. 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 Amendment. Written comments shall be accepted through July 31, 2019. Send written notification of intent to be heard at the public hearing, or written comments on the proposed Amendment to the contact person below.

CONTACT PERSON: Jeff Allen, Executive Director, Kentucky Board of Dentistry, 312 Whittington Parkway, Suite 101, Louisville, Kentucky 40222, phone (502) 429-7280, fax (502) 429-7282, email jeffrey.allen@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jeff Allen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements for dental prescribing, administration, and dispensing of substances.

(b) The necessity of this administrative regulation: KRS 313.060 requires the board to promulgate administrative regulations relating to dental practices which shall include conscious sedation of patients and compliance with federal controlled substances regulations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes requirements for dental prescribing, administration, and dispensing of substances in compliance with federal controlled substances regulations.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes requirements for dental prescribing, administration, and dispensing of substances in compliance with state controlled substances law.

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

(a) How the amendment will change this existing administrative regulation: This amendment updates the requirements for dental prescribing, administration, and dispensing of substances.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary in order to bring the administrative regulation up-to-date with the current legal and regulatory requirements and best practices for dental prescribing, administration, and dispensing of substances.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment updates the requirements for dental prescribing, administration, and dispensing of substances in compliance with federal controlled substances regulations.

(d) How the amendment will assist in the effective administration of the statutes: The amendment ensures that the requirements for dental prescribing, administration, and dispensing of substances are up-to-date in compliance with state controlled substances law.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will primarily affect the approximately three thousand prescribing dentists licensed in Kentucky. Patients who receive prescriptions from a Kentucky licensed dentist may also be affected.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this

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administrative regulation, if new, or by the change, if it an amendment, including:

(a) List the actions that each of the related entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Each entity will be required to prescribe substances and document their prescriptions in accordance with applicable law and administrative regulations.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No costs will be accrued as a result of the amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment will result in a healthier patient population and the avoidance of potentially costly violations of applicable law and administrative regulations.

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

(a) Initially: No cost.

(b) On a continuing basis: No cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? Not applicable.

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

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

(9) TIERING: Is tiering applied? No; this amendment impacts all similarly situated practitioners 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? None.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 218A.205(3), 313.060(1).

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

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

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

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

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

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

Revenues (+/-): None.

Expenditures (+/-): None.

Other explanation: Not applicable.

PUBLIC PROTECTION CABINET
Kentucky Real Estate Authority
Kentucky Real Estate Commission
(Amendment)

201 KAR 11:011. Definitions for 201 KAR Chapter 11.

RELATES TO: KRS 324.010(1), 324.046(1), 324.111(1), (2), (3), (4), (6), 324.117(1), (5), 324.160(4)(j), (m), (r), 324.410(1), 324.420(1), (2), (3), (4), (5)

STATUTORY AUTHORITY: KRS 324.117(5), 324.281(5),

324.282

NECESSITY, FUNCTION, AND CONFORMITY: KRS 324.281(5) and KRS 324.282 require[requires] the Real Estate Commission, with the approval of the executive director of the Kentucky Real Estate Authority, to promulgate administrative regulations necessary to implement KRS Chapter 324. This administrative regulation defines terms used in the implementation of KRS Chapter 324.

Section 1. Definitions. (1) "Academic credit hour" means:

(a) One (1) college semester hour; or

(b) Sixteen (16), fifty (50) minute hours of actual classroom attendance.

(2) "Advertising" or "advertisement" means any manner, method, or activity by which a licensee of the commission makes known a specific property for sale or lease or any services for which a real estate license is required. Advertising shall not include:

(a) Private communications between a licensee and a client or prospective client; or

(b) Directional or pointer signs whose sole purpose is to provide directions to a listed property and includes no identifying licensee or brokerage information.

(3) "Agency" means the specific consensual relationship between the principal broker and the client for a contemplated transaction, by oral or written agreement.

(4) "Agency consent agreement" means the form prescribed by the commission and used by a principal broker and a client to establish the agency relationship in writing.

(5) "Branch office" means a physical place of business for a real estate brokerage company in addition to the main office location.

(6) "Broker-affiliated training program" means one (1) or more post-license education course offered for post-license educational credit provided or sponsored by a principal broker.

(7) "Business relationship" means any arrangement, other than the current real estate transaction, whereby a licensee and a party have or had a mutual, ongoing financial interest in any company, corporation, or other income-producing venture, including any prior representation by the licensee for the party's purchase or sale of real estate.

(8) "Client" means a person or persons, or entity or entities, for whom a licensee provides real estate brokerage services and:

(a) Who has entered into a written agreement with a principal broker for provision of real estate brokerage services;

(b) With whom or for whom a licensee completes an offer to purchase or lease for real estate; or

(c) For whom a licensee otherwise by oral agreement performs acts of real estate brokerage;

(d) For the purposes of selling or leasing real estate, the client shall be the person or persons, or entity or entities, authorized to sell or lease the subject real estate.

(9) "Commercial transaction" means a transaction other than the sale of a single-family residential property, multifamily property containing four (4) units or less, or single-family residential lot.

(10) "Company" means an office or firm, headed by a principal broker, formed to offer real estate brokerage services, which is organized as:

(a) A registered business entity;

(b) Sole proprietorship; or

(c) Another business arrangement.

(11) "Confidential information" means information received or sent, verbally or in writing including transaction paperwork and files, by a licensee, that could materially compromise the negotiating position of a client or prospective client. Confidential information shall include information that is not required to be disclosed by law and:

(a) Is provided to a licensee by a client or prospective client to a real estate transaction;

(b) Describes or affects the client or prospective client's bargaining position or motivation; or

(c) Is designated in writing as confidential by the client or prospective client.

(12) "Consumer" means a person or entity with whom a

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licensee exchanges information that is public in nature, but otherwise does not perform acts of real estate brokerage and with whom no written or oral agency agreement or fiduciary relationship exists.

(13) "Continuing education course" means a course approved pursuant to the requirements set forth in KRS 324.085(1) and the administrative regulations promulgated thereunder.

(14) "Contract deposit" means earnest money delivered to a licensee in conjunction with real estate sales contract [licensed agent as part of an offer to enter a contract for the sale of real property] after:

- (a) The offer or counteroffer is accepted; and
- (b) An executory contract exists.

(15) "Delivery" means transmission of an item to a party by:

- (a) Mail;
- (b) Facsimile transmission;
- (c) Electronic mail; or
- (d) Hand.

(16) "Designated agency" means a type of agency prescribed by KRS 324.121(2).

(17) "Designated agent" means one (1), or more, licensee(s) designated by the principal broker in accordance with KRS 324.121(1) to provide real estate brokerage services to a client.

(18) "Distance education course" means a continuing or post-license education course or a pre-license course that:

(a) Is taught in a setting in which the teacher and the student are in separate locations; and

(b) Uses instructional methods that include internet-based training, computer-based training (CBT), satellite transmission, or teleconferencing.

(19) "Dual agency" means a type of agency in which:

(a) The principal broker and all affiliated licensees simultaneously represent, in the same transaction, buyer and seller, or lessor and lessee, as clients of the principal broker in a limited fiduciary capacity, or

(b) In companies that practice designated agency, only the principal broker or a designated manager shall be a dual agent for that transaction pursuant to KRS 324.121(2).

(20) "Education cycle" means the time period commencing on January 1 of each year and ending at 11:59 p.m. on December 31 of each year.

(21) "Family relationship" means any known familial relationship between a licensee and party regardless of distance of the relationship.

(22)[(4)] ["False, misleading, or deceptive advertising" means an advertisement that is prohibited pursuant to KRS 324.117(1) because the advertisement:

- (a) Is contrary to fact;
- (b) Leads a person to a mistaken belief or conclusion; or
- (c) Knowingly made a representation that is contrary to fact.]

"Fraud" or "fraudulent dealing" means a material misrepresentation that:

- (a) Is:
 - 1. Known to be false; or
 - 2. Made recklessly;
- (b) Is made to induce an act;
- (c) Induces an act in reliance on the misrepresentation; and
- (d) Causes injury.

(23) "Guaranteed sales plan" means an offer or solicitation to guarantee the:

(a) Sale of an owner's real estate; or

(b) Purchase of the owner's real estate if the owner's real estate is not sold by the licensee.

(24) "Initial sales associate license" means an original Kentucky sales associate license issued by the commission for the first time or a Kentucky sales associate license re-issued to a person who formerly held a license issued by the commission.

(25) "License recognition" means a licensing process that:

(a) Replaces reciprocal agreements; and

(b) May be used to obtain a Kentucky license by an individual who holds an active and unrestricted out-of-state sales associate's or broker's license, or the equivalent of either.

(26) "Licensee" means a person properly licensed as a broker or sales associate to perform acts of real estate brokerage in

accordance with KRS Chapter 324 and the administrative regulations promulgated thereto.

(27) "Personal relationship" means a platonic or nonplatonic friendship between a licensee and a party.

(28) "Post-license education course" means a course approved by the commission that satisfies a portion of the forty-eight (48) hours of education required by KRS 324.085(2).

(29) "Pre-license course" means a course approved by the commission that satisfies an education requirement to obtain a real estate sales associate license.

(30) "Promotional activities" means every solicitation or attempt to bring about the sale, exchange, lease, assignment, license or award with regard to a timeshare interest in real estate.

(31) "Prospective client" means a person or entity who has not entered into a written or oral agreement with a principal broker to provide real estate brokerage services, but to whom a licensee offers real estate brokerage services or from whom a licensee receives confidential information related to a contemplated real estate transaction.

(32) "Renewal cycle" means the time period commencing on April 1 of each year and ending on March 31 two (2) calendar years thereafter.

(33) "Security deposit" is defined by KRS 383.545(13).

(34) "Single agency" is the type of agency where the principal broker and all affiliated licensees of the real estate brokerage company act as an agent for a buyer or seller, or a lessor or lessee, as the client on the same side of a transaction.

(35) "Single family residential real estate dwelling" means any:

(a) Duplex, triplex, fourplex; condominium, townhouse, or residential unit;

(b) Manufactured home permanently attached to land; or

(c) Residential unit otherwise conveyed on a unit-by-unit basis, even if the unit is part of a larger building or parcel of real estate containing more than four (4) residential units.

(36) "Team" or "teams" is a group of more than one (1) licensee working together who are:

(a) Affiliated with the same principal broker;

(b) Led by a team leader; and

(c) Representing themselves to the public utilizing the same authorized alternate or assumed name to brand, advertise and broker real estate.

(37) "Team leader" means an individual who is designated by his or her principal broker to be the head of the team.

(38) "Timeshare" means an arrangement under which one may acquire, for a period of time, the right to use and occupy property, for a recurring block of time. A timeshare may be:

(a) A timeshare estate, wherein a freehold estate or an estate for years is conveyed;

(b) A vacation lease, wherein a buyer purchases the right to occupy a specific accommodation for a specified time period over a specified number of years;

(c) A vacation license or club membership, wherein a buyer acquires the right to occupy an undesignated unit at certain real property(ies) during a specific time each year for a specific number of years; or

(d) Variations of the above that result in the acquisition of the right to use real property for a limited period of time in recurring intervals for a number of years.

(39) "Transactional brokerage" means a form of brokerage service(s) provided to either or both parties to a transaction wherein the licensee owes to the parties only the duties owed to a consumer and wherein confidential information is not relayed between the parties by the licensee, unless so directed by the sending party.

(40) "Unrestricted license" means a license that is not under any order of limitation or discipline by another jurisdiction's regulatory body.

(41)[(5)] "Without delay" means as soon as reasonably possible based on the availability of the licensee and the client and subject to any written agreement between them as to how and when written offers will be submitted.

(42) "Without unreasonable delay" means:

(a) For contract deposits or money belonging to others, within three (3) business days of the receipt by the principal broker or an

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affiliated licensee of the principal broker; or

(b) For notice required by KRS 324.360(8), within seventy-two (72) hours of the listing agent's receipt of the prospective purchaser's written and signed offer to purchase [within three (3) business days of the creation of an executory contract for the sale or lease of real property].

LOIS ANN DISPONETT, Chair
H.E. CORDER II, Executive Director
K. GAIL RUSSELL, Secretary

APPROVED BY AGENCY: June 12, 2019

FILED WITH LRC: June 13, 2019 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 23, 2019 at 10:00 a.m. Eastern Time at the Kentucky Real Estate Commission, 656 Chamberlain Ave., Suite B, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this Department in writing by five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on July 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: Heather L. Becker, General Counsel, Kentucky Real Estate Authority, 656 Chamberlin Ave., Suite B, Frankfort, Kentucky 40601, phone (502) 564-7760, fax (502) 564-1538 email: Heather.Becker@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Heather L. Becker

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the definitions to be used in 201 KAR Chapter 11.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure consistent use of terminology by licensees and the commission when referencing 201 KAR Chapter 11.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 324.281(5) and KRS 324.282 authorize the Kentucky Real Estate Commission to promulgate administrative regulations to carry out and enforce the provisions of KRS Chapter 324.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By setting definitions, this administrative regulation ensures consistency in administration and enforcement by the commission.

(2) If 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 proposed by this administrative regulation will change the existing administrative regulation by locating all of the commonly defined terms applicable to KRS Chapter 324 and 201 KAR Chapter 11 in one administrative regulation.

(b) The necessity of the amendment to this administrative regulation: Amendment to this administrative regulation is necessary to provide consistent and predictable definitions for the terms referenced in KRS Chapter 324 and 201 KAR Chapter 11.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 324.281(5) and KRS 324.282 require the Real Estate Commission, with the approval of the executive director of the Kentucky Real Estate Authority, to promulgate administrative regulations necessary to implement KRS Chapter 324. This administrative regulation defines terms used in the implementation of KRS Chapter 324 and 201 KAR Chapter 11.

(d) How the amendment will assist in the effective administration of the statutes: Amendment to this administrative regulation is necessary to provide consistent and predictable definitions for the terms referenced in KRS Chapter 324 and 201 KAR Chapter 11.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect all of the Real Estate Commission's current licensees, as well as prospective license applicants. The Commission currently licenses approximately 23,000 real estate agents. Additionally, this administrative regulation will affect all of the Real Estate Commission's current preclicensing, post licensing, and continuing education providers. Lastly, this administrative regulation will affect the general public to the extent they interact with licensed real estate professionals.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Prospective licensees and members of the general public are not required to take any action to be in compliance with this administrative regulation. Current licensees may have to augment their business models to comply with new licensing terminology. Education providers will be required to amend their instruction materials to comply with the new terminology and content of this administrative regulation.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, all those effected will benefit from the consistent and predictable usage of language to minimize compliance pitfalls.

(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 costs associated with implementing this administrative regulation.

(b) On a continuing basis: There will be no continuing costs associated with implementing this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is necessary to implement and enforce this administrative regulation.

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

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

(9) TIERING: Is tiering applied? No, tiering is not applied because this administrative regulation applies equally to all regulated entities.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments or school districts) will be impacted by this administrative regulation? The Kentucky Real Estate Commission will be impacted by this administrative regulation. Also, local real estate boards may 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 324.281(5), KRS 324.282, and KRS 324.117 require the Real Estate Commission to promulgate administrative regulations.

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

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

(c) How much will it cost to administer this program for the first year? There is no cost associated with administering this administrative regulation for the first year.

(d) How much will it cost to administer this program for subsequent years? There is no cost associated with administering this administrative regulation for subsequent years.

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

Revenues (+/-): Neutral
Expenditures (+/-): Neutral

Other Explanation: This administrative regulation is not expected to have a fiscal impact.

**PUBLIC PROTECTION CABINET
Kentucky Real Estate Authority
Kentucky Real Estate Commission
(Amendment)**

201 KAR 11:105. Advertising~~[listed property; advertising public information about specific property; under what conditions consent and authorization of owner or principal broker is required].~~

RELATES TO: KRS 324.117, 324.160(d),~~(w)~~ (6)

STATUTORY AUTHORITY: KRS 324.117, 324.281(5), 324.282

NECESSITY, FUNCTION, AND CONFORMITY: KRS 324.281(5) and KRS 324.282 require the Kentucky Real Estate Commission, with the approval of the executive director of the Kentucky Real Estate Authority, to promulgate regulations~~[KRS 324.282 requires the Kentucky Real Estate Commission to promulgate administrative regulations]~~ to carry out and enforce the provisions of KRS Chapter 324. KRS 324.117(5) requires the commission to promulgate administrative regulations to define false, misleading, or deceptive advertising. KRS 324.117(6) requires the commission to promulgate administrative regulations to define the manner in which licensees may utilize any internet electronic communications for advertising or marketing. This administrative regulation establishes certain standards for real estate advertising practices, including internet advertising~~[real estate].~~

Section 1. Consent Required to Advertise a Specific Property.

(1) A licensee~~[real estate broker]~~ shall not;

(a) Advertise~~[offer]~~ real estate for sale or lease without the written consent of the owner; ~~[-]~~

(b) Place signage or another advertisement on any private or listed property without the written consent of the owner; or

(c) Promote or advertise a specific property listed by another principal broker unless the licensee has requested and obtained written consent from the listing principal broker.

2. Nothing in subsection (c)1. of this Section shall prohibit a licensee from utilizing public information, including information regarding real estate sold by another licensee, to market his or her real estate brokerage services to consumers.

(2) A licensee who served as a buyer's agent may advertise his or her role in a sale after a closing has occurred if the advertisement clearly and visibly states that the licensee's participation was as the buyer's agent~~[(1) If promoting or advertising the real estate to the general public, the broker shall have a written listing agreement signed by the owner.~~

~~(2)(a) After a closing has occurred, a buyer's agent may~~

~~advertise his or her role in the sale.~~

~~(b) The advertisement shall conspicuously state that his or her participation was as the buyer's agent~~].

Section 2. Content Required. (1)(a) The principal broker, or his or her designee, shall establish written standards for review and approval of advertising activity of the real estate company and affiliated licensees to ensure compliance with KRS Chapter 324 and 201 KAR Chapter 11.

(b) Pursuant to KRS 324.160(6), a principal broker shall held liable for repeated violations by affiliated licensee(s) in violation of either the principal broker's standards for review and approval or KRS Chapter 324 and 201 KAR Chapter 11.

(2) All advertisements shall include:

(a) The full name of the real estate brokerage company registered with the commission; or

(b) The full name of the principal broker registered with the commission, with a clear designation of principal broker status.

(3)(a) An advertisement may include in written text an affiliated licensee's first and last name, or an alternate or assumed name as set forth in Section 4 of this administrative regulation, as registered with the commission, so long as the principal broker has informed the commission of the affiliated licensee's first and last name, or alternate or assumed name being used.

(b) Each affiliated licensee shall be limited to the use of one (1) nickname in place of, or along with, the licensee's first name, and it shall be the responsibility of each individual licensee to inform the commission of the nickname being used. A nickname shall not be used unless the nickname is reflected on the licensee's online services portal before use.

Section 3. Display of Content Required. (1) The content required by Section 2(2) shall be displayed in written text. The content must:

(a) Be clear and visible to a typical observer of the advertisement; and

(b) Not be false, misleading, or deceptive.

(2) The content permitted by Section 2(3) of this administrative regulation shall not appear larger than the content required by Section 2(2) of this administrative regulation.

(3)(a) For purposes of real estate company or licensee advertisement via internet, social media, or other digital or online forms of advertisement, every individual viewable page or post shall constitute a separate advertisement; and

(b) Each advertisement shall contain the content required by Section 2(2) in the page or post header, or visible on the page or post without the observer scrolling or otherwise navigating the page or post to view the content required; or

(c) If a page or post cannot reasonably comply with subsection (2)(b) of this Section, the advertisement shall include a clickable direct link, that is clear, visible, and identifiable as a link, to a page, post or user account profile that contains the content required displayed in accordance with subsection (2)(b) of this Section.

(4) Advertisements that include an audiovisual presentation shall include an audible announcement of the content required by Section 2(2) of this administrative regulation at the beginning of the advertisement.

(5) Any internet, social media, and other digital or online form of advertising that was true and accurate at the time it was made shall not be in violation.

(6) A logo that does not contain written text of the content required by Section 2(2) shall not constitute a substitute for the content required.

(7) If the licensee's principal business location is outside Kentucky, the advertisement shall:

(a) Indicate that the licensee holds a Kentucky license to broker real estate; and

(b) Include the regulatory jurisdiction of the licensee's principal business location.

Section 4. Use of Alternate or Assumed Names. (1) More than one licensee, whether a team, group, other business arrangement, or real estate brokerage company, may collectively use an alternate or assumed name for advertising with the written

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approval of the principal broker.

(2) Prior to allowing the use of an alternate or assumed name in advertising, a principal broker shall:

(a) Register, or ensure the registration of, the alternate or assumed name with the commission; and

(b) Ensure that the alternate or assumed name is populated in the principal broker's or affiliated licensee's online services portal.

(3) An alternate or assumed name shall not:

(a) Contain terms that could lead the public to believe the licensee(s) approved to use the alternate or assumed name is offering real estate brokerage services independent of the principal broker, unless the alternate or assumed name is for the real estate brokerage company;

(b) Be used more than once by licensees within the principal broker's brokerage company; or

(c) Contain the word "company", "firm", or "realty" unless the alternate or assumed name is being used by a real estate brokerage company.

(4) An alternate or assumed name may include reference to a name or person, so long as the name or person has not lost the ability to engage in real estate brokerage through administrative discipline or by operation of law.

(5) If the alternate or assumed name applies to a team or group, the alternate or assumed name shall include the word "team" or "group".

Section 5. False, Misleading, or Deceptive Advertising. (1) False, misleading, or deceptive advertising is prohibited pursuant to KRS 324.117(1).

(2) An advertisement is false, misleading, or deceptive, if the advertisement:

(a) Is known or reasonably should have been known to be false or contrary to fact at the time of placement of the advertisement;

(b) Misleads the general public in any manner; or

(c) Would lead a reasonable observer to believe that real estate brokerage services were being offered by an affiliated licensee(s) independent of their real estate brokerage company or principal broker.

Section 6. Guaranteed Sales Plans. (1) If a licensee advertises a guaranteed sales plan, the licensee shall disclose in writing whether:

(a) A fee is charged for participation;

(b) The real estate shall meet qualifications for participation;

(c) The purchase price under a guarantee of purchase of the owner's real estate shall be determined by the licensee or a third party; and

(d) The owner of the real estate shall purchase other real estate listed for sale by the licensee or his or her designee.

(2) The advertisement may be in print, on radio, or on television and shall be clear and understandable.

(a) For print advertising, the letters that shall be at least twenty-five (25) percent the size of the largest letter in the advertisement;

(b) For television advertising, written communication shall appear on the screen at least three (3) seconds for the first line of lettering and at least one (1) second for each additional line of lettering and in letters that shall be at least eighteen (18) video scan lines in size for uppercase letters or at least twenty-four (24) video scan lines for uppercase capital letters if uppercase capitals and lowercase letters are used.

Section 7. Client Advertising. Consistent with KRS 324.117(4), a licensee shall advise his or her client of the advertising obligations contained in this administrative regulation.

Section 8. Effective Dates. The Commission shall begin enforcement of Section 3 sixty (60) days after the effective date of this administrative regulation. [A sign shall not be placed on any property by a real estate licensee without the written consent of the owner.]

Section 3. (1) In accordance with KRS 324.117(4), a real estate property print advertisement of a licensee, or an offer or

solicitation to provide brokerage services by a licensee, related to marketing or identifying real property for sale or lease, shall include the name of the real estate company where the licensee's license is held or the name of the real estate company's principal broker with whom the licensee is affiliated.

(2) If the advertisement includes the name of the real estate company's principal broker, the principal broker's name shall include his or her title as principal broker or be followed by any other clear designation of his or her status as a broker.

(3) The requirements in this section shall apply to advertisements for listed property only.

Section 4. (1) An advertisement by a licensee shall be approved by:

(a) The principal broker with whom the licensee is affiliated; or

(b) An individual designated by the principal broker to approve the advertisement.

(2) A principal broker shall require his or her licensee to:

(a) Discuss with the property owner-client the advertising requirements of KRS 324.117;

(b) Provide the owner-client with written notice of these advertising requirements; and

(c) Obtain the owner-client's written agreement to comply with the advertising requirements.

Section 5. A licensee may advertise public information, such as sales price, of properties that have sold and closed, even if the licensee did not have a written listing agreement on the property.

Section 6. A licensee may advertise the listings of another real estate brokerage company if:

(1) The licensee has requested and obtained the listing broker's consent to advertise the other company's listing or listings; and

(2) The licensee's advertisement of the other company's listings includes the complete name of the other real estate brokerage company.]

LOIS ANN DISPONETT DATE, Chair

H.E. CORDER II, Executive Director

K. GAIL RUSSELL, Secretary

APPROVED BY AGENCY: June 12, 2019

FILED WITH LRC: June 13, 2019 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 23, 2019 at 10:00 a.m. Eastern Time at the Kentucky Real Estate Commission, 656 Chamberlain Ave., Suite B, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this Department in writing by five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on July 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: Heather L. Becker, General Counsel, Kentucky Real Estate Authority, 656 Chamberlin Ave., Suite B, Frankfort, Kentucky 40601, phone (502) 564-7760, fax (502) 564-1538 email: Heather.Becker@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Heather L. Becker

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation modernizes advertising standards for licensees of the Kentucky Real Estate Commission.

(b) The necessity of this administrative regulation: This

administrative regulation is necessary to clarify the regulatory regime governing advertising by licensees of the Kentucky Real Estate Commission.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 324.281 requires the commission to promulgate administrative regulations with the approval of the executive director of the Kentucky Real Estate Authority to fulfill the duties and functions assigned to the commission by KRS Chapter 324. KRS 324.117(5) requires the commission to promulgate administrative regulations to define false, misleading, or deceptive advertising. KRS 324.117(6) requires the commission to promulgate administrative regulations to define the manner in which licensees may utilize any internet electronic communications for advertising or marketing. This administrative regulation establishes certain standards for real estate advertising practices, including internet advertising.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The Real Estate Commission is charged with licensing and regulating real estate brokers and sales associates in Kentucky. This administrative regulation consolidates and clarifies the rules that will govern advertising for all licensees 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: This administrative regulation consolidates and clarifies the rules that will govern advertising for Real Estate Commission licensees in Kentucky. This proposed administrative regulation amendment includes new provisions relating to advertising by teams and advertising on the internet, including social media.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation is necessary to establish certain standards for real estate advertising practices, including internet advertising.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 324.117(5) requires the commission to promulgate administrative regulations to define false, misleading, or deceptive advertising. KRS 324.117(6) requires the commission to promulgate administrative regulations to define the manner in which licensees may utilize any internet electronic communications for advertising or marketing. This administrative regulation establishes certain standards for real estate advertising practices, including internet advertising.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation consolidates and clarifies the rules that will govern advertising for Real Estate Commission licensees in Kentucky.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect all of the Real Estate Commission's current licensees, as well as prospective license applicants. The Commission currently licenses approximately 23,000 licensees. Additionally, this administrative regulation will affect all of the Real Estate Commission's current precensing, post licensing, and continuing education providers. Lastly, this administrative regulation will affect the general public to the extent they interact with licensed real estate professionals.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Prospective licensees and members of the general public are not required to take any action to be in compliance with this administrative regulation. Current licensees will likely be required to reprint all advertising and redevelop websites and social media accounts to comply with the Sections 2 and 3 of this administrative regulation. Additionally, active real estate brokerage companies will have to augment their business models to comply with new licensing terminology. Education providers will be required to amend their instruction materials to comply with the new advertising rules contained in this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no compliance costs for prospective licensees and members of the general public. Current licensees and active real estate brokerage companies will likely incur significant expense reprinting and redeveloping all facets of their business advertisement. Costs will vary for each licensee and real estate brokerage company. Education providers may incur incidental expenses in amending their instruction materials to comply with the new advertising rules contained in this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, licensees will adequately apprise the public of all information required in a print or social media advertisement.

(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 cost to implement this administrative regulation on a continuing basis.

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

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

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

(9) TIERING: Is tiering applied? No. Tiering is not applied because this administrative regulation applies equally to all regulated entities.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Real Estate Commission 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 324.281(5), KRS 324.282, and KRS 324.117 require the Real Estate Commission to promulgate administrative regulations with the approval of the executive director of the Kentucky Real Estate Authority to fulfill the duties and functions outlined in KRS Chapter 324. KRS 324.117 requires the commission to promulgate administrative regulations to define advertising practices, including internet electronic communications for advertising or marketing.

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

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

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

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

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

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

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: This administrative regulation is not expected to have a fiscal impact.

BOARDS AND COMMISSIONS
Board of Embalmers and Funeral Directors
(Amendment)

201 KAR 15:010. Definitions.

RELATES TO: KRS Chapter 316[316.030(6)(e),—(7), 316.150(3)(b), (c)]

STATUTORY AUTHORITY: KRS 316.210(1)

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation defines terms used in 201 KAR Chapter 15[KRS 316.030 and 316.150].

Section 1. Definitions. (1) "Chapel" means an area where a family and the public may pay their respects to a deceased human being, or an area where funerals or memorial services can be held, and which is a separate and distinct area from the preparation room.

(2) "Direct Supervision" of an apprentice means that a Kentucky-licensed funeral director or a Kentucky-licensed embalmer, as appropriate, is:

(a) Physically present with the apprentice, and;

(b) Personally observing and guiding the activities of the apprentice.

(3) "Establishment Manager" as required by KRS 316.125(4), shall be a Kentucky-licensed embalmer or a Kentucky-licensed funeral director, who spends at least seventy five (75) percent of his or her professional time during regular business hours in the establishment for which he or she is designated as the Establishment Manager, or actively performing funeral directing or embalming services originating in, or based in, the establishment as defined in KRS 316.010 and these administrative regulations.

(4) "Full time" for an apprentice means at least forty (40) hours per week under the personal supervision of a licensed embalmer or licensed funeral director and shall not include time spent "on call".

(5)[~~Section 2.~~] "Operating a funeral establishment" means the management of a funeral establishment including the daily activities of funeral directing, embalming, bookkeeping, and supervision of employees.

(6) "Preparation room" means an area with a minimum of 100 square feet, which is used exclusively to prepare dead human bodies for final disposition if arterial or cavity injection is a function of the establishment, and which is separate and distinct from the viewing area, chapel, or any other part of the establishment.

(7) "Supervisor" of an apprentice means the supervisor of record.

(8) "Supervisor's designee" means a Kentucky-licensed funeral director or a Kentucky-licensed embalmer, as appropriate, who has been approved by the supervisor of record to supervise an apprentice.

(9) "Viewing area" means an area in which a family and the public may pay their respects to a deceased human being.

HAROLD E. CORDER, II, Board Chair

APPROVED BY AGENCY: June 13, 2019

FILED WITH LRC: June 14, 2019 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on 10:00 a.m. on July 22, 2019 at 911 Leawood 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 is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who

wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on July 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 below.

CONTACT PERSON: David Trimble, Board Counsel, 911 Leawood Drive, Frankfort, Kentucky 40601, phone (502) 782-8823, fax (502) 564-3969, email davidc.trimble@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: David Trimble

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation provides definitions of terms for the regulations chapter 201 KAR Chapter 15

(b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure that the particular meaning intended by the Board for the defined terms is consistent across its regulations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS Chapter 316 authorizes the Board to issue regulations governing specific licensure and establishment operations. Definitions of specific terms are necessary to ensure consistent terminology across administrative regulations.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Definitions of specific terms are necessary to such regulations so that members of the board and consumers are able to understand the meaning of terms used.

(2) If 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 reorganizes definitions from throughout the regulations chapter, and adds new terms created by other administrative regulation amendments.

(b) The necessity of the amendment to this administrative regulation: The amendment brings all definitions from the chapter into one Section, and adds new terms created in other regulation amendments.

(c) How the amendment conforms to the content of the authorizing statutes: KRS Chapter 316 authorizes the Board to issue regulations governing specific licensure and establishment operations. Definitions of specific terms are necessary to such regulations.

(d) How the amendment will assist in the effective administration of the statutes: Definitions of specific terms are necessary to such regulations so that users of the regulation understand its meaning.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Board licenses over 500 funeral establishments, and several thousand individual embalmers and funeral directors.

(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: There are no specific compliance requirements for definitions.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: No additional cost.

(c) As a result of compliance, what benefits will accrue to the entities: Clearer understanding of terms used in regulations.

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

(a) Initially: There is no cost to the board to implement this administrative regulation.

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(b) On a continuing basis: There is no cost to the board 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 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 increase in fees or funding is necessary for the implementation and enforcement of this administrative regulation.

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

(9) TIERING: Is tiering applied? No tiering is applied because the definitions established in this administrative regulation apply equally to all persons.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Embalmers and Funeral Directors will be affected by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS Chapter 316 authorizes this Board to promulgate regulations for administration and regulation of embalmers and funeral directors, and funeral establishments.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

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

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

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

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

BOARDS AND COMMISSIONS Board of Embalmers and Funeral Directors (Amendment)

201 KAR 15:015. Per diem compensation of board members.

RELATES TO: KRS 316.170, 316.210

STATUTORY AUTHORITY: KRS 316.170(5), 316.210(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 316.210(1) authorizes the Kentucky Board of Embalmers and Funeral Directors to promulgate administrative regulations to carry

out and enforce the provisions of KRS Chapter 316. KRS 316.170(5) requires the board to establish the amount of per diem compensation to be paid beginning January 1, 2015, to board members, not to exceed \$200. This administrative regulation establishes the per diem amount to be received by board members.

Section 1. Beginning January 1, ~~2020~~[2015], each member of the board shall receive ~~\$200~~[175] for each day spent in the discharge of his or her official duties.

HAROLD E. CORDER, II, Board Chair

APPROVED BY AGENCY: June 13, 2019

FILED WITH LRC: June 14, 2019 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on 10:00 a.m. on July 22, 2019 at 911 Leawood 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 is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on July 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 below.

CONTACT PERSON: David C. Trimble, General Counsel, 911 Leawood Drive, Frankfort, Kentucky 40601, phone (502) 782-8823, fax (502) 564-3969, email davidc.trimble@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: David C. Trimble

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes the per diem compensation of Board members.

(b) The necessity of this administrative regulation: KRS Chapter 316 provides that Board members shall be compensated for their time spent on Board business.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS Chapter 316 provides that Board members shall be compensated for their time spent on Board business.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS Chapter 316 provides that Board members shall be compensated for their time spent on Board business.

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

(a) How the amendment will change this existing administrative regulation: The amendment provides a slight increase (\$25) in per diem compensation.

(b) The necessity of the amendment to this administrative regulation: Per Diem compensation of Board members was last increased in 2015.

(c) How the amendment conforms to the content of the authorizing statutes: KRS Chapter 316 provides that Board members shall be compensated for their time spent on Board business.

(d) How the amendment will assist in the effective administration of the statutes: KRS Chapter 316 provides that Board members shall be compensated for their time spent on Board business.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Board licenses and regulates over 500 funeral establishments and several thousand individual embalmers and funeral directors. KRS Chapter 316 provides that Board members shall be compensated for their time spent on

Board business.

(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: There is no cost to regulated entities to comply with this amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: There is no cost to regulated entities to comply with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities: An increase in per diem compensation will help ensure the ability to recruit competent Board members in the future.

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

(a) Initially: This administrative regulation will cost the board \$25 per board member per day, approximately \$1500 for the first year.

(b) On a continuing basis: This administrative regulation will cost the board \$25 per board member per day, approximately \$1500 per year on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation and enforcement of this administrative regulation will be funded by license fees.

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

(9) TIERING: Is tiering applied? No tiering was used because all board members are treated equally 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 Kentucky Board of Embalmers and Funeral Directors will be affected by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS Chapter 316 provides that Board members shall be compensated for their time spent on Board business.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

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

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

(c) How much will it cost to administer this program for the first year? An increase in per diem compensation will cost \$1,500 annually.

(d) How much will it cost to administer this program for subsequent years? An increase in per diem compensation will cost \$1,500 annually.

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

regulation.

Revenues (+/-): Neutral.

Expenditures (+/-): + \$1,500 per year

Other Explanation: None

BOARDS AND COMMISSIONS
Board of Embalmers and Funeral Directors
(Amendment)

201 KAR 15:030. Fees.

RELATES TO: KRS 316.125(2)(a), 316.130(2), (4), (5), 316.132, 316.140(2)

STATUTORY AUTHORITY: KRS 316.125(2)(a), 316.130(2), (4), (5), 316.132, 316.140(2), 316.210(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 316.125(2)(a), 316.130(2), (4), and (5), 316.132, 316.140(2), and 316.210(1) require the board to set out in administrative regulations certain fees. This administrative regulation establishes these fees.

Section 1. The funeral establishment license fee shall be \$200 [~~\$150~~]. The renewal fee for a funeral establishment license shall be \$200.

Section 2. The embalmer's license renewal fee shall be \$100[~~seventy-five (75)~~ dollars].

Section 3. The funeral director's license renewal fee shall be \$100[~~seventy-five (75)~~ dollars].

Section 4. The late fee for a funeral establishment license renewal shall be \$200[~~\$150~~].

Section 5. The late fee for an embalmer's license renewal or a funeral director's license renewal shall be \$100[~~seventy-five (75)~~ dollars].

Section 6. The fee for an annual courtesy card shall be \$100[~~seventy-five (75)~~] dollars.

Section 7. The fee for processing an application for a continuing education program shall be \$150 per program; for programs included in a conference or convention setting, the total fee shall not exceed \$600.

Section 8. (1) A processing fee of twenty-five (25) dollars shall apply to all document actions not covered by other fees established by KRS Chapter 316 or this administrative regulation such as national exam score requests, out-of-state verifications, official name change requests, paper submissions of any documents or applications that are available to submit electronically, and revisions to wall licensure.

(2) A fee of sixty (60) dollars shall be assessed for any payment made to the Board pursuant to KRS Chapter 316 or these administrative regulations, where the check, draft, money order or other financial instrument is returned by the payor's bank or financial institution for insufficient funds, or cannot otherwise be deposited into the board's account.

Section 9.~~The registration fee for funeral director apprenticeship is established in KRS 316.030(7).~~

Section 10.~~The registration fee for embalmer apprenticeship is established in KRS 316.030(7).~~

Section ~~14~~[4]. The registration fee for Level II funeral director registration shall be fifty (50) dollars.

Section ~~10~~[12]. The registration fee for Level II embalmer registration shall be fifty (50) dollars.~~[Section 13. The examination fee for initial licensure as an embalmer is established in KRS 316.030(4)(g).~~

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Section 14. The examination fee for initial licensure as a funeral director is established in KRS 316.030(5)(f)-[

Section 11[45]. All fees assessed under this administrative regulation shall be nonrefundable.

HAROLD E. CORDER, II, Board Chair

APPROVED BY AGENCY: June 13, 2019

FILED WITH LRC: June 14, 2019 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on 10:00 a.m. on July 22, 2019 at 911 Leawood 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 is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on July 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 below.

CONTACT PERSON: David C. Trimble, General Counsel, 911 Leawood Drive, Frankfort, Kentucky 40601, phone (502) 782-8823, fax (502) 564-3969, email davidc.trimble@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: David C. Trimble

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes fees to be charged for various Board functions.

(b) The necessity of this administrative regulation: Activities of this Board are covered by licensee fees; no general fund dollars are appropriated.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The fees listed in this regulation are set or limited in the statute, and this amended regulation conforms to those limits.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Activities of this Board are covered by licensee fees; no general fund dollars are appropriated.

(2) If 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 makes minor increases to various fees, commensurate with increased operating costs.

(b) The necessity of the amendment to this administrative regulation: The amendment makes minor increases to various fees, commensurate with increased operating costs. Management changes and new personnel at the board uncovered severe deficiencies and the need for funds to address items such as updating equipment, establishing connections to state networks, and proper recordkeeping.

(c) How the amendment conforms to the content of the authorizing statutes: The fees listed in this regulation are set or limited in the statute, and the regulation conforms to those limits.

(d) How the amendment will assist in the effective administration of the statutes: This amendment updates fees within the parameters established by statute in order to address severe operational deficiencies and financial shortfalls discovered by new management and staff. The updated fees will improve operations and the board staff's ability to serve the licensees and the board members efficiently and effectively with updated equipment.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This Board licenses over 500 funeral

establishments and approximately 2,000 embalmers and funeral directors.

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

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: Regulated entities will have to pay slightly higher fees for things such as license renewal.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: The exact cost of compliance with this administrative regulation will vary with the number of licensees and activities in which a regulated entity is engaged. Individual licensee fees are \$100 and establishment license fees are \$200. Additional fees outlined address matters such as late payments and education course approvals.

(c) As a result of compliance, what benefits will accrue to the entities: As a result of compliance, licensees will enjoy the continued and more efficient operation of this licensure board, including enhanced communication and responsiveness.

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

(a) Initially: There will be minimal implementation costs for the board to update forms and processes.

(b) On a continuing basis: No ongoing costs are anticipated as a result of this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: To the extent additional funding is needed for implementation, funds will come from licensure fees.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This amendment increases fees to address severe operational deficiencies and financial shortfalls of the board discovered by new management and staff. The updated fees will improve operations and the board staff's ability to serve the licensees and the board members efficiently and effectively with updated equipment.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The amendment increases fees across the board to address severe operational deficiencies and financial shortfalls of the board discovered by new management and staff. The updated fees will improve operations and the board staff's ability to serve the licensees and the board members efficiently and effectively with updated equipment.

(9) TIERING: Is tiering applied? No tiering is applied. Fees apply to all licensees.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Embalmers and Funeral Directors 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 316.125(2)(a), 316.130(2), (4), and (5), 316.132, 316.140(2), and 316.210(1)

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. 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 amendment should generate an additional \$20,000 to the Board over the fiscal year. The amendment will not generate revenue for the state or local government.

(b) How much revenue will this administrative regulation

generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This amendment should consistently generate an additional \$20,000 to the Board per fiscal year. The amendment will not generate revenue for the state or local government.

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

(d) How much will it cost to administer this program for subsequent years? No additional costs are anticipated 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 (+/-): + \$20,000 per year

Expenditures (+/-): Neutral

Other Explanation: Increased revenue from fees will help this Board to continue and improve operations.

BOARDS AND COMMISSIONS
Board of Embalmers and Funeral Directors
(Amendment)

201 KAR 15:040. Examination.

RELATES TO: KRS 316.030 ~~4(h), 5(g) [(3)(h), (4)(g)]~~
STATUTORY AUTHORITY: KRS 316.210(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 316.030 ~~(4)(h) and (5)(g) [(3)(h), (4)(g)]~~ require an applicant for an embalmer's license or a funeral director's license to pass an examination [examinations] prepared or approved by the board. ~~[The function of] This administrative regulation establishes the administration [is to establish the procedure], content, and evaluation [time] of examinations by the board.~~

Section 1. Exam administration. ~~[Content of Examination.] (1) The board shall administer examinations for funeral director and embalmer licenses at the regular meetings [The examination for a license to practice embalming and the examination for a license to practice funeral directing shall be written examinations administered by one (1) or more members] of the board.~~

(2) An applicant seeking to take an examination administered by the board shall submit the fee required by KRS 316.030(4)(g) or (5)(f) to the board at least forty-five (45) days before the desired examination. ~~[The subjects to be covered in the examination for embalmer's license shall be as follows:]~~

(a) The examination fee shall include a license in good standing for the remainder of the fiscal year if the applicant is successful in the examination.

(b) An applicant shall be entitled to only one (1) examination for each fee paid.

(3) One (1) or more members of the board shall administer the written examination for a license issued by the board.

(4) Any applicant may seek a reasonable accommodation in the manner of giving an examination by the board.

(a) Accommodations will be considered by the board on the same basis as reasonable accommodations that may be available under the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq.

(b) Any applicant who takes an examination with a reasonable accommodation must still perform the essential functions of taking the examination and meet the normal performance requirements for passage.

(5) At the discretion of the board, examinations may be held at other times, if necessary.

Section 2. Content of Examination. (1) The examination for an embalmer's license shall include the following subjects:

- (a) Embalming;
- (b) Anatomy;
- (c) Microbiology;
- (d) Pathology;
- (e) Chemistry;

- (f) Restorative art;
- (g) Mortuary administration and law;
- (h) Accounting;
- (i) Sociology; ~~[and]~~
- (j) Psychology; ~~and~~
- (k) Requirements of KRS Chapter 316 and the administrative regulations promulgated pursuant to KRS Chapter 316.

~~(2) [(3) The subjects to be covered in]~~ The examination for a funeral director's license shall include the following subjects ~~[be as follows]:~~

- (a) Mortuary administration;
- (b) Ethics;
- (c) Accounting;
- (d) Sociology;
- (e) Business law;
- (f) Primary psychology;
- (g) Transportation rules;
- (h) Hygiene, sanitation, and disinfection; and
- (i) Requirements of KRS Chapter 316 and the administrative regulations promulgated pursuant to KRS Chapter 316.

~~(3) [(4)(a) The board may accept the results of the examination prepared and administered by the Conference of Funeral Service Examining Boards and the results of an oral examination on the subject of embalming administered by one (1) or more members of the board in lieu of the written examination for embalmer's license administered by the board.~~

~~(b) The applicant seeking to take an examination administered by the board shall submit the fee required by KRS 316.030(3)(g) or (4)(f) to the board at least thirty (30) days before the date of the examination. The fee shall include a license in good standing for the remainder of the fiscal year if the applicant is successful in the examination.~~

~~Section 2. Procedure for Examination.~~ (1) ~~Applicants shall attain a proficiency of seventy-five (75) percent on any examination to make a passing grade.~~

(2) ~~All written questions for the embalmer's and funeral director's examinations are the property of the board and applicants shall return the questions to the board with their answers.~~

Section 3. Evaluation ~~[Time of Examinations].~~ A score of seventy-five (75) percent on any examination administered by the board shall constitute a passing grade. ~~(1) Examinations administered by the board shall normally be held for funeral director's and embalmer's licenses at the regular meeting of the board in December and June of each year.~~

(2) ~~Examinations may be held at other regular or special meetings at the board's discretion.~~

(3) ~~An applicant shall be entitled to only one (1) examination for each fee.]~~

Section 4. Alternative to Written Examination by the Board. An applicant who has successfully completed the examination prepared and administered by the Conference of Funeral Service Examining Boards may request exemption from the written examination. The applicant shall successfully complete an oral examination administered by one (1) or more members of the board in lieu of the written examination.

HAROLD E. CORDER, II, Board Chair

APPROVED BY AGENCY: June 13, 2019

FILED WITH LRC: June 14, 2019 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on 10:00 a.m. on July 22, 2019 at 911 Leawood 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 is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is

made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on July 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 below.

CONTACT PERSON: David C. Trimble, General Counsel, 911 Leewood Drive, Frankfort, Kentucky 40601, phone (502) 782-8823, fax (502) 564-3969, email davidc.trimble@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: David C. Trimble

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation provides the procedure for examinations required by the Board.

(b) The necessity of this administrative regulation: Licensees are required to pass certain examinations for licensure.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 316.030(4)(h), (5)(g) require an applicant for an embalmer's license or a funeral director's license to pass examinations prepared or approved by the board.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 316.030(4)(h), (5)(g) require an applicant for an embalmer's license or a funeral director's license to pass examinations prepared or approved by the board.

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

(a) How the amendment will change this existing administrative regulation: This amendment clarifies timing requirements associated with examinations, expands examination from twice per year to monthly, and adds provision for reasonable accommodations for examinees in taking examinations. The expanded examination opportunities will reduce burdens on would-be-licensees by providing increased flexibility in examination dates.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to clarify timing requirements associated with examinations and to add provisions for reasonable accommodations for examinees in taking examinations.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 316.030(4)(h), (5)(g) require an applicant for an embalmer's license or a funeral director's license to pass examinations prepared or approved by the board.

(d) How the amendment will assist in the effective administration of the statutes: This amendment clarifies timing requirements associated with examinations, expands examination from twice per year to monthly, and adds provision for reasonable accommodations for examinees in taking examinations. These changes will facilitate the process for would be licensees and the board.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 35-50 individuals per year enter apprenticeship programs and may take examinations for licensure.

(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: Applicants will need to follow all the requirements of the administrative regulation to apply for and take examinations as scheduled.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: This amendment will not increased costs for regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities: Clearer understanding of timing of examinations and availability of reasonable accommodations for taking examinations.

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

(a) Initially: No costs are anticipated to implement this amendment, however there may be some costs associated with reasonable accommodations for examinations at some point.

(b) On a continuing basis: No ongoing costs are anticipated related to this amendment, however there may be some costs associated with reasonable accommodations for examinations at some point.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Licensing fees will provide funding for implementation and enforcement of this amendment.

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

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

(9) TIERING: Is tiering applied? No tiering is applied because this administrative regulation applies equally to all applicants.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Embalmers and Funeral Directors will be affected by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 316.030(4)(h), (5)(g) require an applicant for an embalmer's license or a funeral director's license to pass examinations prepared or approved by the board.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. 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? Examination fees established in this administrative regulation will generate no revenue for the state or local government.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Examination fees established in this administrative regulation will generate no revenue for the state or local government.

(c) How much will it cost to administer this program for the first year? There is no additional cost to administer this program for the first year; Board members are not receiving additional compensation for administering examinations.

(d) How much will it cost to administer this program for subsequent years? There is no additional cost to administer this program for the subsequent years; Board members are not receiving additional compensation for administering examinations.

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: Examination fees are established by KRS 316.030; this administrative regulation specifies how the fees are to be paid.

BOARDS AND COMMISSIONS
Board of Embalmers and Funeral Directors
(Amendment)

201 KAR 15:050. Apprenticeship and supervision requirements.

RELATES TO: KRS 316.030

STATUTORY AUTHORITY: KRS 316.210(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 316.210(1) authorizes the Kentucky Board of Embalmers and Funeral Directors to promulgate administrative regulations to carry out and enforce the provisions of KRS Chapter 316. KRS 316.030(4)(e) and (5)(d) require an applicant for an embalmer's license or a funeral director's license to serve an apprenticeship under the supervision of a Kentucky-licensed embalmer or funeral director. KRS 316.030(9) requires an applicant to file sworn statements semiannually during the apprenticeship. This administrative regulation establishes the requirements for apprentices and their supervisors, the time for filing the sworn statements, and the additional information required in the sworn statements.

~~Section 1.[Definitions. (1) "Direct Supervision" means that a Kentucky-licensed funeral director or a Kentucky-licensed embalmer, as appropriate, is:~~

~~(a) Physically present with the apprentice, and:~~

~~(b) Personally observing and guiding the activities of the apprentice.~~

~~(2) "Supervisor" means the supervisor of record.~~

~~(3) "Supervisor's designee" means a Kentucky-licensed funeral director or a Kentucky-licensed embalmer, as appropriate, who has been approved by the supervisor of record to supervise an apprentice.~~

~~Section 2.] Apprenticeship Application[Registration]. (1) Prior to beginning an apprenticeship, an applicant shall:~~

~~(a) File an Apprenticeship Application[Registration] Form with the board that includes the sworn statement required by KRS 316.030(7)(c);~~

~~(b) Pay the registration fee established in KRS 316.030(7)(b);~~

~~(c) Submit a current photograph;~~

~~(d) Submit a copy of the applicant's high school transcript or diploma, or high school equivalency diploma;~~

~~(e) Submit an official copy of any college transcripts;~~

~~(f) Submit an official copy of National Board scores, if available; and~~

~~(g) Submit an official copy of a current (less than ninety (90) days prior to the application) criminal justice information system (CJIS) report obtained from the Federal Bureau of Investigation (FBI); and~~

~~(h) Appear before the board with the supervisor at the time and place identified by the board.~~

~~(2) The apprenticeship shall begin [begins] the day the applicant and supervisor meet with the board.~~

~~Section 2[3]. Supervisor Responsibilities. (1) An apprenticeship shall be served under the board-approved supervisor identified on the Apprenticeship Registration Form as the supervisor of record.~~

~~(2) Apprenticeships for both embalming and for funeral directing may be served concurrently under:~~

~~(a) A single individual acting as the supervisor of record who holds both a funeral director's license and an embalmer's license; or~~

~~(b) Two (2) individual licensees acting as the supervisor of record who together hold[hold] both a funeral director's license and an embalmer's license.~~

~~(3) Licensed embalmers and licensed funeral directors who seek approval from the board as a supervisor of record shall:~~

~~(a) Embalm or direct funerals at, and be employed by, the establishment where the apprentice is registered or at another funeral establishment if approved by[which is identified to] the board;~~

~~(b) Appear before the board for approval with the apprentice;~~

and

~~(c) Be responsible for ensuring that the apprentice complies with KRS Chapter 316 and 201 KAR Chapter 15.~~

~~(4) The board may withdraw approval of a supervisor based upon:~~

~~(a) Evidence of the inability to supervise an apprentice properly; or~~

~~(b) A violation of KRS Chapter 316 or 201 KAR Chapter 15.~~

~~(5) Apprentices may receive supervision by licensees other than the supervisor of record.~~

~~(a) Registered embalmer apprentices may be supervised by other licensed embalmers designated by the supervisor of record.~~

~~(b) Registered apprentice funeral directors may be supervised by other licensed funeral directors designated by the supervisor of record.~~

~~(c) Supervisors of record that designate[approve] other licensees to provide supervision for an apprentice shall remain responsible for the actions of the apprentice and for the quality of the designated supervision.~~

~~(d) The apprentice shall prepare an Apprentice Travel Form and maintain it with the apprentice calendar:~~

~~1. File an Apprentice Travel Form with the board; and~~

~~2. Maintain the form with his or her calendar].~~

~~(6) The supervisor shall instruct an apprentice and ensure that an apprentice receives experience in all aspects of funeral directing or embalming, as applicable to the individual's apprenticeship.~~

~~(a) The instruction shall include:~~

~~1. The laws relating to the profession, including KRS Chapter 316 and 201 KAR Chapter 15; and~~

~~2. The theory and application of funeral directing or embalming.~~

~~(b) The training and work assignments for apprentice embalmers shall cover the following service items:~~

~~1. Initial call details;~~

~~2. Removals;~~

~~3. Embalming;~~

~~4. Restorative art treatment;~~

~~5. Posing body and features;~~

~~6. Bathing and cosmetizing of bodies;~~

~~7. Dressing and casketing of bodies;~~

~~8. Recordkeeping;~~

~~9. Purchasing of necessary supplies;~~

~~10. Preparation of autopsied bodies;~~

~~11. Care and maintenance of equipment and embalming room;~~

~~and~~

~~12. Professional responsibility.~~

~~(c) The training and work assignments for apprentice funeral directors shall cover the following service items:~~

~~1. Initial call details;~~

~~2. Removals;~~

~~3. Counseling of families on the types of services and merchandise available;~~

~~4. Arrangements of funeral services and merchandise;~~

~~5. Preparing death certificates and documents;~~

~~6. Preparing applications for certain death benefits, such as Social Security, Veterans Administration, insurance companies, and lodges;~~

~~7. Preparing newspaper notices;~~

~~8. Conducting visitations or memorial services;~~

~~9. Directing funerals and graveside services;~~

~~10. Follow-up service to the family after the funeral service has been completed;~~

~~11. Recordkeeping;~~

~~12. Purchasing of necessary supplies;~~

~~13. Caring for equipment and premises; and~~

~~14. Professional responsibility.~~

~~Section 3[4]. Supervision of Apprentices. (1) Supervision of embalmer apprentices.~~

~~(a) For the first twenty-five (25) cases with which an embalmer apprentice assists and throughout the first six (6) months of training, the supervisor or the supervisor's designee shall be present with the apprentice and provide direct supervision of all of~~

the apprentice's embalming activities.

(b) After the apprentice has completed both twenty-five (25) cases and six (6) months of the apprenticeship, the apprentice may perform embalming services if the supervisor or the supervisor's designee is available for consultation and supervision, in accordance with KRS 316.010(14)~~[and 316.030(3)(e), for the duration of the apprenticeship]~~.

(c) The supervisor shall notify the board in writing on the Level II Apprentice Registration Form that the apprentice has completed the required twenty-five (25) cases before allowing the apprentice to embalm without direct supervision. The embalmer Level II registration fee required by 201 KAR 15:030 shall be submitted with the Level II Apprentice Registration Form. The Level II apprenticeship shall commence upon receipt of a Level II apprentice card issued by the board. The supervisor or the supervisor's designee shall continue to supervise the apprentice, in accordance with KRS 316.010(14) and 316.030(4)(e), for the duration of the apprenticeship.

(d) A Level II apprenticeship may continue for a period of up to three (3) years while the apprentice completes the apprenticeship requirements and takes the licensure examination.

(e) An apprentice should take the first examination for licensure within sixty (60) days of completion of all other apprenticeship requirements.

(f) For any apprenticeship violation of the rules of the apprenticeship, or other rules applicable to the professions of embalming or funeral directing, the board may extend the period of apprenticeship as part of disciplinary action.

(g) The board may grant extensions of any apprenticeship upon application for an extension by an apprentice and demonstration by the apprentice of good cause or extenuating circumstances upon which an extension should be granted.

(2) Supervision of funeral director apprentices.

(a) For the first twenty-five (25) cases with which a funeral director apprentice assists and throughout the first six (6) months of training, the supervisor or the supervisor's designee shall provide direct supervision during all of an apprentice's funeral directing activities.

(b) After the apprentice has completed both twenty-five (25) cases and six (6) months of the apprenticeship, the apprentice may perform funeral directing services if the supervisor or the supervisor's designee is available for consultation and supervision, in accordance with KRS 316.010(14)~~[and 316.030(5)(d) for the duration of the apprenticeship]~~.

(c) The supervisor shall notify the board in writing on the Level II Apprentice Registration Form that the apprentice has completed the required twenty-five (25) cases before allowing the apprentice to practice funeral directing without direct supervision. The funeral director Level II registration fee required by 201 KAR 15:030 shall be submitted with the Level II Apprentice Registration Form. The Level II apprenticeship shall commence upon receipt of a Level II apprentice card issued by the board. The supervisor or the supervisor's designee shall continue to supervise the apprentice, in accordance with KRS 316.010(14) and 316.030(4)(f), for the duration of the apprenticeship.

(d) A Level II apprenticeship may continue or a period of up to three (3) years while the apprentice completes the apprenticeship requirements and takes the licensure examination.

(e) An apprentice should take the first examination for licensure within sixty (60) days of completion of all other apprenticeship requirements.

(f) For any apprenticeship violation of the rules of the apprenticeship, or other rules applicable to the professions of embalming or funeral directing, the board may extend the period of apprenticeship as part of disciplinary action.

(g) The board may grant extensions of any apprenticeship upon application for an extension by an apprentice and demonstration by the apprentice of good cause or extenuating circumstances upon which an extension should be granted.

(3) Removals.

(a) The supervisor or the supervisor's designee shall be present and provide direct supervision during the removal of bodies for the first six (6) months of the apprenticeship and the first twenty-five (25) removals assisted in by the apprentice.

(b) After an apprentice has served six (6) months of apprenticeship and assisted with twenty-five (25) removals, an apprentice may make removals without the direct supervision of the supervisor or the supervisor's designee if the supervisor has determined that the apprentice is competent to perform removals without direct supervision.

(c) The supervisor shall notify the board in writing on the Level II Apprenticeship Registration Form that the apprentice has completed the required twenty-five (25) removals and that the supervisor's approval has been given for the apprentice to make removals without direct supervision before the apprentice may begin making these removals.

(d) No individual who obtains or holds a permit from this board to transport dead human bodies may use transport removals performed under that permit to accumulate the number of removals required to complete an apprenticeship. All apprenticeship removals shall be performed within the requirements of the apprenticeship and supervision. Hours accumulated performing removals under a Transport Permit shall not count toward an apprentice's weekly work hours requirement.

(4) Calendar~~[Calendars]~~.

(a) The apprentice shall maintain a calendar at the registered location of the apprenticeship of the apprentice's work schedule documenting the forty (40) regular hours per week that he or she has worked~~[at the location of the apprenticeship]~~. The calendar shall be reviewed and signed on a daily basis by the supervisor(s) to indicate that the supervisor has reviewed and approved the apprentice's work. The calendar shall be available for inspection by the state inspector during any inspection of the establishment. The calendar shall be maintained by an apprentice until such time as the apprentice passes required examinations and becomes licensed.

(b) The calendar shall identify:

1. The daily work schedule of the apprentice, including beginning and ending times; and
2. The days on which the apprentice does not work.

(5) An apprentice may work at the funeral establishment more hours per week than required by subsection (4) of this section. An apprentice may also attend mortuary school classes or complete mortuary school classwork while serving an apprenticeship, but shall nonetheless still work the required forty (40) hour week under the apprenticeship.

~~(6) [The supervisor shall instruct an apprentice and ensure that an apprentice receives experience in all aspects of funeral directing or embalming, as applicable to the individual's apprenticeship.~~

~~(a) The instruction shall include:~~

- ~~1. The laws relating to the profession, including KRS Chapter 316 and 201 KAR Chapter 15; and~~
- ~~2. The theory and application of funeral directing or embalming.~~

~~(b) The training and work assignments for apprentice embalmers shall cover the following service items:~~

- ~~1. Initial call details;~~
- ~~2. Removals;~~
- ~~3. Embalming;~~
- ~~4. Restorative art treatment;~~
- ~~5. Posing body and features;~~
- ~~6. Bathing and cosmetizing of bodies;~~
- ~~7. Dressing and casketing of bodies;~~
- ~~8. Recordkeeping;~~
- ~~9. Purchasing of necessary supplies;~~
- ~~10. Preparation of autopsied bodies;~~
- ~~11. Care and maintenance of equipment and embalming room;~~

and

~~12. Professional responsibility.~~

~~(c) The training and work assignments for apprentice funeral directors shall cover the following service items:~~

- ~~1. Initial call details;~~
- ~~2. Removals;~~
- ~~3. Counseling of families on the types of services and merchandise available;~~
- ~~4. Arrangements of funeral services and merchandise;~~
- ~~5. Preparing death certificates and documents;~~

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6. Preparing applications for certain death benefits, such as Social Security, Veterans Administration, insurance companies, and lodges;

7. Preparing newspaper notices; 8. Conducting visitations or memorial services;

9. Directing funerals and graveside services;

10. Followup service to the family after the funeral service has been completed;

11. Recordkeeping;

12. Purchasing of necessary supplies;

13. Caring for equipment and premises; and

14. Professional responsibility.

(7) If an apprentice's supervisor of record is replaced during the apprenticeship period, a Change of Supervisor form shall be completed and submitted within thirty (30) days following the change.

Section 4[5]. Terminating and Reestablishing an Apprenticeship. (1) The licensed funeral director or licensed embalmer who is the apprentice's supervisor of record shall:

(a) Notify the board in writing by letter of the termination of the apprenticeship. Within five (5) days of the termination of an apprenticeship, the supervisor of record and the apprentice shall: and

(b) Identify the name of the apprentice and the date on which the apprenticeship was terminated.

(2) An apprentice funeral director or embalmer shall, within five (5) days of the termination of the person's apprenticeship with a funeral director or an embalmer:

(a) notify the board in writing of the termination, including by letter that the person is no longer working as an apprentice funeral director or embalmer; and

(b) identify the date on which the apprenticeship ceased.

(2)[(3)] An apprentice funeral director or embalmer whose apprenticeship is terminated at the establishment originally identified to the board shall, within thirty (30) days of being employed by another funeral director or embalmer:

(a) Notify the board in writing of the change in employment and apprenticeship by completing and submitting a Change of Supervisor form;

(b) Identify the name, street address, and license number of the funeral director or embalmer under which the apprentice is continuing the apprenticeship; and

(c) Complete a new registration as set out in Section 2 of this administrative regulation that is signed by the licensed funeral director or embalmer who is to be the apprentice's new supervisor of record.

(3)[(4)] An apprentice funeral director or embalmer who is unable to perform the duties of the apprenticeship for a period of two (2) weeks or more because of:

(a) The birth of a child and to care for the newborn child within one year of birth;

(b) The placement with the employee of a child for adoption or foster care and to care for the newly placed child within one year of placement;

(c) To care for the employee's spouse, child, or parent who has a serious health condition;

(d) A serious health condition that makes the employee unable to perform the essential functions of his or her job; or

(e) Any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a covered military member on "covered active duty;" [health related impairments] shall immediately notify the board [in writing by letter] of:

1. (a) The date on which the apprentice became unable to perform the duties; and

2. (b) The date on which the apprenticeship will be recommenced, not to exceed six (6) months following the commencement of the leave from apprenticeship.

(4)[(5)] An apprenticeship shall not end later than the administration of the second examination for which the apprentice is eligible.

(5) At any time an apprenticeship ceases, or becomes inactive under these administrative regulations, an apprentice does not lose credit for the time served in an apprenticeship. Any such

apprentice whose apprenticeship has ceased or become inactive may be reinstated to apprenticeship by notice to the board including the name of the apprentice's supervisor upon his or her return to active apprenticeship, the establishment at which the apprentice is employed, and payment of a processing fee of fifty (50) dollars. The reinstated apprentice shall be responsible for compliance with all other apprenticeship requirements from the date of reinstatement forward.

Section 5[6]. Sworn Statements. (1) An apprentice shall file the Apprenticeship Sworn Statement required by KRS 316.030(7) on or before May 1 and November 1 of each year relating to the six (6) month period ending with the preceding middle of April or middle of October, respectively.

(2) The Apprenticeship Sworn Statement shall include the following information:

(a) The names and dates of funerals in which the apprentice for a funeral director's license assisted in managing during each six (6) month period;

(b) The names and dates of embalming cases in which the apprentice for an embalmer's license assisted during each six (6) month period; and

(c) The names of the service items set forth in Section 3(6) of this administrative regulation specifically identified for each case in which the apprentice assisted during each six (6) month period.

(3) With the initial sworn statement, an apprentice shall file a report written by the applicant summarizing the requirements of KRS Chapter 316 and 201 KAR Chapter 15.

(4) With subsequent sworn statements, an apprentice shall file a report written by the applicant on an article or a book related to embalming or funeral directing read by the applicant during the six (6) month period. It shall contain a reference that includes the author, title, month and year of publication, and page numbers.

(5) The reports required by subsections (3) and (4) of this section shall be two (2) pages at a minimum and typed, double-spaced, in twelve (12) point font, and with one (1) inch margins on all sides.

(6) An apprentice in mortuary school shall be exempt from the book report requirements of subsections (3) through (5) of this section if the apprentice submits the number of hours he or she is enrolled on the Apprenticeship Sworn Statements.

(7)(a) The supervisor of record shall sign the sworn statements and certify that the apprentice has completed the cases and service items identified in the statement.

(b) If the apprentice has received supervision from a supervisor's designee, the supervisor of record shall still be responsible for:

1. The activities of the apprentice;
2. Signing the sworn statement; and
3. The certification of completion of cases and service items identified in the statement.

(8) Before the activities of the apprentice can count toward the requirements of KRS 316.030(4)(f) or (5)(e), the case shall include the following service items:

(a) For an embalming case, the apprentice shall have participated in the service items listed in Section 4(6)(b)3 through 7 of this administrative regulation; and

(b) For a funeral directing case, the apprentice shall have participated in the service items listed in Section 4(6)(c)3 through 9 of this administrative regulation.

Section 6[7]. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Apprenticeship Application [Registration] Form", 2019[2017];

(b) "Change of Supervisor", 2019[2017];

(c) "Apprenticeship Sworn Statement", 2019[2017];

(d) "Level II Apprentice Registration Form", 2019[2017]; and

(e) "Apprentice Travel Form", 2017.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Embalmers and Funeral Directors, 9114 Leesgate Rd, Ste 4, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. to 4:30 p.m.

VOLUME 46, NUMBER 1– JULY 1, 2019

HAROLD E. CORDER, Board Chair

APPROVED BY AGENCY: June 13, 2019

FILED WITH LRC: June 14, 2019 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on 10:00 a.m. on July 22, 2019 at 911 Leawood 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 is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on July 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 below.

CONTACT PERSON: David C. Trimble, General Counsel, 911 Leawood Drive, Frankfort, Kentucky 40601, phone (502) 782-8823, fax (502) 564-3969, email davidc.trimble@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: David C. Trimble

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes requirements for apprenticeships for embalmers and funeral directors, and supervision of apprentices.

(b) The necessity of this administrative regulation: KRS 316.030(4)(e) and (5)(d) require an applicant for an embalmer's license or a funeral director's license to serve an apprenticeship under the supervision of a Kentucky-licensed embalmer or funeral director.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 316.030(4)(e) and (5)(d) require an applicant for an embalmer's license or a funeral director's license to serve an apprenticeship under the supervision of a Kentucky-licensed embalmer or funeral director. This administrative regulation establishes the requirements for apprentices and their supervisors.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 316.030(4)(e) and (5)(d) require an applicant for an embalmer's license or a funeral director's license to serve an apprenticeship under the supervision of a Kentucky-licensed embalmer or funeral director. This administrative regulation establishes the requirements for apprentices and their supervisors.

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

(a) How the amendment will change this existing administrative regulation: The amendment will clarify apprenticeship and supervisor requirements; establish criteria for withdrawal from apprenticeships on a temporary or permanent basis; specify requirements for apprenticeship calendars.

(b) The necessity of the amendment to this administrative regulation: The amendment will clarify apprenticeship and supervisor requirements; establish criteria for withdrawal from apprenticeships on a temporary or permanent basis; specify requirements for apprenticeship calendars.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 316.030(4)(e) and (5)(d) require an applicant for an embalmer's license or a funeral director's license to serve an apprenticeship under the supervision of a Kentucky-licensed embalmer or funeral director. This administrative regulation establishes the requirements for apprentices and their supervisors.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will clarify apprenticeship and supervisor requirements; establish criteria for withdrawal from apprenticeships on a temporary or permanent

basis; specify requirements for apprenticeship calendars.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Board approves 35-50 apprenticeships annually.

(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: No additional activities are required by the amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: No additional activities or costs are required by the amendment.

(c) As a result of compliance, what benefits will accrue to the entities: Better understanding of apprenticeship requirements and availability of absences from apprenticeship.

(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 to the administrative body to implement this administrative regulation.

(b) On a continuing basis: There is no additional cost to the administrative body 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: Existing staff will continue to administer and monitor apprenticeship and supervision requirements at no additional cost. If additional costs arise, they will be handled through existing license fee revenue.

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

(9) TIERING: Is tiering applied? Tiering is not applied because this administrative regulation applies similarly to similarly situated persons.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Embalmers and Funeral Directors will be affected by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 316.210(1)

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

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

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

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

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

BOARDS AND COMMISSIONS
Board of Embalmers and Funeral Directors
(Amendment)

201 KAR 15:080. Complaints[~~of violations~~].

RELATES TO: KRS 316.150

STATUTORY AUTHORITY: KRS 316.210(1), KRS 316.150

NECESSITY, FUNCTION, AND CONFORMITY: KRS 316.210(1) requires the board to administer and enforce the provisions of KRS Chapter 316 and authorizes the board to promulgate administrative regulations pursuant to KRS Chapter 13A. KRS 316.150 authorizes the board to take disciplinary action against the license of an embalmer, a funeral director, or a funeral establishment or against the registration of an apprentice for violations of KRS Chapter 316. ~~The function of~~ This administrative regulation ~~establishes~~ ~~is to establish~~ the procedure for filing complaints~~of violations~~ with the board.

Section 1. Complaint. (1) A complaint that an embalmer, a funeral director, a funeral establishment, or an apprentice~~respondent~~ has violated the provisions of KRS Chapter 316 or the administrative regulations promulgated thereunder shall be made in writing to the board.

(2) The person making the complaint shall be identified in the complaint, shall provide his or her contact information, and shall sign ~~signed by the person (complainant) making~~ the complaint.

(3) Anonymous complaints shall not serve as the sole justification for disciplinary action, but the board may use the information provided in any anonymous complaint as cause for further investigation ~~The complainant need not be a licensed embalmer or funeral director.~~

(4) The board may file a complaint based upon credible information in its possession that is sufficient to establish probable cause for further investigation and possible disciplinary action.

(5) No complaint may be made more than two (2) years following the discovery of the alleged violation of KRS Chapter 316 or the administrative regulations promulgated thereunder. "Discovery" for this purpose shall be the point in time when the complainant actually discovers, or a reasonably diligent complainant would have discovered, the facts constituting the violation.

Section 2. Notice to Respondent. (1) The board shall send via certified mail, return receipt requested, a notice with a copy of the complaint to the respondent requesting a written response to the complaint.

(2) The respondent shall file a written response to the complaint with the board within twenty (20) days after receipt of notice of the complaint. The respondent shall send a copy of the response to the complainant, and certify in the response that it has been so sent.

(3) The board may treat failure of a duly-notified respondent to file a response within twenty (20) days of receipt of the complaint as a default. Upon default, the board may treat the allegations contained in the complaint as admitted and impose such discipline as the board deems appropriate.

Section 3. Investigation of Complaint. (1) The board may~~if it deems appropriate,~~ assign one (1) or more persons to conduct an investigation of the facts alleged in a complaint and submit a report to the board.

(2) The board may, at any time, conduct an investigation on its own initiative without receipt of a written complaint if the board has reason to believe that~~there may be~~ a violation of KRS Chapter

316 or the administrative regulations promulgated thereunder is taking place.

Section 4. Dismissal, Resolution, and Discipline. (1) [(3)] The board may dismiss a complaint at any time if the board determines that the facts stated in the complaint, or facts known to the board after investigation, fail to create a finding of probable cause of a violation which would warrant disciplinary action. The board shall notify the complainant and the respondent in writing if it dismisses the complaint.

(2) The board may negotiate a resolution of a complaint by an agreed order if the board determines that there is probable cause that a violation has occurred and that disciplinary action may be warranted.

(3) The board may impose disciplinary action established by KRS 316.150 against a licensee or registrant if the board finds, after the conduct of a KRS 13B hearing, that a violation of KRS Chapter 316 or of the administrative regulations promulgated thereunder has occurred.

HAROLD E. CORDER, Board Chair

APPROVED BY AGENCY: June 13, 2019

FILED WITH LRC: June 14, 2019 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on 10:00 a.m. on July 22, 2019 at 911 Leawood 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 is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on July 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 below.

CONTACT PERSON: David C. Trimble, General Counsel, 911 Leawood Drive, Frankfort, Kentucky 40601, phone (502) 782-8823, fax (502) 564-3969, email davidc.trimble@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: David C. Trimble

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides procedures for complaints about licensees and resolution of same.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide procedures for complaints and disciplinary action regarding licensees consistent with KRS 316.50.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 316.150 authorizes the board to take disciplinary action against the license of an embalmer, a funeral director, or a funeral establishment or against the registration of an apprentice for violations of KRS Chapter 316. The function of this administrative regulation is to establish the procedure for filing complaints of violations with the board.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 316.150 authorizes the board to take disciplinary action against the license of an embalmer, a funeral director, or a funeral establishment or against the registration of an apprentice for violations of KRS Chapter 316. The function of this administrative regulation is to establish the procedure for filing complaints of violations with the board.

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

(a) How the amendment will change this existing administrative regulation: This amendment clarifies and adds detail to the Board's

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complaint and disciplinary processes and procedures for ease of use by licensees and the board.

(b) The necessity of the amendment to this administrative regulation: This amendment clarifies and adds detail to the Board's complaint and disciplinary processes and procedures for ease of use by licensees and the board.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 316.150 authorizes the board to take disciplinary action against the license of an embalmer, a funeral director, or a funeral establishment or against the registration of an apprentice for violations of KRS Chapter 316. The function of this administrative regulation is to establish the procedure for filing complaints of violations with the board.

(d) How the amendment will assist in the effective administration of the statutes: KRS 316.150 authorizes the board to take disciplinary action against the license of an embalmer, a funeral director, or a funeral establishment or against the registration of an apprentice for violations of KRS Chapter 316. The function of this administrative regulation is to establish the procedure for filing complaints of violations with the board.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This will vary based on the number of licensees who may violate the statute or regulations in a given year. On average, 25-30 complaints are processed per year.

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

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: The function of this administrative regulation is to establish the procedure for filing complaints of violations with the board, or for responding to complaints once made. The regulation further establishes the Board's procedure for resolution of complaints.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: The cost of compliance with this administrative regulation will vary depending on the complexity and seriousness of complaint; licensees may need to retain legal counsel in some instances.

(c) As a result of compliance, what benefits will accrue to the entities: Regulated entities have additional clarity regarding process and can expect smoother and more efficient resolution of complaints.

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

(a) Initially: No initial costs are anticipated to implement this administrative regulation, however the ongoing cost will be dictated by the number and complexity of complaints.

(b) On a continuing basis: No initial costs are anticipated to implement this administrative regulation, however the ongoing cost will be dictated by the number and complexity of complaints.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: License fees provide the funding for the administration and resolution of complaints against licensees.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: An increase in fees is not likely to be 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 established any new fees; the board has submitted a concurrent amendment to its fee regulation, but it is not a result of this amendment to the complaint and discipline process.

(9) TIERING: Is tiering applied? No. Tiering is not applied because this administrative regulation applies to all complaints.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What 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 Embalmers and Funeral Directors will be affected by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 316.150 authorizes the board to take disciplinary action against the license of an embalmer, a funeral director, or a funeral establishment or against the registration of an apprentice for violations of KRS Chapter 316. The function of this administrative regulation is to establish the procedure for filing complaints of violations with the board.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation may generate minimal revenue for the state when the board issues fines. This administrative regulation will not generate revenue for local government.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation may generate minimal revenue for the state when the board issues fines. This administrative regulation will not generate revenue for local government.

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

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

BOARDS AND COMMISSIONS

Board of Embalmers and Funeral Directors (Amendment)

201 KAR 15:110. Funeral establishment criteria.

RELATES TO: KRS 316.010, 316.030, 316.125, 316.127, 316.130, 316.260, 16 C.F.R. 453.2(b)(2)-(5), 29 U.S.C. 651

STATUTORY AUTHORITY: KRS 316.125(1), KRS 316.210(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 316.125(1) prohibits operating a full-service funeral establishment, a visitation and ceremonial funeral service establishment, or an embalming service establishment without first obtaining the applicable license from the board[requires a license from the board for the operation of a funeral establishment]. KRS 316.210(1) authorizes the board to promulgate administrative regulations to carry out and enforce the provisions of KRS Chapter 316. This administrative regulation establishes the minimum requirements for the licensing and operation of a funeral establishment.

Section 1.[Definitions. (1) "Chapel" means an area where a family and the public may pay their respects to a deceased human being, or an area where funerals or memorial services can be held, and which is a separate and distinct area from the preparation room.

(2) "Preparation room" means an area with a minimum of 100 square feet, which is used exclusively to prepare dead human bodies for final disposition if arterial or cavity injection is a function of the establishment, and which is separate and distinct from the

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viewing area, chapel, or any other part of the establishment.

(3) "Viewing area" means an area in which a family and the public may pay their respects to a deceased human being.

Section 2-2. General Requirements. (1) The interior and exterior of the establishment shall be kept free and clean of litter, dirt, debris, and clutter or other objects or conditions which present a potential or actual hazard to the health, safety, or welfare of the public and the funeral establishment's employees.

(2) Only the following persons shall [A person shall not] be permitted[to be] in a preparation room during the course of embalming a dead human body:

- (a)[except] Employees of the establishment where[in which] the human body is being embalmed;
- (b)[.] Registered apprentices;
- (c)[.] Members of the family of the deceased;
- (d)[,or] Authorized representatives of the deceased;[.] and
- (e) Any other individual otherwise allowed by law.

(3) An establishment shall maintain the following documents, if applicable:

(a) Board approved embalming reports which include[set out]:

- 1. The name of each body embalmed;
- 2.[.] The date of death;
- 3.[.] The date and time that the embalming took place;
- 4.[.] The name and signature of the embalmer;[.] and
- 5. The embalmer's license number;

(b) Proper documentation of the authorization to embalm; and

(c) Accurate and current copies of:

- 1. The casket price list;
- 2.[.] The outer burial container price list;
- 3.[.] The general price list;[.] and
- 4. The statement[of funeral goods and services selected as required by the Federal Trade Commission in 16 C.F.R. 453.2(b)(2) through (5), as maintained in the general practice of the establishment.

(4) An[The funeral] establishment shall maintain embalming reports and documentation of [embalming] authorization to embalm for a minimum of three (3) years.

(5)[A license for establishment shall not be granted for] Establishments located in any public office building, strip mall, public storage, mini-storage, mini-warehouse, multiunit storage complex, or similar facility used by the general public for the storage of goods shall be ineligible for a license.

(6) The building in which an establishment is located, and any sidewalks and parking areas provided adjacent to the establishment, shall be in conformity with the requirements of the applicable federal, state and local statutes, administrative regulations, ordinances, and zoning provisions relating to publicly-accessible buildings and establishments.

(7)(a) An[Each] establishment shall display a sign that:

(a)[which] identifies the name of the establishment; and[.]

(b) [s]The sign shall be in a location[that is] visible from an adjacent public road.

(8) An establishment shall have adequate rest room facilities for members of the public if[there will be] public funeral services or visitation or ceremonial services will be conducted in the establishment.

Section 2[3]. Visitation and Ceremonial Funeral Service Establishment. An establishment that provides[All Visitation and Ceremonial Funeral Service Establishments that provide] visitation and ceremonial funeral services shall have[facilities which meet the following requirements]:

(1)[The establishment shall have] A viewing area or chapel which shall be at least 400 square feet in size; and

(2) The[establishment shall have the] applicable equipment necessary for conducting and arranging funeral services, including:

- (a) Tables or desks and chairs for arrangement conferences;
- (b) Seating for the viewing room;
- (c) Casket bier;
- (d) Register book stand;
- (e) Officiant stand;
- (f) Flower display stands; and
- (g) Organ, piano, music-producing equipment, or any suitable

combination of these items.

Section 3[4]. Embalming Service Establishment. (1) An establishment that provides embalming services shall:

(a) Have facilities and a preparation room which comply with the requirements of the Occupational Safety and Health Act, 29 U.S.C. 651;

(b) Have[and shall also require:

(a) at least one (1) approved embalming table and all professional instruments necessary for embalming and the preparation of dead human bodies; and

(c) Ensure[(b)] that a preparation room shall not be used as a storage area other than for supplies pertaining to the embalming and preparation of dead human bodies.

(2) Human remains shall not be prepared for disposition except by a licensed embalmer or a Level 2 apprentice, in accordance with KRS 316.030, in a preparation room that[which] meets the requirements of this administrative regulation.

(3) All windows and doors shall be constructed or screened to prevent persons from looking into the preparation room.

(4) Each preparation room entrance shall be lockable, shall be locked when not in use, and shall display a sign indicating private or restricted entry.

(5) Licensed embalmers may perform removals and transport dead bodies.

Section 4[5]. Full Service Funeral Establishments. A full service funeral establishment shall have:[In addition to the regulatory requirements established in Sections 3 and 4 of this administrative regulation, a full service funeral establishment shall meet the following additional requirements:

(1)[The establishment shall have] An area available to the public devoted to the display of funeral merchandise. Caskets or casket sections may be viewed by sample, computer, catalog, or other display that corresponds to the current general price list for the funeral establishment; and

(2)[In addition to the viewing area or chapel, the establishment shall have] A separate room or office for arranging funerals. This room may be used to satisfy the requirements of subsection (1) of this section.

Section 5[6]. Inspections. (1) Each establishment shall be subject to inspection at the convenience of the board inspector.

(a) Any establishment that is sited on more than one (1) parcel of real estate shall be required to notify the inspector of the location and identity of the separate parcels, and will be charged a separate inspection fee as set forth in this administrative regulation for each separate parcel, as if each parcel were a separately-licensed establishment.

(b) Failure of the establishment to be open and available for such inspection within a reasonable period of time after the inspector requests access for inspection shall be deemed by the board to be a violation of KRS Chapter 316, including but not limited to KRS 316.150(1)(a), and subject the establishment and its establishment manager to disciplinary action.

(2) The inspector shall inspect the establishment to see if it has suitable and dignified quarters appropriate for the category of services for which it is licensed.

(3) An establishment that provides embalming services shall have completed and signed embalming reports available for inspection upon request.

(4) The following forms shall be available for inspection or copying by the inspector[; with a copy available to the inspector for the inspector's records]:

- (a) A current general price list of charges for services to the public;
- (b) A current price list of caskets as charged to the public;[and]
- (c) A current price list of outer burial containers as charged to the public; and
- (d) All apprentice calendars and apprentice travel forms.

(5)(a) Any establishment seeking an initial inspection for the purpose of obtaining a new license under KRS Chapter 316 may request such inspection by the inspector of the Board of Funeral Directors and Embalmers of the Commonwealth of Kentucky, and

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will be assessed a fee in the amount of \$250 for such inspection. This fee will cover the inspector's initial visit, and one (1) subsequent visit for re-inspection to assure that any initial deficiencies have been cured.

(b) Any establishment licensed under KRS Chapter 316 which is routinely inspected by the inspector of the Board of Funeral Directors and Embalmers of the Commonwealth of Kentucky shall be assessed an inspection fee, payable to the board, of \$100. Such fee shall not be assessed more than one (1) time per calendar year.

(c) Any establishment licensed under KRS Chapter 316 that requires a re-inspection within a period of three (3) months following a routine inspection, due to a deficiency found by the inspector of the Board of Funeral Directors and Embalmers of the Commonwealth of Kentucky on such routine inspection, shall be assessed a re-inspection fee of \$200. This fee shall be paid regardless of any disciplinary action that otherwise may be taken against the establishment for the failure of the inspection.

(d) Any establishment licensed under KRS Chapter 316 may request an inspection by the inspector of the Board of Funeral Directors and Embalmers of the Commonwealth of Kentucky, and shall pay a fee of \$100 for such inspection.

(e) If an establishment fails three (3) consecutive inspections within a period of six (6) months, any and all subsequent inspections required to determine whether such failure(s) have been cured shall require payment of a fee of \$200 for each such inspection. In an instance of three (3) consecutive failures of inspections within six (6) months, the board may also, in its sole discretion, direct that the establishment in question cease operations for an appropriate period, and may assess a fine based upon the violations and failure to correct same..

(f) Inspection fees will be invoiced by the board to the licensee, and will not be due at the time of the inspection.

Section 6[7]. Establishment Manager[Supervisor]. (1) Each[facility] establishment shall have a Kentucky-licensed funeral director, [and] a Kentucky-licensed embalmer, or an individual licensee as required by KRS 316.125(2)(b)[5] to manage and supervise the establishment[facility].

(2) The establishment shall notify the board of a change of the funeral director or the establishment manager[embalmer supervisor] by submitting the Information and Name Change Application signed by the licensed owner and the new establishment manager[supervisor] within five (5) working days of the change.

(3) An establishment manager[A supervisor] who leaves the employment of an establishment shall notify the board in writing within five (5) working days of the departure.

Section 7[8]. Transferability. (1) Establishment licenses shall not be transferable.

(2) If a sale or lease occurs:

(a) The existing establishment license may remain in force by mutual consent of the parties for a period of thirty (30) days or until the next regularly scheduled board meeting, whichever comes first.

(b) During the transition period, the establishment shall be operated under the name shown on the existing license until a new license is issued.

(c) An application for a new license shall be submitted for review at the next board meeting following the sale or lease.

(3) If a relocation or name change occurs, an Information and Name Change Application shall be submitted to the board.

(4)(a) Following the death of a Kentucky-licensed owner, funeral director, or embalmer, the establishment may operate for ninety (90) days while under temporary supervision by a licensed funeral director or embalmer. A licensee who is already identified as the establishment manager[supervisor] for another establishment under KRS 316.125(4) may act as the temporary establishment manager[supervisor] for the establishment under this section for the limited ninety (90) day period.

(b) The temporary establishment manager[supervisor] shall be identified to the board in writing by letter within fifteen (15) days of the death of the Kentucky-licensed owner, funeral director, or embalmer.

(c) A licensee may be the temporary establishment manager[supervisor] for only one (1) establishment at a time.

Section 8[9]. Opening of an Establishment. (1) An establishment shall not operate or be opened for business prior to passing an inspection by the state board inspector and the issuance of an establishment license by the board for that establishment.

(2) To apply for an establishment license, the following shall be submitted to the board:

(a) A completed Establishment Application;

(b) The fee required by these administrative regulations[204 KAR 15:030, Section 4];

(c) A picture of the establishment and signage;

(d) A picture of the establishment manager;

(e) If purchasing the establishment, a certified copy of the property deed or other document demonstrating the property transfer and applicant's ownership[notarized letter from the seller];

(f) If a corporation, the articles of incorporation;

(g) If a partnership, the partnership agreement; [and]

(h) If a limited liability company, the LLC agreement; and

(i) If the property is not owned by the applicant, a commercial lease, certificate of occupancy, or other legal document that demonstrates that the applicant has possession and control of the premises sufficient to be responsible for the property being configured to meet the requirements of these regulations.

(3) Violation of this section shall be grounds for denial of the application for the license by the board.

(4) All establishment licenses shall expire July 31 of each year. Establishments shall renew by submitting the following to the board:

(a) An Establishment Renewal Application;

(b) The renewal fee established in KRS 316.130(4) and 201 KAR 15:030; and

(c) A list of all licensed funeral directors and embalmers affiliated with the establishment.

Section 9[40]. Advertising and Signage. (1) An establishment shall use the exact name listed on the license for the establishment in all advertisements and signage.

(2) Descriptive terms shall be distinctly separated from the name of the establishment in all signage and advertisements unless registered as part of the official name.

(3) Any advertising, designation, or signage for the funeral establishment shall match the classification on the establishment's license.

Section 10. Closure of an Establishment. (1) At any time an establishment is to be closed, for any reason, the establishment licensee shall notify the board that such establishment is to be closed, and whether such closure is permanent, or for a specified period of time.

(2) Any establishment that is closing shall give notice of closure to the Office of the Attorney General together with a listing of any pre-need contracts that remain in effect for the closing establishment.

(3) The licensee for a closing establishment shall give written notice of closure to any clients with whom the establishment has a pre-need contract, and shall include in that notice how the establishment intends to honor its contractual obligation.

Section 11. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Establishment Application", 2017;

(b) "Information and Name Change Application", 2017; and

(c) "Establishment Renewal Application", 2017.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Embalmers and Funeral Directors, 9114 Leesgate Rd, Ste 4, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. to 4:30 p.m.

HAROLD E. CORDER, Board Chair

APPROVED BY AGENCY: June 13, 2019

VOLUME 46, NUMBER 1– JULY 1, 2019

FILED WITH LRC: June 14, 2019 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on 10:00 a.m. on July 22, 2019 at 911 Leawood 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 is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on July 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 below.

CONTACT PERSON: David C. Trimble, General Counsel, 911 Leawood Drive, Frankfort, Kentucky 40601, phone (502) 782-8823, fax (502) 564-3969, email davidc.trimble@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: David C. Trimble

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes criteria for licensure as a funeral or embalming establishment.

(b) The necessity of this administrative regulation: KRS 316.125(1) requires a license from the board for the operation of a funeral establishment. KRS 316.210(1) authorizes the board to promulgate administrative regulations to carry out and enforce the provisions of KRS Chapter 316. This administrative regulation establishes the minimum requirements for the licensing and operation of a funeral establishment.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 316.125(1) requires a license from the board for the operation of a funeral establishment. KRS 316.210(1) authorizes the board to promulgate administrative regulations to carry out and enforce the provisions of KRS Chapter 316. This administrative regulation establishes the minimum requirements for the licensing and operation of a funeral establishment.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 316.125(1) requires a license from the board for the operation of a funeral establishment. KRS 316.210(1) authorizes the board to promulgate administrative regulations to carry out and enforce the provisions of KRS Chapter 316. This administrative regulation establishes the minimum requirements for the licensing and operation of a funeral establishment.

(2) If 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 establishes: requirement of funeral establishment to comply with federal public building requirements; failure of an establishment to reasonably cooperate with inspections shall be deemed a violation; a schedule of fees to be charged for official inspections; change of the term "supervisor" to "Establishment Manager" to identify the licensee that supervises a particular establishment; and clarifies requirements for opening or closing an establishment.

(b) The necessity of the amendment to this administrative regulation: Changes have become necessary through daily operations of Board to comply with statutory requirements.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 316.125(1) requires a license from the board for the operation of a funeral establishment. KRS 316.210(1) authorizes the board to promulgate administrative regulations to carry out and enforce the provisions of KRS Chapter 316. This administrative regulation establishes the minimum requirements for the licensing and operation of a funeral establishment.

(d) How the amendment will assist in the effective

administration of the statutes: KRS 316.125(1) requires a license from the board for the operation of a funeral establishment. KRS 316.210(1) authorizes the board to promulgate administrative regulations to carry out and enforce the provisions of KRS Chapter 316. This administrative regulation establishes the minimum requirements for the licensing and operation of a funeral establishment.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Kentucky licenses over 500 funeral establishments.

(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: Comply with federal public building requirements; reasonably cooperate with inspections; comply with requirements for "Establishment Manager"; comply with requirements for opening or closing an establishment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: The cost of compliance will vary depending on what inspections an entity is seeking and whether the board has to re-inspect following findings of deficiencies.

(c) As a result of compliance, what benefits will accrue to the entities: Avoid federal fines or litigation for non-compliance with public accommodation laws; maintain proper inspection status; establishments properly supervised; timely notifications to Board of opening or closing establishments.

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

(a) Initially: Implementation of this amendment is not anticipated to have a cost for the board.

(b) On a continuing basis: Continued implementation of this amendment is not anticipated to have a cost for the board.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: License fees will be used to fund implementation and enforcement of this 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: This amendment does not increase fees; it establishes new fees.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation establishes fees for inspections of board licensees.

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

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. Occupational Safety and Health Act, 29 U.S.C. 651

(2) State compliance standards. There are multiple OSHA standards which may apply to funeral and embalming establishments, including but not limited to standards for public buildings, and standards for storage and use of embalming chemicals.

(3) Minimum or uniform standards contained in the federal mandate. Federal mandate addresses the facilities and preparation room.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. None.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will

be impacted by this administrative regulation? The Kentucky Board of Embalmers and Funeral Directors 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 316.125(1) requires a license from the board for the operation of a funeral establishment. KRS 316.210(1) authorizes the board to promulgate administrative regulations to carry out and enforce the provisions of KRS Chapter 316. This administrative regulation establishes the minimum requirements for the licensing and operation of a funeral establishment.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation is expected to generate \$30,000 - \$35,000 for the Board from inspection fees. This regulation will not generate revenue for local government.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation is expected to generate \$30,000 - \$35,000 for the Board from inspection fees. This regulation will not generate revenue for local government.

(c) How much will it cost to administer this program for the first year? The board will need to procure new software for invoicing inspection fees; the cost has not yet been determined.

(d) How much will it cost to administer this program for subsequent years? In subsequent years, the board does not anticipate additional costs to administer this program unless the board determines there is a need to hire additional inspectors.

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

Revenues (+/-): + \$30,000 - \$35,000

Expenditures (+/-): Neutral

Other Explanation: None

BOARDS AND COMMISSIONS
Board of Embalmers and Funeral Directors
(Amendment)

201 KAR 15:120. Requirements for applicants holding a license in another state.

RELATES TO: KRS 316.140(1)

STATUTORY AUTHORITY: KRS 316.210(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 316.140(1) authorizes the Board of Embalmers and Funeral Directors to issue a license to an applicant that is licensed in another state and who has met the same or similar requirements for a license as the standards set out in KRS 316.030. This administrative regulation establishes the criteria for determining whether applicants who are licensed in another state qualify for a Kentucky embalmer's or a Kentucky funeral director's license.

Section 1. (1) The board shall accept an applicant licensed in another state as eligible to apply for an embalmer's license who has:

(a) A diploma from a school of mortuary science that is accredited by the American Board of Funeral Service Education or its predecessor; and

(b) Either:

1. Thirty (30) semester or forty-five (45) quarter hours of college credit from an accredited college or university as shown on an official transcript, or

2. Engaged in the fulltime practice of embalming under licensure for ten (10) of the twelve (12) years immediately

preceding the date of the application as demonstrated by the submission of W-2 forms or an affidavit from two (2) licensed embalmers or funeral directors in his state of original licensure which verify that he has been so engaged in practice full time.

(2) An applicant from another state shall:

(a) Submit a copy of his or her current license from the state in which he is licensed;

(b) Pass the current Kentucky examination or examinations for a funeral director license or embalmer license or both, as applicable;

(c) Submit a recently-completed (within the preceding ninety (90) days) criminal justice information system (CJIS) report obtained by the applicant from the Federal Bureau of Investigation (FBI);

(d) Inform the board of any disciplinary actions in states where he or she held a license; and

(e) [(4)] Pay the examination fee and the fees required by 201 KAR 15:030.

HAROLD E. CORDER, Board Chair

APPROVED BY AGENCY: June 13, 2019

FILED WITH LRC: June 14, 2019 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on 10:00 a.m. on July 22, 2019 at 911 Leawood 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 is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on July 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 below.

CONTACT PERSON: David C. Trimble, General Counsel, 911 Leawood Drive, Frankfort, Kentucky 40601, phone 502-782-8823, fax 502-564-3609, email davidc.trimble@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: David C. Trimble

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation provides for reciprocal licensure for out-of-state license holders.

(b) The necessity of this administrative regulation: The regulation allows qualified license holders to obtain a Kentucky license.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The statute authorizes the Board to set requirements for various forms of licensure.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation allows qualified license holders to obtain a Kentucky license.

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

(a) How the amendment will change this existing administrative regulation: The amendment adds the requirement of an FBI criminal background check to the process.

(b) The necessity of the amendment to this administrative regulation: The board has determined that a criminal background check is a necessary item of due diligence before providing Kentucky licensure.

(c) How the amendment conforms to the content of the authorizing statutes: The statute authorizes the Board to set requirements for various forms of licensure.

(d) How the amendment will assist in the effective administration of the statutes: The board has determined that a criminal background check is a necessary item of due diligence before providing Kentucky licensure.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Board provides less than ten (10) reciprocal licenses in a calendar year.

(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: Request, obtain, and submit an FBI criminal background check; these can be obtained on line for less than \$20.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: Request, obtain, and submit an FBI criminal background check; these can be obtained on line for less than \$20.

(c) As a result of compliance, what benefits will accrue to the entities: Applicants will obtain a Kentucky license.

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

(a) Initially: Applicants will obtain a Kentucky license.

(b) On a continuing basis: Applicants will obtain a Kentucky license.

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

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

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

(9) TIERING: Is tiering applied? No tiering is applied.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What 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.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. None.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. 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? Application fees for reciprocal licenses; less than \$2,500 per year.

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

(c) How much will it cost to administer this program for the first year? 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 (+/-): None
Expenditures (+/-): None
Other Explanation: None

BOARDS AND COMMISSIONS
Kentucky Real Estate Authority
Kentucky Real Estate Appraisers Board
(Amendment)

201 KAR 30:010. Definitions for 201 KAR Chapter 30.

RELATES TO: KRS Chapter 324A, 12 U.S.C. 3350
STATUTORY AUTHORITY: KRS 324A.015, 324A.020, 324A.035

NECESSITY, FUNCTION, AND CONFORMITY: KRS 324A.020 and 324A.035 require the Real Estate Appraisers Board, with the approval of the executive director of the Kentucky Real Estate Authority, to promulgate administrative regulations necessary to carry out the provisions of KRS 324A.010 to 324A.090. This administrative regulation is necessary to comply with Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (12 U.S.C. 3331 through 12 U.S.C. 3351), and KRS Chapter 324A. This administrative regulation defines terms used in 201 KAR Chapter 30.

Section 1. Definitions for 201 KAR Chapter 30. (1) "Accredited" means a college or university that grants credit toward a program for an associate, baccalaureate, graduate, or professional degree and that is chartered, licensed, or granted accreditation by an appropriately recognized educational association.

(2) "Appraiser panel" means a network, list, or roster of licensed or certified appraisers approved by an appraisal management company to perform appraisals as independent contractors for the appraisal management company.

(3) "Approved instructor" means an instructor who has been approved by the board pursuant to 201 KAR 30:130 to teach continuing education or qualifying education.

(4)[(4)] "Associate real property appraiser" means an individual who has fulfilled the requirements for licensure as an associate real property appraiser established by the board.

(5) "AQB" means the Appraiser Qualification Board of the Appraisal Foundation.

(6)[to appraise real property in connection with federally- and nonfederally-related transactions.

(2) "Board" is defined at KRS 324A.010(4).

(3) "Certified general real property appraiser" means an appraiser who has fulfilled the requirements for certification established by the board to appraise all real property in connection with federally and nonfederally related transactions.

(7)[(4)] "Certified residential real property appraiser" means an appraiser who has fulfilled the requirements for certification established by the board to perform appraisals on improved structures with up[~~of one~~-(4)] to four (4) residential units and vacant land.

(8) "Classroom hour" means sixty (60) minutes, of which at least[in connection with federally and nonfederally related transactions.

(5) "Classroom hour" means] fifty (50) minutes are actual classroom instruction attended by the student, including time for examinations.

(9)[(6)] "Classroom hour of distance education" means the allotted course time approved by the International Distance Education Certification Center (IDECC) delivery certification.

(10) "Covered transaction" means any consumer credit transaction secured by the consumer's principal dwelling.

(11) "Education provider" means a school or organization that teaches continuing or qualifying education courses, programs, or seminars required by the board.

(12)[(7)] "Federal financial institutions regulatory agencies" means a federal agency listed in 12 U.S.C. 3350(6) that regulates lenders or the loans guaranteed by them.

(13)[the:

(a) Board of Governors of the Federal Reserve System;

(b) Federal Deposit Insurance Corporation;

(c) Office of the Comptroller of the Currency;

(d) Office of Thrift Supervision; and

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(e) National Credit Union Administration.

(8) "Federally-related transaction" means a real estate-related financial transaction that institutions overseen by a member of the Federal Financial Institutions Examination Council ("FFIEC") either engage in or contract a federal financial institution's regulatory agency or the Resolution Trust Corporation:

- (a) 1. Engages in;
- 2. Contracts for; or
- 3. Regulates; and

(b) for, which [it] requires the services of a:

- (a) [1.] Certified general real property appraiser;
- (b) [2.] Certified residential real property appraiser; or
- (c) [3.] Licensed residential real property appraiser.

(14) "Formal complaint" means a formal administrative pleading issued by the board that states a charge against a certificate holder, licensee, registrant, or applicant and commences a formal disciplinary proceeding pursuant to KRS Chapter 13B.

(15) "Grievance" means an allegation that a person has violated the requirements of KRS Chapter 324A or 201 KAR Chapter 30.

(16) [(9)] "Licensed nonfederal real property appraiser" means an individual who has fulfilled the requirements for licensure established by the board to appraise real property in connection with non-federally-related transactions.

(17) [(40)] "Licensed residential real property appraiser" means an appraiser who has fulfilled the requirements for licensure established by the board to appraise real property.

(18) [in connection with federally and nonfederally related transactions.

(14) "Real estate-related financial transaction" means a transaction that involves the:

(a) Sale, lease, purchase, investment in or exchange of real property, including an interest in real property, or the financing thereof;

(b) Refinancing of real property, or an interest in real property; and

(c) Use of real property, or an interest in property, as security for a loan or investment, including a mortgage-backed security.

(19) [(12)] "Residential" means having one (1) to four (4) residential units.

(20) "Required Core Curriculum" means the list of course topics established in Sections 8 through 12 of 201 KAR 30:190.

JOHN G. KENKEL, JR., Board Chair
H.E. CORDER, Executive Director
K. GAIL RUSSELL, Secretary

APPROVED BY AGENCY: June 12, 2019

FILED WITH LRC: June 13, 2019 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on 10:30 a.m. on July 26, 2019 at Kentucky Real Estate Appraisers Board, 321 N. Madison Avenue, Richmond, Kentucky 40475. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on July 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 below.

CONTACT PERSON: Heather L. Becker, General Counsel, Kentucky Real Estate Authority, 656 Chamberlin Avenue, Suite B, Frankfort, Kentucky 40601, phone 502-564-7760, fax 502-564-1538, email heather.becker@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Heather L. Becker

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation defines terms used in 201 KAR Chapter 30.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure consistent usage and understanding of terms used in the regulations governing real estate appraisals in the Commonwealth.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 324A.015 establishes the Real Estate Appraisers Board and empowers it to promulgate administrative regulations necessary to effectuate the provisions of KRS 324A.010 to 324A.090.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist the Real Estate Appraisers Board in carrying out the provisions of KRS 324A.010 to 324A.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: This amendment removes several definitions of terms that are already defined in statute, reducing duplication and making the regulation easier to use. Additionally, this amendment consolidates all definitions into one regulation, providing for consistently defined terminology across the chapter.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to reduce duplication and improve the ease of use of the regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment is within the authority of the Real Estate Appraisers Board established by KRS 324A.015.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will ensure a shared understanding of terms used in the administrative regulations governing real estate appraisals in the Commonwealth.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects approximately 1550 licensed real estate appraisers, 120 appraisal management companies, anyone interested in becoming a real estate appraiser, and all persons seeking to have real estate appraised. This administrative regulation also affects the Kentucky Real Estate Appraisers Board.

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

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: Regulated entities will not have to take any additional action to comply with this amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: Compliance with this administrative regulation will not cost regulated entities anything.

(c) As a result of compliance, what benefits will accrue to the entities: The entities identified in question (3) will benefit from consistent terminology across the real estate appraisal industry.

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

(a) Initially: There will be no cost to implement this administrative regulation initially.

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

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

(8) State whether or not this administrative regulation

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established any fees or directly or indirectly increased any fees: This administrative regulation does not establish or increase any fees.

(9) TIERING: Is tiering applied? No. Tiering is not applied because this administrative regulation applies equally to all persons.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Real Estate Appraisers Board 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 324A.015, 324A.020, 324A.035.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

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

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

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

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

(4) Revenues (+/-): Neutral.

(5) Expenditures (+/-): Neutral.

(6) Other Explanation: None.

BOARDS AND COMMISSIONS
Kentucky Real Estate Authority
Kentucky Real Estate Appraisers Board
(Amendment)

201 KAR 30:040. Professional standards of practice and conduct.

RELATES TO: KRS 324A.035, 324A.050(1)(j), 12 C.F.R. 225.62-225.67, 12 U.S.C. 3331, 3336, 3339

STATUTORY AUTHORITY: KRS 324A.035(3)(d)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 324A.020 and 324A.035 require the Real Estate Appraisers Board, with the approval of the executive director of the Kentucky Real Estate Authority, to promulgate administrative regulations necessary to carry out the provisions of KRS 324A.010 to 324A.090. KRS 324A.035(3)(d) requires the board to establish by administrative regulation standards of professional appraisal practice. 12 U.S.C. 3331, 3336, and 3339 and 12 C.F.R. 225.64 and 225.65 require that real estate appraisals in connection with federally related transactions be performed in accordance with appraisal standards promulgated by the Appraisal Standards Board of the Appraisal Foundation. This administrative regulation establishes the scope of practice and professional standards of conduct. This administrative regulation also establishes the supervision requirements for associate appraisers.

Section 1. USPAP Compliance. (1) [standards of professional practice.] Certificate holders and/or licensees listed in subsections (a) [(4)] through (e) [(5)] of this section shall comply with the Uniform Standards of Professional Appraisal Practice:

(a) [(4)] A certified general real property appraiser;

(b) [(2)] A certified residential real property appraiser;

(c) [(3)] A licensed residential real property appraiser;

(d) [(4)] An associate real property appraiser; and

(e) [(5)] A licensed nonfederal real property appraiser.

(2) The board shall evaluate an appraisal report in accordance with the USPAP in effect when the certificate holder or licensee signed the certification of the report, or when the report was prepared if the report was unsigned.

Section 2. Calculation of Square Footage [Section 2]. The standard for the calculation and reporting of above-grade square footage and below-grade square footage in single-family houses shall be the American National Standard for Single-Family Residential Buildings; Square Footage-Method for Calculating, ANSI Z765 2013.

Section 3. Appraisal Reporting Requirements. For each appraisal assignment that includes an appraisal management company reference as the client or agent for the client, an appraiser shall identify within the appraisal report:

(1) The name that is on file with the board for the appraisal management company;

(2) The Kentucky registration number that is on file with the board for the appraisal management company; and

(3) The fee that will be paid to the appraiser for each appraisal assignment ordered by an appraisal management company, unless the appraiser is a W-2 employee of the appraisal management company.

Section 4. Licensed Nonfederal Real Property Appraiser Advertising. (1) In a written or broadcast communication, a licensed nonfederal real property appraiser shall include the following statement: "Not licensed or certified to perform appraisals for any transactions requiring a licensed or certified appraiser pursuant to federal law or regulations."

(2) A written or broadcast communication shall include:

(a) Appraisal reports;

(b) Advertisements; and

(c) Business cards and stationery.

(3) In a print advertisement, the statement shall be in letters at least fifty (50) percent the size of the largest letter in the advertisement.

(4) In a radio or television advertisement, the statement shall be stated clearly and understandably.

Section 5. Supervision of Associate Appraisers. (1) Each associate appraiser shall maintain an appraisal log for each supervising appraiser. The associate appraiser shall record the following information in the log for each appraisal:

(a) Type of property;

(b) Client name and address;

(c) Address of appraised property;

(d) Description of work performed by the associate;

(e) Scope of the review;

(f) Scope of the supervision by the supervising appraiser;

(g) Number of actual hours worked by the associate on the assignment; and

(h) Signature and state certification number of the supervising appraiser.

(2) The associate shall be entitled to obtain copies of the appraisal reports he or she prepared. The supervising appraiser shall keep copies of appraisal reports for a period of at least five (5) years or at least two (2) years after final disposition of any judicial proceeding in which testimony was given, whichever period expires last.

(3) The supervising appraiser shall:

(a) Have been a state certified real property appraiser for a period of at least three (3) years;

(b) Be certified by the board prior to applying to become a

supervising appraiser:

(c) Be in good standing and shall not have received a suspension, a revocation, or other sanction that limited or prohibited that licensee's practice of real property appraising within the three (3) year period immediately prior to applying to become a supervising appraiser; and

(d) Be responsible for the training and supervision of the associate.

(4) Only a certified general real property appraiser who satisfies the requirements of a supervising appraiser in subsection (3) of this section may supervise a person acquiring experience toward a Certified General Real Property Appraiser certificate.

(5) Any certified general real property appraiser or a certified residential real property appraiser who satisfies the requirements of a supervising appraiser in subsection (3) of this section may supervise a person acquiring experience toward a Certified Residential Real Property Appraiser certificate.

(6) The supervising appraiser shall:

(a) Accept responsibility for an associate's appraisal report by signing and certifying that the report is in compliance with the Uniform Standards of Professional Appraisal Practice;

(b) Review reports by the associate;

(c) Personally inspect each appraised property and the comparable sales with the associate on the associate's first fifty (50) real property appraisal assignments, to ensure that the associate is competent and is acting in accordance with the competency provision of the Uniform Standards of Professional Appraisal Practice for the property type;

(d) Be limited to a maximum of three (3) real property associates at a time;

(e) Notify the board immediately if the supervision of a real property associate has terminated; and

(f) Not be employed by an associate or by a company, firm, or partnership in which the associate has a controlling interest.

(7) A person otherwise qualified to be a supervising appraiser who has been disciplined by the board under KRS 324A.050 shall be subject to one (1) or more of the following, according to the severity of the prior violation:

(a) Prohibited from supervising associates;

(b) Limited in the number of associates to supervise; or

(c) Be required to take additional courses approved by the board before being permitted to supervise an associate.

(8) If necessary to determine the competency of the associate, the board shall request additional reports from the associate.

(9)(a) A first time supervisor and a new associate shall attend a Kentucky-specific seven (7) hour board-approved course in supervision practices prior to beginning supervision or training.

(b) To remain eligible to provide supervision, a supervisor shall attend the board-approved course in supervision practices every three (3) years.

(c) To continue logging creditable experience, an associate shall attend the board-approved course in supervision practices every three (3) years.

Section 6. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Uniform Standards of Professional Appraisal Practice", current edition[2016-2017]; and

(b) "American National Standard for Single Family Residential Buildings; Square Footage Method for Calculating, ANSI Z765 2013", 2013.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Real Estate Appraisers Board, 321 N. Madison Avenue, Richmond, Kentucky 40475, (859) 623-1658, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) This material may also be obtained from the Appraisal Standards Board of the Appraisal Foundation, 1155 15th Street, N.W., Suite 1111, Washington, D.C. 20005, (202) 347-7722.

JOHN G. KENKEL, JR., Board Chair
H.E. CORDER, Executive Director
K. GAIL RUSSELL, Secretary

APPROVED BY AGENCY: June 12, 2019

FILED WITH LRC: June 13, 2019 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on 10:30 a.m. on July 26, 2019 at Kentucky Real Estate Appraisers Board, 321 N. Madison Avenue, Richmond, Kentucky 40475. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on July 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 below.

CONTACT PERSON: Heather L. Becker, General Counsel, Kentucky Real Estate Authority, 656 Chamberlin Avenue, Suite B, Frankfort, Kentucky 40601, phone 502-564-7760, fax 502-564-1538, email heather.becker@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Heather L. Becker

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the scope of practice and professional standards of conduct. This administrative regulation also establishes the supervision requirements for associate appraisers.

(b) The necessity of this administrative regulation: KRS 324A.020 and 324A.035 require the Real Estate Appraisers Board, with the approval of the executive director of the Kentucky Real Estate Authority, to promulgate administrative regulations necessary to carry out the provisions of KRS 324A.010 to 324A.090. KRS 324A.035(3)(d) requires the board to establish by administrative regulation standards of professional appraisal practice. 12 U.S.C. 3331, 3336, and 3339 and 12 C.F.R. 225.64 and 225.65 require that real estate appraisals in connection with federally related transactions be performed in accordance with appraisal standards promulgated by the Appraisal Standards Board of the Appraisal Foundation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 324A.020 and 324A.035 require the Real Estate Appraisers Board, with the approval of the executive director of the Kentucky Real Estate Authority, to promulgate administrative regulations necessary to carry out the provisions of KRS 324A.010 to 324A.090. KRS 324A.035(3)(d) requires the board to establish by administrative regulation standards of professional appraisal practice. 12 U.S.C. 3331, 3336, and 3339 and 12 C.F.R. 225.64 and 225.65 require that real estate appraisals in connection with federally related transactions be performed in accordance with appraisal standards promulgated by the Appraisal Standards Board of the Appraisal Foundation. This administrative regulation establishes the scope of practice and professional standards of conduct. This administrative regulation also establishes the supervision requirements for associate appraisers.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the scope of practice and professional standards of conduct. This administrative regulation also establishes the supervision requirements for associate appraisers.

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

(a) How the amendment will change this existing administrative regulation: Amendment to this administrative regulation moves all provisions relating to professional standards of conduct and competency, including supervision of associate appraisers, into one administrative regulation. This amendment also updates the

relevant conduct provisions to include current versions of binding regulatory guidance.

(b) The necessity of the amendment to this administrative regulation: KRS 324A.020 and 324A.035 require the Real Estate Appraisers Board, with the approval of the executive director of the Kentucky Real Estate Authority, to promulgate administrative regulations necessary to carry out the provisions of KRS 324A.010 to 324A.090. KRS 324A.035(3)(d) requires the board to establish by administrative regulation standards of professional appraisal practice. 12 U.S.C. 3331, 3336, and 3339 and 12 C.F.R. 225.64 and 225.65 require that real estate appraisals in connection with federally related transactions be performed in accordance with appraisal standards promulgated by the Appraisal Standards Board of the Appraisal Foundation.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation establishes the scope of practice and professional standards of conduct. This administrative regulation also establishes the supervision requirements for associate appraisers.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation moves all provisions relating to professional standards of conduct and competency, including supervision of associate appraisers, into one administrative regulation. This amendment also updates the relevant conduct provisions to include current versions of binding regulatory guidance.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects approximately 1550 licensed real estate appraisers, anyone interested in becoming a real estate appraiser, and all persons seeking to have real estate appraised. This administrative regulation also affects the Kentucky Real Estate Appraisers Board.

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

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: Regulated entities will not have to take any additional action to comply with this amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: Compliance with this administrative regulation will not cost regulated entities anything.

(c) As a result of compliance, what benefits will accrue to the entities: The entities identified in question (3) will benefit from clearly defined rules relating to expected standards of conduct.

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

(a) Initially: There will be no cost to implement this administrative regulation initially.

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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No 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 will be 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 or increase any fees.

(9) TIERING: Is tiering applied? No. Tiering is not applied because this administrative regulation applies similarly to all similarly situated persons.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 12 U.S.C. §§ 3331, 3336, and 3339, and 12 C.F.R. 225.64 and 225.65.

(2) State compliance standards. 12 U.S.C. § 3331 requires that appraisals used in connection with federally related transactions are performed in writing according to certain uniform standards. 12 U.S.C. § 3336 requires that the federal government implement certain uniform standards through a public notice and comment period prescribed by federal law. 12 U.S.C. § 3339 requires the creation of rules in accordance with generally accepted appraisal standards evidenced by the appraisal standards promulgated by the Appraisal Standards Board of the Appraisal Foundation and that such appraisals be subject to review and compliance with the Uniform Standards of Professional Appraisal Practice. 12 C.F.R. 225.64 and 225.65 reiterate these rules in the form of federal regulation. To satisfy these requirements, the Kentucky Real Estate Appraisers Board adopts the minimum qualifications as set forth by the Appraisal Standards Board of the Appraisal Foundation and incorporates by reference the most recent version of the Uniform Standards of Professional Appraisal Practice.

(3) Minimum or uniform standards contained in the federal mandate. 12 U.S.C. § 3331 requires that appraisals used in connection with federally related transactions are performed in writing according to certain uniform standards. 12 U.S.C. § 3336 requires that the federal government implement certain uniform standards through a public notice and comment period prescribed by federal law. 12 U.S.C. § 3339 requires the creation of rules in accordance with generally accepted appraisal standards evidenced by the appraisal standards promulgated by the Appraisal Standards Board of the Appraisal Foundation and that such appraisals be subject to review and compliance with the Uniform Standards of Professional Appraisal Practice. 12 C.F.R. 225.64 and 225.65 reiterate these rules in the form of federal regulation.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What 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 Real Estate Appraisers Board 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 324A.020, 324A.035, 12 U.S.C. 3331, 3336, and 3339, and 12 C.F.R. 225.64 and 225.65.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

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

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

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

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

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.

- (4) Revenues (+/-): Neutral.
- (5) Expenditures (+/-): Neutral.
- (6) Other Explanation: None.

BOARDS AND COMMISSIONS
Kentucky Real Estate Authority
Kentucky Real Estate Appraisers Board
(Amendment)

201 KAR 30:070. Grievances.

RELATES TO: KRS 324A.020, 324A.050, 324A.052

STATUTORY AUTHORITY: KRS 324A.020, 324A.035, 324A.052

NECESSITY, FUNCTION, AND CONFORMITY: KRS 324A.020 and 324A.035 require the Real Estate Appraisers Board, with the approval of the executive director of the Kentucky Real Estate Authority, to promulgate administrative regulations necessary to carry out the provisions of KRS 324A.010 to 324A.090. KRS 324A.020 authorizes the board to investigate allegations of wrongdoing under KRS Chapter 324A. KRS 324A.050 authorizes the board to take disciplinary action against the certificate holder or licensee, and KRS 324A.162 authorizes the board to take disciplinary action against a registrant of an appraiser or appraisal management company, or license of an appraiser for violations of KRS Chapter 324A. This administrative regulation establishes the procedures for filing grievances with the board.

Section 1. [Definitions. (1) "Formal complaint" means a formal administrative pleading authorized by the board that states a charge against a credential holder or applicant and commences a formal disciplinary proceeding pursuant to KRS Chapter 13B.

(2) "Grievance" means information that a person has allegedly violated the requirements of KRS Chapter 324A or 201 KAR Chapter 30.

Section 2. [Grievance and Answers. (1) Grievances (a) The board shall process any grievance submitted against a certificate holder, licensee, or registrant [certifican].

(b) A grievance against a licensee or a certificate holder shall:

(a) Be submitted in writing;

(b) Identify:

(c) The person or organization submitting [who submits a grievance shall be identified within the document, unless] the grievance, unless [is being] submitted anonymously;

(d) Contain:

(a) A grievance shall contain a concise statement of the facts, transaction, or occurrence upon which it is based;

(b) Include:

(a) exhibits or other documents, if applicable;

(c) Be served on the certificate holder, [shall be attached to the grievance.

(d) A copy of the grievance and attachments shall be served on the licensee, or registrant [certifican] by the board:

1. At the last known address of the certificate holder, licensee, or registrant [certifican]; and

2. By certified mail, return receipt requested; and

(e) Be filed by the grievant within five (5) years from the date the grievant knew or should have known of the alleged violation.

(2) (a) If the board receives an anonymous grievance, it shall conduct an initial investigation [shall be conducted] to determine whether [if] a formal investigation is warranted.

(3) (a) Unless an extension is requested and granted, the certificate holder, (b) If the board receives an anonymous grievance, the board shall not be required to conduct a formal investigation.

(3) (a) The licensee, or registrant [certifican] shall file [with the board] an answer to the grievance [with the board] no later than [within] twenty (20) days after service of the grievance.

(b) The answer shall be filed with the board no later than [within] twenty (20) days after service of the grievance.

(c) A copy of the answer shall be served on the grievant, unless the grievant is anonymous, by the certificate holder, licensee, or registrant [certifican], by certified mail, return receipt requested, to the address shown on the grievance.

Section 3. [3]. Formal Investigations. [(4)] The board shall conduct an investigation of the facts alleged in a grievance:

(1) [(a)] Upon receipt of a grievance and answer; or

(2) [(b)] If an answer is not filed with the board, upon expiration of the period established in Section 1(3)(a) of 2(3)(b) of this administrative regulation.

(2) A party shall be granted access to information resulting from an investigation that:

(a) Was conducted by the board or board personnel;

(b) Was authorized by the board or board personnel; and

(c) Is related to the subject matter of the grievance.

(3) A party may rebut or comment upon the information or investigation established in subsection (1) of this section. (4) An investigation, or information resulting from an investigation, shall be disclosed to a party if it:

(a) Was the basis for action appealed by an applicant or appraiser; or

(b) Relates to the subject matter of a complaint.

(5) The requirements of the Uniform Standards of Professional Appraisal Practice (USPAP), incorporated by reference in 201 KAR 30:040, shall not apply to the board, its agents, and employees with regard to preparing an investigation for enforcement and disciplinary cases pursuant to this administrative regulation.

Section 3 [4]. Dismissal of Grievance. The board shall dismiss a grievance if the facts stated in the grievance, or facts known to the board upon investigation, fail to establish a violation of KRS 324A.050. The board shall notify the grievant and the certificate holder, licensee, or registrant [certifican] in writing if it dismisses the grievance.

Section 4. Administrative [5. Formal] Complaints. (1) If the facts alleged constitute a prima facie violation of KRS Chapter 324A, 201 KAR Chapter 30, or the USPAP, the board shall issue an administrative [a formal] complaint, in accordance with KRS Chapter 13B, against the certificate holder, licensee, or registrant [credential holder or applicant] and proceed pursuant to KRS 324A.052.

(2) The board may enter into informal settlement with the certificate holder [credential holder].

(a) A settlement conference shall be convened upon agreement of the parties.

(b) A person with a relationship to the proceedings who is permitted to attend the settlement conference may include the board's investigator, executive director, board representative, licensee, or registrant.

(3) [certifican holder, and an attorney or attorneys, as applicable.

(c) If the parties to a settlement conference agree on a stipulation, proposed term, or condition for an agreed order to resolve the complaint, the agreed order shall be forwarded to the board for consideration.

(4) [(d)] If the proposed agreed order is approved by the board, the complaint shall be considered resolved, and a hearing shall not be held.

HAROLD G. KENKEL, JR., Board Chair

H.E. CORDER, Executive Director

K. GAIL RUSSELL, Secretary

APPROVED BY AGENCY: June 12, 2019

FILED WITH LRC: June 13, 2019 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on 10:30 a.m. on July 26, 2019 at Kentucky Real Estate Appraisers Board, 321 N. Madison Avenue, Richmond, Kentucky 40475. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their

intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on July 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 below.

CONTACT PERSON: Heather L. Becker, General Counsel, Kentucky Real Estate Authority, 656 Chamberlin Avenue, Suite B, Frankfort, Kentucky 40601, phone 502-564-7760, fax 502-564-1538, email heather.becker@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Heather L. Becker

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures for filing grievances with the Board and the disciplinary procedures the Board employs in resolving disciplinary matters with credential holders and registrants.

(b) The necessity of this administrative regulation: KRS 324A.020 and 324A.035 require the Real Estate Appraisers Board, with the approval of the executive director of the Kentucky Real Estate Authority, to promulgate administrative regulations necessary to carry out the provisions of KRS 324A.010 to 324A.090. KRS 324A.020 authorizes the board to investigate allegations of wrongdoing. KRS 324A.050 authorizes the board to take disciplinary action against the certificate or license of an appraiser for violations of KRS Chapter 324A. This administrative regulation establishes the procedures for filing grievances with the board.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 324A.020 and 324A.035 require the Real Estate Appraisers Board, with the approval of the executive director of the Kentucky Real Estate Authority, to promulgate administrative regulations necessary to carry out the provisions of KRS 324A.010 to 324A.090. KRS 324A.020 authorizes the board to investigate allegations of wrongdoing. KRS 324A.050 authorizes the board to take disciplinary action against the certificate or license of an appraiser for violations of KRS Chapter 324A. This administrative regulation establishes the procedures for filing grievances with the board. This administrative regulation establishes the procedures for filing grievances with the Board and the disciplinary procedures the Board employs in resolving disciplinary matters with credential holders and registrants.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Consistent with KRS 324A.020, 324A.035, and 324A.050, this administrative regulation establishes the procedures for filing grievances with the Board and the disciplinary procedures the Board employs in resolving disciplinary matters with credential holders and registrants.

(2) If 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 introduces consistent terminology for licensees, certificate holders, and registrants. Additionally, this amendment clarifies and formalizes the process for filing a grievance with the Board, responding to a grievance transmitted by the Board, and the process for formalizing an administrative complaint by the Board against a credential holder or registrant.

(b) The necessity of the amendment to this administrative regulation: KRS 324A.020 and 324A.035 require the Real Estate Appraisers Board, with the approval of the executive director of the Kentucky Real Estate Authority, to promulgate administrative regulations necessary to carry out the provisions of KRS 324A.010

to 324A.090. KRS 324A.020 authorizes the board to investigate allegations of wrongdoing. KRS 324A.050 authorizes the board to take disciplinary action against the certificate or license of an appraiser for violations of KRS Chapter 324A. This administrative regulation establishes the procedures for filing grievances with the board.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 324A.020 and 324A.035 require the Real Estate Appraisers Board, with the approval of the executive director of the Kentucky Real Estate Authority, to promulgate administrative regulations necessary to carry out the provisions of KRS 324A.010 to 324A.090. KRS 324A.020 authorizes the board to investigate allegations of wrongdoing. KRS 324A.050 authorizes the board to take disciplinary action against the certificate or license of an appraiser for violations of KRS Chapter 324A. This administrative regulation establishes the procedures for filing grievances with the board. This administrative regulation establishes the procedures for filing grievances with the Board and the disciplinary procedures the Board employs in resolving disciplinary matters with credential holders and registrants.

(d) How the amendment will assist in the effective administration of the statutes: Consistent with KRS 324A.020, 324A.035, and 324A.050, this administrative regulation establishes the procedures for filing grievances with the Board and the disciplinary procedures the Board employs in resolving disciplinary matters with credential holders and registrants.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects approximately 1550 licensed real estate appraisers, anyone interested in becoming a real estate appraiser, and all persons seeking to have real estate appraised. This administrative regulation also affects the Kentucky Real Estate Appraisers Board.

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

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: Regulated entities will not have to take any additional action to comply with this administrative regulation. Consumers wishing to file grievances against a credential holder or registrant will have to follow the detailed process for filing a grievance with the Board. The Board is not required to take any action to comply with this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: There is no cost associated with comply with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities: Grievants, credential holders, registrants, and the Board will benefit from a clearly defined complaint and disciplinary process.

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

(a) Initially: There will be no cost to implement this administrative regulation initially.

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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No 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 will be 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 or increase any fees.

(9) TIERING: Is tiering applied? No. Tiering is not applied because this administrative regulation treats everyone the same.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 12 U.S.C. § 3347.

(2) State compliance standards. 12 U.S.C. § 3347 requires the Appraisal Subcommittee to monitor each state with a licensing or certification process for appraisers and appraisal management companies to determine whether the state processes complaints and completes investigations in a reasonable time period and whether the state reports complaints and disciplinary actions on a timely basis to the national registries for appraisers and appraisal management companies. While this federal provision does not explicitly require the Real Estate Appraisers Board to develop any particular complaint and disciplinary process, the result of non-compliance is removal of credential holders and registrants from their respective national registry, which would prohibit those individuals or entities from performing appraisal services on federally related transactions. While the Kentucky appraiser program currently has an excellent review, non-compliance or poor compliance or supervision could result in suspension or derecognition of the program.

(3) Minimum or uniform standards contained in the federal mandate. The federal mandate does require the Board to receive and process grievances. However, the federal mandate does not contain minimum or uniform standards; the manner of compliance is entirely within the state licensing agency's discretion. However, as mentioned above, non-compliance or poor compliance could carry a severe penalty.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes. The federal mandate does not contain minimum or uniform standards; the manner of compliance is entirely within the state licensing agency's discretion. However, as mentioned above, non-compliance or poor compliance could carry a severe penalty. The grievance filing and review process established by this administrative regulation clearly informs consumers, credential holders and registrants, and Appraisal Subcommittee of the Board's grievance filing and review process.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The federal mandate does not contain minimum or uniform standards; the manner of compliance is entirely within the state licensing agency's discretion. However, as mentioned above, non-compliance or poor compliance could carry a severe penalty.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What 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 Real Estate Appraisers Board 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 324A.020, 324A.035, and 324A.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. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

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

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

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

first year.

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

BOARDS AND COMMISSIONS
Kentucky Real Estate Authority
Kentucky Real Estate Appraisers Board
(Amendment)

201 KAR 30:110. Appraiser roster ~~and fees~~, ~~transmission, fees, deletions, notification, and hearing~~.

RELATES TO: KRS 324A.020, 324A.035, 324A.040, 324A.045, 324A.047, 324A.065(1)(d), (2)(d), 12 U.S.C. 3331-3351~~[3338(a)(+)]~~

STATUTORY AUTHORITY: KRS 324A.020, 324A.035, 324A.045, 324A.065(1)(d), (2)(d), 12 U.S.C. 3338(a)(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 324A.020 and 324A.035 require the Real Estate Appraisers Board, with the approval of the executive director of the Kentucky Real Estate Authority, to promulgate administrative regulations necessary to carry out the provisions of KRS 324A.010 to 324A.090. KRS 324A.020 authorizes the board to provide a list of certified appraisers to the Appraisal Subcommittee of the Federal Financial Institutions Examination Council. 12 U.S.C. 3338(a)(1) requires the board to maintain and transmit a roster of all licensed or certified appraisers. KRS 324A.065 requires the board to establish by administrative regulation and collect fees for certification or licensure as an appraiser, and KRS 324A.035 requires the board to set the conditions for certification and renewal of licensure. KRS 324A.047 requires the board to set a fee for inactive status. This administrative regulation establishes requirements relating to the roster of appraisers and establishes fees for initial application, annual renewal, roster, and examination, for both federally and nonfederally related transactions.

Section 1. Appraiser roster. (1)~~[Section 1.]~~ The board shall maintain a roster of associate real property appraisers, licensed residential~~[licensed]~~ real property appraisers, certified residential real property appraisers, and certified general real property appraisers.

(2)~~[Section 2.]~~ The board shall ~~transmit the roster to the Appraisal Subcommittee of the Federal Financial Institutions Examination Council at least annually.~~

~~Section 3. The board shall~~ collect an annual roster fee of forty (40) dollars from each licensed residential real property appraiser, certified residential real property appraiser, and certified general real property appraiser.

(3)~~[Section 4.]~~ The board shall transmit the roster, minus the list of associate real property appraisers, and appropriate roster fees to the Appraisal Subcommittee of the Federal Financial Institutions Examination Council at least annually.

Section 2. Applicability of Uniform Standards of Professional Appraisal Practice (USPAP) to the board. (1) The requirements of the USPAP shall not apply to the board, its agents, and employees while conducting an appraisal review for purposes of confirming an applicant's experience pursuant to this administrative regulation.

(2) The requirements of the USPAP shall not apply to the board, its agents, and employees with regard to preparing an investigation for enforcement and disciplinary cases pursuant to this administrative regulation.

Section 3. Fees. (1) Pursuant to KRS 324A.065, the following fees shall be charged by the board:

(a) Federally-related transactions:

1. Initial application fee: \$212;
2. Examination fee: \$200;
3. Annual certificate or licensure fee: \$212;
4. Duplicate certificate fee: ten (10) dollars;
5. Certificate correction fee: ten (10) dollars;
6. Roster fee: forty (40) dollars;
7. Initial inactive certification or licensure fee: fifty (50) dollars.

(b) Nonfederally-related transactions:

1. Initial application fee: \$100;
2. Examination fee: \$100;
3. An annual certificate or licensure renewal fee: \$100;
4. Duplicate certificate fee: five (5) dollars;
5. Certificate correction fee: five (5) dollars.

(2) Initial application and examination fees shall be submitted with the application or request.

(3) The roster fee shall be paid with the application or renewal fee.

(4) Examination fees shall be paid prior to an examination [the appropriate roster fees at least annually].

~~Section 5. (1) The board shall delete from its roster the name of any licensed real property appraiser, certified residential real property appraiser, or certified general real property appraiser, who has been deleted from the roster maintained by the Federal Financial Institutions Examination Council's Appraisal Subcommittee.~~

~~(2) The board shall notify each licensed real property appraiser, certified residential real property appraiser, or certified general real property appraiser whose name it intends to delete from its roster of its intent, in writing, to the address on record with the board, at least fifteen (15) days before the board takes that action.~~

JOHN G. KENKEL, JR., Board Chair

H. E. CORDER, Executive Director

K. GAIL RUSSELL, Secretary

APPROVED BY AGENCY: June 12, 2019

FILED WITH LRC: June 13, 2019 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on 10:30 a.m. on July 26, 2019 at Kentucky Real Estate Appraisers Board, 321 N. Madison Avenue, Richmond, Kentucky 40475. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on July 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 below.

CONTACT PERSON: Heather L. Becker, General Counsel, Kentucky Real Estate Authority, 656 Chamberlin Avenue, Suite B, Frankfort, Kentucky 40601, phone 502-564-7760, fax 502-564-1538, email heather.becker@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Heather L. Becker

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements relating to the roster of appraisers and establishes fees for initial application, annual renewal, roster, and examination, for both federally and nonfederally related transactions.

(b) The necessity of this administrative regulation: KRS 324A.020 and 324A.035 require the Real Estate Appraisers Board, with the approval of the executive director of the Kentucky Real

Estate Authority, to promulgate administrative regulations necessary to carry out the provisions of KRS 324A.010 to 324A.090. KRS 324A.020 authorizes the board to provide a list of certified appraisers to the Appraisal Subcommittee of the Federal Financial Institutions Examination Council. 12 U.S.C. 3338(a)(1) requires the board to maintain and transmit a roster of all licensed or certified appraisers. KRS 324A.065 requires the board to establish by administrative regulation and collect fees for certification or licensure as an appraiser, and KRS 324A.035 requires the board to set the conditions for application and renewal of licensure, including fees. KRS 324A.047 requires the board to set a fee for inactive status.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 324A.020 and 324A.035 require the Real Estate Appraisers Board, with the approval of the executive director of the Kentucky Real Estate Authority, to promulgate administrative regulations necessary to carry out the provisions of KRS 324A.010 to 324A.090. KRS 324A.020 authorizes the board to provide a list of certified appraisers to the Appraisal Subcommittee of the Federal Financial Institutions Examination Council. 12 U.S.C. 3338(a)(1) requires the board to maintain and transmit a roster of all licensed or certified appraisers. KRS 324A.065 requires the board to establish by administrative regulation and collect fees for certification or licensure as an appraiser, and KRS 324A.035 requires the board to set the conditions for application and renewal of licensure, including fees. KRS 324A.047 requires the board to set a fee for inactive status. This administrative regulation establishes requirements relating to the roster of appraisers and establishes fees for initial application, annual renewal, roster, and examination, for both federally and nonfederally related transactions.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Consistent with the Board's authority, this administrative regulation establishes requirements relating to the roster of appraisers and establishes fees for initial application, annual renewal, roster, and examination, for both federally and nonfederally related transactions. This administrative regulation puts certificate holders and registrants on notice of the fees assessed relative to licensure, certification, and registration.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation consolidates into one regulation all of the Real Estate Appraisers Board duties and licensing, certification, and registration fees. Fees relating to education provider approval and course review are addressed in a separate regulation germane to that topic.

(b) The necessity of the amendment to this administrative regulation: KRS 324A.020 and 324A.035 require the Real Estate Appraisers Board, with the approval of the executive director of the Kentucky Real Estate Authority, to promulgate administrative regulations necessary to carry out the provisions of KRS 324A.010 to 324A.090. KRS 324A.020 authorizes the board to provide a list of certified appraisers to the Appraisal Subcommittee of the Federal Financial Institutions Examination Council. 12 U.S.C. 3338(a)(1) requires the board to maintain and transmit a roster of all licensed or certified appraisers. KRS 324A.065 requires the board to establish by administrative regulation and collect fees for certification or licensure as an appraiser, and KRS 324A.035 requires the board to set the conditions for application and renewal of licensure, including fees. KRS 324A.047 requires the board to set a fee for inactive status.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 324A.020 and 324A.035 require the Real Estate Appraisers Board, with the approval of the executive director of the Kentucky Real Estate Authority, to promulgate administrative regulations necessary to carry out the provisions of KRS 324A.010 to 324A.090. KRS 324A.020 authorizes the board to provide a list of certified appraisers to the Appraisal Subcommittee of the Federal Financial Institutions Examination Council. 12 U.S.C. 3338(a)(1) requires the board to maintain and transmit a roster of all licensed or certified appraisers. KRS 324A.065 requires the board to establish by administrative

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regulation and collect fees for certification or licensure as an appraiser, and KRS 324A.035 requires the board to set the conditions for application and renewal of licensure, including fees. KRS 324A.047 requires the board to set a fee for inactive status. This administrative regulation establishes requirements relating to the roster of appraisers and establishes fees for initial application, annual renewal, roster, and examination, for both federally and nonfederally related transactions.

(d) How the amendment will assist in the effective administration of the statutes: Consistent with the Board's authority, this administrative regulation establishes requirements relating to the roster of appraisers and establishes fees for initial application, annual renewal, roster, and examination, for both federally and nonfederally related transactions. This administrative regulation puts certificate holders and registrants on notice of the fees assessed relative to licensure, certification, and registration.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects approximately 1550 licensed real estate appraisers, anyone interested in becoming a real estate appraiser, and all persons seeking to have real estate appraised. This administrative regulation also affects the Kentucky Real Estate Appraisers Board.

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

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: Regulated entities will not have to take any additional action to comply with this amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: Compliance with this administrative regulation will not cost regulated entities anything.

(c) As a result of compliance, what benefits will accrue to the entities: The entities identified in question (3) will benefit from clearly defined licensing, certification, and registration fees.

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

(a) Initially: There will be no cost to implement this administrative regulation initially.

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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No 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 will be 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 establish fees for licensure, certification, and registration of entities regulated by the Real Estate Appraisers Board.

(9) TIERING: Is tiering applied? No. Tiering is not applied because this administrative regulation applies equally to all regulated persons.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 12 U.S.C. 3338.

(2) State compliance standards. The Board collects the roster fee from qualifying appraisers, and submits the appropriate reports and fees to the Appraisal Subcommittee.

(3) Minimum or uniform standards contained in the federal mandate. 12 U.S.C. 3338(a)(1) requires each state with an appraiser certifying or licensing agency to transmit to the Appraisal Subcommittee, no less than annually, a roster listing individuals who have received a state certification or licensure. The Board is

also required to transmit reports on the issuance and renewal of licenses, certifications, registrations, sanctions, disciplinary actions, revocations, and suspensions to the Appraisal Subcommittee. Additionally 12 U.S.C. 3338(a)(4) requires the Board to collect from appraisers a registry fee of not more than \$40 to be transmitted to the Appraisal Subcommittee.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What 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 Real Estate Appraisers Board 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 324A.020, 324A.035, 324A.047, 324A.065, and 12 U.S.C. 3338(a)(1).

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. 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 Board expects to generate \$450,000 each year from licensing appraisers in Kentucky. This includes the roster fee of approximately \$60,000 that is passed through to the federal 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? The Board expects to generate \$450,000 each year from licensing appraisers in Kentucky. This includes the roster fee of approximately \$60,000 that is passed through to the federal government.

(c) How much will it cost to administer this program for the first year? There is no additional cost to administer this program for the first year. However, pursuant to KRS 324A.065(1)(a)1. and 3., the Board is required to provide the current USPAP edition to each initial and renewing certificate holder or licensee. The cost of complying with this statutory provision costs the Board approximately \$60,000 to obtain and mail current USPAP editions to licensees every two years. It is impossible to predict the cost for each year, because licensing occurs on a rolling basis.

(d) How much will it cost to administer this program for subsequent years? There is no additional cost to administer this program for the first year. However, pursuant to KRS 324A.065(1)(a)1. and 3., the Board is required to provide the current USPAP edition to each initial and renewing certificate holder or licensee. The cost of complying with this statutory provision costs the Board approximately \$60,000 to obtain and mail current USPAP editions to licensees every two years. It is impossible to predict the cost for each year, because licensing occurs on a rolling basis.

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: The fiscal impact described in this regulation review is standard year to year; therefore, there is no expected increase or decrease in expenditures or revenues.

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BOARDS AND COMMISSIONS
Kentucky Real Estate Authority
Kentucky Real Estate Appraisers Board
(Amendment)

201 KAR 30:130. Education provider, instructor, and course[Standards for education] approval[fees].

RELATES TO: KRS 324A.035(3)(d), (f), 12 U.S.C. 3331-3351
STATUTORY AUTHORITY: KRS 324A.015, 324A.020, 324A.035(3)(d), (f)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 324A.020 and 324A.035 require the Real Estate Appraisers Board, with the approval of the executive director of the Kentucky Real Estate Authority, to promulgate administrative regulations necessary to carry out the provisions of KRS 324A.010 to 324A.090. KRS 324A.035(3)(d) and (f) require the board to establish requirements for education and continuing education of appraisers. This administrative regulation establishes the requirements for approval and evaluation of education providers, course instructors, and education courses, including distance education courses, for[~~of education courses for~~] real estate appraisers.

Section 1. Standards for Education Approval. (1) To qualify for prelicensure education or continuing education credit, each real estate appraisal education course shall be approved by the board in advance by the process established in[, in accordance with] this administrative regulation.

(2) Each education provider shall apply for approval by submitting a completed Education Provider Application for Course Offerings[Approval].

(3) ~~The Board shall approve education courses it determines will approval shall be given to those education courses which the board finds will provide competent instruction in real estate appraisal so as to~~ establish, maintain and increase the student's skill, knowledge and competency in real estate appraising.

(4) The board shall collect an annual [~~nonrefundable~~] fee from each education provider applying for board approval. The fee shall be:

- (a) \$100 for each prelicensure[~~hour or less education~~] course; and
- (b) Fifty (50) dollars for each continuing education course.

Section 2. Education Provider; Application Process. (1) To apply for approval as a real estate appraiser education provider or to renew approval, a provider shall submit a completed Education Provider Application for Course Offerings.

(2) If the course is a prelicensure course, the education provider shall attach for each course:

- (a) A course description;
- (b) A timed course outline;
- (c) The course's learning objectives;
- (d) A copy of the written or demonstrative material that will be used in the classroom;
- (e) A copy of the materials for instructor use;
- (f) A sample of final examinations and answer key;
- (g) A sample copy of an official transcript from the education provider;

(h) A copy of legal documentation required to support an answer made on the form, if applicable;

(i) A copy of the Certificate of Approval from the Kentucky Commission on Proprietary Education or the Kentucky Department of Education, if applicable;

- (j) Proof of instructor qualification; and
- (k) AQB and IDECC approvals, for distance education courses only.

(3) If the course is a continuing education course, the education provider shall attach:

- (a) A course description;
- (b) A timed course outline;
- (c) The course's learning objectives;
- (d) A copy of the written or demonstrative material that will be used in the classroom;

(e) A copy of the materials for instructor use;

(f) A sample copy of an official transcript from the education provider;

(g) A copy of legal documentation required to support an answer made on the form, if applicable;

(h) Proof of instructor qualification; and

(i) AQB and IDECC approvals, for distance education courses only.

(2) An approved real estate appraisal education provider shall include a statement in the education provider's application for admission that informs prospective students that, consistent with KRS Chapter 335B, a criminal conviction may prevent that person from qualifying for licensure by the Real Estate Appraisers Board.

(3) Courses from institutions that have been accredited by a regional accrediting agency approved by the U.S. Department of Education or listed in the Transfer of Credit Practices of Designated Educational Institutions, published by the American Association of Collegiate Registrars and Admissions Officers, shall be approved by the board without review.

(4) To be approved for continuing education credit, a course shall be consistent with the purpose of continuing education and cover those real property related appraisal topics, including:

- (a) Ad valorem taxation;
- (b) Arbitration, dispute resolution;
- (c) Courses related to the practice of real estate appraisal or consulting;

(d) Development cost estimating;

(e) Ethics and standards of professional practice, USPAP;

(f) Land use planning, zoning;

(g) Management, leasing, timesharing;

(h) Property development, partial interests;

(i) Real estate law, easements, and legal;

(j) Real estate litigation, damages, condemnation;

(k) Real estate financing and investment;

(l) Real estate appraisal related computer applications;

(m) Real estate securities and syndication;

(n) Green building construction;

(o) Impact of seller concessions;

(p) Appraising personal property as a component of real property value; or

(q) Appraising business value as a component of real property value.

(5) Real estate appraisal related field trips shall be acceptable for credit toward the continuing education requirements, except transit time to or from the field trip shall not be included unless instruction occurs during the transit time.

(6) To renew, an education provider shall submit a completed Education Provider Application for Course Offerings with:

(a) Changes to the course material or instructor;

(b) A time course outline;

(c) AQB and IDECC approvals, for distance education courses only.

Section 3. Education Provider Requirements. (1) An approved education provider shall notify the board within fourteen (14) days of a material change in the information originally furnished on the application or in an attachment to the application.

(2) A renewal application shall be submitted by May 31 of each year.

(3) The curriculum offered by the education provider shall:

(a) Include a minimum of two (2) classroom hours for a continuing education course;

(b) Include a minimum of fifteen (15) classroom hours, including examination time, for each qualifying education course;

(c) Be conducted for a maximum of no more than fourteen (14) hours during a twenty-four (24) hour period; and

(d) Consist of courses covering the topics listed in 201 KAR 30:190 and the AQB curriculum guidelines.

(4) An approved real estate appraisal education provider shall maintain accurate and permanent records on each student enrolled in a course.

(a) A permanent record shall include:

1. Each student's record of courses completed or attempted, academic hours awarded, and final grades; and

2. A board-approved Certificate of Completion form for each student and proof that it was mailed to each student upon completion of a course.

(b) A permanent record shall:

1. Be maintained for five (5) years; and

2. Include student attendance records, student evaluations, and test scores, if applicable.

(c) The education provider shall submit to the board a roster with the names of the individuals who attended the course and each student's final examination grade with numerical score within ten (10) days of the completion of each course.

(d) The education provider shall provide the student with a certificate of course completion within ten (10) days of the completion of each course.

(5) An approved real estate appraisal education provider shall permit inspection and monitoring by the board or its designee to evaluate all aspects of the administration or operation of the education provider.

Section 4. Education Provider; Approval Withdrawn. (1) Education provider status approval shall be withdrawn if the board determines that:

(a) Information contained on the application or renewal is inaccurate or misleading;

(b) The establishment or conduct of the education provider is not in compliance with this administrative regulation;

(c) The instruction is so deficient as to impair the value of the course; or

(d) The education provider failed to meet any policy or statement made in its application.

(2) If an education provider has been given notice of a deficiency under this section, the board shall give the education provider an opportunity to correct the deficiency within ten (10) days.

(3) An effort made directly or indirectly by an education provider, official, or employee, or a designee, to reconstruct the national real property appraisal licensing or certification examination for any licensed or certified real property appraiser, or a portion of these examinations, shall result in immediate revocation of education provider approval.

Section 5. Instructor Requirements. (1) Only an approved instructor shall teach a qualifying or mandatory continuing education course offered by an approved education provider.

(2) Instructors shall:

(a) Be approved by the board and be in compliance with the provisions of this administrative regulation; and

(b) Observe and enforce the guidelines for classroom management as part of the education program.

Section 6. Uniform Standards of Professional Appraisal Practice Courses. (1) Prior to teaching any course entitled "Uniform Standards of Professional Appraisal Practice" as a qualifying education course or a continuing education course, the instructor shall be an appraiser qualifications board certified USPAP instructor.

(2) The provider shall submit a copy of the instructor's AQB certified USPAP instructor approval certificate which includes the instructor approval number and the date of course completion.

(3) Instructors previously certified by the appraiser qualifications board national instructor program to teach USPAP who have failed to renew the certification at the time of application to the Real Estate Appraisers Board and who are not in good standing with the appraiser qualifications board or not in good standing with all state appraiser regulatory agencies in which the instructor is certified shall not be approved to teach qualifying education or continuing education courses.

Section 7. Instructor Qualifications. (1) An instructor shall have:

(a) A baccalaureate degree or higher in real estate, business, law, finance or education from a college or university duly accredited by a nationally recognized accrediting organization;

(b) An associate degree in real estate from a college or university duly accredited by a nationally recognized accrediting

organization;

(c) Completed five (5) consecutive years full-time experience, with an average of at least twenty (20) hours per week, in the real estate appraisal related subject area that he or she is teaching; or

(d) A combination of teaching, education, and full-time experience, averaging at least twenty (20) hours per week for each year of experience, in real estate appraisal totaling five (5) years.

(2) An instructor shall possess:

(a) A thorough familiarity of the provisions of KRS Chapter 324A, 201 KAR Chapter 30, and their effect on the subject area of the course;

(b) A thorough knowledge of the subject area of the course he or she is teaching, including property type and proper appraisal methods and techniques applicable to the subject area; and

(c) A thorough familiarity with the current edition of the Uniform Standards of Professional Appraisal Practice;

(3) An instructor for courses that are specific to the certified general real property appraiser level shall be a certified general real property appraiser in good standing.

(4) An instructor for courses that are specific to the certified residential real property appraiser level or the licensed residential real property appraiser level shall be a certified general real property appraiser in good standing or a certified residential real property appraiser in good standing.

Section 8. Instructor Evaluation. (1) Each continuing education provider shall distribute to and collect from each student a completed Continuing Education Instructor Evaluation Form.

(2) The board may request from each continuing education provider the provider's Continuing Education Evaluation Forms.

(3) If requested, the provider's Continuing Education Evaluation Forms shall be reviewed by the board in the following manner:

(a) The Real Estate Appraisers Board Education Coordinator or the board designee shall review the course approval percentage rating, averaging all ratings, for each instructor;

(b) A seventy (70) percent rating is required in the categories of "Instructor Knowledge"; and "Instructor Presentation";

(c) The comments section of the Continuing Education Evaluation Form shall be reviewed for other remarks concerning the instructor's performance; and

(d) If an instructor receives an average rating lower than seventy (70) percent in the categories of "Instructor Knowledge"; and "Instructor Presentation"; from two (2) courses taught within a twelve (12) month period, the board shall notify the instructor and the course provider of the deficiency.

(4) In any class with ten (10) or fewer participants for which the instructor receives at least one (1) evaluation below seventy (70) percent, the board shall not consider the highest and lowest course approval percentage rating in order to ensure greater accuracy in the rating.

(5) After a deficiency notice, the instructor may be monitored by a board representative to determine the instructor's knowledge or the course's content and ability as an instructor.

(6) The board monitor shall submit a recommendation to the board as to whether the instructor should be allowed to continue to teach courses.

(7) Based upon the recommendation of the monitor, the evaluation score and the comments from the third class, a recommendation shall be made to the board to:

(a) Take no further action;

(b) Suspend the approval of the instructor; or

(c) Place the instructor on probation pending the evaluation and review of a future class.

(8) In the event the board issues a probationary statement, the board shall outline the length and terms of the probationary period as well as the date of the class to be monitored.

(9) At the conclusion of the probationary period, the Real Estate Appraisers Board shall determine whether the instructor's approval shall continue.

(10) The board shall notify the instructor and the school of its decision in writing.

(11) If probation has ended satisfactorily, the instructor's approval will be reinstated.

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(12) If the board determines that the instructor's approval shall be suspended, the instructor shall not be allowed to teach any board-approved education courses unless approval is reinstated.

(13) The annual recertification of instructors and continuing education courses shall include an in-depth review of the evaluations completed by the students and those of any monitor who may have been present for the class.

Section 9. Withdrawal of Instructor Approval. (1) Approval of an instructor may be withdrawn by the board for:

(a) A violation of a provision of KRS 324A.050 or an administrative regulation promulgated by the board that results in the suspension or revocation of his or her certification;

(b) Falsification of material submitted to the board to become an approved instructor;

(c) Falsification of a student's hours of attendance or grades in a course;

(d) Failure to be present in the classroom or leaving the classroom management in the supervision of an instructor not approved by the board to teach the class;

(e) Failure to provide to any materials requested by the board;

(f) Improper conduct or incompetence in instruction as evidenced by:

1. Negative evaluations;

2. Excessive pass or failure rates in a course; or

3. Negative evaluation by a board representative who has observed the course.

Section 10. Instructor Reinstatement. (1) Any instructor who has been suspended from teaching continuing education courses may apply for reinstatement by submitting a request for approval to the board.

(2) If the deficiency that resulted in the suspension was related to presentation, the instructor shall attend an instructor development workshop approved by the board.

(3) If the deficiency that resulted in the suspension was related to the lack of knowledge of the subject matter, the instructor shall attend a prescribed number of credit hours in that subject approved by the board and successfully pass the examination for the course.

(4) The request for reinstatement shall include:

(a) Proof of attendance at any required courses; and

(b) Written documentation outlining other steps taken to improve the instructor's knowledge and skills.

(5) After submission of the above documents and consideration by the board, the board shall approve or deny the instructor's request for reinstatement in its discretion.

Section 11. Distance Education Provider and Course Approval.

(1) In addition to the requirements of this administrative regulation, each applicant who submits a distance education course for approval shall submit a letter of approval, to the board, for each class submitted, from one (1) of the following institutions:

(a) The International Distance Education Certification Center (IDECC);

(b) A college or university that is accredited by the Commission on Colleges; or

(c) A regional or national accrediting agency recognized by the U.S. Secretary of Education.

(2) Credit for the classroom hour requirement for education courses delivered via distance education may be obtained from:

(a) A college or university;

(b) A community or junior college;

(c) A real estate appraisal or real estate related organization;

(d) A state or federal agency or commission;

(e) A proprietary school; or

(f) An education provider approved by the board.

(3) Credit shall be granted for continuing education distance education courses that are consistent with the approved real estate appraisal continuing education topics.

(4) Credit shall be granted for qualifying education distance education courses that cover Required Core Curriculum topics.

Section 12. Distance Education Instructors and Proctors. (1) An instructor of a distance education course shall:

(a) Hold a Certified General Real Property Appraiser Certification or Certified Residential Real Property Appraiser Certification with:

1. A minimum of five (5) years of experience; and

2. Competency in the specific area of appraisal subject being taught;

(b) Hold a Certified Distance Education Instructor certification from the IDECC;

(c) Not have been found by the board to have violated the requirements of KRS 324A.050 or 201 KAR Chapter 30; and

(d) Submit a copy of the instructor's curriculum vitae and appraisal certification.

(2) If an instructor is replaced or added, the credentials of the new instructor shall be submitted for approval before that instructor may teach a course.

(3)(a) A proctor shall be the board approved individual responsible for supervising the distance education course examination.

(b) A proctor shall not be subject to the same requirements as those for a distance instructor established in subsections (1) and (2) of this section.

(c) A proctor shall not be:

1. A licensed real estate salesperson or broker;

2. A licensed or certified real property appraiser;

3. Professionally affiliated with a real estate sales or real property appraisal office or business;

4. A member of the student's family; or

5. Professionally or personally associated with the student.

(d) The proctor shall:

1. Verify that the person taking the examination is the person registered for the course by confirmation:

a. With a picture ID;

b. With another identification document, including a driver's license or student ID card; or

c. By familiarity;

2. Observe the student taking the exam;

3. Assure that the student does all the work alone without aids of any kind, including books, notes, conversation with others, or any other external resource;

4. Verify that the calculator used during the exam shall be a nonprogrammable, hand-held calculator;

5. Provide for the administration of a printed (hard copy) or CD-ROM based final examination;

6. Provide the student with the URL for the course examination which shall be supplied by the provider if a request for the examination is received from the student;

7. Assure that the student adheres to the time limit requirement specified for the examination;

8. Assure that the examination shall be completed in one (1) sitting;

9.a. Assure that, if there is an interruption, the board shall be notified that the examination was interrupted and the reason for the interruption; and

b. Assure that the board, or its designee, shall approve the request to resume; and

10. Upon completion of the examination, submit a certificate that confirms that the:

a. Proctor verified the identity of the student;

b. Examination was completed on the date assigned during the time permitted; and

c. Student has done all the work alone without aids of any kind, including books, notes, conversation with others, or any other external resource while taking the examination, including access to Internet search engines or Web sites other than the examination.

Section 13. Distance Education Course Delivery Medium. (1) A course delivery system shall contain provisions for interactivity including:

(a) Instructor feedback with a response time of no more than two (2) business days from student lesson assignment, quiz submissions, and inquiries;

(b) Readily available opportunity for student inquiry and general questions concerning the course;

(c) Timely clarification of confusing points or errors in the study

text; and

(d) Instructor's review of a student's activity in the course at least every thirty (30) days to assess progress and find the cause of potential delays in the student's completion of the course.

(2) The provider shall provide the board's course reviewers with:

(a) Two (2) full copies of the courseware with free access to the course text, assignments, quizzes, and final examination; and

(b) The URL and any username or password required for free access, if Internet course delivery shall be used.

Section 14. Distance Education Record Keeping and Reports.

(1) The provider shall furnish to the board notification identifying the student, along with the name of the course in which the student is enrolled, as each enrollment is received by the provider.

(2) At the conclusion of the course, the student shall submit a Distance Education Student Independent Work Certification for the course.

(3) Upon the completion of the final examination, the proctor shall submit a Distance Education Proctor's Examination Certification.

(4) A Distance Education Course Evaluation of the student's on-line experience during the course shall be submitted at the conclusion of the course.

(5) A Certificate of Completion shall be delivered to the board and the student upon successful completion of the course and the final examination that contains:

(a) The course name and the provider's course number exactly as it appears on the Education Provider Application for Course Offerings;

(b) The student's name and address;

(c) Whether the student passed the course;

(d) An original authorized signature of a representative for the course provider;

(e) The dates and location that the course was in session;

(f) Information that the student was in attendance a minimum of fifty (50) minutes of each hour of instruction time excluding lunch and breaks; and

(g) The address and telephone number of the provider.

Section 15. Incorporation by Reference. (1) The "Education Provider Application for Course Offerings", 6/2019 [Incorporation by Reference. (1) "Application for Course Approval", May 1994], is incorporated by reference.

(2) This material may be inspected, copied or obtained, subject to applicable copyright law, at the Kentucky Real Estate Appraisers Board, 321 N. Madison Avenue, Richmond, Kentucky 40475, (859) 623-1658, Monday through Friday, 8 a.m. to 4:30 p.m.

JOHN G. KENKEL, JR., Board Chair

H. E. CORDER, Executive Director

K. GAIL RUSSELL, Secretary

APPROVED BY AGENCY: June 12, 2019

FILED WITH LRC: June 13, 2019 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on 10:30 a.m. on July 26, 2019 at Kentucky Real Estate Appraisers Board, 321 N. Madison Avenue, Richmond, Kentucky 40475. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on July 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 below.

CONTACT PERSON: Heather L. Becker, General Counsel, Kentucky Real Estate Authority, 656 Chamberlin Ave., Suite B,

Frankfort, Kentucky 40601, phone 502-564-7760, fax 502-564-1538, email heather.becker@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Heather L. Becker

(1) Provide a brief summary of:

(a) What this administrative regulation does: KRS 324A.020 and 324A.035 require the Real Estate Appraisers Board, with the approval of the executive director of the Kentucky Real Estate Authority, to promulgate administrative regulations necessary to carry out the provisions of KRS 324A.010 to 324A.090. KRS 324A.035(3)(d) and (f) require the board to establish requirements for education and continuing education of appraisers. This administrative regulation establishes the requirements for approval and evaluation of education providers, course instructors, and education courses, including distance education courses, for real estate appraisers.

(b) The necessity of this administrative regulation: KRS 324A.035(3)(d) and (f) require the board to establish requirements for education and continuing education of appraisers.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes the requirements for approval and evaluation of education providers, course instructors, and education courses, including distance education courses, for real estate appraisers.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the requirements for approval and evaluation of education providers, course instructors, and education courses, including distance education courses, for real estate appraisers.

(2) If 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 consolidates all provisions relating to real estate appraiser education providers into one administrative regulation. This amendment removes duplicate and conflicting provisions and streamlines the processes for all education provider and course review.

(b) The necessity of the amendment to this administrative regulation: This amendment to this administrative regulation is necessary to remove duplication in the Board's regulatory scheme. The Board is also modernizing their provider and course review processes and applications, necessitating amendment to the administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 324A.035(3)(d) and (f) require the board to establish requirements for education and continuing education of appraisers. This administrative regulation establishes the requirements for approval and evaluation of education providers, course instructors, and education courses, including distance education courses, for real estate appraisers.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation establishes the requirements for approval and evaluation of education providers, course instructors, and education courses, including distance education courses, for real estate appraisers.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects approximately 1550 licensed real estate appraisers, anyone interested in becoming a real estate appraiser, and qualifying, continuing, and distance education providers. This administrative regulation also affects the Kentucky Real Estate Appraisers Board.

(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: Qualifying, continuing, and distance education providers will be subject to the new provisions for submitting and approving providers and

courses, and they will be required to use the new application form. No other new action is required by any of the entities identified in Question (3) to comply with this administrative regulation amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: There is no cost associated with complying with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities: Qualifying, continuing, and distance education providers will benefit from a streamlined application and review process that applies equally to all providers regardless of the type of education or the education delivery medium used by the provider.

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

(a) Initially: There is no cost associated with implementing this administrative regulation initially.

(b) On a continuing basis: There is no cost associated with implementing this administrative regulation on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There is no anticipated need for funding 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: There is no anticipated need to increase fees 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 directly or indirectly increase any fees. This regulation does establish fees for course and provider approval.

(9) TIERING: Is tiering applied? No. Tiering is not applied because all regulated entities are treated the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Real Estate Appraisers Board 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 324A.020, 324A.035, and 12 U.S.C. 3331 through 3351.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate revenue for local government in the first year. The Real Estate Appraisers Board will receive \$25,000 course submission fees.

(b) How 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 local government in subsequent years. The Real Estate Appraisers Board will receive \$25,000 course submission fees.

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

(d) How much will it cost to administer this program for subsequent years? There is no additional cost to administer this 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 (+/-): Neutral.

Expenditures (+/-): Neutral.

Other Explanation: None.

BOARDS AND COMMISSIONS
Kentucky Real Estate Authority
Kentucky Real Estate Appraisers Board
(Amendment)

201 KAR 30:190. Certification and licensing requirements~~[Educational requirements for certification].~~

RELATES TO: KRS 324A.010, 324A.030, 324A.035(1), (3), 324A.040(2), 324A.045, 324A.047, 324A.052, 324A.065, 324A.075, 12 C.F.R. 225.64, 225.65, 12 U.S.C. 3331-3351

STATUTORY AUTHORITY: KRS 324A.015(1), 324A.020, 324A.035(1), (3), 324A.045, 324A.065(1), 324A.075, 12 U.S.C. 3331-3351

NECESSITY, FUNCTION, AND CONFORMITY: KRS 324A.020 and 324A.035 require the Real Estate Appraisers Board, with the approval of the executive director of the Kentucky Real Estate Authority, to promulgate administrative regulations necessary to carry out the provisions of KRS 324A.010 to 324A.090. KRS 324A.035(1) and 12 U.S.C. 3331 through 3351 require~~[324A.035(1) requires]~~ the board to establish by administrative regulation requirements for certification or licensure of appraisers of real property in federally related transactions. KRS 324A.035(3)(d), (e), and (f) require~~[requires]~~ the board to establish by administrative regulations~~[regulation]~~ requirements for experience and examination of applicants. KRS 324A.065 requires the board to establish and collect fees for certification or licensure as an appraiser. KRS 324A.075 authorizes the board to issue a reciprocal credential to a person licensed or certified in another state. KRS 324A.035 requires the board to promulgate administrative regulations establishing requirements for continuing education for appraisers and license renewal procedures for certificate holders and licensees. This administrative regulation is necessary to comply with Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (12 U.S.C. 3331 through 12 U.S.C. 3351). This administrative regulation establishes the types of appraisers required in federally related transactions, scope of the practice, and general requirements for certification or licensure. Additionally, this administrative regulation adopts~~the~~[education of appraisers, 12 U.S.C. 3331-3351 establishes] requirements for certification or licensure of appraisers of real property in federally related transactions, including the education, experience, and examination requirements established~~[promulgated]~~ by the Appraisers Qualifications Board. This administrative regulation also establishes the criteria for licensure as a nonfederal real property appraiser. This administrative regulation establishes the requirements for certification or licensure of persons licensed or certified in another state. This administrative regulation establishes the requirements for temporary appraisal licenses and certificates. This administrative regulation establishes the requirements for continuing education for appraisers and license renewal procedures for certificate holders or licensees. This administrative regulation also establishes the fees for initial application, annual renewal, roster, and examination, for both federally and nonfederally~~[education requirements for appraisers of real property in federally]~~ related transactions.

Section 1. Types of Appraisers. (1) An appraiser for a federally related transaction shall be a:

- (a) Certified general real property appraiser;
- (b) Certified residential real property appraiser;
- (c) Licensed residential real property appraiser; or
- (d) Associate real property appraiser.

(2) The board may also license nonfederal real property appraisers pursuant to Section 20 of this administrative regulation.

Section 2. Scope of Practice. (1) A certified general real property appraiser may perform appraisals of all types of real property.

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(2) A certified residential real property appraiser may perform residential appraisals on vacant or improved sites with up to four (4) residential units, without regard to value or complexity.

(3) A licensed residential real property appraiser may perform appraisals of:

(a) Non-complex, one (1) to four (4) residential units with a transaction value less than \$1,000,000; and

(b) Complex, one (1) to four (4) residential units with a transaction value less than \$250,000.

(4) An associate real property appraiser may perform an appraisal of property that the supervising appraiser of the associate may appraise and shall be subject to the Uniform Standards of Professional Appraisal Practice, incorporated by reference in 201 KAR 30:040.

Section 3. General Requirements for Certification or Licensure. Except as provided by Section 4 of this administrative regulation, certification or licensure, as appropriate, shall be granted if an applicant:

(1) Has met the examination, education, experience, and fee requirements established by this administrative regulation; and

(2) Applies to the board on the notarized Appraiser License/Certification Application.

Section 4. Armed Forces Exemption. An applicant who was a member of a Reserve component of the US Armed Forces, who was pursuing an appraiser licensure or certification prior to December 1, 2011, and who was called to active duty between December 1, 2011 and December 31, 2014, may satisfy the examination, education, and experience requirements under the 2008 Real Property Appraiser Qualification Criteria instead of the requirements in this administrative regulation for a time period equal to the applicant's time of active duty, plus twelve (12) months.

Section 5. Qualifying Education for Licensure or Certification. [Definitions. (1) "AQB" means the Appraiser Qualification Board of the Appraisal Foundation.

(2) "Class hour" means sixty (60) minutes, of which at least fifty (50) minutes are instruction attended by the student, including time for examinations.

(3) "Required Core Curriculum" means the list of course topics established in Section 8 of this administrative regulation.

Section 2.] (1) Credit for the qualifying education requirements established in this administrative regulation may be obtained only from the following providers:

- (a) Colleges or universities;
 - (b) Community or junior colleges;
 - (c) Real estate appraisal or real estate related organizations;
 - (d) State or federal agencies or commissions;
 - (e) Proprietary schools;
 - (f) Providers approved by the board in accordance with 201 KAR 30:130[30:150]; and
 - (g) The Appraisal Foundation or its boards.
- (2) Experience shall not be substituted for education.

Section 6[3]. Criteria Specific to Qualifying Education. (1) A class hour shall be credited only for educational offerings with content that follows the Required Core Curriculum established in Sections 8 through 12[Section 8] of this administrative regulation for each respective credential.

(2) The course content requirement may be general or [it may be]specific to a property type.

(3) A class hour shall be obtained only if:

(a) The minimum length of the educational offering is at least fifteen (15) hours; and

(b) The student successfully completes an approved closed-book examination pertinent to that educational offering.

(4) If an individual qualifying education course covers multiple topics identified within the Required Core Curriculum, there shall be appropriate testing of each component.

(5) Courses taken to satisfy the qualifying education requirements shall not be repetitive.

(6) Courses shall foster problem-solving skills in the education process by utilizing case studies as a major teaching method if applicable.

Section 7. [(7)] Uniform Standards of Professional Appraisal Practice (USPAP) [incorporated by reference in 201 KAR 30:040,] courses.

(1) [(a)] An applicant shall take the 15-Hour National USPAP Course, or its equivalent, and pass the associated 15-Hour National USPAP Course Examination as approved by the AQB.

(2) [(b)] At least one (1) of the course instructors shall be an AQB Certified USPAP instructor who is also a state certified appraiser.

(3) [(c)] USPAP course content equivalency shall be determined by the AQB or by an alternate method established by the AQB.

Section 8[4]. Qualifying Education for Associate Real Property Appraisers[Appraiser]. (1) Prior to applying for an associate real property appraiser certification, an applicant shall have completed ninety (90) class hours as specified in the required core curriculum.

(2) The required core curriculum and class hours for an associate real property appraiser certification shall be:

(a) Basic appraisal principles: thirty (30) class hours.

(b) Basic appraisal procedures: thirty (30) class hours.

(c) Residential market analysis and highest and best use: fifteen (15) class hours.

(d) 15-Hour national USPAP course or fifteen (15) hours its equivalent: fifteen (15) hours.

(3) [established in Section 8 of this administrative regulation, which shall include at least fifteen (15) hours related to market analysis and highest and best use.

(2) An applicant shall pass:

(a) the Required Core Curriculum examination for each course taken; and

(b) The 15-Hour National USPAP Course or its equivalent and examination as established in Section 3(7) of this administrative regulation].

(4) All qualifying education shall be completed within the five (5) year period immediately preceding [prior to] the submission of an application for an Associate Real Property Appraiser credential.

Section 9[5]. Qualifying Education for Licensed Residential Real Property Appraisers. (1) The prerequisite for taking the AQB approved examination shall be successful completion of 150[180] class hours as established in the required core curriculum.

(2) The required core curriculum and class hours for a licensed residential real property appraiser shall be: [established in Section 8 of this administrative regulation.

(2) The applicant shall successfully complete the 15-Hour National USPAP Course, or its equivalent, and the examination required by Section 3(7) of this administrative regulation. There is no alternative to successful completion of the examination.

(3) An applicant for the licensed real property certificate shall hold a bachelor's degree, or higher, from an accredited college, junior college, community college, or university.

Section 6. Qualifying Education for Certified Residential Real Property Appraisers Certification. (1) The prerequisite for taking the AQB approved examination shall be completion of 200 class hours as established in the required core curriculum Section 8 of this administrative regulation.

(2) The applicant shall successfully complete the 15-Hour National USPAP Course, or its equivalent, and the examination required by Section 3(7) of this administrative regulation.

(3) An applicant for the certified residential real property certificate shall hold a bachelor's degree, or higher, from an accredited college, junior college, or community college.

Section 7. Qualifying Education for Certified General Real Property Appraiser Certification. (1) The prerequisite for taking the AQB approved examination shall be completion of 300 class hours as established in the required core curriculum Section 8 of this administrative regulation.

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(2) The applicant shall complete the 15-Hour National USPAP Course and examination.

(3) An applicant shall demonstrate that his or her education includes the core courses listed in these criteria, with particular emphasis on nonresidential properties.

(4) An applicant for the certified general real property certificate shall hold a bachelor's degree or higher from an accredited college or university.

Section 8. The required core curriculum and class hours for each of the types or classification of licensees or certificate holders shall be as follows:

(1) Associate Real Property Appraiser consisting of ninety (90) class hours.]

(a) Basic appraisal principles: thirty (30) class hours.

(b) Basic appraisal procedures: thirty (30) class hours.

(c) Market analysis and highest and best use: fifteen (15) class hours.

(d) 15-Hour national USPAP course or fifteen (15) hours its equivalent: fifteen (15) hours.

(2) Licensed real estate appraiser consisting of 180 class hours.

(a) Basic appraisal principles: thirty (30) class hours.

(b) Basic appraisal procedures: thirty (30) class hours.

(c) 15-Hour national USPAP course or fifteen (15) hours its equivalent: fifteen (15) class hours.

(d) Residential market analysis and highest and best use: fifteen (15) class hours.

(e) Residential appraiser site valuation and cost approach: fifteen (15) class hours.

(f) Residential sales comparison and income approaches: thirty (30) class hours.

(g) Residential report writing and case studies: fifteen (15) class hours.

Section 10. Qualifying Education for Certified Residential Real Property Appraisers Certification. (1) The prerequisite for taking the AQB approved examination shall be completion of 200 class hours as established in the required core curriculum.

(2) The required core curriculum and (h) Statistics, modeling, and finance: fifteen (15) class hours.

(i) Advanced residential applications and case studies: fifteen (15) class hours for a].

(3) certified residential real estate appraiser shall be: [consisting of 200 class hours.]

(a) Basic appraisal principles: thirty (30) class hours.

(b) Basic appraisal procedures: thirty (30) class hours.

(c) 15-Hour national USPAP course or fifteen (15) hours its equivalent: fifteen (15) class hours.

(d) Residential market analysis and highest and best use: fifteen (15) class hours.

(e) Residential appraiser site valuation and cost approach: fifteen (15) class hours.

(f) Residential sales comparison and income approaches: thirty (30) class hours.

(g) Residential report writing and case studies: fifteen (15) class hours.

(h) Statistics, modeling and finance: fifteen (15) class hours.

(i) Advanced residential applications and case studies: fifteen (15) class hours.

(j) Appraisal subject matter electives: twenty (20) class hours.

(3) An applicant for the certified residential real property certificate shall satisfy at least one of the following options:

(a) Possess a bachelor's degree from an accredited college or university in any field of study;

(b) Possess an associate's degree from an accredited college or university in any field of study related to:

1. Business Administration;

2. Accounting;

3. Finance;

4. Economics; or

5. Real Estate;

(c) Have successfully completed thirty (30) semester hours of college-level courses that cover each of the following specific topic

areas and hours:

1. English Composition (three (3) semester hours);

2. Microeconomics (three (3) semester hours);

3. Macroeconomics (three (3) semester hours);

4. Finance (three (3) semester hours);

5. Algebra, Geometry, or higher mathematics (three (3) semester hours);

6. Statistics (three (3) semester hours);

7. Computer Science (three (3) semester hours);

8. Business or Real Estate Law (three (3) semester hours); and

9. Two (2) elective courses in any of the topics listed above or in accounting, geography, agricultural economics, business management, or real estate (three (3) semester hours each).

(d) Successful completion of at least thirty (30) semester hours of College Level Examination Program® (CLEP®) examinations from each of the following subject matter areas:

1. College Algebra (three (3) semester hours);

2. College Composition (six (6) semester hours);

3. College Composition Modular (three (3) semester hours);

4. College Mathematics (six (6) semester hours);

5. Principles of Macroeconomics (three (3) semester hours);

6. Principles of Microeconomics (three (3) semester hours);

7. Introductory Business Law (three (3) semester hours); and

8. Information Systems (three (3) semester hours).

(e) Any combination of (c) and (d) that ensure coverage of all topics and hours identified in (c); or

(f) Proof of credential as a licensed residential real property appraiser for a minimum of five (5) years with no record of adverse, final, and non-appealable disciplinary action affecting the licensed residential real property appraiser's legal ability to engage in appraisal practice within the five (5) years immediately preceding the date of application for the certified residential credential.

Section 11. Qualifying Education for (4) Certified General Real Property [estate] Appraiser Certification. (1) The prerequisite for taking the AQB approved examination shall be completion of 300 class hours as established in the required core curriculum.

(2) The required core curriculum and class hours for a certified general real property appraiser shall be: [consisting of 300 class hours.]

(a) Basic appraisal principles: thirty (30) class hours.

(b) Basic appraisal procedures: thirty (30) class hours.

(c) 15-Hour national USPAP course or fifteen (15) hours its equivalent: fifteen (15) class hours.

(d) General appraiser market analysis and highest and best use: thirty (30) class hours.

(e) Statistics, modeling and finance: fifteen (15) class hours.

(f) General appraiser site valuation and cost approach: thirty (30) class hours.

(g) General appraiser sales comparison approach: thirty (30) class hours.

(h) General appraiser income approach: sixty (60) class hours.

(i) General appraiser report writing and case studies: thirty (30) class hours.

(j) Appraisal subject matter electives: thirty (30) class hours.

(3) An applicant shall demonstrate that his or her education includes the core courses listed in these criteria, with particular emphasis on nonresidential properties.

(4) An applicant for the certified general real property certificate shall hold a bachelor's degree or higher from an accredited college or university.

Section 12. Required Core Curriculum. The required core curriculum and class hours for each of the types or classification of licensees or certificate holders prescribed in Sections 8 through 11 of this administrative regulation shall be consistent with and cover the topics established in the most recent criteria for qualifying education issued by the Appraiser Qualification Board of the Appraisal Foundation.

Section 13. Required Experience. (1) Certification as a general real property appraiser shall require:

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(a) 3,000 hours of appraisal experience, which shall not be acquired in a period of fewer than eighteen (18) calendar months;

(b) At least 1,500 hours of appraisal experience shall be nonresidential.

(2) Certification as a residential real property appraiser shall require 1,500 hours of appraisal experience, which shall not be acquired in a period of fewer than twelve (12) calendar months.

(3) Licensure as a residential real property appraiser shall require 1,000 hours of appraisal experience, which shall not be acquired in a period of fewer than six (6) calendar months.

(4) More than fifty (50) percent of the required experience credit shall not be obtained for appraisal assignments without a traditional client (e.g., a client hiring an appraiser for a business purpose) being identified.

(5) More than fifty (50) percent of the required experience credit shall not be obtained in a board-approved practicum course that requires students to:

(a) Produce credible appraisals that utilize an actual subject property;

(b) Perform market research containing sales analysis;

(c) Perform assignments that require problem solving skills for a variety of property types; and

(d) Apply and report the appraisal approaches in compliance with the Uniform Standards of Professional Appraisal Practice (USPAP), incorporated by reference in 201 KAR 30:040.

(6) The appraisal experience required by this section may have been acquired in any calendar years, whether or not the calendar years are consecutive. Hours may be treated as cumulative in order to achieve the necessary hours of appraisal experience.

(7) Real property appraisal assignments submitted for experience credit shall be completed:

(a) In compliance with the requirements of USPAP as incorporated by reference in 201 KAR 30:040 and defined in KRS 324A.010(7);

(b) Under the supervision of a certified residential real property appraiser for experience of one (1) to four (4) unit residential properties; and

(c) Under the supervision of a certified general real property appraiser for experience of all property uses other than one (1) to four (4) unit residential properties.

(8) To count towards the requirements of this section, the experience shall be acquired while the applicant is licensed or certified by the board.

Section 14. Examination. (1) An applicant for certification as a certified general real property appraiser, a certified residential real property appraiser, a licensed residential real property appraiser, or an associate real property appraiser shall pass an examination specific for the certification or license applied for and approved by:

(a) The board; and

(b) The Appraiser Qualifications Board of the Appraisal Foundation.

(2) A passing score from an examination shall be valid for two (2) years.

(3) An applicant shall complete all the education and experience requirements for the credential which the individual is seeking prior to being approved to sit for the national appraisal examination.

(4)(a) An individual shall submit a completed Application for Appraiser Credential and Reciprocal, which documents the completed education and experience to the board prior to being approved to sit for the national appraisal examination.

(b) The applicant shall submit the following information with the application:

1. Proof of completion of the education;

2. Proof of completion of the required experience as established in Section 13 of this administrative regulation, including any reports identified by the board; and

3. The fee required by 201 KAR 30:110.

(5)(a) An applicant shall verify experience credit on the Appraiser Assignment Log.

(b) An applicant shall submit satisfactory reports, file memoranda, and other documentation requested by the board to confirm the applicant's appraisal experience.

Section 15. Temporary Appraisal Licenses and Certificates. (1) A real estate appraiser from another state who is licensed or certified by the appraiser licensing or certifying agency in that state shall apply for registration to receive temporary appraiser licensing or certification privileges in this state by paying a fee of \$150 and filing with the board a notarized Non-Resident Appraiser Application for Temporary Practice. The completed application shall include:

(a) An irrevocable consent that service of process in an action against the applicant arising out of the applicant's appraisal activities in this state may be made by delivery on the board;

(b) Information sufficient to identify the appraisal assignment to be performed under the temporary practice certificate or license, including the projected beginning and ending dates for performing the appraisal assignment, but the applicant shall not divulge information concerning the appraisal assignment that would breach the applicant's duty of confidentiality to his client under the provisions of the Uniform Standards of Professional Appraisal Practice, incorporated by reference in 201 KAR 30:040; and

(c) Upon request of the board, statement under seal issued by the appraiser licensing or certifying agency setting forth:

1. The applicant's name, business name, and address;

2. The type of license or certificate held by the applicant and the license or certificate number;

3. The dates of licensure or certification and the expiration date of the applicant's current license or certificate;

4. If the license or certificate was issued as a result of passing a licensure or certification examination, by reciprocity, or by some other means; and

5. A complete record of disciplinary actions taken or disciplinary proceedings pending against the applicant.

(2) An applicant shall be granted a temporary practice certificate or license by the board, to perform the appraisal assignment described in his application, if:

(a) He has filed a properly completed application;

(b) He has submitted the required fee with the application;

(c) He has satisfied the board as to his qualifications and eligibility for temporary licensing or certification privileges; and

(d) The time projected by the applicant for completion of the assignment is reasonable, given the scope and complexity of the assignment.

(3) Except as provided by subsection (1) of this section, licensing and certification privileges granted under the provisions of this administrative regulation shall expire upon completion of the appraisal assignment described in the application for temporary licensing.

(4) To afford an applicant additional time to complete the appraisal assignment, the board shall extend the licensing or certification privileges granted under an applicant's temporary practice certificate or license, if he shows that additional time is needed to complete the assignment.

(5) A person granted temporary licensing or certification privileges under the provisions of this administrative regulation shall not advertise or otherwise claim to be a Kentucky state-licensed or state-certified appraiser.

Section 16. Reciprocal Licensing Requirements for Applicants Licensed or Certified in Another State. (1) A licensee from another state may obtain a certification or licensed residential real property appraiser credential in Kentucky by reciprocity.

(2) An individual who is a certified residential, a certified general, or a licensed residential real property appraiser out-of-state may apply for a Kentucky credential that is the same as the out-of-state certification held by that individual in the other state if the appraiser licensing program of the other state:

(a) Is in compliance with the provisions of the Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA) of Title XI Real Estate Appraisal Reform Amendments (12 U.S.C. 3331-3351) as administered by the Appraisal Subcommittee (ASC) of the Federal Financial Institutions Examination Council (FFIEC); and

(b) The credentialing requirements of the home state meets or exceeds the KREAB requirements that exist at the time the

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reciprocal application is submitted to the board.

(3) To obtain a Kentucky certification issued by the board, an out-of-state applicant shall:

(a) Complete the notarized Application for Appraiser Credential and Reciprocal;

(b) Be identified on the National Registry of The Appraisal Subcommittee as an active licensed or certified real property appraiser that currently conforms to the AQB criteria;

(c) Not have received disciplinary action that limited or stopped the ability to complete the practice of real property appraising; and

(d) Not have lost a license to practice any profession by revocation, suspension, or voluntary surrender.

(4) The out-of-state applicant shall indicate whether the applicant:

(a) Has had an application for certification or licensure as an appraiser denied by any agency within the Commonwealth or any other state, and if so, explain and submit with the application a copy of the denial notice;

(b) Has been reprimanded, fined, or had a license, certificate, or registration suspended, revoked, restricted, denied, or surrendered in the Commonwealth or in any other state, and if so, submit with the application:

1. A written explanation; and

2. A copy of any documentation that describes the charges and action taken by the agency;

(c) Is the subject of any pending investigation, administrative sanction proceeding, hearing, trial, or similar action by any agency that granted or denied the license, certificate, or registration, and if so, explain and submit with the application a copy of any documentation describing the charges;

(d) Has ever entered a plea of nolo contendere, been found guilty of, or been convicted of a felony, or within the last ten (10) years of a misdemeanor, and if so, submit with the application:

1. An explanation of the offense;

2. The location of the proceedings; and

3. A copy of all final court documents identifying the charges and assessing the penalties;

(e) Is awaiting trial or sentencing in any criminal proceeding, and if so, submit with the application:

1. An explanation of the facts of the alleged offense; and

2. The location of the proceedings; and

(f) Has had any disciplinary action brought against him or her as a member of any professional organization or trade association, and if so, submit with the application:

1. An explanation of the action;

2. A copy of any document reflecting the allegations; and

3. The final action or decision if rendered.

(5) No provision of this administrative regulation shall be construed to prohibit the professional appraisal practice activities of any out-of-state certified appraiser who is performing the duties and responsibilities while a direct full-time employee of any entity of the United States government.

Section 17. Individual Appraiser License Renewal and Fees.

(1) Except as provided in subsection 2 of this section, a licensed or certified real property appraiser seeking to renew his or her license shall:

(a) Use the online License Renewal System offered by the board at www.kreab.ky.gov on or before July 1 each year; and

(b) Pay a renewal fee in the amount of \$212 for associate appraiser renewal and \$252 for certified or licensed residential renewal.

(2) If a licensed or certified appraiser is unable to utilize the online procedure, he or she shall:

(a) Complete and submit on or before July 1 one of the following Annual Renewal Notices:

1. Annual Renewal Notice Associate;

2. Annual Renewal Notice Certified Residential and Certified General; or

3. Annual Renewal Notice Licensed Residential; and

(b) Submit a check or money order made payable to the Kentucky Real Estate Appraisers Board in the amount of \$212 for associate appraiser renewal and \$252 for certified or licensed residential renewal.

(3) The board shall notify a licensee that his or her license is due to expire in accordance with the renewal dates established in KRS 324A.045(2). Failure to receive a renewal notification shall not excuse a licensee of his or her obligation to renew.

(4) The renewal date for a certificate or license shall be July 1 of each calendar year.

(5) The fee required for annual renewal of a certificate or license shall be submitted by each certificate holder or licensee on or before July 1 of each calendar year.

(6) Failure to renew a license or certificate by July 1 shall result in a \$200 late renewal fee.

Section 18. Certificate Holder or Licensee Continuing Education. (1) All licensed or certified real property appraisers, including associate appraisers, shall:

(a) Complete fourteen (14) hours of board approved continuing education each license year prior to May 31 of the current renewal year; and

(b) Submit to the board proof of course completion prior to May 31 of the current renewal year.

(2)(a) Each certificate holder or licensee shall successfully complete the seven (7) hour National Uniform Standards of Professional Appraisal Practice Update Course, or its equivalent, between January 1 and May 31 of each even numbered year.

(b) Equivalency shall be determined by the Appraiser Qualifications Board Course Approval Program.

(c) USPAP continuing education credit shall only be awarded if the class is instructed by an AQB Certified Instructor who is also a State Certified General Real Property Appraiser or a State Certified Residential Real Property Appraiser.

(3) Failure to complete and submit to the board proof of course completion prior to the May 31 deadline shall prevent renewal until the certificate holder or licensee completes the deficient education and remits payment of a \$200 late fee.

(4) Continuing education credit may be granted by the board. If granted, continuing education credit shall be for:

(a) Approved continuing education courses; or

(b) Participation, other than as a student, in appraisal educational programs and processes not to exceed seven (7) hours of the required fourteen (14) hours of continuing education for each licensure year.

(2) Appraisal educational programs and processes shall include:

(a) Teaching a course. Credit for instructing any given course shall only be awarded one (1) time during a continuing education cycle;

(b) Program development;

(c) Authorship of textbooks; or

(d) Similar activities.

(3) Continuing education credit shall be granted if a course:

(a) Is at least two (2) hours in duration;

(b) The subject is designed to ensure that an appraiser's skill, knowledge, and competency in real estate appraisal shall be maintained or increased; and

(c) Has been approved by the board.

(4) The board shall defer continuing education requirements for up to 180 days for a certificate holder or licensee:

(a) Returning from active military duty; or

(b) Whose business or residence is located in a county that has been declared a disaster area by the governor or President of the United States.

(5) Credit for repeating the same course title and content within a twenty-four (24) month period shall not be granted.

Section 19. Inactive Status. (1) Requests to enter inactive status pursuant to KRS 324A.047 shall be submitted to the board on the Request for Inactive Status form.

(2) The completed form shall be accompanied by the required fifty (50) dollar fee.

Section 20. Licensed nonfederal real property appraisers. (1) The provisions of this section shall not apply to persons who, prior to April 7, 1992 have engaged in the appraisal of real property for at least ten (10) years.

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(2) An applicant shall be licensed as a nonfederal real property appraiser if he has:

(a) A:

1. High school diploma; or
2. General equivalency diploma;
- (b) Applied to the board for licensure; and

(c) Paid the fees required by KRS 324A.065(2).

(3) A licensed nonfederal real property appraiser shall not be required to meet the conditions established for the:

(a) Certification of:

1. General real property appraisers; or
2. Residential real property appraisers; or

(b) Licensure of licensed residential real property appraisers.

(4) A licensed nonfederal real property appraiser shall not perform real property appraisals of property that is the subject of a federally related transaction as defined by 201 KAR 30:010.

Section 21. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for Appraiser Credential and Reciprocal", 6/2019;

(b) "AQB Real Property Appraiser Qualification Criteria", 5/2018;

(c) "Non-residential Appraiser Application for Temporary Practice", 6/2019;

(d) "Annual Renewal Notice Associate", 6/2019;

(e) "Annual Renewal Notice Certified Residential and Certified General", 6/2019;

(f) "Annual Renewal Notice Licensed Residential", 6/2019; and

(g) "Request for Inactive Status", 6/2019.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Real Estate Appraisers Board, 321 N. Madison Avenue, Richmond, Kentucky 40475, (859) 623-1658, Monday through Friday, 8 a.m. to 4:30 p.m.

(5) The required core curriculum classes shall cover the topics established in this subsection.

(a) Basic appraisal principles:

1. Real property concepts and characteristics, including basic real property concepts, real property characteristics, and legal description.

2. Legal consideration, including forms of ownership, public and private controls, real estate contracts, and leases.

3. Influences on real estate values, including governmental influences, economic influences, social influences, environmental, geographic, and physical influences.

4. Types of value, including market value and other value types.

5. Economic principles, including classical economic principles and application and illustrations of the economic principles.

6. Overview of real estate markets and analysis including market fundamentals, characteristics, and definitions, supply analysis, demand analysis, use of market analysis.

7. Ethics and how they apply in appraisal theory and practice.

(b) Basic appraisal procedures:

1. Overview of approaches to value.

2. Valuation procedures.

a. Defining the problem;

b. Collecting and selecting data;

c. Analyzing;

d. Reconciling and final value opinion;

e. Communicating the appraisal;

f. Valuation of green buildings; and

g. Impact of seller concessions.

3. Property description.

a. Geographic characteristics of the land or site;

b. Geologic characteristics of the land or site;

c. Location and neighborhood characteristics;

d. Land or site considerations for highest and best use; and

e. Improvements: architectural styles and types of construction.

4. Residential applications.

(c) The 15-Hour National USPAP Course or its equivalent.

1. Preamble and ethics rules.

2. Standard 1.

3. Standard 2.

4. Standards 3 through 10.

5. Statements and advisory opinions.

(d) Residential market analysis and highest and best use.

1. Residential markets and analysis.

a. Market fundamentals, characteristics, and definitions;

b. Supply analysis;

c. Demand analysis; and

d. Use of market analysis.

2. Highest and best use.

a. Test constraints;

b. Application of highest and best use;

c. Special considerations;

d. Market analysis; and

e. Case studies.

(e) Residential appraiser site valuation and cost approach.

1. Site valuation.

a. Methods; and

b. Case studies.

2. Cost approach.

a. Concepts and definitions;

b. Replacement or reproduction cost new;

c. Accrued depreciation;

d. Methods of estimating accrued depreciation; and

e. Case studies.

(f) Residential sales comparison and income approaches.

1. Valuation principles and procedures-sales comparison approach.

2. Valuation principles and procedures-income approach.

3. Finance and cash equivalency.

4. Financial calculator introduction.

5. Identification, derivation, and measurement of adjustments.

6. Gross rent multipliers.

7. Partial interests.

8. Reconciliation.

9. Case studies and applications.

(g) Residential report writing and case studies.

1. Writing and reasoning skills.

2. Common writing problems.

3. Form reports.

4. Report options and USPAP compliance.

5. Case studies.

(h) Statistics, modeling, and finance.

1. Statistics.

2. Automated valuation models (AVMs) and mass appraisal.

3. Real estate finance.

(i) Advanced residential applications and case studies.

1. Complex property, ownership, and market conditions.

2. Deriving and supporting adjustments.

3. Residential market analysis.

4. Advanced case studies.

(j) General appraiser market analysis and highest and best use.

1. Real estate markets and analysis.

a. Market fundamentals, characteristics, and definitions;

b. Supply analysis;

c. Demand analysis; and

d. Use of market analysis.

2. Highest and best use.

a. Test constraints;

b. Application of highest and best use;

c. Special considerations;

d. Market analysis; and

e. Case studies.

(k) General appraiser sales comparison approach.

1. Value principles.

2. Procedures.

3. Identification and measurement of adjustments.

4. Reconciliation.

5. Case studies.

(l) General appraiser site valuation and cost approach.

1. Site valuation.

a. Methods; and

b. Case studies;

2. Cost approach.

a. Concepts and definitions;

- ~~b. Replacement or Reproduction cost new; c. Accrued depreciation;~~
- ~~d. Methods of estimating accrued depreciation; and~~
- ~~e. Case studies;~~
- ~~(m) General appraiser income approach.~~
 - ~~1. Overview.~~
 - ~~2. Compound interest.~~
 - ~~3. Lease analysis.~~
 - ~~4. Income analysis.~~
 - ~~5. Vacancy and collection loss.~~
 - ~~6. Estimating operating expenses and reserves.~~
 - ~~7. Reconstructed income and expense statement.~~
 - ~~8. Stabilized net operating income estimate.~~
 - ~~9. Direct capitalization.~~
 - ~~10. Discounted cash flow.~~
 - ~~11. Yield capitalization.~~
 - ~~12. Partial interests.~~
 - ~~13. Case studies.~~
- ~~(n) General appraiser report writing and case studies.~~
 - ~~1. Writing and reasoning skills.~~
 - ~~2. Common writing problems.~~
 - ~~3. Report options and USPAP compliance.~~
 - ~~4. Case studies]~~

JOHN G. KENKEL, JR., Board Chair
 H. E. CORDER, Executive Director
 K. FAIL RUSSELL, Secretary

APPROVED BY AGENCY: June 12, 2019
 FILED WITH LRC: June 13, 2019 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on 10:30 a.m. on July 26, 2019 at Kentucky Real Estate Appraisers Board, 321 N. Madison Avenue, Richmond, Kentucky 40475. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on July 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 below.

CONTACT PERSON: Heather L. Becker, General Counsel, Kentucky Real Estate Authority, 656 Chamberlin Avenue, Suite B, Frankfort, Kentucky 40601, phone 502-564-7760, fax 502-564-1538, email heather.becker@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Heather L. Becker

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the types of appraisers required in federally related transactions, scope of the practice, and general requirements for certification or licensure. Additionally, this administrative regulation adopts the requirements for certification or licensure of appraisers of real property in federally related transactions, including the education, experience, and examination requirements promulgated by the Appraisers Qualifications Board established by 12 U.S.C. 3331-3351. This administrative regulation also establishes the criteria for licensure as a nonfederal real property appraiser. This administrative regulation establishes the requirements for certification or licensure of persons licensed or certified in another state. This administrative regulation establishes the requirements for temporary appraisal licenses and certificates. This administrative regulation establishes fees for initial application, annual renewal, roster, and examination, for both federally and nonfederally related transactions. This administrative regulation establishes the continuing education

requirements for credential holders.

(b) The necessity of this administrative regulation: KRS 324A.020 and 324A.035 require the Real Estate Appraisers Board, with the approval of the executive director of the Kentucky Real Estate Authority, to promulgate administrative regulations necessary to carry out the provisions of KRS 324A.010 to 324A.090. KRS 324A.035(1) and 12 U.S.C. 3331 through 3351 require the board to establish by administrative regulation requirements for certification or licensure of appraisers of real property in federally related transactions. KRS 324A.035(3)(d), (e), and (f) require the board to establish by administrative regulations requirements for experience and examination of applicants. KRS 324A.065 requires the board to establish and collect fees for certification or licensure as an appraiser. KRS 324A.075 authorizes the board to issue a reciprocal credential to a person licensed or certified in another state. KRS 324A.035 requires the board to promulgate administrative regulations establishing license renewal procedures for credential holders. This administrative is necessary to establish the continuing education requirements for credential holders and the deadline for submission of course completion documentation. This administrative regulation is necessary to comply with Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (12 U.S.C. 3331 through 12 U.S.C. 3351).

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 324A.020 and 324A.035 require the Real Estate Appraisers Board, with the approval of the executive director of the Kentucky Real Estate Authority, to promulgate administrative regulations necessary to carry out the provisions of KRS 324A.010 to 324A.090. KRS 324A.035(1) and 12 U.S.C. 3331 through 3351 require the board to establish by administrative regulation requirements for certification or licensure of appraisers of real property in federally related transactions. KRS 324A.035(3)(d), (e), and (f) require the board to establish by administrative regulations requirements for experience and examination of applicants. KRS 324A.065 requires the board to establish and collect fees for certification or licensure as an appraiser. KRS 324A.075 authorizes the board to issue a reciprocal credential to a person licensed or certified in another state. KRS 324A.035 requires the board to promulgate administrative regulations establishing license renewal procedures for credential holders. KRS 324A.035(3) requires the board to establish by administrative regulation requirements for continuing education for appraisers. This administrative regulation is necessary to comply with Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (12 U.S.C. 3331 through 12 U.S.C. 3351). This administrative regulation establishes the types of appraisers required in federally related transactions, scope of the practice, and general requirements for certification or licensure. Additionally, this administrative regulation adopts the requirements for certification or licensure of appraisers of real property in federally related transactions, including the education, experience, and examination requirements promulgated by the Appraisers Qualifications Board established by 12 U.S.C. 3331-3351. This administrative regulation also establishes the criteria for licensure as a nonfederal real property appraiser. This administrative regulation establishes the requirements for certification or licensure of persons licensed or certified in another state. This administrative regulation establishes the requirements for temporary appraisal licenses and certificates. This administrative regulation establishes fees for initial application, annual renewal, roster, and examination, for both federally and nonfederally related transactions. This administrative regulation establishes the continuing education requirements for credential holders.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the types of appraisers required in federally related transactions, scope of the practice, and general requirements for certification or licensure. Additionally, this administrative regulation adopts the requirements for certification or licensure of appraisers of real property in federally related transactions, including the education, experience, and examination requirements promulgated by the Appraisers

Qualifications Board established by 12 U.S.C. 3331-3351. This administrative regulation also establishes the criteria for licensure as a nonfederal real property appraiser. This administrative regulation establishes the requirements for certification or licensure of persons licensed or certified in another state. This administrative regulation establishes the requirements for temporary appraisal licenses and certificates. This administrative regulation establishes fees for initial application, annual renewal, roster, and examination, for both federally and nonfederally related transactions. This administrative regulation establishes the requirements for continuing education for credential holders. The regulation requires fourteen hours per year of continuing education, to include seven hours of National Uniform Standards of Professional Appraisal Practice updates and instruction.

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

(a) How the amendment will change this existing administrative regulation: This administrative regulation amendment consolidates all prelicensing education, experience, and examination requirements into one administrative regulation that clearly defines the entire licensing process followed by the Board. This regulation combines substantive provisions from nine separate administrative regulations which all related to obtaining and maintaining licensure, license renewal, and temporary and reciprocal licensing. Additionally, this administrative regulation incorporates the 2018 Real Property Appraiser Qualification Criteria published by the Appraisal Qualifications Board of the Appraisal Foundation. Amendment to the continuing education provisions of this administrative regulation change the deadline for submitting proof of continuing education course completion from May 15 to May 31 of each renewal year. This amendment also relocates the requirement that credential holders complete the National Uniform Standards of Professional Appraisal Practice course once every two years to a portion of the regulation that establishes the basic continuing education obligations for credential holders.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation incorporates the 2018 Real Property Appraiser Qualification Criteria published by the Appraisal Qualifications Board of the Appraisal Foundation. KRS 324A.035 prohibits the board from establishing requirements relating to appraisers of federally related transactions in excess of the minimum requirements established by federal law or regulation. Therefore, amendment to the education and experience qualifications is necessary to discharge this statutory duty.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 324A.020 and 324A.035 require the Real Estate Appraisers Board, with the approval of the executive director of the Kentucky Real Estate Authority, to promulgate administrative regulations necessary to carry out the provisions of KRS 324A.010 to 324A.090. KRS 324A.035(1) and 12 U.S.C. 3331 through 3351 require the board to establish by administrative regulation requirements for certification or licensure of appraisers of real property in federally related transactions. KRS 324A.035(3)(d), (e), and (f) require the board to establish by administrative regulations requirements for experience and examination of applicants. KRS 324A.065 requires the board to establish and collect fees for certification or licensure as an appraiser. KRS 324A.075 authorizes the board to issue a reciprocal credential to a person licensed or certified in another state. KRS 324A.035 requires the board to promulgate administrative regulations establishing license renewal procedures for credential holders. KRS 324A.035(3) requires the board to establish by administrative regulation requirements for continuing education for appraisers. This administrative regulation is necessary to comply with Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (12 U.S.C. 3331 through 12 U.S.C. 3351). This administrative regulation establishes the types of appraisers required in federally related transactions, scope of the practice, and general requirements for certification or licensure. Additionally, this administrative regulation adopts the requirements for certification or licensure of appraisers of real property in federally related transactions, including the education, experience, and examination requirements promulgated by the Appraisers Qualifications Board established by 12 U.S.C. 3331-

3351. This administrative regulation also establishes the criteria for licensure as a nonfederal real property appraiser. This administrative regulation establishes the requirements for certification or licensure of persons licensed or certified in another state. This administrative regulation establishes the requirements for temporary appraisal licenses and certificates. This administrative regulation establishes fees for initial application, annual renewal, roster, and examination, for both federally and nonfederally related transactions. This administrative regulation establishes the continuing education requirements for credential holders.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation establishes the types of appraisers required in federally related transactions, scope of the practice, and general requirements for certification or licensure. Additionally, this administrative regulation adopts the requirements for certification or licensure of appraisers of real property in federally related transactions, including the education, experience, and examination requirements promulgated by the Appraisers Qualifications Board established by 12 U.S.C. 3331-3351. This administrative regulation also establishes the criteria for licensure as a nonfederal real property appraiser. This administrative regulation establishes the requirements for certification or licensure of persons licensed or certified in another state. This administrative regulation establishes the requirements for temporary appraisal licenses and certificates. This administrative regulation establishes fees for initial application, annual renewal, roster, and examination, for both federally and nonfederally related transactions. This administrative regulation incorporates the 2018 Real Property Appraiser Qualification Criteria published by the Appraisal Qualifications Board of the Appraisal Foundation. KRS 324A.035 prohibits the board from establishing requirements relating to appraisers of federally related transactions in excess of the minimum requirements established by federal law or regulation. Therefore, amendment to the education and experience qualifications is necessary to discharge this statutory duty. Additionally, the amendment changes the deadline for completion and submission of course completion documentation for all credential holders, allowing an additional two weeks to complete and submit course completion proof.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects approximately 1550 licensed real estate appraisers, anyone interested in becoming a real estate appraiser, and all persons seeking to have real estate appraised. This administrative regulation also affects the Kentucky Real Estate Appraisers Board.

(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: New applicants and associate appraisers some current credential holders will benefit from less restrictive education and experience prerequisites due to the Board's adoption of the 2018 Real Property Appraiser Qualification Criteria published by the Appraisal Qualifications Board of the Appraisal Foundation. Credential holders will have an additional two weeks to submit proof of course completion. No other new action is required to comply with this administrative regulation amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: There is no cost to any affected individual to comply with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities: As a result of compliance, some current credential holders and all new applicants will benefit from less restrictive education and experience prerequisites due to the Board's adoption of the 2018 Real Property Appraiser Qualification Criteria published by the Appraisal Qualifications Board of the Appraisal Foundation. Credential holders will avoid payment of an education penalty for late submission of course completion documentation if credential holders submit the required documentation by the revised deadline

of May 31.

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

(a) Initially: There will be no cost to implement this administrative regulation initially.

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

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

(7) Provide an assessment of whether an 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 will be 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 directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? No. Tiering is not applied because all similarly situated regulated entities are treated the same.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 12 U.S.C. 3331 through 3351.

(2) State compliance standards. 12 U.S.C. 3345 requires states to adopt licensing and certification criteria and recommends that state licensing agencies defer to the Appraisal Qualification Board of the Appraisal Foundation. 12 U.S.C. 3347 permits disapproval of a state's licensing scheme if it fails to produce licensing and certification qualifications, supervision, and regulation of appraisers consistent with 12 U.S.C. 3331 through 3351. This administrative regulation incorporates the 2018 Real Property Appraiser Qualification Criteria published by the Appraisal Qualifications Board of the Appraisal Foundation. KRS 324A.035 prohibits the board from establishing requirements relating to appraisers of federally related transactions in excess of the minimum requirements established by federal law or regulation. Therefore, amendment to the education and experience qualifications is necessary to discharge this statutory duty.

(3) Minimum or uniform standards contained in the federal mandate. 12 U.S.C. 3345 requires states to adopt licensing and certification criteria and recommends that state licensing agencies defer to the Appraisal Qualification Board of the Appraisal Foundation. 12 U.S.C. 3347 permits disapproval of a state's licensing scheme if it fails to produce licensing and certification qualifications, supervision, and regulation of appraisers consistent with 12 U.S.C. 3331 through 3351.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What 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 Real Estate Appraisers Board 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 324A.020, 324A.035(1), 324A.045, 324A.065, 324A.075, and 12 U.S.C. 3331 through 3351.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative

regulation.

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

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

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

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

BOARDS AND COMMISSIONS
Kentucky Real Estate Authority
Kentucky Real Estate Appraisers Board
(Amendment)

201 KAR 30:330. Registration and supervision of appraisal management companies[Application for registration].

RELATES TO: KRS 324A.030, 324A.035, 324A.152, 324A.154, 324A.155, 324A.163, 15 U.S.C. 1639e(i), 12 C.F.R. 226.42(f), 12 C.F.R. 34.210-216[324A.152(2), (3), (4), 324A.154]

STATUTORY AUTHORITY: KRS 324A.152(8), 324A.154, 12 C.F.R. 34.210-216

NECESSITY, FUNCTION, AND CONFORMITY: KRS 324A.020 and 324A.035 require the Real Estate Appraisers Board, with the approval of the executive director of the Kentucky Real Estate Authority, to promulgate administrative regulations necessary to carry out the provisions of KRS 324A.010 to 324A.164 and to implement and enforce the provisions of KRS 324A.150 to 324A.164. KRS 324A.152(2) requires the board to establish by administrative regulation the application process for appraisal management companies. KRS 324A.155 and 324A.163 require the board to establish by administrative regulation the amount to be charged to registrants for the appraisal management company recovery fund. KRS 324A.154(1) requires the board to establish by administrative regulation the fees for registration of appraisal management companies. KRS 324A.152(8) requires the board to establish by administrative regulation standards governing the operation of an appraisal management company. This administrative regulation establishes the application process for registration and renewal of registration for appraisal management companies as well as the process for reinstatement of an expired registration for appraisal management companies, including the applicable registration and renewal fees. This administrative regulation also establishes the amount to be charged to registrants for the appraisal management company recovery fund and establishes appraisal procedures for appraisal management companies.[of appraisal management companies.]

Section 1. Registration Requirements. (1) A person required to be registered under KRS 324A.152 shall submit:

(a) A completed Initial and Renewal[apply by submitting the following to the board:

(a) A completed] Application for Appraisal Management Company Registration; and

(b) An initial application fee of \$2,000; and
(c) Payment for the AMC Recovery Fund required by KRS 324A.155 in the amount of \$400.

(2) The applicant for registration shall designate a controlling

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person or managing principal, who shall be a certified appraiser.

(3) Attachments A through H as listed in the Application for Appraisal Management Company Registration;

(c) Proof of valid and sufficient surety bond as required by 201 KAR 30:320; and

(d) All fees required by 201 KAR 30:310.

(2) If information required or requested by the board, through application or otherwise, becomes inaccurate, the registrant shall file with the board an amendment correcting that information within ten (10) business days.

Section 2. Registration Renewal. (1) Each registration shall expire on October 31 of each year unless renewed before that time.

(2) The board shall send a renewal notice to the controlling person or managing principal identified by the registrant by September 1 of each year.

(3)(a) The registrant shall apply for renewal in accordance with KRS 324A.152 and this administrative regulation by October 1 to ensure that all renewal requirements are satisfied before the expiration date of the registration.

(b) Failure to receive a renewal notice established in subsection (2) of this section from the board shall not relieve the registrant of the responsibility to timely apply for renewal.

(4) An Initial and Renewal [Incorporation by Reference. (1) "Application for Appraisal Management Company Registration shall not be complete, and a renewal shall not be issued, until all requirements under KRS 324A.152 and in this administrative regulation are satisfied.

(5) A holder of an appraisal management company (AMC) registration seeking to renew shall:

(a) Complete the Initial and Renewal Application for Appraisal Management Company Registration;

(b) Submit the annual renewal fee of \$2,000;

(c) Submit payment for the AMC Recovery Fund required by KRS 324A.155 in the amount of \$400; and

(d) Submit a national reporting and registry fee consistent with Section 7 of this administrative regulation detailing how many Kentucky licensed or certified appraisers performed a covered transaction during July 1 of the preceding year through June 30 of the present renewal year.

(6)(a) If a registrant does not intend to renew its registration, the controlling person or managing principal shall notify the board in writing of the non-renewal and provide the board with its notice to wind down business in Kentucky.

(b) If a registrant fails to comply with the requirement in subsection (6)(a) of this Section, the registrant and all stakeholders holding ten (10) percent or more in the company shall be prohibited from reapplying for registration in Kentucky for a period of one (1) year.

(7) If a registrant fails to complete the National Registry Reporting requirement contained in Section 7 of this administrative regulation, the registrant shall be prohibited from renewing until the reporting requirement has been satisfied. The registrant shall pay the late filing fee provided for in KRS 324A.152(7).

Section 3. Reinstatement of an Expired Registration. (1) To reinstate an expired registration within six (6) months after expiration, a registrant shall:

(a) Apply in writing on the Initial and Renewal Application for Appraisal Management Company Registration provided by the board;

(b) Submit the reinstatement fee of \$2,000 in addition to the late filing fee provided for in KRS 324A.152(7); and

(c) Submit payment of \$400 to be deposited in the AMC recovery fund in accordance with KRS 324A.155.

(2) Reinstatement shall not apply retroactively to the activities of the registrant while the registration was expired.

(3) Failure to renew a registration prior to the expiration date shall result in a loss of authority to operate, in accordance with KRS 324A.152(7).

(4) A registration expired beyond six (6) months shall not be renewed.

Section 4. Dishonored Checks. Any dishonored or returned check shall incur the cost of collection plus twenty-five (25) dollars.

Section 5. Operation of an AMC. (1) A registrant shall disclose to its client the actual fees paid to an appraiser for appraisal services, separately from any other fees or charges for appraisal management services and, upon written request, shall make that information available to the board.

(2) A registrant shall verify its state registration to each appraiser that it engages for appraisal services.

(3) A registrant shall not attempt to directly or indirectly coerce an appraiser to accept an assignment if the appraiser indicates that the appraiser lacks competency or sufficient experience to complete the assignment, and the registrant shall not penalize the appraiser by reducing the number of assignments made to that appraiser, refusing to pay fees owed, or in any other manner.

(4) A registrant shall not withhold or threaten to withhold future business or assignments from an appraiser because of the appraiser's failure to concede to improper or illegal requests, demands, or coercion. This prohibition shall include any express or implicit promise of future business, assignments, promotions, or increased compensation for an appraiser in exchange for the appraiser's agreement to concede to improper or illegal requests, demands, or coercion.

(5) A registrant shall not require an appraiser to indemnify an AMC or hold an AMC harmless for any liability, damage, losses, or claims arising out of the services provided by the AMC. This prohibition shall not preclude indemnification agreements for services performed by the appraiser.

(6) A registrant shall not use an appraiser directly selected or referred by any member of a loan production staff of a client.

(7) A registrant shall not request that a broker price opinion be used as the primary basis for developing and reporting an appraisal for the purpose of loan origination of a residential mortgage loan secured by any one (1) to four (4) unit residential property.

(8) A registrant may not remove an appraiser from its appraiser panel without prior written notice to the appraiser as required by KRS 324A.158(2)(d). An appraiser may file a complaint with the Kentucky Real Estate Appraisers Board to review the decision of the registrant for removal from its appraiser panel for reasons other than those allowed by KRS 324A.158(2)(d).

(9) A registrant shall require that if an appraisal report prepared by a Kentucky licensed or certified real property appraiser is reviewed by a state licensed or certified real property appraiser, the review appraiser shall also be licensed or certified by the Kentucky Real Estate Appraisers Board.

(10) A registrant shall not prohibit communication between a Kentucky licensed or certified real property appraiser and any person from whom the appraiser believes the information is relevant in the performance of an appraisal assignment.

(11) A registrant shall not require a Kentucky licensed or certified real property appraiser that is an independent contractor under Kentucky law to sign a non-compete agreement.

Section 6. Appraisal Procedures. (1) A registrant shall make payment to an engaged appraiser for the completion of an appraisal within forty-five (45) days after the date on which the appraisal is transmitted or otherwise completed.

(2) Subsequent requests by a registrant to the appraiser for additional support of valuation or correction of factual and objective data shall not extend the payment date beyond the original forty-five (45) days from first receipt of the appraisal.

(3) An appraiser shall comply with a registrant's request for additional data support of estimate of value or correction of factual and objective data errors within fifteen (15) days of the request or be subject to complaint process to the Board by the registrant.

(4) An appraiser shall not be prohibited by an AMC from including within each appraisal report the compensation received from the AMC for each appraisal assignment completed.

Section 7. AMC National Registry. (1) A registrant meeting the following qualifications shall be registered by the board on the Appraisal Subcommittee's AMC National Registry:

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(a) The registrant maintains or oversees an appraiser panel, network, or roster consisting of:

1. More than fifteen (15) Kentucky certified or licensed appraisers contracted or engaged to perform appraisals in connection with covered transactions, if the registrant only operates in Kentucky, or

2. Twenty-five (25) or more certified or licensed appraisers contracted or engaged to perform appraisals in connection with covered transactions, if the registrant operates in two or more states; and

(b) The registrant satisfies the ownership limitations established by 12 C.F.R. 34.214.

(2) For purposes of counting the number of licensed or certified appraisers on a registrant's appraiser panel, network, or roster, 12 C.F.R. 34.212 shall control.

(3) The registrant shall report the following information to the Kentucky Real Estate Appraisers Board on the Appraisal Management Company National Registry Fee Reporting Form during each renewal year for the relevant reporting period of July 1 of the preceding year through June 30 of the present renewal year:

(a) The number of licensed or certified appraisers on the registrant's roster; and

(b) The number of covered transactions performed by appraisers in Kentucky on the registrant's roster.

(4) The registrant shall remit a twenty-five (25) dollar fee for each panel appraiser who performed appraisals in connection with covered transactions as defined in 12 C.F.R. 34.211(h).

(5) The information gathered by the board pursuant to this subsection shall be transmitted to the Appraisal Subcommittee for publication on the AMC National Registry.

Section 8. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Initial and Renewal Application for Appraisal Management Company Registration", 6/19; and

(b) "Appraisal Management Company National Registry Fee Reporting Form", 6/19["], 4/2/11, is incorporated by reference].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Real Estate Appraisers Board, 321 N. Madison Avenue, Richmond, Kentucky 40475, (859) 623-1658, Monday through Friday, 8 a.m. to 4:30 p.m.

JOHN G. KENKEL, JR., Board Chair
H. E. CORDER, Executive Director
K. GAIL RUSSELL, Secretary

APPROVED BY AGENCY: June 12, 2019

FILED WITH LRC: June 13, 2019 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on 10:30 a.m. on July 26, 2019 at Kentucky Real Estate Appraisers Board, 321 N. Madison Avenue, Richmond, Kentucky 40475. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on July 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 below.

CONTACT PERSON: Heather L. Becker, General Counsel, Kentucky Real Estate Authority, 656 Chamberlin Avenue, Suite B, Frankfort, Kentucky 40601, phone 502-564-7760, fax 502-564-1538, email heather.becker@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Heather L. Becker

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation consolidates the provisions presently contained in 201 KAR 30:310, 201 KAR 30:315, 201 KAR 30:330, 201 KAR 30:360, and 201 KAR 30:375, all of which relate to the registration and regulation of appraisal management companies.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to discharge the Real Estate Appraisers Board's duties contained in KRS Chapter 324A, and more specifically, KRS 324A.150 through 324A.164, the Kentucky Appraisal Management Company Registration Act. Additionally, this administrative regulation is necessary to conform with federal regulations governing appraisal management companies. Specifically, 12 C.F.R. 34.210 through 34.216 require the registration, regulation, and annual reporting of appraisal management companies, which includes the collection of fees to be delivered to the Congressional Appraisal Subcommittee.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 324A.020 and 324A.035 require the Real Estate Appraisers Board, with the approval of the executive director of the Kentucky Real Estate Authority, to promulgate administrative regulations necessary to carry out the provisions of KRS 324A.010 to 324A.090 and to implement and enforce the provisions of KRS 324A.150 to 324A.164. KRS 324A.152(2) requires the board to establish by administrative regulation the application process for appraisal management companies. KRS 324A.155 and 324A.163 require the board to establish by administrative regulation the amount to be charged to registrants for the appraisal management company recovery fund. KRS 324A.154(1) requires the board to establish by administrative regulation the fees for registration of appraisal management companies. KRS 324A.152(8) requires the board to establish by administrative regulation standards governing the operation of an appraisal management company. This administrative regulation establishes the application process for registration and renewal of registration for appraisal management companies as well as the process for reinstatement of an expired registration for appraisal management companies, including the applicable registration and renewal fees. This administrative regulation also establishes the amount to be charged to registrants for the appraisal management company recovery fund and establishes appraisal procedures for appraisal management companies.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is necessary to discharge the Real Estate Appraisers Board's duties contained in KRS Chapter 324A, and more specifically, KRS 324A.150 through 324A.164, the Kentucky Appraisal Management Company Registration Act. This administrative regulation establishes the application process for registration and renewal of registration for appraisal management companies as well as the process for reinstatement of an expired registration for appraisal management companies, including the applicable registration and renewal fees. This administrative regulation also establishes the amount to be charged to registrants for the appraisal management company recovery fund and establishes appraisal procedures for appraisal management companies.

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

(a) How the amendment will change this existing administrative regulation: This administrative regulation consolidates the provisions presently contained in 201 KAR 30:310, 201 KAR 30:315, 201 KAR 30:330, 201 KAR 30:360, and 201 KAR 30:375, all of which relate to the registration and regulation of appraisal management companies. The singular regulation governing appraisal management companies will cover applications, renewals, operating and reporting standards, fees, fines, and recovery fund administration by the Real Estate Appraisers Board. This regulation increases the Appraisal Management Recovery Fund fee by \$100, to ensure that the balance of the fund established in KRS 324A.155 shall not fall below three hundred thousand dollars (\$300,000), consistent with KRS 324A.163(4)(a) and (b). Additionally, this regulation incorporates reporting requirements imposed by 12 C.F.R. 34.210 through 34.216, which

requires the registration, regulation, and annual reporting of appraisal management companies, including the collection of fees to be delivered to the Congressional Appraisal Subcommittee.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation is necessary to discharge the Real Estate Appraisers Board's duties contained in KRS Chapter 324A, and more specifically, KRS 324A.150 through 324A.164, the Kentucky Appraisal Management Company Registration Act. This administrative regulation establishes the application process for registration and renewal of registration for appraisal management companies as well as the process for reinstatement of an expired registration for appraisal management companies, including the applicable registration and renewal fees. This administrative regulation also establishes the amount to be charged to registrants for the appraisal management company recovery fund and establishes appraisal procedures for appraisal management companies. The additional regulations relating to reporting are required by 12 C.F.R. 34.210 through 34.216. Without these regulations, appraisal management companies are unable to operate in Kentucky on federally backed mortgages.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 324A.020 and 324A.035 require the Real Estate Appraisers Board, with the approval of the executive director of the Kentucky Real Estate Authority, to promulgate administrative regulations necessary to carry out the provisions of KRS 324A.010 to 324A.090 and to implement and enforce the provisions of KRS 324A.150 to 324A.164. KRS 324A.152(2) requires the board to establish by administrative regulation the application process for appraisal management companies. KRS 324A.155 and 324A.163 require the board to establish by administrative regulation the amount to be charged to registrants for the appraisal management company recovery fund. KRS 324A.154(1) requires the board to establish by administrative regulation the fees for registration of appraisal management companies. KRS 324A.152(8) requires the board to establish by administrative regulation standards governing the operation of an appraisal management company. This administrative regulation establishes the application process for registration and renewal of registration for appraisal management companies as well as the process for reinstatement of an expired registration for appraisal management companies, including the applicable registration and renewal fees. This administrative regulation also establishes the amount to be charged to registrants for the appraisal management company recovery fund and establishes appraisal procedures for appraisal management companies. Additionally, this regulation incorporates reporting requirements imposed by 12 C.F.R. 34.210 through 34.216, which requires the registration, regulation, and annual reporting of appraisal management companies, including the collection of fees to be delivered to the Congressional Appraisal Subcommittee.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation is necessary to discharge the Real Estate Appraisers Board's duties contained in KRS Chapter 324A, and more specifically, KRS 324A.150 through 324A.164, the Kentucky Appraisal Management Company Registration Act. This administrative regulation establishes the application process for registration and renewal of registration for appraisal management companies as well as the process for reinstatement of an expired registration for appraisal management companies, including the applicable registration and renewal fees. This administrative regulation also establishes the amount to be charged to registrants for the appraisal management company recovery fund and establishes appraisal procedures for appraisal management companies.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky Real Estate Appraisers Board currently regulates 120 appraisal management companies. This regulation will affect all of those registrants. Additionally, the Kentucky Real Estate Appraisers Board will be impacted by this regulation. Without these regulations, all financial institutions which offer federally backed mortgage products will be negatively impacted because appraisal management companies will be prohibited from operating 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: Affected lenders and consumers will not have to take any action whatsoever to comply with this administrative regulation. The Kentucky Real Estate Appraisers Board will be required to submit reports and fees collected to the Congressional Appraisal Subcommittee. Registered appraisal management companies will be required to remit an additional \$100 to supplement the Appraisal Management Company Recovery Fund, which is presently below \$300,000. Additionally, registered appraisal management companies will be required to remit the registry fee consistent with Section 7 of this proposed administrative regulation for the Board, with the Board serving as a pass through to the Appraisal Subcommittee.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: The total cost of compliance for appraisal management companies will depend on the number of licensed appraisers and covered transactions completed during the relevant reporting period. The fee imposed is \$25 for each rostered appraiser. Additionally, each registrant will incur an additional \$100 fee toward the Appraisal Management Company Recovery Fund.

(c) As a result of compliance, what benefits will accrue to the entities: As a result of compliance, appraisal management companies will be able to continue operating in Kentucky, and the Kentucky Real Estate Appraisers Board will discharge its duty, consistent with KRS 324A.163(4)(a) and (b), to ensure that the balance of the fund established in KRS 324A.155 shall not fall below three hundred thousand dollars (\$300,000).

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

(a) Initially: There is no cost associated with implementing this administrative regulation.

(b) On a continuing basis: There is no continued cost associated with implementing this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding source is required to implement and enforce this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: While this regulation increases and introduces new fees for appraisal management companies, additional 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 establishes a \$25 reporting fee, per rostered appraiser, for all registered appraisal management companies. Additionally, this administrative regulation increases the fee collected for the Appraisal Management Recovery Fund, to ensure that the balance of the fund established in KRS 324A.155 shall not fall below three hundred thousand dollars (\$300,000).

(9) TIERING: Is tiering applied? No. Tiering is not applied as all regulated entities are treated the same.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 15 U.S.C. 1639e(i) requires lenders and their agents to compensate fee appraisers at a rate that is customary and reasonable for appraisal services performed in the market area of the property being appraised. 12 C.F.R. 226.42(f) is a federal regulation promulgated pursuant to 15 U.S.C. 1639e(i), which reiterates the requirement that appraisers be paid a customary and reasonable fee for appraisal services performed. 12 C.F.R. 34.210-216 is a series of federal regulations promulgated by the Office of the Comptroller of the Currency under 12 U.S.C. 93a and Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA), as amended by the Dodd–Frank Wall Street Reform and Consumer Protection Act (the Dodd–Frank Act) (Pub.L. 111–

203, 124 Stat. 1376 (2010)), 12 U.S.C. 3331 et seq. Additionally, the Appraisal Subcommittee published its Final Rule, pursuant to its authority in 12 C.F.R. 34-216, which applies to states and appraisal management companies providing appraisal management services in connection with consumer credit transactions secured by a consumer's principal dwelling or securitizations of those transactions. The Final Rule requires states to implement regulations to govern appraisal management companies, including annual National AMC Registry reporting requirements to the Appraisal Subcommittee of the Federal Financial Institutions Examination Counsel, a Congressional subcommittee.

(2) State compliance standards. The Kentucky Real Estate Appraisers Board does not impose or opine what a customary and reasonable fee for appraisal services might be in any given market. However, the Board's regulation does require compensation to be made within 45 days of the service being rendered. This proposed administrative regulation also brings the Board into compliance with the National AMC Registry reporting requirements.

(3) Minimum or uniform standards contained in the federal mandate. In order for appraisal management companies to continue to providing appraisal management services in connection with consumer credit transactions secured by a consumer's principal dwelling or securitizations of those transactions, a state must adopt regulations and elect to register appraisal management companies on the Appraisal Subcommittee's National AMC Registry. At a minimum, a state electing to register appraisal management companies shall: 1) review and approve or deny registration applications; 2) review and renew or deny registrations; 3) examine the books and records of operating registrants and require submission of reports, information, and documents; 4) verify that appraisers rostered with an appraisal management company are appropriately credentialed; 5) investigate appraisal management companies to assess potential violations; 6) discipline appraisal management companies as appropriate consistent with appraisal-related laws; 7) report violations and discipline of an appraisal management company to the Appraisal Subcommittee.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. The Final Rule simply requires registered appraisal management companies to submit a report of the number of appraisers on the company's roster and the number of covered transactions completed in the required reporting period.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The additional responsibilities imposed by the Board will assist the Board in regulating the conduct of registrants to ensure appraisers are treated fairly and in evaluating complaints and potential licensing law violations by registrants, relating to other administrative regulations promulgated by the Board in addition to that which is required for compliance with the National AMC Registry.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Real Estate Appraisers Board is the only state or local governmental entity that will be affected by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation is necessary to discharge the Real Estate Appraisers Board's duties contained in KRS Chapter 324A, and more specifically, KRS 324A.150 through 324A.164, the Kentucky Appraisal Management Company Registration Act. Additionally, this administrative regulation is necessary to conform with federal regulations governing appraisal management companies. Specifically, 12 C.F.R. 34.210 through 34.216 require the registration, regulation, and annual reporting of appraisal management companies, which includes the collection of fees to be delivered to the Congressional Appraisal Subcommittee.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 Kentucky Real Estate Appraisers Board currently regulates 120 appraisal management companies and collects approximately \$246,000 in registration fees each year. The Board also currently collects \$2,000 in corporate registration fees and \$300 in recovery fund fees from each registrant. With an increase of \$100 to the Appraisal Management Recovery Fund for each registrant, the Board will receive an additional \$12,000 in revenue each year. The National Registry fee is collected by the Board, with the Board serving exclusively as a pass through to the Appraisal Subcommittee.

(b) How 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 Kentucky Real Estate Appraisers Board currently regulates 120 appraisal management companies and collects approximately \$246,000 in registration fees each year. The Board also currently collects \$2,000 in corporate registration fees and \$300 in recovery fund fees from each registrant. With an increase of \$100 to the Appraisal Management Recovery Fund for each registrant, the Board will receive an additional \$12,000 in revenue each year. Until the Appraisal Management Recovery Fund has a balance in excess of \$300,000, and assuming no new registrants, the Board will continue to receive an additional \$12,000 in revenue each year. The National Registry fee is collected by the Board, with the Board serving exclusively as a pass through to the Appraisal Subcommittee.

(c) How much will it cost to administer this program for the first year? There is no anticipated cost expected to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? There is no anticipated cost expected 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 (+/-): An increase in revenue in the amount of \$12,000 is expected.

Expenditures (+/-): No expenditures are expected.

Other Explanation: The National Registry fee is collected by the Board, with the Board serving exclusively as a pass through to the Appraisal Subcommittee.

OFFICE OF HOMELAND SECURITY
911 Services Board
(Amendment)

202 KAR 6:010. Definitions for 202 KAR Chapter 6.

RELATES TO: KRS 65.7621-65.7643, 9 U.S.C. Sections 1-16, 47 U.S.C. Sections 153(27), 332(d)

STATUTORY AUTHORITY: KRS 65.7633(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 65.7633(1) requires the Kentucky 911 Services[CMRS] Board to implement the provisions of KRS 65.7621 to 65.7643 through the promulgation of administrative regulations. This administrative regulation provides definitions for terms used in 202 KAR Chapter 6.

Section 1. Definitions. (1) "Alternate routing" means sending 9-1-1 calls to a designated alternate location if all 9-1-1 trunks to the normal PSAP are busy or out of service. Alternate routing may be activated automatically, if an equipment failure is detected, or upon request.

(2) "Call transfer function" means the ability to redirect a call to another party.

(3) "Contracted wireline E9-1-1 service provider" means the company providing by signed agreement the E9-1-1 features, functions, and network connections to the PSAP.

(4) "Cost recovery plan" means a detailed description of how a CMRS carrier intends to comply with the wireless E9-1-1 requirements established in the FCC order.

(5) "Default routing" means the ability of the 9-1-1 network to automatically send 9-1-1 calls to a predetermined alternate PSAP if a call cannot be selectively routed due to an ANI failure or other cause.

(6) "E9-1-1" means the features and functions available in an enhanced 9-1-1 capable PSAP as defined by the FCC order.

(7) "FCC" means the Federal Communications Commission.

(8) "Next Generation 911" means a 911 system where any device capable of making a 911 emergency request uses digital technology through managed emergency services Internet protocol networks composed of functional elements and databases that replicate enhanced 911 features and functions while providing additional multimedia capabilities for the PSAP. "Next generation 911" includes any technology, functions, capabilities, best practices, or processes, either currently existing or later developed, that will be used during and after the transition of the delivery of 911 services from analog to digital technology.

(9) "Nondisclosure agreement" means a signed statement whereby a person swears to maintain the confidentiality of designated information provided to them.

~~(10)~~ "NRC" means nonrecurring cost.

~~(11)~~ "P-ANI" means pseudo automatic number identification as defined by KRS 65.7621~~(21)~~.

~~(12)~~ "Phase I" means the interim step in implementing the wireless E9-1-1 network to include the provision of a caller's mobile phone number and P-ANI, and as further defined by the FCC.

~~(13)~~ "Phase II" means the second step in implementing the wireless E9-1-1 network to include the functions of Phase I, and as further defined by the FCC.

~~(14)~~ "RC" means recurring cost.

~~(15)~~ "Sworn paid invoice" means a notarized statement submitted with invoices for reimbursement that:

(a) Lists the included invoices or other approved documentation;

(b) Attests that the invoices are accurate and reflect true costs for the carrier's implementation of wireless E9-1-1; and

(c) Is signed and dated by a person designated by a carrier.

~~(16)~~ "Sworn statement" means a notarized letter signed and dated by a person designated by a PSAP, which may be given in lieu of documentation.

MIKE SUNSERI, Administrator

JOHN HOLIDAY, Chair

APPROVED BY AGENCY: June 12, 2019

FILED WITH LRC: June 12, 2019 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on administrative regulation 202 KAR 6:010 shall be held on July 26, 2019, at 2:30 p.m. at the Kentucky Office of Homeland Security, located at 200 Mero Street in Frankfort, Kentucky 40622. 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 July 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: Mike Sunseri, 911 Services Board Administrator, 200 Mero Street in Frankfort, Kentucky 40622, 502-564-2081, 502-564-7764 (fax), Mike.Sunseri@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Mike Sunseri

(1) Provide a brief summary of:

(a) What this administrative regulation does: Establishes definitions to implement the provisions of KRS 65.7621 to 65.7643.

(b) The necessity of this administrative regulation: To provide clarity for terms used throughout the regulations in the relevant section.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 65.7633 authorizes the Kentucky 911 Services Board to promulgate the provisions of KRS 65.7621 to 65.7623 through the promulgation of administrative regulations in accordance with the provisions of KRS Chapter 13A.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: See 1B.

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

(a) How the amendment will change this existing administrative regulation: Update to match current statutes.

(b) The necessity of the amendment to this administrative regulation: To conform to legislation passed since 2007.

(c) How the amendment conforms to the content of the authorizing statutes: Current statutes were analyzed against this regulation to ensure conformity.

(d) How the amendment will assist in the effective administration of the statutes: By updating the language to match current statutory language.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Kentucky 911 Services Board, 115 Board-certified public safety answering points; city/county treasurers throughout Commonwealth, 45 providers of wireless telecommunications 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: none

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): \$0

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Clarity, based on amended regulation matching current statutes.

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

(a) Initially: \$0

(b) On a continuing basis: \$0

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: 911 Services Board restricted 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: n/a

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: n/a

(9) TIERING: Is tiering applied? Tiering is not necessary for this KAR.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky 911 Services Board, 115 Board-certified public safety answering points; city/county treasurers throughout Commonwealth, 45 providers of wireless telecommunications services.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 65.7633

(3) Estimate the effect of this administrative regulation on the

expenditures and revenues of a state or 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 impact.

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

(b) How 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 impact.

(c) How much will it cost to administer this program for the first year? \$800,000 for all operational facets of the 911 Services Board, based on current 911 fee collections using the statutory formula in KRS 65.7631(2) to administer 202 KAR 6:010 to 6:100. Two-and-a-half percent of all CMRS funds collected on behalf of wireless telecommunications subscribers are retained by the 911 Services Board to pay the administrative costs and expenses incurred in the operation of the Board in carrying out the functions and duties set forth in KRS 65.7621 to 65.7643. However, this regulation is already in place and the proposed amendments have no new fiscal impact.

(d) How much will it cost to administer this program for subsequent years? \$800,000 for all operational facets of the 911 Services Board, based on current 911 fee collections using the statutory formula in KRS 65.7631(2) to administer 202 KAR 6:010 to 6:100. Two-and-a-half percent of all CMRS funds collected on behalf of wireless telecommunications subscribers are retained by the 911 Services Board to pay the administrative costs and expenses incurred in the operation of the Board in carrying out the functions and duties set forth in KRS 65.7621 to 65.7643. As the funding formula is set in statute, the amount of funding directed to Board operations fluctuates based on overall 911 fee collections. However, this regulation is already in place and the proposed amendments have no new fiscal impact.

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:

**OFFICE OF HOMELAND SECURITY
911 Services Board
(Amendment)**

202 KAR 6:020. CMRS provider cost recovery.

RELATES TO: KRS 65.7621-65.7643, 47 U.S.C. 153(27), 332(d)

STATUTORY AUTHORITY: KRS 65.7633

NECESSITY, FUNCTION, AND CONFORMITY: KRS 64.7631(4) requires the Kentucky 911 Services[CMRS] Board to distribute a portion of the revenues deposited into the CMRS fund to CMRS providers (carriers) licensed to do business in the Commonwealth, solely for the purpose of reimbursing the actual expenses incurred by the CMRS providers in complying with the wireless E911 service requirements established by the FCC order and any rules and regulations which are or may be adopted by the Federal Communications Commission in carrying out the FCC order. KRS 65.7633 requires the Kentucky 911 Services[CMRS] Board to promulgate administrative regulations to implement KRS 65.7621 to 65.7643. This administrative regulation establishes the process by which CMRS carriers may obtain cost recovery for those expenses.

Section 1. A provider shall file a cost recovery plan with the Kentucky 911 Services[CMRS] Board in order to receive reimbursement for NRCs and RCs.

Section 2. Cost Recovery Plan Submission. (1) Upon receipt of a written request for wireless E911 service from a PSAP (public

safety answering point) that has been certified by the board in accordance with KRS 65.7631(6)(5)(a), the CMRS carrier shall:

(a) Acknowledge receipt of the request back to the PSAP within thirty (30) days; and

(b) Develop a comprehensive detailed plan for implementation of E911 service for:

1. The requesting PSAP; or
2. The appropriate service area if the CMRS carrier's switch serves more than one (1) PSAP.

(2) A CMRS provider shall provide the technical aspects of the plan to the requesting certified PSAP. The CMRS provider shall submit the plan and the associated cost structure to the board, including a completed "Kentucky CMRS Provider Data Sheet". The board shall request from the provider, if necessary to reach a decision:

- (a) Additional information; or
- (b) A presentation.

(3) Only carrier costs directly attributable to wireless E911 call completion shall be considered for recovery, in accordance with Section 8 of this administrative regulation.

Section 3. Cost Recovery Plan Requirements. A plan submitted to the board shall contain the following information:

(1) The provider's good faith estimate of its total cost recovery reimbursement claim for providing wireless E911 service in the area served by the requesting PSAP or the appropriate service area for the carrier's switch;

(2) Specific detail for each NRC and RC the carrier expects to recover;

(a) An RC shall be described as subscriber-based or nonsubscriber-based;

(b) An RC shall be based on a calendar month unless a provider chooses a different period on which to base its RCs. If a different period is chosen, the provider shall state the period used and the reasons for using that period;

(3) A description of the technology solution the CMRS provider has elected to implement and the projected implementation dates;

(4) A map or other detailed description of the coverage area affected by the plan;

(5) A list of the PSAPs affected by the provider; and

(6) The carrier must identify the name(s) and office(s) of the individual(s) who is authorized by the carrier to submit sworn paid invoices to the board for reimbursement.

Section 4. Cost Recovery Plan Approval. (1) A cost recovery plan submitted to the Kentucky 911 Services[CMRS] Board shall be stamped "Confidential" and proprietary information received shall be filed and maintained so as to preserve its confidentiality in accordance with KRS 65.7639.

(2) A cost recovery plan submitted to the board shall be approved or disapproved within ninety (90) days of its receipt by a simple majority vote of the board.

(3) Within ten (10) business days of its approval or disapproval, notice of the decision shall be sent to the provider and affected PSAPs, in writing, by certified mail, return receipt requested.

Section 5. Rejection of a Cost Recovery Plan. (1) If a plan is rejected, the board shall include with the decision specific reasons for its rejection.

(2) The carrier may submit a revised plan to the board.

(3) The provider may appeal the board's rejection in accordance with KRS Chapter 13B.

Section 6. Implementation of Additional Service Using an Approved Plan. (1) After initial approval of a CMRS provider plan by the board, if the provider wishes to implement service to an additional area in the state using the existing approved plan, the carrier:

(a) Shall send a letter to the board, by certified mail, return receipt requested, proposing the provider's intention to use an approved plan for the implementation of additional service;

(b) Shall include with the letter to the board a map of the area to be served by the planned additional implementation; and

(c) Need not make an additional presentation to the committee

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if the board agrees that the provider's intention fits within the existing approved plan.

(2) The board shall:

(a) Decide within ninety (90) days of its receipt of the provider's letter if it agrees that the provider's intention to use an approved plan is appropriate for the additional service implementation;

(b) Within ten (10) business days of its decision, notify the provider, in writing, by certified mail, return receipt requested; and

(c) Accept the cost recovery outlined in the approved plan as sufficient to submit a claim for reimbursement.

(3) If the board concludes that the inclusion of the additional service implementation is not appropriate under the approved plan, the board shall:

(a) Within ten (10) business days of its decision, notify the provider, in writing, by certified mail, return receipt requested, identifying its specific concerns; and

(b) Schedule the earliest possible date to meet with the carrier and discuss the identified concerns.

(4) If the board concludes that the inclusion of the additional service implementation is not appropriate under the approved plan, the provider may appeal the board's decision in accordance with KRS Chapter 13B.

Section 7. Revision of an Approved Plan. (1) In addition to the process established in Section 6 of this administrative regulation, after a cost recovery plan is approved, a subsequent change may be requested by either the CMRS provider or the board.

(2) The board may review an existing plan and request re-substantiation, new documentation, and reapproval of an existing cost recovery plan, or may revoke approval of a plan as necessary, to maintain the integrity of:

(a) The wireless E911 system as new technologies are deployed; and

(b) The CMRS fund.

(3) A provider may submit a revised plan or a change in reimbursement rate as business needs and new technologies dictate.

(4) The party requesting revision of a plan shall send written notice of the requested changes to the other party by certified mail, return receipt requested.

(5) An existing approved plan shall remain in effect until a review and decision regarding a requested change is made.

(6) Except as stated in subsection (7) of this section, if the board revokes approval of a plan, reimbursements from the CMRS fund shall cease immediately, except for RCs and NRCs for which the carrier is obligated by a previously signed contract.

(7) Failure of a carrier to respond in writing to a board request within the time frame indicated in the request, may be considered cause for the board to revoke approval of a previously approved plan and to cease reimbursement payments to the carrier.

Section 8. Appropriate Costs for Recovery. (1) For the purpose of differentiating between CMRS carrier costs and PSAP costs, the point of demarcation shall be the selective router of the contracted wireline E9-1-1 service provider, or similarly placed functional equipment within the E9-1-1 call completion hierarchy. The board shall determine, based upon industry standards, what equipment is to be considered "similarly placed functional equipment".

(2) Recoverable RCs and NRCs shall include:

(a) Trunking;

(b) Connection fees between carrier switches or other interface equipment to a selective router;

(c) Facilities: T-1's, selective router ports;

(d) Routing charges;

(e) Operations;

(f) Engineering;

(g) Switch upgrades;

(h) Network design;

(i) Test plan development;

(j) P-ANI administration;

(k) Database management;

(l) Reporting requirements;

(m) Software required for the operation of wireless E-911;

(n) Call counting;

(o) Amortization and carrying costs;

(p) Costs of complying with CMRS audit; and

(q) Other costs attributed to wireless E911 call completion and approved by the board. The CMRS provider shall provide full rationale for other costs submitted.

(3) Submission of costs for activities that occurred more than twenty-four (24) months prior to submission of an invoice by the carrier to the Kentucky 911 Services[CMRS] Board shall not be reimbursed.

Section 9. Use of Reimbursed Funds. A CMRS carrier shall use money received from the CMRS fund only for those expenditures and purposes authorized in KRS 64.7631(4), listed in invoices accepted by the board and as previously authorized in an approved cost recovery plan.

Section 10. Claims for Reimbursement. (1) After a cost recovery plan is approved, a CMRS provider may file a claim for reimbursement of NRCs and RCs defined in the plan by submitting an invoice or other documentation, as defined in the plan.

(2) An invoice submitted by a CMRS provider which is consistent with the then-current approved plan shall be paid by the board.

(3) A carrier may appeal a rejected invoice in accordance with KRS Chapter 13B.

(4) The board shall suspend payment of a claim, including a claim previously approved but unpaid by the board, from a carrier who fails to comply with the requirements for remittance as specified by KRS 65.7635, until the carrier complies.

Section 11. Amount of Reimbursement. (1) The amount of payments by the board to a carrier shall be determined by one (1) of the following methods, as set out in the approved cost recovery plan:

(a) By submission of NRCs necessary for the realization of the carrier's approved plan and actually incurred by the carrier;

(b) By submission of the predefined calendar period's nonsubscriber-based RCs;

(c) By submission of the predefined calendar period's subscriber-based RCs; or

(d) By a combination of methods in paragraphs (a), (b), and (c) of this subsection, as previously approved by the board.

(2) To document costs requested to be reimbursed, a carrier shall submit:

(a) A sworn paid invoice for actual costs or purchases from other vendors or suppliers; and approved documentation for internal costs (e.g., time slips for actual work performed by the carrier's employees) sufficient to establish the internal costs as reasonable and necessary; or

(b) other appropriate documentation approved by the board as part of the cost recovery plan.

(3) The subscriber count reported monthly by a carrier with the CMRS fund remittance and reporting process shall be used to determine the total for subscriber-based RCs. The subscriber count shall be subject to audit by the board, in accordance with KRS 65.7629(13).

Section 12. Payment Frequency. At least once per calendar quarter, the Kentucky 911 Services[CMRS] Board shall approve and pay claims submitted by carriers for reimbursement that are consistent with approved cost recovery plans.

Section 13. Prorated Payments. If the board determines that the total amount of invoices submitted by CMRS carriers and approved by the board exceeds the amount of revenue in the fund in a month or other payment period, the board shall pay a prorated share of the available funds to carriers who have submitted board-approved invoices for the relevant period. The priority of payment shall be as follows:

(1) The balance of approved unpaid invoices, including additional carrying charges at a rate established in the approved plan, shall be paid first; and

(2) Current invoices approved by the board shall then be paid.

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Section 14. Amortization of Costs. (1) Nonrecurring costs may be amortized over a period not longer than twenty-four (24) months, until the amounts claimed for NRCs are fully recouped by the CMRS carrier.

(2) The board may reject a cost recovery plan or revised cost recovery plan if the amortization period of NRCs selected by the carrier is not long enough to ensure adequate monthly surcharge revenues with which to meet the carrier's monthly reimbursement demands.

(3) The interest rate for carrying unreimbursed NRCs shall be established and fully documented in the carrier's cost recovery plan.

(4) The actual cost of borrowing to fund NRCs shall be a legitimate recoverable RC.

(5) Only NRCs shall be amortized.

Section 15. Sunset of 202 KAR 6:020. Pursuant to KRS 65.7631(3)(b), this administrative regulation shall sunset upon final payment of all outstanding carrier cost recovery obligations incurred by tier III CMRS providers from June 30, 2011, to January 1, 2016.

Section 16[15]. Incorporation by Reference. (1) "Kentucky CMRS Provider Data Sheet" (07/09/2007) is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky 911 Services[CMRS]Board, 200 Mero Street, Frankfort, Kentucky 40622[40604], Monday through Friday, 8 a.m. to 4:30 p.m.

MIKE SUNSERI, Administrator
JOHN HOLIDAY, Chair

APPROVED BY AGENCY: June 12, 2019
FILED WITH LRC: June 12, 2019 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on administrative regulation 202 KAR 6:020 shall be held on July 26, 2019, at 2:30 p.m. at the Kentucky Office of Homeland Security, located at 200 Mero Street in Frankfort, Kentucky 40622. 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 July 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: Mike Sunseri, 911 Services Board Administrator, 200 Mero Street in Frankfort, Kentucky 40622, phone 502-564-2081, fax 502-564-7764, Mike.Sunseri@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Mike Sunseri

(1) Provide a brief summary of:

(a) What this administrative regulation does: Provides guidance for administration of the 911 Services Board's carrier cost recovery fund.

(b) The necessity of this administrative regulation: KRS 65.7631 mandates the maintenance of a fund for the sole purpose of reimbursing the actual expenses incurred by tier III CMRS providers from June 30, 2011, to January 1, 2016, for complying with requirements established by the FCC order.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 65.7633 authorizes the Kentucky 911 Services Board to promulgate the provisions of KRS 65.7621 to 65.7623 through the promulgation of administrative regulations in accordance with the provisions of KRS Chapter 13A. By establishing a mechanism for CMRS provider to access reimbursement for actual expenses relating to complying with the FCC order.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: See 1B.

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

(a) How the amendment will change this existing administrative regulation: Update to match current statutes.

(b) The necessity of the amendment to this administrative regulation: To conform to legislation passed since 2007.

(c) How the amendment conforms to the content of the authorizing statutes: Current statutes were analyzed against this regulation to ensure conformity.

(d) How the amendment will assist in the effective administration of the statutes: By updating the language to match current statutory language.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 45 providers of wireless telecommunications 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: none

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): \$0

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Clarity, based on amended regulation matching current statutes.

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

(a) Initially: \$0

(b) On a continuing basis: \$0

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: 911 Services Board restricted 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: n/a

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: n/a

(9) TIERING: Is tiering applied? Tiering is not necessary for this KAR.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky 911 Services Board, 3 tier III providers of wireless telecommunications services.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 65.7631, KRS 65.7633

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 impact, regulation already in place; amendments have no fiscal impact.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? \$800,000. However, this regulation is already in place and the amendments have no fiscal impact.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? \$200,000 this regulation affects a fund that has been capped. The outstanding obligations will be satisfied by the end of the first quarter of FY 2020. At that time, per KRS 65.7631(3)(b) carrier cost recovery funds will funnel into the PSAP pro rata

formula and wireless workload formula.

(c) How much will it cost to administer this program for the first year? \$800,000 for all operational facets of the 911 Services Board, based on current 911 fee collections using the statutory formula in KRS 65.7631(2) to administer 202 KAR 6:010 to 6:100. Two-and-a-half percent of all CMRS funds collected on behalf of wireless telecommunications subscribers are retained by the 911 Services Board to pay the administrative costs and expenses incurred in the operation of the Board in carrying out the functions and duties set forth in KRS 65.7621 to 65.7643. However, this regulation is already in place and the proposed amendments have no new fiscal impact.

(d) How much will it cost to administer this program for subsequent years? \$800,000 for all operational facets of the 911 Services Board, based on current 911 fee collections using the statutory formula in KRS 65.7631(2) to administer 202 KAR 6:010 to 6:100. Two-and-a-half percent of all CMRS funds collected on behalf of wireless telecommunications subscribers are retained by the 911 Services Board to pay the administrative costs and expenses incurred in the operation of the Board in carrying out the functions and duties set forth in KRS 65.7621 to 65.7643. As the funding formula is set in statute, the amount of funding directed to Board operations fluctuates based on overall 911 fee collections. However, this regulation is already in place and the proposed amendments have no new fiscal impact.

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

Revenues (+/-):
Expenditures (+/-):
Other Explanation: See 3b

**OFFICE OF HOMELAND SECURITY
911 Services Board
(Amendment)**

202 KAR 6:030. Confidential and proprietary information.

RELATES TO: KRS 65.7621-65.7643, 47 U.S.C. 153(27), 332(d)

STATUTORY AUTHORITY: KRS 65.7633(1), 65.7639

NECESSITY, FUNCTION, AND CONFORMITY: KRS 65.7633(1) requires the Kentucky 911 Services[CMRS] Board to implement the provisions of KRS 65.7621 to 65.7643 through the promulgation of administrative regulations. In order to comply with KRS 65.7629, 65.7639, and administrative regulations promulgated by the Kentucky 911 Services[CMRS] Board, it is necessary that the board and PSAPs (public safety answering points) certified by the board obtain proprietary information. KRS 65.7639 protects such information and governs the form and manner of its release to others. This administrative regulation establishes the procedures by which the board shall ~~ensure~~[insure] the security of confidential or proprietary information.

Section 1. Identification of Confidential or Proprietary Information. (1) Information identifying subscribers shall be held confidential, as proprietary information belonging to the disclosing CMRS provider, by the board and each of its employees. Identifying information shall include a subscriber's:

- (a) Name;
- (b) Telephone number; and
- (c) Billing address;

(2) A CMRS provider, PSAP, board-contracted entity, or local exchange carrier (LEC) shall explicitly and clearly mark as confidential, prior to submission, information supplied and regarded by the provider, PSAP, board-contracted entity, or LEC as proprietary.

(3) The board shall not regard as confidential or proprietary the identification of a provider or LEC or a subsidiary of either.

Section 2. Allowable Uses of Confidential and Proprietary Information. The use of confidential or proprietary information shall be strictly limited to:

- (1) Disburse funds as provided in KRS 65.7631(1), (2), (3),~~and~~ (4), and (5);
- (2) Discharge the duties of the board and its agents as provided in KRS 65.7629(1), (3), (8), (12),~~and~~ (13)(a), and (16);
- (3) Process revenues remitted to the board by CMRS providers; and
- (4) Manage calls by PSAPs in accordance with KRS 65.7639.

Section 3. Management of Confidential and Proprietary Information in the Possession of the Board. (1) The board shall instruct, in writing, all board personnel, agents of the board, and PSAPs as to the proper management and uses of confidential and proprietary information.

(2) A nondisclosure agreement shall be signed by each board member, employee, and agent of the board who may handle or possess information deemed confidential or proprietary.

(3) Material deemed confidential or proprietary shall be specifically and clearly identified by the board.

(4) Only persons specifically authorized by the board shall open board correspondence. Correspondence received by postal mail, electronic mail, or facsimile and opened by an unauthorized person shall:

- (a) Not be copied;
- (b) Be immediately returned to its container; and
- (c) Immediately forwarded to the board.

(5) Proprietary and confidential information in the possession of the board, a member, agent, or any other person or entity shall be stored in a secure room, vault, or container. The room, vault, or container shall be kept locked when unattended or outside of normal business hours. Electronic files containing confidential or proprietary information shall be secured utilizing established mainframe protocols, stand alone servers, secured sockets, or password protected desktop applications, as appropriate.

(6) Access to confidential and proprietary information shall be limited to persons specifically authorized by KRS 65.7639.

(7) Each copy of confidential or proprietary information may be distributed as necessary for the efficient discharge of board duties and responsibilities.

(a) Copies shall be explicitly and clearly marked as confidential.

(b) A person possessing copies of documents containing confidential or proprietary information shall be responsible for document security.

(c) A copy no longer required shall be:

- 1. Returned to the board immediately; or
- 2. Destroyed immediately in such a manner as to prevent its reconstruction.

(8) An original record or file no longer needed for processing shall be:

(a) Sealed securely, retaining the notice of confidentiality, and transferred:

- 1. To a facility accessible only to the board administrator; or
- 2. With board approval, to the state archival and record storage center;

(b) With board approval, destroyed; or

(c) Returned to the proprietor.

Section 4. Breaches of Security. (1) The board shall take immediate action to determine the cause, impact, and persons involved in a security violation of the confidential information entrusted to the board.

(2) Unauthorized access to confidential or proprietary information shall be promptly reported to the board in writing.

(3) A report of a security breach shall include a description of the incident, specific identification of the information disclosed, identification of each person who accessed the records, and the purposes for which access was obtained.

(4) The board shall notify an affected party immediately, providing a copy of the written report detailing the incident.

(5) A board member, agent, or employee who willfully or negligently disregards a provision of this administrative regulation shall be dismissed or requested to resign.

(6) If a PSAP or its employee willfully or negligently disregards a provision of this administrative regulation, the board shall

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decertify the PSAP.

(7) A board member, agent, or employee who has been dismissed or asked to resign for willful or negligent disregard of the provisions of this administrative regulation may appeal the dismissal in accordance with KRS Chapter 13B.

(8) A PSAP that has been decertified for willful or negligent disregard of the provisions of this administrative regulation may appeal the decertification in accordance with KRS Chapter 13B.

MIKE SUNSERI, Administrator

JOHN HOLIDAY, Chair

APPROVED BY AGENCY: June 12, 2019

FILED WITH LRC: June 12, 2019 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on administrative regulation 202 KAR 6:030 shall be held on July 26, 2019, at 2:30 p.m. at the Kentucky Office of Homeland Security, located at 200 Mero Street in Frankfort, Kentucky 40622. 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 July 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: Mike Sunseri, 911 Services Board Administrator, 200 Mero Street in Frankfort, Kentucky 40622, phone 502-564-2081, fax 502-564-7764, Mike.Sunseri@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Mike Sunseri

(1) Provide a brief summary of:

(a) What this administrative regulation does: Provides guidance for proper handling of proprietary information the 911 Services Board must obtain in the course of its regular business.

(b) The necessity of this administrative regulation: KRS 65.7639 requires the 911 Services Board to develop procedures and protocols to ensure confidential and proprietary information obtained in the Board's regular course of business remain confidential.

(c) How this administrative regulation conforms to the content of the authorizing statutes: By establishing procedures and protocols to ensure confidential and proprietary information obtained in the Board's regular course of business remain confidential. KRS 65.7633 authorizes the Kentucky 911 Services Board to promulgate the provisions of KRS 65.7621 to 65.7623 through the promulgation of administrative regulations in accordance with the provisions of KRS Chapter 13A.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: See 1B/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: Update to match current statutes.

(b) The necessity of the amendment to this administrative regulation: To conform to legislation passed since 2007.

(c) How the amendment conforms to the content of the authorizing statutes: Current statutes were analyzed against this regulation to ensure conformity.

(d) How the amendment will assist in the effective administration of the statutes: By updating the language to match current statutory language.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 115 Board-certified public safety answering points, 45 providers of wireless telecommunications 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: none

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): \$0

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Clarity, based on amended regulation matching current statutes.

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

(a) Initially: \$0

(b) On a continuing basis: \$0

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: 911 Services Board restricted 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: n/a

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: n/a

(9) TIERING: Is tiering applied? Tiering is not necessary for this KAR.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky 911 Services Board, 115 Board-certified public safety answering points, 45 providers of wireless telecommunications services.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 65.7633, 65.7639

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 impact, regulation already in place; amendments have no fiscal impact.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No impact, regulation already in place; amendments have no fiscal impact.

(b) How 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 impact, regulation already in place; amendments have no fiscal impact.

(c) How much will it cost to administer this program for the first year? \$800,000 for all operational facets of the 911 Services Board, based on current 911 fee collections using the statutory formula in KRS 65.7631(2) to administer 202 KAR 6:010 to 6:100. Two-and-a-half percent of all CMRS funds collected on behalf of wireless telecommunications subscribers are retained by the 911 Services Board to pay the administrative costs and expenses incurred in the operation of the Board in carrying out the functions and duties set forth in KRS 65.7621 to 65.7643. However, this regulation is already in place and the proposed amendments have no new fiscal impact.

(d) How much will it cost to administer this program for subsequent years? \$800,000 for all operational facets of the 911 Services Board, based on current 911 fee collections using the statutory formula in KRS 65.7631(2) to administer 202 KAR 6:010 to 6:100. Two-and-a-half percent of all CMRS funds collected on behalf of wireless telecommunications subscribers are retained by the 911 Services Board to pay the administrative costs and expenses incurred in the operation of the Board in carrying out the functions and duties set forth in KRS 65.7621 to 65.7643. As the funding formula is set in statute, the amount of funding directed to Board operations fluctuates based on overall 911 fee collections.

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However, this regulation is already in place and the proposed amendments have no new fiscal impact.

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:

**OFFICE OF HOMELAND SECURITY
911 Services Board
(Amendment)**

202 KAR 6:050. PSAP certification.

RELATES TO: KRS 65.7621-65.7643, 9 U.S.C. Sections 1-16, 42 U.S.C. sec. 12101, 47 U.S.C. Sections 153(27), 332(d)
 STATUTORY AUTHORITY: KRS 65.7631(4)(a), 65.7633(1)
 NECESSITY, FUNCTION, AND CONFORMITY: KRS 65.7631(6[4])(a) states that no PSAP shall be eligible to request or receive a disbursement from the CMRS fund unless and until the PSAP is expressly certified as a PSAP by the Kentucky 911 Services[CMRS] Board, upon written application to the Kentucky 911 Services[CMRS] Board. KRS 65.7633 requires the Kentucky 911 Services[CMRS] Board to implement the provisions of KRS 65.7621 to 65.7643 through the promulgation of administrative regulations. This administrative regulation establishes the process by which a PSAP shall establish and maintain eligibility for disbursement from the CMRS fund.

Section 1. Phase I Certification. (1) Certification of a PSAP by the board implies that the board has examined the operation and infrastructure of the requesting PSAP and determined that it is[or will be] capable of complying with the requirements for handling wireless E9-1-1 calls.

~~(2) The board shall certify as many PSAPs as possible, recognizing the less stringent technological and operational requirements of Phase I wireless E9-1-1 and the uneven nature of existing E9-1-1 infrastructure in the Commonwealth.~~

~~(3) The board shall:~~

~~(a) Allow for as much diversity as possible in facilities and operation of E9-1-1 systems across the Commonwealth;~~

~~(b) Provide for increasing integrity in E9-1-1 systems statewide; and~~

~~(b)[(e)] Coordinate and assist in the implementation of new technology in the operation of emergency telecommunications in the state.~~

~~(3)[(4)] A PSAP seeking certification shall send to the board, by certified mail, return receipt requested, the following:~~

~~(a) A completed "Kentucky 911 Services Board[CMRS] PSAP Certification Application";~~

~~(b) A copy of:~~

~~1. Documentation which establishes the PSAPs authority to establish 9-1-1 service in accordance with KRS 65.760;~~

~~2. [Any existing or proposed agreement between a CMRS carrier and the PSAP;~~

~~3.] A list of the public safety agencies served by the requesting PSAP and a copy of any agreement between the PSAP and the designated agencies;~~

~~3[4]. Any agreement between the requesting PSAP and the contracted wireline E9-1-1 service provider; and~~

~~4[5]. A printed map detailing the[area served by the requesting] PSAP service boundary.~~

~~(c) A description of:~~

~~1. The mapping and addressing applications including:~~

~~a. The location of each database;~~

~~b. How each database is maintained; and~~

~~c. Who maintains each database.~~

~~2. The network and its characteristics currently or proposed to be in use by the PSAP; and~~

~~3.[The customer premises equipment employed by the PSAP in receiving E9-1-1 calls; and~~

~~4.] Call transfer functions in the PSAP.~~

(d) Documentation of:

1. Sworn statements that telecommunicators and PSAP management have signed nondisclosure agreements regarding confidential information accessible by them;

2. The disaster recovery application used by the PSAP including:

a. Default routing and alternate routing of call applications or other contingency applications for rerouting calls in the event of system failure;

b. Type of backup power equipment installed; and

c. Evacuation and relocation applications.

3. Seven (7) digit service for administrative non-emergency service;

4. Telecommunications devices for the deaf and hard of hearing in the PSAP;

5. A certificate or sworn statement that telecommunicators employed by the PSAP that handles wireless E9-1-1 calls meet the training requirements as required by law; and

6. The PSAP's standard operating procedures for the handling of wireless E9-1-1.

(e) A description of:

1. The PSAP's ability or anticipated ability to handle the data elements associated with wireless E9-1-1 calls; and

2. The anticipated use of the CMRS funds, in accordance with KRS 65.7631.

(5) Nothing in subsection (3)[(4)](b)1. of this section shall prohibit the Kentucky State Police from establishing a public safety answering point as otherwise permitted by law.

(6) After its initial review, the board shall:

(a) Require submission of other necessary documentation; and

(b) Schedule an on-site inspection by a member or members of the board or advisory council.

Section 2. Application for Certification. (1) An application for certification shall be stamped "Confidential."[-] Proprietary information received by the board shall be filed and maintained so as to maintain its confidentiality in accordance with KRS 65.7639 and 202 KAR 6:030.

(2) The board shall review and act upon an application for certification within ninety (90) days of receipt. Board action on the application shall be determined by a simple majority vote.

(3) Within ten (10) business days of its decision, written notice of the board's approval or disapproval of an application shall be sent to the PSAP[-, certified mail, return receipt requested].

(4) If an application for PSAP certification is disapproved:

(a) The board shall:

1. State in its written notice of decision the specific reason for rejection; and

2. Schedule a meeting with the PSAP applicant to resolve identified problems.

(b) The PSAP may:

1. Submit a revised application to the board for its review and approval or disapproval, following the procedure set out in Sections 1 and 2 of this administrative regulation; or

2. Appeal the board's rejection in accordance with KRS Chapter 13B.

Section 3. Revision of an Approved Application. (1) After an application is approved, subsequent changes may be requested by either the PSAP or the board.

(2) The board may review an existing certification and request re-substantiation and re-approval of an application if necessary:

(a) To maintain the integrity of the wireless E9-1-1 system;

(b) To implement Phase II as specified by the FCC;

(c) In the event the board becomes aware of changes or deficiencies that have occurred at a PSAP.

(3) New or revised requirements specified by the board shall be applied to all PSAPs, upon written notice, within a reasonable period, not to exceed ninety (90) days.

(4) A party requesting revision of an application shall send written notice of the requested changes to the other party[by certified mail, return receipt requested].

(5) An existing and approved application shall remain in effect until the board has notified the PSAP of its decision on the

proposed changes.

(6) The board shall review a request for revision under the procedure designated in Sections 1 and 2 of this administrative regulation.

(7) The board shall decertify a previously approved application and shall discontinue payments to a PSAP, if the PSAP fails, without good cause, to respond in writing to a board request within the time period specified in the request.

Section 4. Phase II Certification. (1)~~[The board shall establish and publish a timetable within which it expects PSAPs to migrate to Phase II in accordance with KRS 65.7625(3)(c).~~

(2) If the evolving technology necessary to implement Phase II requires additional enhancements to a PSAP's operation, the board shall:

- (a) Seek additional documentation and substantiation of a PSAP's continuing ability to handle E9-1-1 calls; or
- (b) Impose more stringent requirements to receive or maintain certification.

Section 5. Decertification of a PSAP. The board shall decertify a PSAP if the PSAP:

- (1) Has used funds for purposes other than as prescribed by KRS 65.7631 and administrative regulations promulgated pursuant thereto; or
- (2) Has not maintained or purchased the necessary technology or infrastructure to comply with evolving requirements.
- (3) A PSAP that has been decertified may appeal the decertification in accordance with KRS Chapter 13B.

Section 6. Incorporation by Reference. (1) "Kentucky 911 Services Board [CMRS] PSAP Certification Application (04/01/2019[12/02/1999]) is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky 911 Services[CMRS] Board, 200 Mero Street, Frankfort, Kentucky 40622[40604], Monday through Friday, 8 a.m. to 4:30 p.m.

MIKE SUNSERI, Administrator
JOHN HOLIDAY, Chair

APPROVED BY AGENCY: June 12, 2019
FILED WITH LRC: June 12, 2019 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on administrative regulation 202 KAR 6:050 shall be held on July 26, 2019, at 2:30 p.m. at the Kentucky Office of Homeland Security, located at 200 Mero Street in Frankfort, Kentucky 40622. 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 July 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: Mike Sunseri, 911 Services Board Administrator, 200 Mero Street in Frankfort, Kentucky 40622, phone 502-564-2081, fax 502-564-7764, Mike.Sunseri@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Mike Sunseri

- (1) Provide a brief summary of:
 - (a) What this administrative regulation does: Establishes basic Phase 1 requirements for public safety answering points to achieve 911 Services Board certification.
 - (b) The necessity of this administrative regulation: This regulation outlines basic certification requirements and establishes guidelines for public safety answering points to apply for Board certification.
 - (c) How this administrative regulation conforms to the content

of the authorizing statutes: KRS 65.7633 authorizes the Kentucky 911 Services Board to promulgate the provisions of KRS 65.7621 to 65.7623 through the promulgation of administrative regulations in accordance with the provisions of KRS Chapter 13A. KRS 65.7631 outlines the apportionment of CMRS funds. KRS 65.7631(6) charges the 911 Services Board to establish certification standards prior to a PSAP being granted the ability to access CMRS funds.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: See 1C.

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

- (a) How the amendment will change this existing administrative regulation: Update to match current statutes and remove antiquated language.
- (b) The necessity of the amendment to this administrative regulation: To conform to legislation passed since 2007 and to removed unnecessary antiquated language.
- (c) How the amendment conforms to the content of the authorizing statutes: Current statutes were analyzed against this regulation to ensure conformity.

(d) How the amendment will assist in the effective administration of the statutes: By updating the language to match current statutory language, which will provide public safety answering points seeking to become Board-certified adequate guidance for the application and qualification process.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 45 non-certified PSAPs.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Non-certified PSAPs will need to follow the updated regulation if they elect to apply for certification to access CMRS funds.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): An indeterminable amount of staff time on behalf of the public safety answering point seeking 911 Services Board certification, and an indeterminable amount of equipment necessary to meet the requirement guidelines.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Updating the application guidelines will improve the efficiency and effectiveness of the Board-certification application process.

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

- (a) Initially: \$0
- (b) On a continuing basis: \$0

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: 911 Services Board restricted 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: n/a

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: n/a

(9) TIERING: Is tiering applied? Tiering is not necessary for this KAR.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky 911 Services Board, 115 Board-certified public safety answering points, approximately 45 non-certified PSAPs.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 65.7631, 65.7633

(3) Estimate the effect of this administrative regulation on the

expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. An indeterminable amount of staff time on behalf of the public safety answering point seeking 911 Services Board certification, and an indeterminable amount of equipment necessary to meet the requirement guidelines. The cost to a local government to achieve Board certification is based on the equipment already owned by the public safety answering point.

(a) How much 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 will depend on how many residents the newly certified PSAP has as a significant portion of certified dispersals are based on call volume. Each Board-certified PSAP currently receives approximately \$130,000 per year in wireless 911 fees collected by the Board through the pro rated formula but the quarterly workload payment is based on the number of wireless subscribers served by the PSAP.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The amount of revenue received by certified PSAPs is based on a statutory formula per KRS 65.7631.

(c) How much will it cost to administer this program for the first year? \$800,000 for all operational facets of the 911 Services Board, based on current 911 fee collections using the statutory formula in KRS 65.7631(2) to administer 202 KAR 6:010 to 6:100. Two-and-a-half percent of all CMRS funds collected on behalf of wireless telecommunications subscribers are retained by the 911 Services Board to pay the administrative costs and expenses incurred in the operation of the Board in carrying out the functions and duties set forth in KRS 65.7621 to 65.7643. However, this regulation is already in place and the proposed amendments have no new fiscal impact.

(d) How much will it cost to administer this program for subsequent years? \$800,000 for all operational facets of the 911 Services Board, based on current 911 fee collections using the statutory formula in KRS 65.7631(2) to administer 202 KAR 6:010 to 6:100. Two-and-a-half percent of all CMRS funds collected on behalf of wireless telecommunications subscribers are retained by the 911 Services Board to pay the administrative costs and expenses incurred in the operation of the Board in carrying out the functions and duties set forth in KRS 65.7621 to 65.7643. As the funding formula is set in statute, the amount of funding directed to Board operations fluctuates based on overall 911 fee collections. However, this regulation is already in place and the proposed amendments have no new fiscal impact.

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

Revenues (+/-):
Expenditures (+/-):
Other Explanation: See 3a&b.

**OFFICE OF HOMELAND SECURITY
911 Services Board
(Amendment)**

202 KAR 6:060. PSAP pro rata fund disbursement.

RELATES TO: KRS 65.7621-65.7643, 47 U.S.C. 153(27), 332(d)

STATUTORY AUTHORITY: KRS 65.7633(2)(c)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 65.7633(2)(c) requires the Kentucky 911 Services[CMRS] Board to establish procedures and guidelines for reviewing, evaluating, and approving or disapproving disbursements under KRS 65.7631(2), (3), and (4) from the CMRS fund and requests for disbursements. This administrative regulation establishes the pro rata fund disbursement process.

Section 1. Revenues Collected by the Kentucky 911

Services[CMRS] Board. (1) Monthly revenues remitted to the CMRS Board after March 31, 2000 shall be disbursed to PSAPs (public safety answering points) in quarterly payments.

(2) Any PSAP that is certified by the end of a calendar quarter shall be eligible to receive a pro rata share of funds collected during that quarter. Payments will be made within forty-five (45) days of the end of each calendar quarter.

MIKE SUNSERI, Administrator
JOHN HOLIDAY, Chair

APPROVED BY AGENCY: June 12, 2019
FILED WITH LRC: June 12, 2019 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on administrative regulation 202 KAR 6:060 shall be held on July 26, 2019, at 2:30 p.m. at the Kentucky Office of Homeland Security, located at 200 Mero Street in Frankfort, Kentucky 40622. 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 July 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: Mike Sunseri, 911 Services Board Administrator, 200 Mero Street in Frankfort, Kentucky 40622, phone 502-564-2081, fax 502-564-7764, Mike.Sunseri@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Mike Sunseri

(1) Provide a brief summary of:

(a) What this administrative regulation does: Establishes methodology for certified PSAPs to receive quarterly pro rata fund disbursements.

(b) The necessity of this administrative regulation: To comply with KRS 65.7631 (5)(a).

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 65.7633 authorizes the Kentucky 911 Services Board to promulgate the provisions of KRS 65.7621 to 65.7623 through the promulgation of administrative regulations in accordance with the provisions of KRS Chapter 13A. KRS 65.7631 (5)(a) charges the 911 Services Board to disburse a portion of CMRS funds to certified PSAPs using a pro rata formula.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: See 1C.

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

(a) How the amendment will change this existing administrative regulation: Update to match current statutes.

(b) The necessity of the amendment to this administrative regulation: To conform to legislation passed since 2007.

(c) How the amendment conforms to the content of the authorizing statutes: Current statutes were analyzed against this regulation to ensure conformity.

(d) How the amendment will assist in the effective administration of the statutes: n/a (only change to this regulation was updating the name of the Board to conform to 2016 HB 585).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 115 Board-certified PSAPs.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: none

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in

question (3): \$0

(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 the administrative body to implement this administrative regulation:

(a) Initially: \$0

(b) On a continuing basis: \$0

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: 911 Services Board restricted 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: n/a

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: n/a

(9) TIERING: Is tiering applied? Tiering is not necessary for this KAR.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky 911 Services Board, 115 Board-certified public safety answering points.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 65.7631, 65.7633

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 pro rata fund administered through this regulation generates approximately \$13,200,000 in payments to Board-certified PSAPs based on current 911 fee collections. However, this regulation is already in place and the proposed amendments have no new fiscal impact.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The pro rata fund administered through this regulation generates approximately \$13,200,000 in payments to Board-certified PSAPs based on current 911 fee collections. However, this regulation is already in place and the proposed amendments have no new fiscal impact.

(b) How 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 pro rata fund administered through this regulation generates approximately \$13,200,000 in payments to Board-certified PSAPs based on current 911 fee collections. Future revenues are based on the amount of wireless 911 fees collected by the 911 Services Board. These fees are expected to achieve slight increases in future years as residents continue to transition from wireline to wireless telecommunication services. However, this regulation is already in place and the proposed amendments have no new fiscal impact.

(c) How much will it cost to administer this program for the first year? \$800,000 for all operational facets of the 911 Services Board, based on current 911 fee collections using the statutory formula in KRS 65.7631(2) to administer 202 KAR 6:010 to 6:100. Two-and-a-half percent of all CMRS funds collected on behalf of wireless telecommunications subscribers are retained by the 911 Services Board to pay the administrative costs and expenses incurred in the operation of the Board in carrying out the functions and duties set forth in KRS 65.7621 to 65.7643. However, this regulation is already in place and the proposed amendments have no new fiscal impact.

(d) How much will it cost to administer this program for subsequent years? \$800,000 for all operational facets of the 911 Services Board, based on current 911 fee collections using the statutory formula in KRS 65.7631(2) to administer 202 KAR 6:010 to 6:100. Two-and-a-half percent of all CMRS funds collected on behalf of wireless telecommunications subscribers are retained by the 911 Services Board to pay the administrative costs and

expenses incurred in the operation of the Board in carrying out the functions and duties set forth in KRS 65.7621 to 65.7643. As the funding formula is set in statute, the amount of funding directed to Board operations fluctuates based on overall 911 fee collections. However, this regulation is already in place and the proposed amendments have no new fiscal impact.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: See 3 a & b above.

OFFICE OF HOMELAND SECURITY
911 Services Board
(Amendment)

202 KAR 6:070. PSAP workload fund disbursement.

RELATES TO: KRS 65.7621, 65.7627, 65.7629(5)-(8), 65.7631(3), 65.7643, 47 U.S.C. 153(27), 332(d)

STATUTORY AUTHORITY: KRS 65.7633(2)(c)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 65.7633(2)(c) requires the Kentucky 911 Services[CMRS] Board to establish procedures and guidelines for reviewing, evaluating, and approving or disapproving disbursement from the CMRS Fund and requests for disbursements under, KRS 65.7631(2), (3), and (4). This administrative regulation establishes the wireless workload fund disbursement process.

Section 1. Revenues Collected by the Kentucky 911 Services[CMRS] Board. (1) Wireless workload revenues remitted to the CMRS Board during a calendar quarter shall be disbursed in one (1) payment to PSAPs (public safety answering points) within 120 days of the end of that same calendar quarter.

(2) Each PSAP certified by the end of a calendar quarter shall be eligible for a disbursement of funds received during that same calendar quarter.

Section 2. Determination of the Zip Codes or Portions thereof in a PSAP's Jurisdiction. (1) Upon initial certification, the board shall submit to each PSAP a list of zip codes within the PSAP's jurisdiction. A zip code with at least three (3) percent of its total area in a jurisdiction shall be included in the list. Percentage allocation shall be determined by the Commonwealth Office for Technology, Division of Geographic Information, and communicated to the board.

(2) If three (3) percent or more of a zip code's geographic area[~~code~~] is in more than one (1) PSAP's jurisdiction, the Kentucky 911 Services[CMRS] Board shall adjust the allocation determined by the Commonwealth Office for Technology so that the percentage of zip code area allocated to the PSAP shall be equivalent to the percentage of CMRS connections within the zip code area.

(3) Within forty-five (45) days of receipt of the zip code list from the Kentucky 911 Services[CMRS] Board, each PSAP shall acknowledge, in writing to the Kentucky 911 Services[CMRS] Board whether the list of zip codes in the PSAP's jurisdiction is correct and complete.

(4) Within forty-five (45) days of receipt of the zip code list from the Kentucky 911 Services[CMRS] Board, a PSAP may dispute zip code or percentage allocations by notifying the board and any other PSAP affected by the dispute, in writing, of the disputed zip code.

(a) Within five (5) working days of receipt of a notice of dispute, the board shall notify each PSAP affected by the dispute[~~by certified mail, return receipt requested~~]. The affected PSAPs shall:

1. Negotiate a mutually agreeable resolution to the identified problem; and

2. Notify the Kentucky 911 Services[CMRS] Board of the result.

(b) If within the following thirty (30) days the Kentucky 911 Services[CMRS] Board is not notified of a mutually-agreeable

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resolution between the affected PSAPs, the board shall determine the percentage of the identified zip code to be allocated to each PSAP.

(5) A PSAP may request a change to a previously-approved zip code allocation by submitting a written request to the Kentucky 911 Services[CMRS] Board and the other affected PSAPs no later than thirty (30) days after the end of a calendar quarter.

(a) Within five (5) working days of receipt of a request, the board shall notify each affected PSAP[~~by certified mail, return receipt requested~~]. The affected PSAPs shall:

1. Negotiate a mutually-agreeable resolution to the requested change; and

2. Notify the Kentucky 911 Services[CMRS] Board of the result.

(b) If, within the following thirty (30) days, the board is not notified of a mutually-agreeable resolution between the affected PSAPs, the board shall determine the percentage of the zip code to be allocated to each PSAP.

(6) A PSAP may appeal the final allocation of a zip code assignment in accordance with KRS Chapter 13B.

Section 3. Calculation of Individual PSAP Disbursements Under the PSAP Wireless Workload Formula. (1) Within ninety (90) days after the end of calendar quarter, the board shall determine a value for each CMRS connection by dividing the total amount of funds remitted to the board during the collection period established for this disbursement by the total number of CMRS connections, as submitted in a quarterly report by[the] CMRS providers.

(2) The board shall multiply the value for each connection by the number of connections in each zip code, as reported in the quarterly reports by the CMRS providers.

(3) The Kentucky 911 Services[CMRS] Board shall divide the disbursement for a zip code that crosses a PSAP jurisdictional boundary according to the percentages established in Section 2 of this administrative regulation.

(4) A PSAP's workload disbursement shall consist of the total amounts for all zip codes or percentage of zip codes whose areas are served by a PSAP, as determined by subsections (2) and (3) of this section.

(5) Disbursement amounts attributed to zip codes whose allocation of CMRS connections is disputed by a PSAP shall be reserved by the board in the PSAP volume account until an allocation for that zip code is determined.

(a) Disputed funds shall remain in the CMRS fund accounts until disbursed.

(b) Interest accrued by disputed funds shall be deposited in the CMRS Fund and thereafter distributed in accordance with KRS 65.7631.

(c) Upon resolution of a dispute, the reserved funds shall be disbursed to the PSAPs with the next regular workload fund disbursement.

MIKE SUNSERI, Administrator
JOHN HOLIDAY, Chair

APPROVED BY AGENCY: June 12, 2019

FILED WITH LRC: June 12, 2019 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on administrative regulation 202 KAR 6:070 shall be held on July 26, 2019, at 2:30 p.m. at the Kentucky Office of Homeland Security, located at 200 Mero Street in Frankfort, Kentucky 40622. 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 July 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: Mike Sunseri, 911 Services Board Administrator, 200 Mero Street in Frankfort, Kentucky 40622,

phone 502-564-2081, fax 502-564-7764, Mike.Sunseri@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Mike Sunseri

(1) Provide a brief summary of:

(a) What this administrative regulation does: Establishes methodology for certified PSAPs to receive quarterly workload (call volume) disbursements.

(b) The necessity of this administrative regulation: To comply with KRS 65.7631 (5)(b).

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 65.7633 authorizes the Kentucky 911 Services Board to promulgate the provisions of KRS 65.7621 to 65.7623 through the promulgation of administrative regulations in accordance with the provisions of KRS Chapter 13A. KRS 65.7631 (5)(b) charges the 911 Services Board to disburse a portion of CMRS funds to certified PSAPs using a call volume/workload formula.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: See 1C.

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

(a) How the amendment will change this existing administrative regulation: Update to match current statutes.

(b) The necessity of the amendment to this administrative regulation: To conform to legislation passed since 2007.

(c) How the amendment conforms to the content of the authorizing statutes: Current statutes were analyzed against this regulation to ensure conformity.

(d) How the amendment will assist in the effective administration of the statutes: n/a (only change to this regulation was updating the name of the Board to conform to 2016 HB 585).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 115 Board-certified PSAPs.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: none

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): \$0

(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 the administrative body to implement this administrative regulation:

(a) Initially: \$0

(b) On a continuing basis: \$0

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: 911 Services Board restricted 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: n/a

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: n/a

(9) TIERING: Is tiering applied? Tiering is not necessary for this KAR.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky 911 Services Board, 115 Board-certified public safety answering points.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 65.7631, 65.7633

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 wireless workload fund administered through this regulation generates approximately \$13,200,000 in payments to Board-certified PSAPs based on current 911 fee collections. However, this regulation is already in place and the proposed amendments have no new fiscal impact.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The wireless workload fund administered through this regulation generates approximately \$13,200,000 in payments to Board-certified PSAPs based on current 911 fee collections. However, this regulation is already in place and the proposed amendments have no new fiscal impact.

(b) How 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 wireless workload fund administered through this regulation generates approximately \$13,200,000 in payments to Board-certified PSAPs based on current 911 fee collections. Future revenues are based on the amount of wireless 911 fees collected by the 911 Services Board. These fees are expected to achieve slight increases in future years as residents continue to transition from wireline to wireless telecommunication services. However, this regulation is already in place and the proposed amendments have no new fiscal impact.

(c) How much will it cost to administer this program for the first year? \$800,000 for all operational facets of the 911 Services Board, based on current 911 fee collections using the statutory formula in KRS 65.7631(2) to administer 202 KAR 6:010 to 6:100. Two-and-a-half percent of all CMRS funds collected on behalf of wireless telecommunications subscribers are retained by the 911 Services Board to pay the administrative costs and expenses incurred in the operation of the Board in carrying out the functions and duties set forth in KRS 65.7621 to 65.7643. However, this regulation is already in place and the proposed amendments have no new fiscal impact.

(d) How much will it cost to administer this program for subsequent years? \$800,000 for all operational facets of the 911 Services Board, based on current 911 fee collections using the statutory formula in KRS 65.7631(2) to administer 202 KAR 6:010 to 6:100. Two-and-a-half percent of all CMRS funds collected on behalf of wireless telecommunications subscribers are retained by the 911 Services Board to pay the administrative costs and expenses incurred in the operation of the Board in carrying out the functions and duties set forth in KRS 65.7621 to 65.7643. As the funding formula is set in statute, the amount of funding directed to Board operations fluctuates based on overall 911 fee collections. However, this regulation is already in place and the proposed amendments have no new fiscal impact.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: See 3 a & b above.

**OFFICE OF HOMELAND SECURITY
911 Services Board
(Amendment)**

202 KAR 6:080. CMRS surcharge remittance and reporting.

RELATES TO: KRS 65.7621, 65.7627, 65.7629(3)-(9), (13), 65.7631, 65.7634, 65.7635, 65.7636, 65.7639, 65.7643, 9 U.S.C. 1-16, 47 U.S.C. 153(27), 332(d), FCC Order Docket #94-102, 1996 STATUTORY AUTHORITY: KRS 65.7633

NECESSITY, FUNCTION, AND CONFORMITY: KRS 65.7631(5)(3) requires the Kentucky 911 Services[CMRS] Board to collect surcharges from every prepaid, postpaid and Lifeline CMRS connection in the Commonwealth and to distribute a portion of the revenues deposited into the CMRS fund to Board-certified

PSAPs, based in part on their workload in complying with the wireless E911 service requirements established by the FCC order. This administrative regulation establishes the process by which point of sale retailers of prepaid wireless communication services, and CMRS providers and their resellers of prepaid, postpaid and Lifeline CMRS connections remit surcharges and report the information necessary to collect the remittances and to calculate the required disbursements.

Section 1. Remittance of postpaid and Lifeline CMRS Surcharge. (1) A CMRS provider shall remit to the Kentucky 911 Services[CMRS] Board the CMRS surcharge for postpaid and Lifeline subscribers on form "Provider Remittance Report[~~EFT Payment Submission~~]", incorporated by reference, also available on the web page at https://911board.ky.gov[~~https://911cmrsboard.ky.gov~~].

(2) At least ninety (90) calendar days before implementation of a change in remittance procedure, the board shall notify each provider [~~by certified mail, return receipt requested,~~] of the change. Notice shall include copies of required forms and instructions for their completion.

(3) The board shall:

(a) Upon request of a provider, provide copies of required forms and instructions for their completion; and

(b) Maintain on the Web site https://911board.ky.gov [~~https://911cmrsboard.ky.gov~~], a copy of the form and instructions in current use.

Section 2. Remittance of prepaid CMRS Surcharge. (1) The prepaid service charge imposed by KRS 65.7634 shall be collected by the retailer from the purchaser at the time of purchase and remitted to the Department of Revenue as provided in KRS 142.100 to 142.135.

Section 3[2]. Quarterly Report of CMRS Connections in a Zip Code. (1) Each provider or reseller shall submit to the Kentucky 911 Services[CMRS] Board a quarterly report of the number of postpaid, prepaid, and Lifeline CMRS connections served by them for the previous three (3) months of the reporting periods ending March 31, June 30, September 30, and December 31.

(2) Each quarterly report shall list for each zip code served by the provider and located at least partially in Kentucky, the number of CMRS postpaid, prepaid, and Lifeline connections billed by them in each month of the reporting period[~~the months of March, June, September, or December~~].

(3) The report shall be sorted by zip code and submitted in a format as designated by the Kentucky 911 Services Board[~~as an Excel spreadsheet~~]. The board shall maintain on the Web site https://911board.ky.gov, a copy of the form and instructions in current use.

(4) A reseller shall include:

(a) A list of the CMRS providers on whose network they resell service; and

(b) The number of CMRS connections on each network.

(5) The report shall be due at the Kentucky 911 Services [CMRS] Board office no later than sixty (60) days following the end of the reporting month.

Section 4[3]. Required Reports Regarding Resellers of CMRS Service. (1) A provider who contracts with a reseller of wireless service shall submit to the CMRS Board a quarterly report listing each vendor reselling wireless service on the provider's network.

(2) The quarterly report shall:

(a) Be submitted to the board no later than sixty (60) days after the end of the calendar months of March, June, September, and December;

(b) Include the reseller's:

1. Business name;
2. Business address;
3. Contact person;
4. Telephone numbers; and
5. E-mail address; and

(c) Include[~~if the network provider has a cost recovery plan based on number of subscribers,~~] the number of CMRS

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connections receiving service on the provider's network and billed by the listed reseller.

Section 5[4]. Provider Failure to Comply with Reporting and Remittance Requirements. (1) A provider's failure to comply with the requirements of this administrative regulation shall constitute cause for the board to suspend cost recovery payments to the provider.

(2) A cost recovery payment shall be suspended only if authorized by a majority vote of the Kentucky 911 Services[CMRS] Board.

(3) The board shall not consider suspension of payment to a provider unless the provider has been:

(a) Notified in writing of the failure to comply with a stated provision of this administrative regulation; and

(b) Allowed ten (10) days from receipt of notice in which to respond.

(4) The provider may appeal the board's suspension of cost recovery payments, in accordance with KRS Chapter 13B.

Section 6[5]. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Provider Remittance Report[EFT Payment Submission], 3/20/2019[6/2004]"; and

(b) "Bank Routing and Account", 6/2001.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky 911 Services[CMRS] Board, 200 Mero Street, Frankfort, Kentucky 40622[40604], Monday through Friday, 8 a.m. to 4:30 p.m.

MIKE SUNSERI, Administrator
JOHN HOLIDAY, Chair

APPROVED BY AGENCY: June 12, 2019

FILED WITH LRC: June 12, 2019 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on administrative regulation 202 KAR 6:080 shall be held on July 26, 2019, at 2:30 p.m. at the Kentucky Office of Homeland Security, located at 200 Mero Street in Frankfort, Kentucky 40622. 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 July 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: Mike Sunseri, 911 Services Board Administrator, 200 Mero Street in Frankfort, Kentucky 40622, phone 502-564-2081, fax 502-564-7764, Mike.Sunseri@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Mike Sunseri

(1) Provide a brief summary of:

(a) What this administrative regulation does: Establishes methodology for 911 Services Board to receive 911 fees from wireless CMRS providers; establishes subscriber reporting requirements and methodology for CMRS providers.

(b) The necessity of this administrative regulation: To comply with KRS 65.7629, 65.7630, 65.7634, 65.7635, and 65.7636.

(c) How this administrative regulation conforms to the content of the authorizing statutes: Under the statutes mentioned above, the Kentucky 911 Services Board collects surcharges from every prepaid, postpaid and Lifeline CMRS connection in the Commonwealth and to distribute a portion of the revenues deposited into the CMRS fund to Board-certified PSAPs, based in part on their workload in complying with the wireless E911 service requirements established by the FCC order. This administrative regulation establishes the process by which point of sale retailers of prepaid wireless communication services, and CMRS providers

and their resellers of prepaid, postpaid and Lifeline CMRS connections remit surcharges and report the information necessary to collect the remittances and to calculate the required disbursements. KRS 65.7633 authorizes the Kentucky 911 Services Board to promulgate the provisions of KRS 65.7621 to 65.7623 through the promulgation of administrative regulations in accordance with the provisions of KRS Chapter 13A.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: See 1C.

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

(a) How the amendment will change this existing administrative regulation: Update to match current statutes, which were changed by 2016 HB 585 to include new language regarding the collection of 911 fees from prepaid wireless subscribers and subscribers of wireless Lifeline service.

(b) The necessity of the amendment to this administrative regulation: To conform to legislation passed since 2007, including 2016 HB 585.

(c) How the amendment conforms to the content of the authorizing statutes: Current statutes were analyzed against this regulation to ensure conformity.

(d) How the amendment will assist in the effective administration of the statutes: 2016 HB 585 created new statutes under Chapter 65 to include methodology for collecting 911 fees from prepaid wireless subscribers and wireless Lifeline subscribers. Amending this regulation will bring the regulation in line with KRS 65.7629, 65.7630, 65.7634, 65.7635, and 65.7636 as modified by 2016 HB 585.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 115 Board-certified PSAPs, 45 providers of wireless telecommunications services, 15 providers of wireless Lifeline telecommunications 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: PSAPs – none. Wireless providers will have to follow reporting guidelines that reflect amendments to the regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): PSAPs - \$0. CMRS providers – indeterminable as they were already required to provide subscriber reports to the Board. The amended regulation merely enhances the existing reporting requirements.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Ensured compliance with KRS 65.7629, 65.7630, 65.7634, 65.7635, and 65.7636.

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

(a) Initially: \$0

(b) On a continuing basis: \$0

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: 911 Services Board restricted 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: n/a

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: n/a

(9) TIERING: Is tiering applied? Tiering is not necessary for this KAR.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky 911 Services Board, 115 Board-certified PSAPs, 45 providers of wireless telecommunications services, 15 providers of wireless

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Lifeline telecommunications services.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 65.7629, 65.7630, 65.7633, 65.7634, 65.7635, and 65.7636.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 911 Services Board distributes more than \$30,000,000 a year in 911 fees collected from wireless telecommunications providers and point-of-sale retailers (through the Department of Revenue) to Board-certified PSAPs based on current 911 fee collections. Funds are distributed by a formula set in KRS 65.7631. However, this regulation is already in place and the proposed amendments have no new fiscal impact.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The 911 Services Board distributes more than \$30,000,000 a year in 911 fees collected from wireless telecommunications providers and point-of-sale retailers (through the Department of Revenue) to Board-certified PSAPs based on current 911 fee collections. Funds are distributed by a formula set in KRS 65.7631. However, this regulation is already in place and the proposed amendments have no new fiscal impact.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Future revenues are based on the amount of wireless 911 fees collected by the 911 Services Board. These fees are expected to achieve slight increases in future years as residents continue to transition from wireline to wireless telecommunication services. However, this regulation is already in place and the proposed amendments have no new fiscal impact.

(c) How much will it cost to administer this program for the first year? \$800,000 for all operational facets of the 911 Services Board, based on current 911 fee collections using the statutory formula in KRS 65.7631(2) to administer 202 KAR 6:010 to 6:100. Two-and-a-half percent of all CMRS funds collected on behalf of wireless telecommunications subscribers are retained by the 911 Services Board to pay the administrative costs and expenses incurred in the operation of the Board in carrying out the functions and duties set forth in KRS 65.7621 to 65.7643. However, this regulation is already in place and the proposed amendments have no new fiscal impact.

(d) How much will it cost to administer this program for subsequent years? \$800,000 for all operational facets of the 911 Services Board, based on current 911 fee collections using the statutory formula in KRS 65.7631(2) to administer 202 KAR 6:010 to 6:100. Two-and-a-half percent of all CMRS funds collected on behalf of wireless telecommunications subscribers are retained by the 911 Services Board to pay the administrative costs and expenses incurred in the operation of the Board in carrying out the functions and duties set forth in KRS 65.7621 to 65.7643. As the funding formula is set in statute, the amount of funding directed to Board operations fluctuates based on overall 911 fee collections. However, this regulation is already in place and the proposed amendments have no new fiscal impact.

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:

OFFICE OF HOMELAND SECURITY
911 Services Board
(Amendment)

202 KAR 6:090. Permitted uses by PSAPs for CMRS funds.

RELATES TO: KRS 65.7621, 65.7627, 65.7629(3)-(9), (13),

65.7631, 65.7635, 65.7639, 65.7643, 9 U.S.C. 1-16, 47 U.S.C. 153(27), 332(d), FCC Order Docket #94-102, 1996

STATUTORY AUTHORITY: KRS 65.7633(2)(c)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 65.7633(2)(c) requires the Kentucky 911 Services[CMRS] Board to promulgate administrative regulations to establish guidelines to be followed by the board in reviewing, evaluating, and approving or disapproving disbursements from the CMRS fund and requests for disbursements under KRS 65.7631(4)(2) and (5)(3). KRS 65.7631(5)(2) restricts the use of funds disbursed solely for the purposes of answering, routing, and properly disposing of CMRS 911 calls, training PSAP staff, public education, and complying with the wireless E911 service requirements established by the FCC. This administrative regulation establishes guidelines to be followed by the board in its review and evaluation of disbursement requests by local 911 centers.

Section 1. Definitions. (1) "AVL" means automatic vehicle location systems used to track emergency responder vehicle.

(2) "CAD" means computer aided dispatch systems used by 911 personnel to allocate and track emergency responder resources during a 911 call.

(3) "EMS" means emergency medical system which includes paramedics, emergency medical technicians and other personnel and equipment used to respond to medical emergencies.

(4) "GIS" means Geographic Information Systems used to create, maintain, and manage graphic location data for use by PSAPs [~~emergency communications centers~~] or services routing emergency calls to PSAPs.

(5) "LINK/NCIC" means the Law Enforcement Information Network of Kentucky and the National Crime Information Center, two (2) systems commonly used by law enforcement and emergency communications personnel for short messaging between agencies and to request vehicle, driver, and criminal history checks.

(6) "MSAG" means Master Street Address Guide, the database used by 911 centers to determine an emergency call's initial location.

Section 2. Allocation of CMRS Funds. (1) Wireless only costs. CMRS funds may be expended for costs which are solely for the provision of enhanced 911 service involving calls from wireless consumers.

(2) Wireline and wireless-shared costs. Costs for personnel, equipment, or facilities which are necessarily shared by calls to 911 from wireline and wireless users shall be prorated based on the percentage of call traffic attributed to calls from wireless users. CMRS funds may be used only for the wireless prorated portion.

(3) Multifunction personnel, equipment, or facility shared costs. Expenses for personnel, equipment, or facilities which serve multiple functions or purposes shall be prorated. Only those costs for the prorated wireless portion directly involved in the delivery of 911 service shall be allowed.

Section 3. Allowed 911 Center Operational Expenditures. (1) Personnel costs. Costs for the following employees, to the extent their duties are directly attributable to delivery of 911 service, shall be allowed:

- (a) Positions allowed.
 1. Director;
 2. Supervisor;
 3. Dispatcher;
 4. Call-taker;
 5. Technical staff;
 6. Support staff; and
 7. Other staff involved in the provision of 911 service.

- (b) Costs allowed.
 1. Salaries;
 2. Fringe benefits;
 3. MSAG coordination;
 4. Uniforms; and
 5. Addressing/database development and management.

(2) Facility costs. Facility costs for the following expenses, to the extent it is directly attributable to delivery of 911 service, shall

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be allowed:

- (a) Capital improvements for construction, remodeling, or expansion;
- (b) Lease or rental payments;
- (c) Utilities;
- (d) Heating and air conditioning;
- (e) Fire suppression systems;
- (f) Security systems;
- (g) Cleaning and maintenance;
- (h) Emergency power and uninterruptible power equipment;
- (i) Insurance;
- (j) Office supplies;
- (k) Printing and copying services; and
- (l) Furniture.

(3) Training and memberships. Training and memberships in professional associations shall be allowed to the extent they are directly attributable to the enhancement of knowledge, skills and abilities of 911 personnel in the provision of 911 service, including:

- (a) Vendor provided training;
- (b) Conferences;
- (c) Necessary travel and lodging;
- (d) On-the-job training; and
- (e) Memberships in 911 related associations, such as the Association of Public Communications Officials, or the National Emergency Number Association.

(4) Hardware, software, and peripheral equipment. Costs for the following equipment shall be allowed to the extent their function is directly attributable to the provision of 911 service, whether on the premises or remotely located:

- (a) 911 controllers, telephone equipment, or software;
- (b) 911 trunks or administrative lines for the PSAP[911 center];
- (c) Remote 911 hardware or modems;
- (d) Automatic call distribution (ACD) systems or other call management facilities and software;
- (e) Call-time stamping or other clock functions;
- (f) Computer workstations;
- (g) Telephone device for the deaf equipment;
- (h) Voice and data recording systems;
- (i) Radio systems, including consoles and infrastructure;
- (j) CAD, GIS/mapping software, equipment, and services, paging, mobile data, LINK/NCIC, or AVL systems;
- (k) Associated databases;
- (l) Network connectivity;
- (m) Software licenses; and
- (n) Maintenance or service agreements for equipment or software listed in paragraphs (a) through (m) of this subsection.

(5) Vehicle costs. Vehicle costs for the following, either as reimbursement to an employee for the use of a private vehicle or direct costs for a vehicle assigned to the agency, shall be allowed to the extent their use is directly attributable to the provision of 911 service:

- (a) MSAG and address development and maintenance;
- (b) GIS verification and testing; and
- (c) Public education.

(6) Professional services. Costs for the following professional services shall be allowed to the extent they are directly attributable to the provision of 911 related service:

- (a) Legal;
- (b) Architectural;
- (c) Auditing; and
- (d) Consultation.

(7) Public education. Costs for public education regarding the proper use of 911 shall be allowed.

Section 4. Not Allowed 911 Center Operational Expenses. (1) Personnel costs. Personnel costs for the following personnel shall not be allowed, except when directly functioning as 911 center staff:

- (a) Law enforcement;
- (b) EMS personnel;
- (c) Fire personnel;
- (d) Emergency management staff; and
- (e) Shared support or technical staff.

(2) Facility costs. Facility costs for the following purposes and

facilities shall not be allowed, except for that portion used for 911 operations.

(a) Capital and furnishing costs for facilities whose primary purpose is other than 911 operations;

(b) Facilities primarily intended for use by police, fire, EMS, or other emergency management personnel; and

(c) Facilities providing general offices for county or municipal government operations.

(3) Training and memberships.

(a) Costs for training for staff not directly involved in the delivery of 911 services or courses whose content is not intended to increase of the knowledge, skills, and abilities of 911 personnel in regard to delivery of 911 service shall not be allowed.

(b) Costs for memberships in organizations or associations whose primary purpose is other than public safety communications or 911 issues shall not be allowed.

(4) Hardware, software, and peripheral equipment. The following hardware, software, or peripheral equipment costs, unless directly attributable to the delivery of 911 service shall not be allowed:

(a) Law enforcement, fire, EMS, or jail record management systems;

(b) Word processing, databases, and other general computer applications;

(c) GIS applications providing data layers not needed for the location of emergency calls, or other general mapping and location services for government operations;

(d) Court information systems;

(e) Field equipment used outside of the 911 center by emergency responders or other government personnel for radio, paging, mobile data, LINK/NCIC, CAD, or AVL systems;

(f) Connection for an application listed in paragraphs (a) to (e) of this subsection;

(g) A maintenance or service agreement for an application listed in paragraphs (a) to (e) of this subsection; and

(h) Software license for an application listed in paragraphs (a) to (e) of this subsection.

(5) Vehicle costs. The cost of an emergency response or other government vehicle not directly attributable to the delivery of 911 service shall not be allowed.

(6) Professional services. Costs for professional services not directly attributable to the delivery of 911 service shall not be allowed.

(7) Public education. Costs for public education not directly attributable to the delivery of 911 service shall not be allowed.

MIKE SUNSERI, Administrator

JOHN HOLIDAY, Chair

APPROVED BY AGENCY: June 12, 2019

FILED WITH LRC: June 12, 2019 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on administrative regulation 202 KAR 6:090 shall be held on July 26, 2019, at 2:30 p.m. at the Kentucky Office of Homeland Security, located at 200 Mero Street in Frankfort, Kentucky 40622. 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 July 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: Mike Sunseri, 911 Services Board Administrator, 200 Mero Street in Frankfort, Kentucky 40622, phone 502-564-2081, fax 502-564-7764, Mike.Sunseri@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Mike Sunseri

(1) Provide a brief summary of:

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(a) What this administrative regulation does: Establishes permitted uses by PSAPs of CMRS funds from wireless 911 fees held by the 911 Services Board.

(b) The necessity of this administrative regulation: To comply with KRS 65.7631.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 65.7633 authorizes the Kentucky 911 Services Board to promulgate the provisions of KRS 65.7621 to 65.7623 through the promulgation of administrative regulations in accordance with the provisions of KRS Chapter 13A. KRS 65.7631 (5) mandates that CMRS funds can only be used by PSAPs for the purposes of answering, routing, and properly disposing of wireless 911 calls and to follow the FCC order, including the costs and expenses of provisioning E911 service.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: See 1C.

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

(a) How the amendment will change this existing administrative regulation: Update to match current statutes.

(b) The necessity of the amendment to this administrative regulation: To conform to legislation passed since 2007.

(c) How the amendment conforms to the content of the authorizing statutes: Current statutes were analyzed against this regulation to ensure conformity.

(d) How the amendment will assist in the effective administration of the statutes: n/a (only changes to this regulation was updating the name of the Board to conform to 2016 HB 585 and technical change to reflect updated technology).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 115 Board-certified PSAPs.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: none

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): \$0

(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 the administrative body to implement this administrative regulation:

(a) Initially: \$0

(b) On a continuing basis: \$0

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: 911 Services Board restricted 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: n/a

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: n/a

(9) TIERING: Is tiering applied? Tiering is not necessary for this KAR.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky 911 Services Board, 115 Board-certified PSAPs and the local government entities in which they are located.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 65.7631, 65.7633.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 impact, regulation already in place; amendments have no fiscal

impact.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No impact, regulation already in place; amendments have no fiscal impact.

(b) How 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 impact, regulation already in place; amendments have no fiscal impact.

(c) How much will it cost to administer this program for the first year? \$800,000 for all operational facets of the 911 Services Board, based on current 911 fee collections using the statutory formula in KRS 65.7631(2) to administer 202 KAR 6:010 to 6:100. Two-and-a-half percent of all CMRS funds collected on behalf of wireless telecommunications subscribers are retained by the 911 Services Board to pay the administrative costs and expenses incurred in the operation of the Board in carrying out the functions and duties set forth in KRS 65.7621 to 65.7643. However, this regulation is already in place and the proposed amendments have no new fiscal impact.

(d) How much will it cost to administer this program for subsequent years? \$800,000 for all operational facets of the 911 Services Board, based on current 911 fee collections using the statutory formula in KRS 65.7631(2) to administer 202 KAR 6:010 to 6:100. Two-and-a-half percent of all CMRS funds collected on behalf of wireless telecommunications subscribers are retained by the 911 Services Board to pay the administrative costs and expenses incurred in the operation of the Board in carrying out the functions and duties set forth in KRS 65.7621 to 65.7643. As the funding formula is set in statute, the amount of funding directed to Board operations fluctuates based on overall 911 fee collections. However, this regulation is already in place and the proposed amendments have no new fiscal impact.

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:

OFFICE OF HOMELAND SECURITY
911 Services Board
(Amendment)

202 KAR 6:100. PSAP Phase II certification.

RELATES TO: KRS 65.7621-65.7643, 47 U.S.C. 153(27), 332(d)

STATUTORY AUTHORITY: KRS 65.7631(5)(e), 65.7633(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 65.7631 (6)(a)[(5)(e)] states that no PSAP shall be eligible to request or receive a disbursement from the CMRS fund unless and until the PSAP demonstrates that the PSAP has made the investment which is necessary to allow the PSAP to receive and utilize the data elements associated with wireless E911 service. KRS 65.7633 requires the Kentucky 911 Services[CMRS] Board to implement the provisions of KRS 65.7621 to 65.7643 through the promulgation of administrative regulations. This administrative regulation establishes the process by which a PSAP shall demonstrate its ability to receive and utilize the data elements associated with wireless E911 and Next Generation 911 (NG911) service.

Section 1. PSAPs not currently certified by the Kentucky 911 Services[CMRS] Board in accordance with 202 KAR 6:050 shall not be eligible for disbursement from the CMRS fund as provided in KRS 65.7631(6)(3) until they successfully complete both the requirements established in 202 KAR 6:050 and relevant sections of this administrative regulation.

Section 2. PSAPs Already Certified by the Kentucky 911

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Services[CMRS] Board. (1) In order to maintain continued eligibility for CMRS funds, PSAPs that are currently certified by the Kentucky 911 Services[CMRS] Board in accordance with 202 KAR 6:050 shall no later than September[February] 1, annually submit:

(a) An updated[CMRS] PSAP Annual Survey[Certification Review Data Sheet], including any changes to the documentation supplied in their original Phase I Application; and

(b) Based on an actual tabulation of call traffic for at least the first week in each calendar quarter:

1. A[An annual] count of wireless 911 calls received by the PSAP[on dedicated 911 trunks] for the previous fiscal year; and

2. A count of non-wireless 911 calls received by the PSAP[on dedicated 911 trunks] for the previous fiscal year.

3. An accounting of the receipt and disbursement of funds used to operate the PSAP as provided in KRS 65.7630(3).

(2) Certified PSAPs shall:

(a) Make operational the hardware, software, and database necessary to receive and utilize the data elements associated with Phase II wireless E911 service;

(b) Notify the board, in writing, of their readiness to receive and utilize the data elements associated with Phase II wireless E911 service; and

(c) Supply to the board the following documentation:

1. An electronic copy of the digital maps[map] of the PSAP's response area boundary and emergency service boundaries for law, fire, and emergency medical response[jurisdiction], which meets the mapping criteria as outlined in the Kentucky 911 Services Board "Kentucky NG911 Mapping Guide." Updated electronic response boundary and emergency response boundaries must be updated or validated at least quarterly[in Section 3(1)(a) and Section 3(2) of this administrative regulation]; and

a. In the event that a PSAP's submitted jurisdictional or an emergency service boundary or boundaries conflicts with the jurisdictional or emergency service boundary or boundaries of another PSAP, the board shall notify all PSAPs affected by the dispute within five (5) working days. The affected PSAPs shall:

(i) Negotiate a mutually agreeable resolution to the identified problem; and

(ii) Notify the Kentucky 911 Services Board of the result.

(iii) If within the following thirty (30) days the Kentucky 911 Services Board is not notified of a mutually-agreeable resolution between the affected PSAPs, the board shall establish an arbitration panel that includes no fewer than three (3) members and includes GIS professionals and representatives of PSAPs certified for CMRS funding to determine the proper jurisdictional or emergency service boundary or boundaries.

b. PSAP may appeal the final determination of a boundary in accordance with KRS Chapter 13B.

2. An electronic copy of the digital street centerlines which meets the mapping criteria in Section 3(1)(c) and Section 3(2) of this administrative regulation; and

3. Beginning July 1, 2021, an electronic copy of the digital dataset of all address site and structure points which meets the mapping criteria as outlined in the Kentucky 911 Services Board "Kentucky NG911 Mapping Guide."

4. The 911 Services Board recommends certified PSAPs present updated digital mapping data set layers monthly, but requires updated digital mapping data sets are presented to the board at least quarterly, as outlined in the Kentucky 911 Services Board "Kentucky NG911 Mapping Guide."

5[3].a. Copies of return receipts and letters sent certified mail requesting Phase II service from all wireless carriers licensed to operate in the PSAP's jurisdiction response area; or

b. Documentation from a wireless carrier licensed to operate within the PSAP response area that Phase II service is operational or has been requested by the PSAP;

6[4]. Evidence from the LEC, 911 service provider, and any contracted 3rd party database services that all network elements necessary to the provision of Phase II wireless E911 service are operational; and

7[5]. Evidence from hardware and software vendors that all hardware and software necessary to utilize Phase II calls is now operational. [(3) Certified PSAPs shall present to the board updated

mapping data sets once a year during the month of October.]

Section 3. Mapping Criteria. Regardless of the source of its data, a PSAP certified for CMRS funding shall be responsible for the accuracy of the geographic data and supporting databases used by the PSAP and those supplied to the Kentucky 911 Services[CMRS] Board.

(1) Maps in use by PSAPs shall include the following:

(a) PSAP response boundaries as outlined in the Kentucky 911 Services Board "Kentucky NG911 Mapping Guide"[and contact information, to include PSAP name, contact personnel, and ten (10) digit contact telephone number with twenty four (24) hour, seven (7) day availability];

(b) Emergency response boundaries for law, emergency medical service (EMS), and fire agencies within the PSAP response boundary as outlined in the Kentucky 911 Services Board "Kentucky NG911 Mapping Guide"[Cell site location as used within the PSAP for Phase I mapping];

(c) Road centerlines that have been prepared and attributed with only items as outlined in the Kentucky 911 Services[CMRS] Board "Kentucky NG911 Mapping Guide."["PSAP Mapping Requirements" Table; and];

(d) Beginning July 1, 2021, site and structure points as outlined in the Kentucky 911 Services Board "Kentucky NG911 Mapping Guide"; and

(e)[(4)] Address data that is ninety (90) percent accurate upon audit as outlined in Section 4 of this administrative regulation.

(2) The geospatial positional accuracy of all geographic elements submitted shall be within thirty-three (33) feet of its true location, plus the accuracy of the device used to conduct the test, for ninety (90) percent of all tested sites.

Section 4. Geospatial Audit Requirements and Methodology.

(1) The Kentucky 911 Services[CMRS] Board shall audit the use and quality of geospatial data supplied by certified PSAPs. The PSAP is not responsible for the accuracy of data provided by wireless carriers.

(2) Audits shall be conducted:

(a) Utilizing equipment and methodology as approved and supplied by the Kentucky 911 Services[CMRS] Board or its designee and calibrated according to manufacturer's specifications; and

(b) Using tests[approved be]approved by the board which includes GIS professionals and representatives of PSAPs certified for CMRS funding.

(3) Audits shall verify that upon receipt of a wireless 911 call the PSAP's mapping component shall:

(a)1. Display the X, Y coordinates on digital base maps used by the PSAP;

2. Identify the incoming 911 call on the map display; and

3. Identify the closest assigned address to the X, Y coordinates provided.];[or

(b) In the absence of the X, Y coordinate information, identify the cell site, and cell face.]

(4) Each PSAP's mapping shall be tested for the accuracy of the GIS software and hardware used within the PSAP[road centerline data]. A minimum of twenty (20) randomly-selected address points shall be tested in each PSAP response area. If a PSAP response area encompasses multiple counties, a sampling of a minimum of twenty (20) randomly-selected address points per county shall be tested. Tested locations shall:

(a) Be distributed across the PSAP response area to yield a valid cross section of urban and rural environments;

(b) Plot on the correct side of the street as shown on the base map data supplied by the PSAP;

(c) Plot within the correct cross streets as shown on the base map data supplied by the PSAP; and

(d) Plot within one-tenth (1/10) of a mile of their location on PSAP supplied base maps.

Section 5. Audit Results. (1) The Kentucky 911 Services [CMRS] Board shall notify PSAPs, in writing, within ten (10) business days of audit results.

(2) If a PSAP fails to meet the audit requirements, the

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Kentucky 911 Services[CMRS] Board shall allow the PSAP ninety (90) days from receipt of the audit notification to remedy the identified problems.

(3) After receipt of the PSAP response, the board may schedule a reaudit.

(4) A PSAP shall be decertified for CMRS funding if it:

- (a) Fails to remedy the problems identified by the board; or
(b) Fails a reaudit.

(5) The board shall notify the PSAP Director, in writing, return receipt requested, of its decision to decertify the PSAP.

Section 6. Appeals of Decertification. (1) A PSAP may request a review of its decertification by submitting a request in writing, within thirty (30) days of receipt of a decertification notice.

(a) The decertification shall be suspended pending the review by the board.

(b) The board shall schedule the requested review at a regularly scheduled board meeting, no later than ninety (90) days after receipt of the PSAP request.

(c) The board shall notify the PSAP of the scheduled review date, in writing, at least thirty (30) days prior to the meeting.

(d) After the board's review, the board shall notify, in writing, the PSAP of its decision within ten (10) business days.

(2) A PSAP that has been decertified may further appeal its decertification in accordance with KRS Chapter 13B.

Section 7. Status of PSAP Funds During an Appeal. (1) During a PSAP's appeal of its decertification, the PSAP's pro rata and workload payments shall be held in reserve in the appropriate CMRS fund account until resolution of all appeals by the PSAP.

(a) If the PSAP's appeal is successful, the reserved funds shall be disbursed to the PSAP with the next regular disbursement of each account.

(b) If the PSAP's appeal is unsuccessful, the reserved funds shall be disbursed to the remaining certified PSAPs with the next regular payments from each account in accordance with KRS 65.7631(3).

(2) All interest accrued by reserved funds shall be distributed among the normal CMRS accounts in accordance with KRS 65.7631.

Section 8. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) ["CMRS PSAP Certification Review" 07/14/2003; and

(b) The Kentucky 911 Services Board "Kentucky NG911 Mapping Guide." [The CMRS Board "PSAP Mapping Requirements" table], 06/01/2019[06/29/2007].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky 911 Services[CMRS] Board, 200 Mero Street, Frankfort, Kentucky 40622[40604], Monday through Friday, 8 a.m. to 4:30 p.m.

MIKE SUNSERI, Administrator
JOHN HOLIDAY, Chair

APPROVED BY AGENCY: June 12, 2019

FILED WITH LRC: June 12, 2019 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on administrative regulation 202 KAR 6:100 shall be held on July 26, 2019, at 2:30 p.m. at the Kentucky Office of Homeland Security, located at 200 Mero Street in Frankfort, Kentucky 40622. 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 July 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: Mike Sunseri, 911 Services Board Administrator, 200 Mero Street in Frankfort, Kentucky 40622,

phone 502-564-2081, fax 502-564-7764, Mike.Sunseri@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Mike Sunseri

(1) Provide a brief summary of:

(a) What this administrative regulation does: Establishes Phase II requirements for public safety answering points to achieve and maintain 911 Services Board certification.

(b) The necessity of this administrative regulation: This regulation outlines Phase II wireless certification requirements; establishes public safety answering points annual reporting requirements; outlines GIS mapping requirements for Next Generation 911; establishes guidelines for geospatial audits.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation provides guidance to public safety answering points seeking to become certified to receive CMRS funds under KRS 65.7631 and to maintain Board certification. This regulation also lays the foundation for PSAPs to achieve mapping standards necessary for the adoption of Next Generation 911 technologies. KRS 65.7633 authorizes the Kentucky 911 Services Board to promulgate the provisions of KRS 65.7621 to 65.7623 through the promulgation of administrative regulations in accordance with the provisions of KRS Chapter 13A.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: See 1C.

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

(a) How the amendment will change this existing administrative regulation: Update to match current statutes, remove antiquated language, and establish parameters for PSAPs to achieve mapping standards necessary for the adoption of Next Generation 911 technologies.

(b) The necessity of the amendment to this administrative regulation: To conform to legislation passed since 2007, to remove unnecessary antiquated language, and establish parameters for PSAPs to achieve mapping standards necessary for the adoption of Next Generation 911 technologies.

(c) How the amendment conforms to the content of the authorizing statutes: Current statutes were analyzed against this regulation to ensure conformity.

(d) How the amendment will assist in the effective administration of the statutes: By updating the language to match current statutory language, which will provide public safety answering points seeking to become Board-certified adequate guidance for the application and qualification process. The regulation also establishes parameters for modern mapping standards which are necessary to advance Kentucky's 911 infrastructure into NG911 readiness.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 115 Board-certified PSAPs and approximately 45 non-certified PSAPs that may eventually seek Board 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: Board-certified PSAPs will have to adopt enhanced mapping standards in preparation of NG911. Non-certified PSAPs will need to follow the updated regulation if they elect to apply for certification to access CMRS funds.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): An indeterminable amount of staff time on behalf of the public safety answering point seeking 911 Services Board certification, and an indeterminable amount of equipment necessary to meet the requirement guidelines as each PSAP operates in a unique environment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Updating the application guidelines will improve the efficiency and effectiveness of the

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Board-certification application process and will ready all PSAPs for the adoption of modern NG911 technologies.

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

- (a) Initially: \$0
- (b) On a continuing basis: \$0

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: 911 Services Board restricted 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: n/a

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: n/a

(9) TIERING: Is tiering applied? Tiering is not necessary for this KAR.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky 911 Services Board, 115 Board-certified public safety answering points, approximately 45 non-certified PSAPs.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 65.7631, 65.7633

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. An indeterminable amount of staff time on behalf of the public safety answering point seeking 911 Services Board certification, and an indeterminable amount of equipment necessary to meet the requirement guidelines. The cost to a local government to achieve Board certification is based on the equipment already owned by the public safety answering point.

(a) How much 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 will depend on how many residents the newly certified PSAP has as a significant portion of certified dispersals are based on call volume. Each Board-certified PSAP currently receives approximately \$130,000 per year in wireless 911 fees collected by the Board.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The amount of revenue received by certified PSAPs is based on a statutory formula per KRS 65.7631.

(c) How much will it cost to administer this program for the first year? \$800,000 for all operational facets of the 911 Services Board, based on current 911 fee collections using the statutory formula in KRS 65.7631(2) to administer 202 KAR 6:010 to 6:100. Two-and-a-half percent of all CMRS funds collected on behalf of wireless telecommunications subscribers are retained by the 911 Services Board to pay the administrative costs and expenses incurred in the operation of the Board in carrying out the functions and duties set forth in KRS 65.7621 to 65.7643. However, this regulation is already in place and the proposed amendments have no new fiscal impact.

(d) How much will it cost to administer this program for subsequent years? \$800,000 for all operational facets of the 911 Services Board, based on current 911 fee collections using the statutory formula in KRS 65.7631(2) to administer 202 KAR 6:010 to 6:100. Two-and-a-half percent of all CMRS funds collected on behalf of wireless telecommunications subscribers are retained by the 911 Services Board to pay the administrative costs and expenses incurred in the operation of the Board in carrying out the functions and duties set forth in KRS 65.7621 to 65.7643. As the funding formula is set in statute, the amount of funding directed to Board operations fluctuates based on overall 911 fee collections. The enhanced GIS mapping requirements of this regulation will place an additional burden on 911 Services Board staff in the

areas of compliance and administration but the amount is indeterminable.

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

- Revenues (+/-):
- Expenditures (+/-):
- Other Explanation: See answers to questions 3 c&d.

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

301 KAR 1:152. Harvest and sale of Asian carp~~[and Scaled Rough Fish Harvest Program]~~.

RELATES TO: KRS 150.010, 150.170, 150.175, 150.445, 150.450(2), (3), 150.990

STATUTORY AUTHORITY: KRS 150.025(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish seasons for the taking of fish and wildlife, to regulate creel limits and methods of take, to regulate the buying, selling, or transporting of fish and wildlife, and to make these requirements apply to a limited area. This administrative regulation establishes the requirements for the harvest and sale of~~[department's] Asian carp beyond the requirements of 301 KAR 1:155~~~~[Carp and Scaled Rough Fish Harvest Program]~~.

Section 1. Definitions. (1) "Asian carp" means:

- (a) Bighead carp;
- (b) Black carp;
- (c) Grass carp; or
- (d) Silver carp.

(2) "By-catch" means any fish that is not an Asian carp or scaled rough fish.

(3) "Program" means Asian Carp and Scaled Rough Fish Harvest Program.

(4) "Program participant" means a commercial fisherman who is:

- (a) Enrolled in the Asian Carp and Scaled Rough Fish Harvest Program; and
- (b) Fishing in restricted water.

(5)~~[(4)]~~ "Restricted water" means those areas, as established in~~[pursuant to]~~ 301 KAR 1:140, 1:150, and 1:155, where:

- (a) Commercial fishing is prohibited; or
- (b) Commercial fishing with gill or trammel nets is prohibited.

(6)~~[(5)]~~ "Scaled rough fish" means any scaled fish that is not an Asian carp or sport fish as established in~~[pursuant to]~~ 301 KAR 1:060.

(7)~~[(6)]~~ "Whip net set" means a gill or trammel net that is set to encircle and harvest Asian carp and scaled rough fish.

Section 2. Program Participant Qualifications. A commercial fisherman shall:

- (1) Contact the department and request to be included in the program; and
- (2) Possess a valid Kentucky commercial fishing license.

Section 3. Program Participant Requirements. A program participant shall:

(1) Call the department at 800-858-1549 prior to the requested fishing date and provide the information established in paragraphs (a) through (e) of this subsection:

- (a) The participant's name;
- (b) The fish buyer's name and phone number;
- (c) Date requested;
- (d) The location in the restricted water body to be fished; and
- (e) The name or location of the boat ramp that will be used;

(2) Harvest a weight ratio of at least sixty-five (65) percent Asian carp to thirty-five (35) percent scaled rough fish over a one (1) month period, except that a commercial fisherman whose license fee has been waived as established in~~[pursuant to]~~ Section

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4 of this administrative regulation shall only harvest Asian carp and not retain any by-catch;

- (3) Only fish:
 - (a) On dates approved by the department; and
 - (b) At a location approved by the department;
- (4) Immediately notify the department if the participant changes

the:

- (a) Fishing location in the restricted water body; or
- (b) Boat ramp being used;
- (5) Only use a whip net set:
 - (a) With a minimum bar mesh size of three (3) inches;
 - (b) That is always tended by a program participant when set less than three (3) feet below the surface of the water;
 - (c) That is not left unattended by a program participant for more than six (6) hours when set at least three (3) feet below the surface of the water from April 1 through September 30; and
 - (d) That is not left unattended by a program participant for more than eight (8) hours when set at least three (3) feet below the surface of the water from October 1 through March 31;
- (6) Complete and submit to the department a Daily Harvest and Release Summary Card immediately after each day's fishing;
- (7) Be allowed to sell all harvested Asian carp and scaled rough fish as established in Section 2 and 3 of this administrative regulation;
- (8) Immediately release all by-catch;
- (9) Report all harvest on a Monthly Report of Commercial Fish Harvest form, as established in~~[pursuant to the requirements of]~~ 301 KAR 1:155; and
- (10) Be suspended from the program:
 - (a) For a three (3) month period beginning on the first day of the next month if the minimum requirements established in subsection (2) of this section are not met; and
 - (b) For a period of one (1) year beginning on the first day of the next month if the requirements are not met a second time.

Section 4. Commercial Fishing License Fee Waiver. The commercial fishing license fees, as established in 301 KAR 3:022, shall be waived for a program participant~~[commercial fisherman]~~ who only harvests Asian carp in restricted waters.

Section 5. Department Program Requirements. (1) The department shall:

- (a) Maintain a list of program participants and their contact information, which shall be:
 - 1. Provided to known fish buyers; and
 - 2. Updated at least weekly; and
- (b) Review all restricted water fishing requests as established in Section 3 of this administrative regulation.
- (2) The department shall approve a qualified fishing request by assigning:
 - (a) A fishing location and boat ramp to a program participant, except that no more than two (2) program participants shall be assigned to the same one-half (1/2) mile section of water; and
 - (b) The time period when fishing may occur, not to exceed a three (3) consecutive day period.
- (3) The department shall not approve a fishing request for reasons established in paragraphs (a) and (b)~~[through (e)]~~ of this subsection:
 - (a) Higher than normal by-catch is likely to occur at that location and time; or
 - (b) Two (2) program participants have already been approved for the same one-half (1/2) mile section of water at the same time; or
 - (c) ~~A requested date falls on:~~
 - 1. Memorial Day;
 - 2. Labor Day;
 - 3. July 4; or
 - 4. ~~A Saturday or prior to sunset on a Sunday from April 4 through September 30].~~

Section 6. Program Disqualification. (1) A program participant whose commercial fishing license becomes revoked or suspended as established in~~[pursuant to]~~ 301 KAR 1:155 shall be disqualified from participating in the Asian Carp and Scaled Rough Fish

Harvest Program while that license is revoked or suspended.

(2) Any participant who is disqualified from participation in the program may appeal the decision in accordance with KRS Chapter 13B.

Section 7. Non-commercial Asian Carp Harvest and Sale. A person harvesting Asian carp using legal fishing methods as established in 301 KAR 1:201 and 1:410:

- (1) May sell Asian carp; and
- (2) Shall possess a valid Kentucky sport fishing license.

Section 8. Incorporation by Reference. (1) "Daily Harvest and Release Summary Card", 2011 Edition, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Fish and Wildlife Resources, #1 Sportsman's Lane, Frankfort, Kentucky, Monday through Friday, 8:00 a.m. to 4:30 p.m.

RICH STORM, Commissioner
DON PARKINSON, Secretary

APPROVED BY AGENCY: May 22, 2019

FILED WITH LRC: May 24, 2019 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 23, 2019 at 9 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation through July 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 the requirements for the Asian Carp and Scaled Rough Fish Harvest Program, which allows commercial harvest of Asian carp and scaled rough fish in waters currently restricted to commercial fishing. This administrative regulation also provides for the sale of Asian carp harvested with traditional and non-traditional fishing methods.
 - (b) The necessity of this administrative regulation: The regulation is necessary to provide important mechanisms for the removal of invasive and exotic Asian carp from waters critical to sport fishing and recreational boating.
 - (c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025(1) authorizes the department to promulgate administrative regulations to set seasons, establish bag or creel limits, to regulate the buying, selling, or transporting of fish and wildlife, and to make these requirements apply to a limited area.
 - (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by establishing a process for nuisance fish removal from waters of the Commonwealth.
- (2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
 - (a) How the amendment will change this existing administrative

regulation: This amendment increases the amount of time commercial fishermen can fish under the Asian Carp and Scaled Rough Fish Harvest Program by allowing them to fish on all weekends and holidays during the year. Previously, commercial fishermen could not fish on a Saturday or prior to sunset on a Sunday from April 1 through September 30. They also could not fish on Memorial Day, Labor Day or July 4. This amendment also allows for the sale of Asian carp harvested using traditional and non-traditional fishing methods.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to remove as many Asian carp as possible from waters of the Commonwealth, and is critical for the protection of game and non-game fish species, especially in Kentucky and Barkley lakes in western Kentucky. Increased removal of these invasive fish species will help protect a 1.2 billion dollar tourism industry centered on recreational boating and fishing in western Kentucky and Tennessee.

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect approximately 20 commercial fishermen currently fishing under the Asian Carp and Scaled Rough Fish Harvest Program as well as any new commercial fishermen who join the program. This administrative regulation will also affect all recreational anglers who wish to harvest and sell Asian carp. Additionally, this regulation may positively affect all anglers and recreational boaters in the Mississippi and Ohio rivers, their tributaries, and in Kentucky and Barkley lakes.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Commercial fishermen fishing under the Asian Carp and Scaled Rough Fish Program will now be able to fish on all weekends and holidays. Recreational anglers using traditional and non-traditional fishing methods will now be able to sell the Asian carp they harvest.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost to commercial fishermen or recreational anglers to comply with these amendments other than to purchase the appropriate fishing license.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Commercial fishermen will be able to harvest and sell more Asian carp which will benefit them financially. Recreational fishermen will also benefit financially from any Asian carp they sell. The increased harvest of Asian carp will also benefit all anglers and recreational boaters in the Mississippi and Ohio rivers, their tributaries, and in Kentucky and Barkley lakes.

(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 initially.

(b) On a continuing basis: There will be minimal 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: No increase in fees is needed to fund this program.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees were established or increased, directly or indirectly.

(9) TIERING: Is tiering applied? No. All commercial and recreational fishermen wishing to fish under these amended

regulations are treated the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department's Fisheries Division and Law Enforcement 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 150.025(1).

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

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

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This regulation will not directly generate revenue for state or local government in subsequent years, but local economies could be positively impacted in the future through removal of Asian carp species.

(c) How much will it cost to administer this program for the first year? There will be minimal cost to the department to administer this program in the first year.

(d) How much will it cost to administer this program for subsequent years? There will be a minimal cost to the department 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 4:090. Taxidermy and the buying and selling of inedible wildlife parts.

RELATES TO: KRS 150.010, 150.175, 150.180, 150.183, 150.305, 150.330, 150.370, 150.411, 150.722, 150.990

STATUTORY AUTHORITY: KRS 150.025(1), 150.4111

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations regarding the buying, selling, or transporting of wildlife. KRS 150.4111 authorizes a person to sell the inedible parts of any legally taken wildlife to a licensed taxidermist for the purpose of mounting, authorizes a licensed taxidermist to buy or sell the inedible parts of any legally taken wildlife for the purpose of mounting, and authorizes any person to purchase from or sell to a licensed taxidermist any legally mounted specimen. This administrative regulation establishes the requirements for the buying and selling of inedible wildlife parts, and the proper disposal of cervid carcasses and parts.

Section 1. Definitions. (1) "Cervid" means a member of the family Cervidae.

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

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

(4)[(3)] "Licensed taxidermist" means any person, partnership, firm, or corporation that accepts remuneration for the mounting of

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skins or other inedible wildlife parts and who holds a valid Kentucky taxidermist license, as established in KRS 150.175.

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

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

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

(2) A licensed taxidermist shall:

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

(b) Have all records pertaining to the business and all wildlife specimens or wildlife parts available for inspection during normal business hours by a department conservation officer.

(3) A person or business who transforms a legally acquired, processed, inedible wildlife part into a hand-crafted or manufactured finished product shall not be required to possess a license from the department.

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

(5) In addition to the appropriate state license, all licensed taxidermists who mount federally protected species shall possess a valid federal taxidermist license issued by the U.S. Fish and Wildlife Service.

Section 3. Labeling Requirements. (1) Each[All] licensed taxidermist[taxidermists] shall keep records of the name, address, and phone number of the owner and the date killed of all wildlife or wildlife parts in their possession and shall tag each specimen or part to identify its owner.

(2) Wildlife heads harvested in Kentucky or other parts separated from the carcass for mounting by a licensed taxidermist shall have the hunter's confirmation number, if applicable, attached to the separated part.

Section 4. Cervid carcass disposal. (1) A licensed taxidermist shall dispose of any unused cervid carcass material by:

(a) Burying the carcass or parts in an opening in the earth at least four (4) feet deep with the carcass or parts covered with two (2) inches of quicklime and at least three (3) feet of earth:

1. With the cervid abdominal cavity, if applicable, opened wide the entire length;

2. At a point which is never covered with the overflow of ponds or streams; and

3. Not less than 100 feet from any watercourse, sinkhole, well, spring, public highway, residence, or stable; or

(b) Depositing the carcass or parts in a contained landfill, as established in KRS Chapter 224.

RICH STORM, Commissioner
DON PARKINSON, Secretary

APPROVED BY AGENCY: June 11, 2019

FILED WITH LRC: June 13, 2019 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 23, 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 July 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 the requirements for the buying and selling of inedible wildlife parts and the proper disposal of cervid carcass waste for taxidermist.

(b) The necessity of this administrative regulation: This regulation is necessary to establish the requirements for disposal of cervid carcass waste and the buying and selling of inedible wildlife parts to sustain and protect the wildlife resources of the state, while providing a legal and reasonable market.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025(1) authorizes the department to promulgate administrative regulations regarding the buying, selling, or transporting of wildlife. KRS 150.4111 authorizes a person to sell the inedible parts of any legally taken wildlife to a licensed taxidermist for the purpose of mounting, authorizes a licensed taxidermist to buy or sell the inedible parts of any legally taken wildlife for the purpose of mounting, and authorizes any person to purchase from or sell to a licensed taxidermist any legally mounted specimen.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in administering the above statutes by establishing the requirements for the buying and selling of inedible wildlife parts and the proper disposal of cervid carcasses and parts.

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

(a) How the amendment will change this existing administrative regulation: This amendment establishes the requirements for proper disposal of cervid carcasses or parts by taxidermists.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to reduce the risk of introducing Chronic Wasting Disease (CWD) into Kentucky.

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: During the 2018-2019 license year, 330 taxidermy licenses were sold.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Each licensed taxidermist must dispose of their cervid carcass waste as required in this amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no additional cost to individuals to buy and sell inedible parts. Licensed taxidermists who do not dispose of cervid carcass waste as required in this amendment may have an increased cost for the disposal of their waste.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Proper disposal of cervid carcass waste reduces the risk for Chronic Wasting Disease importation into Kentucky.

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

(a) Initially: There will not be a cost to the department to implement this regulation initially.

(b) On a continuing basis: There will not be a 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 State Game and Fish Fund.

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

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

(9) TIERING: Is tiering applied? No. Tiering is not applied, as the same requirements apply to all people.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS150.025(1) and 150.4111.

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

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

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

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

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

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

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

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Water
(Amendment)

401 KAR 10:001. Definitions for 401 KAR Chapter 10.

RELATES TO: KRS 146.200 through 146.360[~~146.200-146.360~~], 146.410 through 146.535[~~146.410-146.535~~], 146.550 through 146.570[~~146.550-146.570~~], 146.600 through 146.619[~~146.600-146.619~~], 146.990, 224.1-010[~~224.01-010~~], 224.1-400[~~224.01-400~~], 224.16-050, 224.16-070, 224.70-100 through 22.70-150[~~224.70-100 – 224.70-140~~], 224.71-100 through 224.71-145[~~224.71-100 – 224.71-145~~], 224.73-100 through 224.73-120[~~224.73-100 – 224.73-120~~], 40 C.F.R. 136

STATUTORY AUTHORITY: KRS 224.10-100, 224.70-100, 224.70-110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 authorizes the cabinet to promulgate administrative regulations for the prevention, abatement, and control of all water pollution. KRS 224.70-100 establishes the policy of the Commonwealth to protect, prevent, and abate new and existing water pollution. KRS 224.70-110 prohibits the direct or indirect pollution of waters of the

Commonwealth. This administrative regulation establishes definitions for terms used in 401 KAR Chapter 10.

Section 1. Definitions. (1) "Acute to chronic ratio"["~~Acute-chronic-ratio~~"] means the ratio of the acute toxicity, expressed as an LC₅₀, of an effluent or a toxic substance, to its chronic toxicity. It is used as a factor to estimate chronic toxicity from acute toxicity data.

(2) "Acute criteria" means the highest instream concentration of a toxic substance or an effluent to which an organism can be exposed for one (1) hour without causing an unacceptable harmful effect.

(3) "Acute toxicity" means lethality or other harmful effect sustained by either an indigenous aquatic organism or a representative indicator organism used in a toxicity test, due to a short-term exposure, of ninety-six (96) hours or less, to a specific toxic substance or mixture of toxic substances.

(4) "Acute toxicity unit" means the reciprocal of the effluent dilution that causes the acute effect, or LC₅₀, by the end of the acute exposure period.

(5) "Adversely affect" or "adversely change" means to alter or change the community structure or function, to reduce the number or proportion of sensitive species, or to increase the number or proportion of pollution tolerant aquatic species so that aquatic life use support or aquatic habitat is impaired.

(6) "Balanced indigenous community" means a biotic community typically characterized by diversity, the capacity to sustain itself through cyclic seasonal changes, presence of necessary food chain species, and a lack of domination by pollution tolerant species. The community may include historically nonnative species introduced in connection with a program of wildlife management and species whose presence or abundance results from substantial, irreversible environmental modification. Normally, such a community does not include species whose presence or abundance is attributable to the introduction of pollutants that will be eliminated by compliance of all sources with 401 KAR 5:065, and may not include species whose presence or abundance is attributable to alternative effluent limitations imposed pursuant to 401 KAR 5:055.

(7) "Bathing area" means those surface waters that are:

(a) Frequented by bathers for swimming;

(b) Have a lifeguard; or

(c) Have a bathhouse facility.

(8) "Best management practices" or "BMPs" means:

(a) For agriculture operations, as defined by KRS 224.71-100(3); or

(b) For all other purposes:

1. Schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the commonwealth; and

2. Treatment requirements; operating procedures; and practices to control site run-off, pollution of surface water and groundwater from nonpoint sources, spillage or leaks, sludge or waste disposal, or drainage from raw material storage. [~~(8) "Biochemical oxygen demand", "BOD", or "BOD₅" means the amount of oxygen required to stabilize biodegradable organic matter under aerobic conditions within a five (5) day period. Other time periods may be measured, and if so, are indicated where the term is used.~~

(9) [~~"Carbonaceous biochemical oxygen demand" or "CBOD" means BOD, not including the nitrogenous oxygen demand of the wastewater.~~]

(9) [(40)] "Chronic criteria" means the highest instream concentration of a toxic substance or an effluent to which organisms are able to be exposed for ninety-six (96) hours without causing an unacceptable harmful effect.

(10) [(44)] "Chronic toxicity" means lethality, reduced growth or reproduction, or other harmful effect sustained by either indigenous aquatic organisms or representative indicator organisms used in toxicity tests due to long-term exposures, relative to the life span of the organisms or a significant portion of their life span, to toxic substances or mixtures of toxic substances.

(11) [(42)] "Chronic toxicity unit" means the reciprocal of the

effluent dilution that causes twenty-five (25) percent inhibition of growth or reproduction to the test organisms by the end of the chronic exposure period.

~~(12)~~~~(13)~~ "Clean Water Act" or "CWA" means the Clean Water Act as subsequently amended, 33 U.S.C. Section 1251 through 1387, otherwise known as the Federal Water Pollution Control Act.~~(14)~~ "Coal remining operation" means:

~~(a) A surface coal mining operation, which begins after July 11, 1990, at a site on which a coal mining operation was conducted before August 3, 1977; and~~

~~(b) A surface coal mining operation existing on July 11, 1990, which receives a permit revision from the Department for Surface Mining Reclamation and Enforcement (DSMRE) in accordance with 405 KAR 8:010, Section 20, for a site on which a coal mining operation was conducted before August 3, 1977.]~~

~~(13)~~~~(15)~~ "Cold water aquatic habitat" or "CAH" means surface waters and associated substrate that are able to support indigenous aquatic life or self-sustaining or reproducing trout populations on a year-round basis.

~~(14)~~ "Combined sewer" or "combined sewer line" means a sewer or sewer line designed to carry stormwater runoff as well as sanitary wastewater.

~~(15)~~ "Combined sewer overflow" or "CSO" means the flow from a combined sewer in excess of the interceptor or regulator capacity that is discharged into a receiving water without going to a POTW.~~(16)~~ "Concentrated animal feeding operation" means one (1) of the following:

~~(a) "Large concentrated animal feeding operation" as defined in subsection (45) of this section;~~

~~(b) "Medium concentrated animal feeding operation" as defined in subsection (50) of this section; or~~

~~(c) "Small concentrated animal feeding operation" as defined in subsection (76) of this section.]~~

~~(16)~~~~(17)~~ "Conventional domestic water supply treatment" means or includes coagulation, sedimentation, filtration, and disinfection.~~(18)~~ "Conventional pollutant" means biochemical oxygen demand (BOD), chemical oxygen demand (COD), total organic carbon (TOC), total suspended solids (TSS), ammonia (as N), bromide, chlorine (total residual), color, fecal coliform, fluoride, nitrate, kjeldahl nitrogen, oil and grease, and phosphorus.]

~~(17)~~~~(19)~~ "Criteria" or "Water Quality Criteria" means elements of state water quality standards expressed as constituent concentrations, levels, or narrative statements, that represent a quality of water that supports a particular designated use[specific concentrations or ranges of values, or narrative statements of water constituents that represent a quality of water expected to result in an aquatic ecosystem protective of designated uses of surface waters. Criteria are derived to protect legitimate uses such as aquatic life, domestic water supply, and recreation and to protect human health].

~~(18)~~~~(20)~~ "Day" means a twenty-four (24) hour period.

~~(19)~~~~(21)~~ "Discharge" or "discharge of a pollutant" means the addition of a pollutant or combination of pollutants to waters of the commonwealth from a point source.

~~(20)~~~~(22)~~ "Division" means the Kentucky Division of Water, within the Department for Environmental Protection, Energy and Environment Cabinet.

~~(21)~~~~(23)~~ "Domestic" means relating to household wastes or other similar wastes. It is used to distinguish municipal, household, or commercial water or wastewater services from industrial water or wastewater services.~~(24)~~ "Domestic sewage" means sewage devoid of industrial or other wastes and that is typical of waste received from residential facilities. It may include wastes from commercial developments, schools, restaurants, and other similar developments.]

~~(22)~~~~(25)~~ "Domestic water supply" or "DWS" means surface waters that with conventional domestic water supply treatment are suitable for human consumption through a public water system as defined by 40 C.F.R. 141.2[in 401 KAR 8:010], culinary purposes, or for use in a food or beverage processing industry; and meet state and federal regulations promulgated pursuant to the Safe Drinking Water Act, as amended, 42 U.S.C. 300f - 300j-26.

~~(23)~~~~(26)~~ "Effluent limitations" is defined by KRS 224.1-010(11)~~[224.01-010(12)].~~

~~(24)~~~~(27)~~ "Environmental Protection Agency", [or] "EPA", or "U.S. EPA" means the United States Environmental Protection Agency.

~~(25)~~~~(28)~~ "Epilimnion" means the thermally homogeneous water layer overlying the metalimnion of a thermally stratified lake or reservoir.

~~(26)~~~~(29)~~ "E. coli" or "Escherichia coli" means an aerobic and facultative anaerobic gram negative, nonspore forming, rod shaped bacterium that can grow at forty-four and five tenths (44.5) degrees Celsius, that is ortho-nitrophenyl-B-D-galactopyranoside (ONPG) positive, and Methylumbelliferyl glucuronide (MUG) positive. It is a member of the indigenous fecal flora of warm-blooded animals.

~~(27)~~~~(30)~~ "Eutrophication" means the enrichment of a surface water with nutrients nitrogen and phosphorus resulting in adverse effects on water chemistry and the indigenous aquatic community. Resulting adverse effects on water chemistry manifest by daily dissolved oxygen supersaturation followed by low dissolved oxygen concentrations and diurnal increase in pH. Resulting adverse effects on the indigenous aquatic community include:

~~(a) Nuisance algae blooms;~~

~~(b) Proliferation of nuisance aquatic plants;~~

~~(c) Displacement of diverse fish or macroinvertebrate[macroinvertebrate] community by species tolerant of nutrient-enriched environments; or~~

~~(d) Fish kills brought on by severe, sudden episodes of plant nutrient enrichment.~~

~~(28)~~~~(34)~~ "Exceptional water" means a surface water categorized as exceptional by the cabinet pursuant to 401 KAR 10:030.

~~(29)~~~~(32)~~ "Existing use" means a legitimate use being attained in or on a surface water of the commonwealth on or after November 28, 1975, irrespective of its use designation.

~~(30)~~~~(33)~~ "Expanded discharge" means an increase in pollutant loading of twenty (20) percent or greater.

~~(31)~~~~(34)~~ "°F" means degrees Fahrenheit.

~~(32)~~~~(35)~~ "General permit" means a:

~~(a) "General permit" as defined by 40 C.F.R. 122.2; or~~

~~(b) KPDES permit issued pursuant to 401 KAR 5:055 authorizing a category of discharges or non-discharging facilities pursuant to KRS Chapter 224 within a geographical area[, issued pursuant to 401 KAR 5:055].~~

~~(33)~~~~(36)~~ "Harmonic mean flow" means the reciprocal of the mean of the reciprocal daily flow values.

~~(34)~~~~(37)~~ "High quality water" means a surface water categorized as high quality by the cabinet pursuant to 401 KAR 10:030.

~~(35)~~~~(38)~~ "Impact" means a change in the chemical, physical, or biological quality or condition of a surface water.

~~(36)~~~~(39)~~ "Impairment" means a detrimental impact to a surface water that prevents attainment of a designated use.

~~(37)~~~~(40)~~ "Indigenous aquatic community" means naturally occurring aquatic organisms including bacteria, fungi, algae, aquatic insects, other aquatic invertebrates, reptiles, amphibians, and fishes. Under some natural conditions one (1) or more of the above groups may be absent from a surface water.

~~(38)~~~~(44)~~ "Inhibition concentration of twenty-five (25) percent" or "IC₂₅" means the concentration that is determined by a linear interpolation method for estimating the concentration at which a twenty-five (25) percent reduction is shown in reproduction or growth in test organisms, and which statistically approximates the concentration at which an unacceptable chronic effect is not observed.

~~(39)~~~~(42)~~ "Intermittent water" means a stream that flows only at certain times of the year.

~~(40)~~~~(43)~~ "Kentucky Pollutant Discharge Elimination System" or "KPDES" means the Kentucky program for issuing, modifying, revoking and reissuing, revoking, monitoring, and enforcing permits to discharge, and imposing and enforcing pretreatment requirements.

~~(41)~~~~(44)~~ "KPDES permit" means a Kentucky Pollutant Discharge Elimination System permit issued to a facility, including a POTW, or activity pursuant to KRS Chapter 224 for the purpose of operating the facility or activity.~~(45)~~ "Large concentrated animal

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feeding operation" is defined by 40 C.F.R. 122.23(b)(4), effective July 1, 2007.]

(42)[(46)] "LC₁" means that concentration of a toxic substance or mixture of toxic substances that is lethal, or immobilizing if appropriate, to one (1) percent of the organisms tested in a toxicity test during a specified exposure period.

(43)[(47)] "LC₅₀" means that concentration of a toxic substance or mixture of toxic substances that is lethal, or immobilizing if appropriate, to fifty (50) percent of the species tested in a toxicity test during a specified exposure period.

(44) "Long-term CSO control plan" means a control plan that complies with the Combined Sewer Overflow Control Policy issued by the U.S. EPA and published in the Federal Register on April 19, 1994 (59 FR 18688).

(45)[(48)] "Maintain" means to preserve or keep in present condition by not allowing an adverse permanent or long-term change to water quality or to a population of an aquatic organism or its habitat.

(46)[(49)] "Measurement" means the ability of the analytical method or protocol to quantify as well as identify the presence of the substance in question. [(50) "Medium concentrated animal feeding operation" is defined by 40 C.F.R. 122.23(b)(6), effective July 1, 2007.]

(47)[(51)] "µg/L" means micrograms per liter, same as ppb, assuming unit density. [(52) "mgd" or "MGD" means million gallons per day.]

(48)[(53)] "Milligrams per liter" or "mg/L" means the milligrams of substance per liter of solution, and is equivalent to parts per million in water, assuming unit density.

(49)[(54)] "Mixing zone" means a domain of a water body contiguous to a treated or untreated wastewater discharge with quality characteristics different from those of the receiving water. The discharge is in transit and progressively diluted from the source to the receiving system. The mixing zone is the domain where wastewater and receiving water mix. [(55) "Natural temperature" means the temperature that would exist in waters of the commonwealth without the change of enthalpy of artificial origin, as contrasted with that caused by climatic change or naturally occurring variable temperature associated with riparian vegetation and seasonal changes.]

(50)[(56)] "Natural water quality" means those naturally occurring physical, chemical, and biological properties of waters. [(57) "Net discharge" means the amount of substance released to a surface water by excluding the influent value from the effluent value if both the intake and discharge are from and to the same or similar body of water.

(58) "Nonconventional pollutant" means a pollutant not considered to be a conventional pollutant, including priority pollutants identified in 401 KAR 5:060.]

(51)[(59)] "Nonpoint" means a source of pollutants not defined by a point source.

(52) "Normal temperature" means the temperature that would exist in waters of the commonwealth without the change of enthalpy of artificial origin.

(53)[(60)] "Other wastes" means sawdust, bark or other wood debris, garbage, refuse, ashes, offal, tar, oil, chemicals, acid drainage, wastes from agricultural enterprises, and other foreign substances not included within the definitions of industrial wastes and sewage that may cause or contribute to the pollution of waters of the Commonwealth.

(54)[(61)] "Outstanding national resource water" means a surface water categorized by the cabinet as an outstanding national resource water pursuant to 401 KAR 10:030.

(55)[(62)] "Outstanding state resource water" means a surface water designated by the cabinet as an outstanding state resource water pursuant to 401 KAR 10:031.

(56)[(63)] "pCi/L" means picocuries per liter.

(57)[(64)] "PCR" means primary contact recreation.

(58)[(65)] "Point source" is defined by 33 U.S.C. 1362(14). The term does not include agricultural stormwater[storm water] run-off or return flows from irrigated agriculture.

(59) "Pollutant" is defined by KRS 224.1-010.

(60)[(66)] "POTW" means publicly owned[publicly-owned]

treatment works as defined by KRS 224.1-010[224.01-010].

(61)[(67)] "Primary contact recreation water" means those waters suitable for full body contact recreation during the recreation season of May 1 through October 31.

(62)[(68)] "Productive aquatic community" means an assemblage of indigenous aquatic life capable of reproduction and growth.

(63)[(69)] "Propagation" means the continuance of a species by successful spawning, hatching, and development or natural generation in the natural environment, as opposed to the maintenance of the species by artificial culture and stocking.

(64)[(70)] "Regional facility plan" means a type of water quality management plan addressing point sources of pollution for the purpose of areawide waste treatment management planning prepared by the designated regional planning agency pursuant to Sections[Section] 201, 205, and 208 of the Clean Water Act, 33 U.S.C. 1251-1387, to control point sources of pollution within a planning area. [(71) "Remined area" means only that area of a coal remining operation on which a coal mining operation was conducted before August 3, 1977.]

(65)[(72)] "Representative indicator organism" means an aquatic organism designated for use in toxicity testing because of its relative sensitivity to toxicants and its widespread distribution in the aquatic environment.

(66)[(73)] "SCR" means secondary contact recreation.

(67)[(74)] "Secondary contact recreation waters" means those waters suitable for partial body contact recreation, with minimal threat to public health due to water quality.

(68)[(75)] "Seven-Q-ten" or "7Q₁₀" means that minimum average flow that occurs for seven (7) consecutive days with a recurrence interval of ten (10) years. [(76) "Small concentrated animal feeding operation" is defined by 40 C.F.R. 122.23(b)(9), effective July 1, 2007.]

(69)[(77)] "Source" means a building, structure, facility, or installation from which there is or may be a discharge of pollutants.

(70)[(78)] "Standard" or "water quality standard" means the designated uses of a surface water of the commonwealth and the water quality criteria and antidegradation requirements necessary to maintain and protect the designated uses as established in 401 KAR Chapter 10[means a water quality standard].

(71)[(79)] "Stormwater" is defined by 40 C.F.R. 122.26(b)(13)[means stormwater run-off, snow melt run-off, and surface run-off and drainage].

(72)[(80)] "Surface waters" means those waters having well-defined banks and beds, either constantly or intermittently flowing; lakes and impounded waters; marshes and wetlands; and any subterranean waters flowing in well-defined channels and having a demonstrable hydrologic connection with the surface. Lagoons used for waste treatment and effluent ditches that are situated on property owned, leased, or under valid easement by a permitted discharger are not considered to be surface waters of the commonwealth.

(73)[(81)] "Total dissolved solids" or "TDS" is defined by 40 C.F.R. 122.2[means the total dissolved solids (filterable residue) as determined by use of the method specified in 40 C.F.R. Part 136].

(74)[(82)] "Total suspended solids" or "TSS" means the total suspended solids (nonfilterable residue) as determined by use of the method specified in 40 C.F.R. Part 136.

(75)[(83)] "Toxic substance" means a substance that is bioaccumulative, synergistic, antagonistic, teratogenic, mutagenic, or carcinogenic and causes death, disease, a behavioral abnormality, a physiological malfunction, or a physical deformity in an organism or its offspring or interferes with normal propagation. [(84) "U.S. EPA" means the United States Environmental Protection Agency.]

(76)[(85)] "Warm water aquatic habitat" or "WAH" means a surface water and associated substrate capable of supporting indigenous warm water aquatic life.

(77)[(86)] "Wetlands" is defined by 40 C.F.R. 122.2[means land that has a predominance of hydric soils and that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions].

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(78)(87) "Zone of initial dilution" means the limited area permitted by the cabinet surrounding or downstream from a discharge location where rapid, first-stage mixing occurs. The zone of initial dilution is the domain where wastewater and receiving water initially mix.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: June 11, 2019

FILED WITH LRC: June 12, 2019 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 23, 2019 at 6:00 p.m. Eastern Time at the Energy and Environment Cabinet, Training Room B, 300 Sower Boulevard, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through July 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: Carole J. Catalfo, Internal Policy Analyst, RPPS, Division of Water, 3rd Floor, 300 Sower Boulevard, Frankfort, Kentucky 40601, phone (502) 564-3410, fax (502) 564-9003, email water@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Carole J. Catalfo

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes definitions for terms used in 401 KAR Chapter 10.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to define terms used in 401 KAR Chapter 10.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100 authorizes the cabinet to promulgate administrative regulations for the prevention, abatement, and control of all water pollution. KRS 224.70-100 establishes the policy of the Commonwealth to protect, prevent, and abate new and existing water pollution. KRS 224.70-110 prohibits the direct or indirect pollution of waters of the Commonwealth. This administrative regulation establishes definitions for terms used in 401 KAR Chapter 10.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides definitions for terms used throughout 401 KAR Chapter 10 for proper interpretation and enforcement.

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

(a) How the amendment will change this existing administrative regulation: The amendment adds six (6) definitions and clarifies twelve (12) definitions to align them with other KAR Chapters and for consistency. The amendment removes fourteen (14) terms that are no longer relevant. Those terms are primarily related to the KPDES program, and were not removed in 2008 when water quality standards were separated from the KPDES regulations and recodified from 401 KAR Chapter 5 to Chapter 10.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary for clarification of terms used in 401 KAR Chapter 10.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100 authorizes the cabinet to promulgate administrative regulations for the prevention, abatement, and control of all water pollution. KRS 224.70-100 establishes the policy of the Commonwealth to protect, prevent,

and abate new and existing water pollution. KRS 224.70-110 prohibits the direct or indirect pollution of waters of the Commonwealth. This administrative regulation establishes definitions for terms used in 401 KAR Chapter 10.

(d) How the amendment will assist in the effective administration of the statutes: The amendment clarifies terms used in 401 KAR Chapter 10.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All individuals, businesses, organizations, and governments that use the Commonwealth's surface waters for residential, commercial, industrial, or recreational purposes could be impacted by this regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This administrative regulation establishes definitions only. No further actions will be needed 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 administrative regulation establishes definitions only. No additional costs will be incurred.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Affected entities will have clear definitions for understanding the terms used throughout 401 KAR Chapter 10.

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

(a) Initially: This administrative regulation will not result in additional costs.

(b) On a continuing basis: This administrative regulation will not result in additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This administrative regulation establishes definitions only. No changes in funding are necessary.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied because definitions do not require tiering.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Government entities using the regulations in 401 KAR Chapter 10 will have clear definitions for terms used throughout the chapter.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.10-100 authorizes the cabinet to promulgate administrative regulations for the prevention, abatement, and control of all water pollution. KRS 224.70-100 establishes the policy of the Commonwealth to protect, prevent, and abate new and existing water pollution. KRS 224.70-110 prohibits the direct or indirect pollution of waters of the Commonwealth. This administrative regulation establishes definitions for terms used in 401 KAR Chapter 10.

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

(a) How much revenue will this administrative regulation

generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation establishes definitions. It will not generate revenue.

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

(c) How much will it cost to administer this program for the first year? This administrative regulation establishes definitions. It will not result in additional costs.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation establishes definitions. It will not result in additional costs.

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

Revenues (+/-): NA

Expenditures (+/-): NA

Other Explanation: This administrative regulation establishes definitions. It will not result in additional costs or generate revenue.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal mandate regarding the establishment of definitions.

2. State compliance standards. KRS 224.10-100, 70-100, and 70-110.

3. Minimum or uniform standards contained in the federal mandate. There is no federal mandate regarding the establishment of definitions.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate? There is no federal mandate regarding the establishment of definitions.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There is no federal mandate regarding the establishment of definitions.

**ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Water
(Amendment)**

401 KAR 10:026. Designation of uses of surface waters.

RELATES TO: KRS 146.200 through 146.360[146.200-146.360], 146.410 through 146.535[146.410-146.535], 146.550 through 146.570[146.550-146.570], 146.600 through 146.619[146.600-146.619], 146.990, 224.1-010, 224.1-400, 224.16-050, 224.16-070, 224.70-100 through 224.70-140[224.70-100-224.70-140], 224.71-100 through 224.71-145[224.71-100-224.71-145], 224.73-100 through 224.73-120[224.73-100 -224.73-120]

STATUTORY AUTHORITY: KRS 146.220, 146.241, 146.270, 146.410, 146.450, 146.460, 146.465, 224.10-100, 224.16-050, 224.16-060, 224.70-100, 224.70-110, 40 C.F.R. Part 131, 16 U.S.C. 1271 through 1287[1271-1287], 1531 through 1544[1531-1544], 33 U.S.C. 1311, 1313, 1314, 1316, 1341

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the cabinet to develop and conduct a comprehensive program for the management of water resources and to provide for the prevention, abatement, and control of pollution. This administrative regulation and 401 KAR 10:001, 10:029, 10:030, and 10:031 establish procedures to protect the surface waters of the Commonwealth, and thus protect water resources. This administrative regulation applies the designated uses described in 401 KAR 10:031 to the surface waters of the Commonwealth. This administrative regulation also establishes that all surface waters shall be subject to the general criteria specified in 401 KAR 10:031, Section 2.

Section 1. Scope of Designation. (1) All surface waters of the commonwealth listed in this administrative regulation shall be designated for all legitimate uses contained in KRS 224.70-100(1);

(a) Except as specified in 401 KAR 10:031, Sections 5 and 8,] and listed in Tables B and C of this administrative regulation; or

(b) Unless[until] redesignated in accordance with the procedures established in Section 2 of this administrative regulation and listed in Table D of this administrative regulation.

(2) Designated uses are:

(a) Warm water aquatic habitat;

(b) Cold water aquatic habitat;

(c) Primary contact recreation;

(d) Secondary contact recreation;

(e) Domestic water supply; and

(f) Outstanding state resource water.

(3)[Listed] Waters listed in this administrative regulation shall meet all criteria applicable to their designated uses and those criteria listed in 401 KAR 10:031, Section 2, unless the;

(a) Cabinet grants an exception pursuant to 401 KAR 10:031, Section 10 or 11; or

(b) Uses for a listed water have been redesignated pursuant to Section 2 of this administrative regulation.

(4) Outstanding state resource waters may have unique water quality characteristics that shall be protected by additional criteria established in 401 KAR 10:031, Section 8.

Section 2. Redesignation of Surface Water Uses. (1)(a) Surface waters shall not be redesignated except upon affirmative findings by the cabinet pursuant to Sections 3 and 4 of this administrative regulation and consistent with 40 C.F.R. 131.10(g).

(b) Before redesignating a surface water, the cabinet shall provide notice and an opportunity for a public hearing.

(2) In redesignating a surface water, the cabinet shall ensure that its water quality standards provide for the[~~attainment and~~] maintenance of downstream[the] water quality and do not preclude the attainment of designated uses[standards] of downstream surface waters.

(3) A designated use shall not be removed for a surface water if:

(a) That use is an existing use; or

(b) The use may be attained by implementing effluent limitations required under Sections 301(b) and 306 of the Clean Water Act, 33 U.S.C. 1311(b) and 1316, and by implementing cost-effective best management practices for nonpoint source control.

(4) If a surface water is designated for a use that is not an existing use, the cabinet shall redesignate the surface water upon demonstration and consistent with 40 C.F.R. 131.10(g) that the designated use is unattainable because:

(a) Naturally occurring pollutant concentrations prevent the attainment of the use;

(b) Natural, ephemeral, intermittent, or low flow conditions or water levels prevent the attainment of the use, unless these conditions may be compensated for by the discharge of sufficient volume of effluent discharges;

(c) Human caused conditions or sources of pollution prevent the attainment of the use and cannot be remedied or would cause more environmental damage to correct than to leave in place;

(d) Dams, diversions, or other types of hydrologic modifications preclude the attainment of the use, and it is not feasible to restore the surface water to its original condition or to operate the modification in a way that would result in the attainment of the use;

(e) Physical conditions related to the natural features of the surface water, but unrelated to water quality, preclude attainment of the aquatic life use, such as the lack of a proper substrate, cover, flow, depth, pools, or riffles; or

(f) Controls more stringent than those required by Sections 301(b) and 306 of the Clean Water Act, 33 U.S.C. 1311(b) and 1316, would result in substantial and widespread economic and social impact as determined by;

1. The guidelines in Interim Economic Guidance for Water Quality Standards Workbook, EPA, March 1995; or

2.a. An updated Combined Sewer Overflow Long Term Control Plan Financial Capability Assessment developed in accordance with the Combined Sewer Overflows Guidance for Financial

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Capability Assessment and Schedule Development (EPA, February 1997); and

b. An updated Combined Sewer Overflow Long Term Control Plan alternatives analysis developed in accordance with the Combined Sewer Overflow Control Policy (EPA, 1994) if the cabinet determines it necessary.

(5) The cabinet shall re-examine any waterbody with water quality standards that do not include the uses specified in this administrative regulation every three (3) years to determine if any new information has become available as established in 40 C.F.R. 131.20(a).

(6) Redesignations shall be consistent with the antidegradation provisions of 401 KAR 10:029 and 10:030.

Section 3. Documentation for Redesignations. (1)(a) A person may request redesignation of surface water uses by petition to the cabinet.

(b) The petitioner shall provide the cabinet with the documentation required in subsection (3) of this section and shall have the burden of proof that the redesignation is appropriate.

(2)(a) The cabinet may propose redesignations of surface water uses.

(b) The cabinet shall provide documentation for those surface waters that it proposes for use redesignation.

(3) Except for waters identified pursuant to 401 KAR 10:031, Section 8(1)(a), documentation to support the redesignation of a surface water of the Commonwealth shall be:

(a) A United States Geological Survey 7.5 minute topographic map or its equivalent showing those surface waters to be redesignated, with a description consisting of a river mile index with existing and proposed discharge points;

(b) Existing uses and water quality data for the surface waters for which the redesignation is proposed. If adequate data are unavailable, additional studies shall be required by the cabinet;

(c) Descriptions of general land uses and specific land uses adjacent to the surface waters for which the redesignation is proposed;

(d) The existing and designated uses of the downstream waters into which the surface water under consideration discharges;

(e) General physical characteristics of the surface water including width, depth, bottom composition, and slope;

(f) The frequency of occasions if there is no natural flow in the surface water and the 7Q₁₀ and harmonic mean flow values for the surface water and adjacent surface waters;

(g) An assessment of the existing and potential aquatic life habitat in the surface waters under consideration and the adjacent upstream surface waters.

1. The existing aquatic life shall be documented and livestock and natural wildlife dependence on the surface water shall be assessed; and

2. The occurrence of individuals or populations, indices of diversity and well-being, and abundance of species of unique native biota shall be documented;

(h) The proposed designated uses for the surface water in question; and

(i) An explanation of the irretrievable person-induced, or natural conditions that preclude attainment of a higher use designation or an assessment of the substantial and widespread social and economic impacts resulting from the imposition of additional controls necessary for existing point sources, beyond the most stringent effluent limitation levels normally required for the sources. This explanation shall be in accordance with the:

1. Interim Economic Guidance for Water Quality Standards Workbook (EPA, 1995); or

2. Combined Sewer Overflows Guidance for Financial Capability Assessment and Schedule Development (EPA, February 1997).

Section 4. Procedures for Redesignation. (1) For each of the surface waters for which a redesignation is proposed, the cabinet or petitioner shall prepare a fact sheet containing:

(a) The name and address of the petitioner;

(b) The name and sketch or description of the surface water proposed for specified use redesignations, including the location of existing and proposed dischargers;

(c) The proposed use redesignations;

(d) A brief abstract of the supportive documentation, which demonstrates that the redesignation is appropriate;

(e) The appropriate water quality criteria for the surface water based on the proposed designated use;

(f) The treatment requirements proposed for discharges to the surface water in question if designated for the proposed use; and

(g) A "plain English" summary of the implications of the designation for the community and other users or potential users of the surface water in question.

(2) The cabinet shall document the determination to propose or deny redesignation as a result of a petition, and shall provide a copy of the decision to the petitioner and other interested parties.

Section 5. Surface Water Use Designations. (1) Listed in the tables in this administrative regulation are the use designations for specific surface waters of the Commonwealth. ~~[The county column indicates the county in which the mouth or outlet of the surface water is located.]~~ The identifying symbols for use designations are listed in table A of this section.

Symbol	Description
WAH	Warm Water Aquatic Habitat
CAH	Cold Water Aquatic Habitat
PCR	Primary Contact Recreation
SCR	Secondary Contact Recreation
DWS	Domestic Water Supply, applicable at existing points of public water supply intake
OSRW	Outstanding State Resource Water

~~[(2)(a) Surface waters not specifically listed in this section are designated for the uses of warm water aquatic habitat, primary contact recreation, secondary contact recreation, and domestic water supply in accordance with Section 1 of this administrative regulation.~~

(b) Domestic water supply criteria in 401 KAR 10:031, Section 6, are implemented at locations listed in Table B in this paragraph.

Facility	WWID	PWSID	Location of Withdrawal (Waterbody; Latitude/Longitude; Decimal Degrees)	County
BIG SANDY RIVER BASIN				
Jenkins Water Works	0794	0670213	Little Elkhorn Creek (Elkhorn Lake); 37.16837/-82.63473	Letcher
Jenkins Water Works	1069	0670213	Elkhorn Creek; 37.17066/-82.63652	Letcher
Louisa Municipal Water Works	0284	0640257	Levisa Fork; 38.10972/-82.5989	Lawrence
Martin County Water District #1	0683	0800273	Lick Branch (Martin County Reservoir); 37.878854/-82.518931	Martin
Martin County Water District #1	1060	0800273	Tug Fork; 37.91628/-82.48585	Martin
Mother Nature	-	0980327	UT of Elkhorn Creek (Mother Nature Spring); 37.255278/-82.460833	Pike
Mountain Water District	0941	0980575	Russell Fork; 37.363931/-82.40928	Pike
Paintsville Municipal Water Works	1657	0580340	Paint Creek (Paintsville Lake); 37.840141/-82.88384	Johnson

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Pikeville Water Works/US Filter	0638	0980350	Levisa Fork; 37.46457/-82.52492	Pike
Prestonsburg City Utilities Commission	0626	0360358	Levisa Fork; 37.667489/-82.743964	Floyd
US Filter/Southern Water & Sewer District	0776	0360026	Levisa Fork; 37.61306/-82.72667	Floyd
GREEN RIVER BASIN				
Bowling Green Municipal Utilities	0134	1140038	Barren River; 36.999269/-86.426747	Warren
Butler County Water System	1271	0160052	Green River; 37.23833/-86.67528	Butler
Calvert Spring Water Co	-	0021006	UT of Long Creek (Calvert Spring); 36.720556/-86.090833	Allen
Campbellsville Water Works	0027	1090060	Trace Fork (Campbellsville City Reservoir); 37.356822/-85.342436	Taylor
Campbellsville Water Works	0664	1090060	UT of Stone Quarry Creek (Green River Lake); 37.29528/-85.32	Taylor
Central City Municipal Water & Sewer	0217	0890071	Green River; 37.32445/-87.115163	Muhlenberg
Century Aluminum Sebree LLC	0659	0512406	UT of Green River; 37.657085/-87.489554	Henderson
Columbia Adair County Water Commission	1617	0011016	Green River (Green River Lake); 37.215771/-85.328655	Adair
Edmonson County Water District	0681	0310114	Green River; 37.20278/-86.25944	Edmonson
Edmonson County Water District	1279	0310114	Nolin River (Nolin River Lake); 37.342563/-86.125596	Grayson
Franklin Water Plant	0632	1070144	West Fork Drakes Creek; 36.72222/-86.5525	Simpson
Glasgow Water Co/Plant A	0639	0050929	Barren River (Barren River Lake); 36.89901/-86.06528	Allen
Glasgow Water Co/Plant B	0044	0050929	Beaver Creek; 37.03139/-85.91111	Barren
Grayson County Water District	1502	0430616	Rough River (Rough River Lake); 37.589085/-86.464849	Grayson
Green River Valley Water District	0168	0500166	UT of UT of Green River (Rio Verde Springs); 37.32466/-85.77136	Hart
Green River Valley Water District	1155	0500166	Green River; 37.31722/-85.7675	Hart
Greensburg Municipal Water Works	0046	0440168	Green River; 37.25333/-85.50083	Green
Greenville Utilities Commission	0340	0890170	UT of UT of Caney Creek (Lake Luzerne); 37.21069/-87.1945	Muhlenberg
Hardin County Water District #1	1162	0470393	Rough River (Head of Rough Spring); 37.718372/-86.081995	Hardin
Hardin County Water District #1 A	0924	0470393	UT of Rough River (Pirtle Spring); 37.696194/-86.108605	Hardin
Hardin County Water District #2	0123	0470175	Valley Creek (Gaithers Station Spring); 37.65747/-85.90138	Hardin
Hardin County Water District #2	1125	0470175	Nolin River (White Mills Spring); 37.56208/-86.0361	Hardin
Hardin County Water District 2 Elizabethtown	0122	0470175	Valley Creek (Old City Spring); 37.678905/-85.874747	Hardin
Hartford Municipal Water Works	0330	0920181	Rough River; 37.453341/-86.91035	Ohio
Henderson Water Utility South	1382	0510510	UT of Grane Creek (Raw Storage Lake); 37.648778/-87.512639	Henderson
Hodgenville Water Works	0174	0620200	North Fork Nolin River; 37.57518/-85.73868	Larue
Hodgenville Water Works	1457	0620200	Salem Creek (Hodgenville City Reservoir); 37.58889/-85.71111	Larue
La Fayette Water District, Macon Co Tennessee	1062	-	Barren River; 36.66694/-85.94361	Monroe
Leitchfield Municipal Water Works	0643	0430244	Rough River (Rough River Lake); 37.565559/-86.385604	Grayson
Liberty Water Works	0833	0230987	Hickman Creek (Liberty City Lake); 37.3233/-84.89503	Casey
Madisonville Municipal Water Works	0828	0540936	Green River; 37.53773/-87.36527	Hopkins
Morgantown Utilities Commission	0012	0160294	Green River; 37.22528/-86.67778	Butler
Ohio County Water Plant	0403	0920332	Green River; 37.333925/-86.793706	Ohio
Perdue Farms Inc	1352	0920631	Green River; 37.334638/-86.796192	Ohio
Scottsville Municipal Water Works	1236	0020386	Barren River (Barren River Lake); 36.85634/-86.07816	Allen
Stanford Water Works	1108	0690417	UT of Green River (James C Harris Reservoir); 37.46234/-84.69513	Lincoln
Tompkinsville Municipal Water	0720	0860426	Mill Creek (Mill Creek Lake (Monroe Co)); 36.68228/-85.70176	Monroe

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<u>Works</u>				
<u>Webster County Water District</u>	<u>1433</u>	<u>1170995</u>	<u>Green River;</u> <u>37.59147/-87.43526</u>	<u>Webster</u>
KENTUCKY RIVER BASIN				
<u>Beattyville Water Works</u>	<u>0474</u>	<u>0650024</u>	<u>North Fork Kentucky River (Pool 14); 37.579536/-83.667657</u>	<u>Lee</u>
<u>Beech Fork Water Commission</u>	<u>1061</u>	<u>0990281</u>	<u>Beech Fork (Stanton Reservoir);</u> <u>37.8645/-83.89295</u>	<u>Powell</u>
<u>Beech Fork Water Commission</u>	<u>1466</u>	<u>0990281</u>	<u>Red River;</u> <u>37.864165/-83.868919</u>	<u>Powell</u>
<u>Berea Municipal Utilities</u>	<u>0068</u>	<u>0760030</u>	<u>Cowbell Creek (Berea Reservoir);</u> <u>37.53893/-84.2276</u>	<u>Madison</u>
<u>Berea Municipal Utilities</u>	<u>1076</u>	<u>0760030</u>	<u>East Fork Silver Creek (Lower Berea City Lake); 37.54325/-</u> <u>84.24184</u>	<u>Madison</u>
<u>Berea Municipal Utilities</u>	<u>1077</u>	<u>0760030</u>	<u>East Fork Silver Creek (Upper Berea City Lake); 37.53418/-</u> <u>84.24437</u>	<u>Madison</u>
<u>Berea Municipal Utilities</u>	<u>1078</u>	<u>0760030</u>	<u>Owsley Fork (Owsley Fork Reservoir); 37.5458/-84.18222</u>	<u>Madison</u>
<u>Bluegrass Army Depot</u>	<u>1013</u>	<u>0762637</u>	<u>Little Muddy Creek (Lake Vega);</u> <u>37.70098/-84.21787</u>	<u>Madison</u>
<u>Booneville Water & Sewer District</u>	<u>0752</u>	<u>0950036</u>	<u>South Fork Kentucky River;</u> <u>37.46977/-83.67561</u>	<u>Owsley</u>
<u>Bullock Pen Water District</u>	<u>0486</u>	<u>0410047</u>	<u>Bullock Pen Creek (Bullock Pen Lake);</u> <u>38.798588/-84.640871</u>	<u>Grant</u>
<u>Campton Water Works</u>	<u>0640</u>	<u>1190061</u>	<u>Hiram Branch (Campton Lake);</u> <u>37.744818/-83.545495</u>	<u>Wolfe</u>
<u>Danville Water Works</u>	<u>0213</u>	<u>0110097</u>	<u>Dix River (Herrington Lake);</u> <u>37.694373/-84.735017</u>	<u>Boyle</u>
<u>Frankfort Electric & Water Plant Board</u>	<u>0024</u>	<u>0370143</u>	<u>Kentucky River (Pool 4);</u> <u>38.17092/-84.86551</u>	<u>Franklin</u>
<u>Georgetown Municipal Water & Sewer</u>	<u>0797</u>	<u>1050157</u>	<u>UT of North Elkhorn Creek (Royal Spring);</u> <u>38.20879/-84.5621</u>	<u>Scott</u>
<u>Gladie Cultural Center</u>	<u>-</u>	<u>0833498</u>	<u>Gladie Spring; 37.833907/-83.608346</u>	<u>Menifee</u>
<u>Harrodsburg Municipal Water Works</u>	<u>0264</u>	<u>0840180</u>	<u>Kentucky River (Pool 7);</u> <u>37.81778/-84.72194</u>	<u>Mercer</u>
<u>Hazard Water Department</u>	<u>0026</u>	<u>0970184</u>	<u>North Fork Kentucky River;</u> <u>37.24633/-83.18187</u>	<u>Perry</u>
<u>Highbridge Springwater</u>	<u>1403</u>	<u>0570495</u>	<u>Highbridge Spring;</u> <u>37.82381/-84.71356</u>	<u>Jessamine</u>
<u>Hyden-Leslie County Water District</u>	<u>0650</u>	<u>0660204</u>	<u>Middle Fork Kentucky River;</u> <u>37.1414/-83.37921</u>	<u>Leslie</u>
<u>Irvine Municipal Utilities</u>	<u>0882</u>	<u>0330205</u>	<u>Kentucky River (Pool 11); 37.69556/-83.9725</u>	<u>Estill</u>
<u>Jackson Municipal Water Works</u>	<u>0163</u>	<u>0130208</u>	<u>North Fork Kentucky River;</u> <u>37.545612/-83.370096</u>	<u>Breathitt</u>
<u>Kentucky-American Water Company River Station</u>	<u>0200</u>	<u>0340250</u>	<u>Kentucky River (Pool 9);</u> <u>37.902089/-84.376561</u>	<u>Fayette</u>
<u>Kentucky-American Water Company Richmond Road Station</u>	<u>0201</u>	<u>0340250</u>	<u>East Hickman Creek (Lexington Reservoir No. 4); 37.978246/-</u> <u>84.449875</u>	<u>Fayette</u>
<u>Kentucky-American Water Company River Station II/Hardins Landing Plant</u>	<u>1572</u>	<u>0340250</u>	<u>Kentucky River; 38.35616/-84.87497</u>	<u>Franklin</u>
<u>Knott County Water and Sewer District</u>	<u>1629</u>	<u>0600062</u>	<u>Carr Fork (Carr Creek Lake);</u> <u>37.23277/-82.99865</u>	<u>Knott</u>
<u>Lancaster Municipal Water Works</u>	<u>0013</u>	<u>0400233</u>	<u>Kentucky River (Pool 8);</u> <u>37.728206/-84.571527</u>	<u>Garrard</u>
<u>Lancaster Municipal Water Works</u>	<u>TBD</u>	<u>0400233</u>	<u>Reservoir #1;</u> <u>37.606667/-84.594722</u>	<u>Garrard</u>
<u>Lawrenceburg Municipal Water Works</u>	<u>0229</u>	<u>0030239</u>	<u>Kentucky River;</u> <u>38.041184/-84.847706</u>	<u>Anderson</u>
<u>Manchester Water Works</u>	<u>0418</u>	<u>0260737</u>	<u>Beech Creek (Bert T Combs Lake);</u> <u>37.16738/-83.70802</u>	<u>Clay</u>
<u>Manchester Water Works</u>	<u>1217</u>	<u>0260737</u>	<u>Goose Creek;</u> <u>37.16828/-83.75055</u>	<u>Clay</u>
<u>Nicholasville Water Works</u>	<u>0050</u>	<u>0570315</u>	<u>Kentucky River (Pool 8);</u> <u>37.84027/-84.48528</u>	<u>Jessamine</u>
<u>Pine Mountain Settlement School</u>	<u>-</u>	<u>0483135</u>	<u>Pine Mountain Settlement School Spring; 36.947778/-83.181111</u>	<u>Harlan</u>
<u>Richmond Utilities Board</u>	<u>0310</u>	<u>0760370</u>	<u>Kentucky River (Pool 11);</u> <u>37.7808/-84.10969</u>	<u>Madison</u>
<u>Stanford Water Works</u>	<u>0267</u>	<u>0690417</u>	<u>UT of Neals Creak (Stanford Reservoir);</u> <u>37.487622/-84.677564</u>	<u>Lincoln</u>
<u>Versailles Municipal Water</u>	<u>0258</u>	<u>1200439</u>	<u>Kentucky River (Pool 5);</u>	<u>Letcher</u>

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<u>Works</u>			<u>38.02607/-84.82943</u>	
<u>Whitesburg Municipal Water Works/Veolia Water</u>	<u>0353</u>	<u>0670466</u>	<u>North Fork Kentucky River; 37.115055/-82.813942</u>	<u>Letcher</u>
<u>Wilmore Utilities System</u>	<u>0045</u>	<u>0570010</u>	<u>Kentucky River (Pool 6); 37.85476/-84.68887</u>	<u>Jessamine</u>
<u>Winchester Municipal Utilities</u>	<u>0622</u>	<u>0250473</u>	<u>UT of Lower Howard Creek (Winchester Reservoir); 37.949068/-84.229938</u>	<u>Clark</u>
<u>Winchester Municipal Utilities</u>	<u>0623</u>	<u>0250473</u>	<u>Kentucky River (Pool 10); 37.89465/-84.26084</u>	<u>Clark</u>
LICKING RIVER BASIN				
<u>Carlisle Water Department</u>	<u>1040</u>	<u>0910065</u>	<u>Licking River; 38.359408/-83.949295</u>	<u>Nicholas</u>
<u>Carlisle Water Department</u>	<u>0488</u>	<u>0910065</u>	<u>UT of Brushy Fork (Carlisle Pond 1); 38.31/-84.04</u>	<u>Nicholas</u>
<u>Cave Run Water Commission</u>	<u>1550</u>	<u>0831010</u>	<u>Licking River (Cave Run Lake); 38.02284/-83.44927</u>	<u>Menifee</u>
<u>Cynthiana Municipal Water Works</u>	<u>0256</u>	<u>0490096</u>	<u>South Fork Licking River; 38.37667/-84.30417</u>	<u>Harrison</u>
<u>Cynthiana Municipal Water Works</u>	<u>1018</u>	<u>0490096</u>	<u>Licking River; 38.48613/-84.17127</u>	<u>Harrison</u>
<u>Falmouth Water Plant</u>	<u>0625</u>	<u>0960126</u>	<u>Licking River; 38.67556/-84.325</u>	<u>Pendleton</u>
<u>Flemingsburg Utilities</u>	<u>0265</u>	<u>0350134</u>	<u>UT of Town Branch (Flemingsburg Reservoir (New)); 38.428335/-83.75212</u>	<u>Fleming</u>
<u>Morehead State University Water Plant</u>	<u>0387</u>	<u>1030480</u>	<u>Evans Branch (Eagle Lake); 38.19321/-83.43373</u>	<u>Rowan</u>
<u>Morehead State University Water Plant</u>	<u>0388</u>	<u>1030480</u>	<u>Triplett Creek; 38.18409/-83.42995</u>	<u>Rowan</u>
<u>Morehead Utility Plant Board</u>	<u>0637</u>	<u>1030292</u>	<u>Licking River; 38.13138/-83.54941</u>	<u>Rowan</u>
<u>Mt Sterling Water & Sewer System</u>	<u>0191</u>	<u>0870298</u>	<u>Slate Creek (Reservoir); 38.0628/-83.8478</u>	<u>Montgomery</u>
<u>Northern Ky Water Service District Plant A</u>	<u>0126</u>	<u>0590220</u>	<u>Licking River; 39.031587/-84.490282</u>	<u>Kenton</u>
<u>Paris Municipal Water Works</u>	<u>0076</u>	<u>0090343</u>	<u>Stoner Creek; 38.2046/-84.23809</u>	<u>Bourbon</u>
<u>Salversville Municipal Water Works</u>	<u>0916</u>	<u>0770566</u>	<u>Licking River; 37.73684/-83.07163</u>	<u>Magoffin</u>
<u>West Liberty Water Company</u>	<u>1402</u>	<u>0880452</u>	<u>North Fork Licking River (Cave Run Lake); 38.039151/-83.400272</u>	<u>Morgan</u>
<u>Western Fleming Water District</u>	<u>0748</u>	<u>0910675</u>	<u>Licking River; 38.424429/-83.981407</u>	<u>Nicholas</u>
<u>Williamstown Municipal Water</u>	<u>0333</u>	<u>0410472</u>	<u>Goose Creek (Williamstown Lake); 38.655888/-84.537148</u>	<u>Grant</u>
LITTLE SANDY RIVER BASIN				
<u>Grayson Utility Commission</u>	<u>0315</u>	<u>0220164</u>	<u>Little Sandy River; 38.322443/-82.951303</u>	<u>Carter</u>
<u>Greenup Water Plant</u>	<u>0715</u>	<u>0450169</u>	<u>Little Sandy River; 38.57416/-82.84471</u>	<u>Greenup</u>
<u>Rattlesnake Ridge Water District</u>	<u>1494</u>	<u>0220555</u>	<u>UT of Little Sandy River (Grayson Lake); 38.20015/-83.01784</u>	<u>Elliott</u>
LOWER CUMBERLAND RIVER BASIN				
<u>Barkley Lake Water District</u>	<u>0648</u>	<u>1110019</u>	<u>Hopson Creek (Lake Barkley); 36.807408/-87.959462</u>	<u>Trigg</u>
<u>Cadiz Water Company</u>	<u>1263</u>	<u>1110054</u>	<u>UT of Little River (Cadiz Spring); 36.861677/-87.836395</u>	<u>Trigg</u>
<u>Crittenden-Livingston Co Water District</u>	<u>0932</u>	<u>0700532</u>	<u>Cumberland River; 37.18574/-88.23974</u>	<u>Livingston</u>
<u>Eddyville Municipal Water Works</u>	<u>0268</u>	<u>0720113</u>	<u>Knob Creek (Lake Barkley); 37.07476/-88.09773</u>	<u>Lyon</u>
<u>Eddyville Municipal Water Works</u>	<u>1540</u>	<u>0720113</u>	<u>Cumberland River (Lake Barkley); 37.04538/-88.07513</u>	<u>Lyon</u>
<u>Hopkinsville Water Environmental Authority</u>	<u>1118</u>	<u>0240201</u>	<u>North Fork Little River (Hopkinsville Stone Quarry No. 1 (South Quarry)); 36.88361/-87.47611</u>	<u>Christian</u>
<u>Hopkinsville Water Environmental Authority</u>	<u>1327</u>	<u>0240201</u>	<u>White Creek (Hopkinsville Stone Quarry No. 2 (North Quarry)); 36.88694/-87.47639</u>	<u>Christian</u>
<u>Hopkinsville Water Environmental Authority</u>	<u>1591</u>	<u>0240201</u>	<u>Little River (Lake Barkley); 36.88158/-87.85449</u>	<u>Trigg</u>
<u>Kentucky State Penitentiary</u>	<u>0028</u>	<u>0720552</u>	<u>Cumberland River (Lake Barkley); 37.04583/-88.07556</u>	<u>Lyon</u>

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<u>Kuttawa Municipal Water Plant</u>	<u>0553</u>	<u>0720227</u>	<u>UT of Cumberland River (Lake Barkley);</u> <u>37.05515/-88.12678</u>	<u>Lyon</u>
<u>Princeton Water Department</u>	<u>0519</u>	<u>0170360</u>	<u>Eddy Creek (Lake Barkley);</u> <u>37.02464/-88.05554</u>	<u>Lyon</u>
OHIO RIVER BASIN (MAIN STEM AND MINOR TRIBUTARIES)				
<u>Ashland Municipal Water Works</u>	<u>0071</u>	<u>0100011</u>	<u>Ohio River;</u> <u>38.453432/-82.607551</u>	<u>Boyd</u>
<u>Four Rivers Nuclear Partnership - Paducah Gaseous Diffusion</u>	<u>0900</u>	<u>0732457</u>	<u>Ohio River;</u> <u>37.152955/-88.775182</u>	<u>McCracken</u>
<u>Henderson Water & Sewer Department</u>	<u>0113</u>	<u>0510188</u>	<u>Ohio River;</u> <u>37.84692/-87.59153</u>	<u>Henderson</u>
<u>Louisville Water Company BEPWTP B</u>	<u>0786</u>	<u>0560258</u>	<u>Ohio River;</u> <u>38.34833/-85.63722</u>	<u>Jefferson</u>
<u>Louisville Water Company ZPS A</u>	<u>0100</u>	<u>0560258</u>	<u>Ohio River;</u> <u>38.28127/-85.70231</u>	<u>Jefferson</u>
<u>Marion Municipal Water Works</u>	<u>0478</u>	<u>0280267</u>	<u>Crooked Creek (Marion City Lake);</u> <u>37.310582/-88.091216</u>	<u>Crittenden</u>
<u>Maysville Utility Commission</u>	<u>0043</u>	<u>0810275</u>	<u>Ohio River;</u> <u>38.64556/-83.75167</u>	<u>Mason</u>
<u>Morganfield Municipal Water Works</u>	<u>0263</u>	<u>1130293</u>	<u>Ohio River;</u> <u>37.79886/-87.91645</u>	<u>Union</u>
<u>Northern Ky Water Service District Newport Plant</u>	<u>0086</u>	<u>0590220</u>	<u>Ohio River;</u> <u>39.0806/-84.4372</u>	<u>Campbell</u>
<u>Northern Ky Water Service District Plant B</u>	<u>0176</u>	<u>0590220</u>	<u>Ohio River;</u> <u>39.07024/-84.43646</u>	<u>Campbell</u>
<u>Paducah Water Works</u>	<u>0098</u>	<u>0730533</u>	<u>Ohio River;</u> <u>37.09919/-88.6073</u>	<u>McCracken</u>
<u>Russell Water Plant</u>	<u>0269</u>	<u>0450376</u>	<u>Ohio River;</u> <u>38.53832/-82.69659</u>	<u>Greenup</u>
<u>Sturgis Municipal Water Works</u>	<u>1717</u>	<u>1130422</u>	<u>Ohio River;</u> <u>37.53472/-88.07</u>	<u>Union</u>
SALT RIVER BASIN				
<u>Bardstown Municipal Water Works</u>	<u>0004</u>	<u>0900017</u>	<u>Buffalo Creek (Sympson Lake);</u> <u>37.80672/-85.50918</u>	<u>Nelson</u>
<u>Bardstown Municipal Water Works</u>	<u>1747</u>	<u>0900017</u>	<u>Beech Fork;</u> <u>37.795089/-85.478597</u>	<u>Nelson</u>
<u>Lebanon Water Works Company</u>	<u>0230</u>	<u>0780241</u>	<u>Rolling Fork;</u> <u>37.512632/-85.261361</u>	<u>Marion</u>
<u>Lebanon Water Works Company</u>	<u>1240</u>	<u>0780241</u>	<u>Fagan Branch (Fagan Branch Lake);</u> <u>37.52072/-85.23982</u>	<u>Marion</u>
<u>Shelbyville Municipal Water & Sewer Commission</u>	<u>0001</u>	<u>1060394</u>	<u>Guist Creek (Guist Creek Lake);</u> <u>38.2078/-85.15798</u>	<u>Shelby</u>
<u>Sleepy Hollow Association</u>	<u>-</u>	<u>0933314</u>	<u>Sleepy Hollow Association Spring;</u> <u>38.345833/-85.556667</u>	<u>Oldham</u>
<u>Springfield Water Works</u>	<u>0928</u>	<u>1150415</u>	<u>Lick Creek (Willisburg Lake);</u> <u>37.82735/-85.16276</u>	<u>Washington</u>
<u>Springfield Water Works</u>	<u>1578</u>	<u>1150415</u>	<u>Allen Branch (New Springfield Reservoir);</u> <u>37.672658/-85.253698</u>	<u>Washington</u>
<u>Springfield Water Works</u>	<u>1723</u>	<u>1150415</u>	<u>Beech Fork;</u> <u>37.72667/-85.19305</u>	<u>Washington</u>
<u>US Army Ft Knox A</u>	<u>0493</u>	<u>0470990</u>	<u>Otter Creek;</u> <u>37.89558/-86.02574</u>	<u>Meade</u>
TRADEWATER RIVER BASIN				
<u>Dawson Springs City Water & Sewer</u>	<u>0822</u>	<u>0540958</u>	<u>Piney Creek (Lake Beshear);</u> <u>37.14842/-87.68233</u>	<u>Caldwell</u>
<u>Madisonville Municipal Water Works</u>	<u>0210</u>	<u>0540936</u>	<u>Greasy Creek (Lake Peewee);</u> <u>37.34889/-87.52771</u>	<u>Hopkins</u>
<u>Providence Municipal Water Works</u>	<u>1073</u>	<u>1170361</u>	<u>Tradewater River;</u> <u>37.37828/-87.8014</u>	<u>Webster</u>
<u>Providence Water Works</u>	<u>0159</u>	<u>1170361</u>	<u>UT to Owens Creek (Providence New City Lake);</u> <u>37.37583/-87.79639</u>	<u>Webster</u>
TYGARTS CREEK BASIN				
<u>Olive Hill Water Works</u>	<u>0490</u>	<u>0220335</u>	<u>Perry Branch (Olive Hill Reservoir);</u> <u>38.31203/-83.21328</u>	<u>Carter</u>
<u>Olive Hill Water Works</u>	<u>1059</u>	<u>0220335</u>	<u>Tygarts Creek;</u> <u>38.29037/-83.19062</u>	<u>Carter</u>
UPPER CUMBERLAND RIVER BASIN				
<u>Barbourville Utility Commission</u>	<u>0953</u>	<u>0610016</u>	<u>Indian Camp Creek (Laurel River Lake);</u> <u>37.00134/-84.20062</u>	<u>Laurel</u>
<u>Barbourville Utility Commission</u>	<u>1333</u>	<u>0610016</u>	<u>Cumberland River;</u> <u>36.86361/-83.88361</u>	<u>Knox</u>
<u>Bell County Forestry Camp</u>	<u>1539</u>	<u>0070729</u>	<u>Clear Creek (Chenoa Lake);</u>	<u>Bell</u>

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<u>Benham Water Works</u>	<u>0781</u>	<u>0480028</u>	<u>36.674883/-83.852413</u> <u>Looney Creek (Benham City Spring);</u> <u>36.965711/-82.9328</u>	<u>Harlan</u>
<u>Burkesville Municipal Water Works</u>	<u>0501</u>	<u>0290049</u>	<u>Cumberland River;</u> <u>36.787424/-85.364434</u>	<u>Cumberland</u>
<u>Burnside Water Company</u>	<u>0053</u>	<u>1000050</u>	<u>Cumberland River (Lake Cumberland);</u> <u>36.992543/-84.589573</u>	<u>Pulaski</u>
<u>Cawood Water District</u>	<u>1216</u>	<u>0480565</u>	<u>Martins Fork Cumberland River;</u> <u>36.781842/-83.236429</u>	<u>Harlan</u>
<u>City of Albany</u>	<u>1590</u>	<u>0270003</u>	<u>Indian Creek (Lake Cumberland);</u> <u>36.803137/-85.111049</u>	<u>Clinton</u>
<u>Corbin City Utilities Commission</u>	<u>0020</u>	<u>1180085</u>	<u>Laurel River (Corbin City Reservoir);</u> <u>36.970016/-84.119910</u>	<u>Laurel</u>
<u>Cumberland Water Works</u>	<u>0761</u>	<u>0480092</u>	<u>Poor Fork Cumberland River;</u> <u>36.979714/-82.987377</u>	<u>Harlan</u>
<u>Harlan Municipal Water Works</u>	<u>0242</u>	<u>0480178</u>	<u>Poor Fork Cumberland River;</u> <u>36.86192/-83.32558</u>	<u>Harlan</u>
<u>Jackson County Water Association Inc</u>	<u>0686</u>	<u>0550209</u>	<u>Flat Lick Creek (Beulah Lake);</u> <u>37.37861/-83.9125</u>	<u>Jackson</u>
<u>Jackson County Water Association Inc</u>	<u>1609</u>	<u>0550209</u>	<u>South Fork Rockcastle River;</u> <u>37.29637/-84.09296</u>	<u>Jackson</u>
<u>Jamestown Municipal Water Works</u>	<u>0654</u>	<u>1040210</u>	<u>Greasy Creek (Lake Cumberland);</u> <u>36.96704/-85.06397</u>	<u>Russell</u>
<u>Kettle Island Water System</u>	<u>-</u>	<u>0070325</u>	<u>Kettle Island Spring;</u> <u>36.784305/-83.593745</u>	<u>Bell</u>
<u>King Bottling Inc</u>	<u>-</u>	<u>1021014</u>	<u>Rockcastle Spring (UT of Brush Creek);</u> <u>37.45333/-84.23611</u>	<u>Rockcastle</u>
<u>Kingdom Come State Park</u>	<u>-</u>	<u>0482399</u>	<u>UT of Poor Fork Cumberland River (Kingdom Come Lake);</u> <u>36.99/-82.986389</u>	<u>Harlan</u>
<u>Knox County Utility Commission</u>	<u>0724</u>	<u>0610110</u>	<u>Cumberland River;</u> <u>36.8358/-83.81198</u>	<u>Knox</u>
<u>Laurel County Water District #2</u>	<u>0467</u>	<u>0630238</u>	<u>Laurel River;</u> <u>37.00167/-84.09972</u>	<u>Laurel</u>
<u>Laurel County Water District #2</u>	<u>1613</u>	<u>0630238</u>	<u>Indian Camp Creek (Laurel River Lake);</u> <u>36.99868/-84.20452</u>	<u>Laurel</u>
<u>London Utility Commission</u>	<u>0196</u>	<u>0630255</u>	<u>Indian Camp Creek (Laurel River Lake);</u> <u>37.00055/-84.20156</u>	<u>Laurel</u>
<u>Lynch Municipal Water Works</u>	<u>1147</u>	<u>0480262</u>	<u>Looney Creek (underground storage reservoir);</u> <u>36.96417/-82.92028</u>	<u>Harlan</u>
<u>McCreary County Water District Plant A</u>	<u>0498</u>	<u>0740276</u>	<u>Laurel Creek (Laurel Creek Reservoir);</u> <u>36.69271/-84.4433</u>	<u>McCreary</u>
<u>McCreary County Water District Plant B</u>	<u>1495</u>	<u>0740276</u>	<u>Big South Fork Cumberland River (Lake Cumberland);</u> <u>36.791521/-84.528349</u>	<u>McCreary</u>
<u>McKee Municipal Water Works</u>	<u>0621</u>	<u>0550784</u>	<u>Bills Branch (McKee City Reservoir);</u> <u>37.45692/-83.97863</u>	<u>Jackson</u>
<u>Monroe County Water District</u>	<u>1652</u>	<u>0860150</u>	<u>Cumberland River; 36.69083/-85.56834</u>	<u>Monroe</u>
<u>Monticello Water & Sewer Commission</u>	<u>0125</u>	<u>1160291</u>	<u>Cumberland River (Lake Cumberland);</u> <u>36.93654/-84.787257</u>	<u>Wayne</u>
<u>Mt Vernon Municipal Water Works</u>	<u>0356</u>	<u>1020299</u>	<u>Renfro Creek (Lake Linville);</u> <u>37.385/-84.3375</u>	<u>Rockcastle</u>
<u>Pineville Water System</u>	<u>0772</u>	<u>0070353</u>	<u>Cannon Creek (Cannon Creek Lake);</u> <u>36.68486/-83.69215</u>	<u>Bell</u>
<u>Somerset Water Service</u>	<u>0015</u>	<u>1000403</u>	<u>Cumberland River (Lake Cumberland);</u> <u>37.01444/-84.63278</u>	<u>Pulaski</u>
<u>Stanford Water Works</u>	<u>1597</u>	<u>0690417</u>	<u>Buck Creek;</u> <u>37.39352/-84.60845</u>	<u>Lincoln</u>
<u>Water Service Corporation of KY</u>	<u>0008</u>	<u>0070282</u>	<u>Little Yellow Creek (Fern Lake);</u> <u>36.59059/-83.70666</u>	<u>Bell</u>
<u>Williamsburg Water Works</u>	<u>0634</u>	<u>1180471</u>	<u>Cumberland River;</u> <u>36.74548/-84.1703</u>	<u>Whitley</u>
<u>Wood Creek Water District</u>	<u>0753</u>	<u>0630477</u>	<u>Wood Creek (Wood Creek Lake);</u> <u>37.195406/-84.181362</u>	<u>Laurel</u>
<u>Woodson Bend Resort</u>	<u>0922</u>	<u>1000973</u>	<u>Big South Fork Cumberland River (Lake Cumberland);</u> <u>36.94968/-84.60043</u>	<u>Pulaski</u>

[Table B: SURFACE WATER INTAKES FOR DOMESTIC WATER SUPPLY USE

Name	Description	County
BIG SANDY RIVER BASIN		
<u>Paintsville Municipal Water Works</u>	<u>Mile 9.3 of Paint Creek</u>	<u>Johnson</u>
<u>Paintsville Utilities Commission</u>	<u>Mile 38.8 of Levisa Fork</u>	<u>Johnson</u>
<u>Louisa Municipal Water Works</u>	<u>Mile .06 of Levisa Fork</u>	<u>Lawrence</u>
<u>Prestonsburg City Utilities Commission</u>	<u>Mile 57.3 of Levisa Fork</u>	<u>Floyd</u>

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Pikeville Water Works/US Filter	Mile 87.9 of Levisa Fork	Pike
Martin County Water District #1	Mile 23.8 of Tug Fork	Martin
US Filter/Southern Water & Sewer District	Mile 65.42 of Levisa Fork	Floyd
Jenkins Water Works	Mile 0.2 of Little Elkhorn Creek (Elkhorn Lake)	Letcher
Mountain Water District	Mile 4.6 of Russell Fork	Pike
Martin County Water District #1	Mile 1.3 of Lick Branch (Crum Reservoir)	Martin
Jenkins Water Works	Mile 24.4 of Elkhorn Creek	Letcher
Little Sandy River Basin		
Grayson Utility Commission	Mile 39.03 of Little Sandy River	Carter
Greenup Water Plant	Mile 0.7 of Little Sandy River	Greenup
Rattlesnake Ridge Water District	Mile 58.2 of Little Sandy River (Grayson Lake)	Elliott
Tygarts Creek Basin		
Olive Hill Water Works	Mile 2.2 of Perry Branch (Olive Hill Reservoir)	Carter
Olive Hill Water Works	Mile 81.3 of Tygarts Creek	Carter
Upper Cumberland River Basin		
Water Service Corporation of KY	Mile 3.2 of Little Yellow Creek (Forn Lake)	Bell
Somerset Water Service	Mile 504.5 of Cumberland River (Lake Cumberland)	Pulaski
Corbin City Utilities Commission	Mile 18.6 of Laurel River (City Reservoir)	Laurel
Burnside Water Company	Mile 508.4 of Cumberland River (Lake Cumberland)	Pulaski
City of Albany	Mile 4.5 of Indian Creek (Lake Cumberland)	Clinton
Monticello Water & Sewer Commission	Mile 493.5 of Cumberland River (Lake Cumberland)	Wayne
London Utility Commission	Mile 1.3 of Indian Camp Creek (Laurel River Reservoir)	Laurel
Harlan Municipal Water Works	Mile 0.2 of Poor Fork	Harlan
Mt Vernon Municipal Water Works	Mile 3.3 of Renfro Creek (Lake Linville)	Rockcastle
Laurel County Water District #2	Mile 1.0 of Indian Camp Creek (Laurel River Lake)	Laurel
Laurel County Water District #2	Mile 25.2 of Laurel River	Laurel
McCreary County Water District Plant A	Mile 8.9 of Laurel Creek (Laurel Creek Reservoir)	McCreary
Burkesville Municipal Water Works	Mile 421.95 of Cumberland River	Cumberland
McKee Municipal Water Works	Mile 2.35 of Bills Branch (McKee City Reservoir)	Jackson
Williamsburg Water Works	Mile 581.35 of Cumberland River	Whitley
Jamestown Municipal Water Works	Mile 3.75 of Greasy Creek Branch (Lake Cumberland)	Russell
Jamestown Municipal Water Works	Mile Point 4.3 of Greasy Creek Branch (Lake Cumberland due to the lowering)	Russell
Jackson County Water Association Inc	Mile 2.1 of Flat Lick Creek (Beulah Lake)	Jackson
Knox County Utility Commission	Mile 635.6 of Cumberland River	Knox
Wood Creek Water District	Mile 4.15 of Wood Creek (Wood Creek Lake)	Laurel
Cumberland Water Works	Mile 25.0 of Poor Fork	Harlan
Pineville Water System	Mile 3.2 of Cannon Creek (Cannon Creek Lake)	Bell
Benham Water Works	Mile 3.5 of Looney Creek	Harlan
Woodson Bend Resort	Mile 2.98 of South Fk. Cumberland River (Lake Cumberland)	Pulaski
Barbourville Utility Commission	Mile 1.3 of Indian Camp Creek (Laurel River Lake)	Laurel
Cawood Water District	Mile 10.2 of Martins Fork	Harlan
Barbourville Utility Commission	Mile 628.45 of Cumberland River	Knox
McCreary County Water District Plant B	Mile 31.1 of South Fork Cumberland River (Lake Cumberland)	McCreary
Bell County Forestry Camp	Mile 13.9 of Clear Creek (Chenoa Lake)	Bell
Stanford Water Works	Mile 58.1 Buck Creek (Buck Creek Lake)	Lincoln
Licking River Basin		
Paris Municipal Water Works	Mile 16.7 of Stoner Creek	Bourbon
Northern Ky Water Service District Plant A	Mile 4.7 of Licking River	Kenton
Mt Sterling Water & Sewer System	Slate Creek at mile 36.1 (Reservoir)	Montgomery
Mt Sterling Water & Sewer System	Mile 36.5 of Slate Creek	Montgomery
Cynthiana Municipal Water Works	Mile 51.1 of South Fork Licking River	Harrison
Flemingsburg Utilities	Mile 0.7 of UT of Town Branch (Flemingsburg Lake)	Fleming
Williamstown Municipal Water	Mile 1.89 of Lake Branch (Lake Williamstown)	Grant
Morehead State University Water Plant	Mile 0.7 of Evans Branch (Evans Branch Impoundment)	Rowan
Morehead State University Water Plant	Mile 13.7 of Triplets Creek	Rowan
Carlisle Municipal Water Plant	Mile 3.5 of UT to Brushy Fork (City Lake)	Nicholas
Falmouth Water Plant	Mile 52.6 of Licking River	Pendleton
Morehead Utility Plant Board	Mile 176.4 of Licking River	Rowan
Western Fleming Water District	Mile 102.3 of Licking River	Nicholas
Salyersville Municipal Water Works	Mile 271.9 of Licking River	Magoffin
Cynthiana Municipal Water Works	Mile 84.3 of Licking River	Harrison
Carlisle Municipal Water Department	Mile 110.0 Licking River	Nicholas
West Liberty Water Company	Mile 227.4 Licking River	Morgan
West Liberty Water Company	Mile 3.7 of North Fork Licking River	Morgan/Rowan
Cave Run Water Commission	Mile 196.2 of Licking River (Cave Run Lake)	Menifee

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Kentucky River Basin		
Lancaster Municipal Water Works	Mile 145.0 of Kentucky River (Pool #8)	Garrard
Northpoint Training Center	Mile 17.3 of Dix River (Herrington Lake)	Boyle
Frankfort Electric & Water Plant Board	Mile 71.5 of Kentucky River (Pool #4)	Franklin
Hazard Water Department	Mile 104.1 of North Fork Kentucky River	Perry
Wilmore Utilities System	Mile 117.0 of Kentucky River (Pool #6)	Jessamine
Nicholasville Water Works	Mile 157.7 of Kentucky River (Pool #8)	Jessamine
Berea Municipal Utilities	Mile 3.6 of Cowbell Creek-Cowbell Lake	Madison
Jackson Municipal Water Works	Mile 47.2 of North Fork Kentucky River	Breathitt
Kentucky American Water Company Plant A	Mile 171.25 of Kentucky River (Pool #9)	Fayette
Kentucky American Water Company Plant B	Mile 10.6 of East Hickman Creek (Reservoir #4)	Fayette
Kentucky American Water Company	Reservoir #1 (Lake Ellerslie) (Primarily used as emergency backup)	Fayette
Danville Water Works	Mile 18.9 of Dix River (Herrington Lake)	Boyle
Lawrenceburg Municipal Water Works	Mile 85.9 of Kentucky River	Anderson
Versailles Municipal Water Works	Mile 87.5 of Kentucky River (Pool 5)	Woodford
Harrodsburg Municipal Water Works	Mile 120.8 of Kentucky River (Pool 7)	Mercer
Stanford Water Works	Mile 6.0 of Neals Creek (Stanford Reservoir)	Lincoln
Richmond Utilities Board	Mile 206.2 of Kentucky River (Pool 11)	Madison
Whitesburg Municipal Water Works/Veolia Water	Mile 150.95 of North Fork Kentucky River	Letcher
Manchester Water Works	Mile 3.9 of Beech Creek (Bert Combs Lake)	Clay
Georgetown Municipal Water & Sewer	Mile 50.9 of North Elkhorn Creek (Royal Springs)	Scott
Beattyville Water Works	Mile 3.4 of North Fork Kentucky River (Pool #14)	Lee
Bullock Pen Water District	Mile 2.8 Of Bullock Pen Creek (Bullock Pen Lake)	Grant
Winchester Municipal Utilities	Mile 6.5 of Lower Howard Creek (Winchester Reservoir (Carol E. Ecton Reservoir))	Clark
Winchester Municipal Utilities	Mile 180.5 of Kentucky River (Pool #10)	Clark
Campton Water Works	Mile 0.2 of Hiram Branch (Campton Lake)	Wolfe
Hyden-Leslie County Water District	Mile 76.6 of Middle Fork Kentucky River	Leslie
Booneville Water & Sewer District	Mile 12.8 of South Fork Kentucky River	Owsley
Georgetown Municipal Water & Sewer	Mile 0.61 of UT (Royal Springs) at mile 33.5 of North Elkhorn Creek	Scott
Kentucky American Northern Division	Mile 0.55 of Severn Creek	Owen
Kentucky American Northern Division	Mile 6.3 of North Fork of North Severn Creek (Lower Thomas Lake)	Owen
Irvine Municipal Utilities	Mile 223.1 of Kentucky River (Pool #11)	Estill
Bluegrass Army Depot	Mile 0.25 of Little Muddy Creek (Lake Vega)	Madison
Beech Fork Water Commission	Mile 0.3 of Beech Fork (Beech Fork Reservoir)	Powell
Berea Municipal Utilities	Mile 2.15 of East Fork Silver Creek (Lower Silver Creek Lake)	Madison
Berea Municipal Utilities	Mile 2.8 of East Fork Silver Creek (Upper Silver Creek Lake)	Madison
Berea Municipal Utilities	Mile 2.5 of Owsley Fork (Owsley Fork Lake)	Madison
Manchester Water Works	Mile 18.9 of Goose Creek	Clay
Beech Fork Water Commission	Mile 31.0 of Red River	Powell
Kentucky American Water Co (Plant C)	Mile 47.8 of Kentucky River	Franklin
Knott County Water and Sewer District	Mile 11.6 of Carr Fork Lake	Knott
Salt River Basin		
Shelbyville Municipal Water & Sewer Commission	Mile 27.5 of Guist Creek (Guist Creek Lake)	Shelby
Bardstown Municipal Water Works	Mile 1.1 of Buffalo Creek (Lake Sympson)	Nelson
Lebanon Water Works Company	Mile 98.2 of Rolling Fork River	Marion
Springfield Water Works	Mile 4.2 of Long Lick Creek (Willisburg Lake)	Washington
Lebanon Water Works Company	Mile 2.0 of Fagan Branch (Fagan Branch Reservoir)	Marion
Springfield Water Works	Mile 1.3 of Allen Branch (Springfield Reservoir)	Washington
Green River Basin		
Morgantown Utilities Commission	Mile 144.6 of Green River	Butler
Campbellsville Water Works	Mile 1.3 of Trace Fork (City Reservoir)	Taylor
Columbia/Adair Co Water Commission	Mile 317.4 of Green River (Green River Lake)	Adair
Glasgow Water Co/Plant B	Mile 21.5 of Beaver Creek	Barren
Greensburg Municipal Water Works	Mile 283.3 of Green River	Green
Livermore Water Works	Mile 71.7 of Green River	McLean
Bowling Green Municipal Utilities	Mile 38.1 of Barren River	Warren
Green River Valley Water District	Rio Springs at UT to Green River at mile 240.5	Hart
Hodgenville Water Works	Mile 5.85 of North Fork Nolin River	Larue
Central City Municipal Water & Sewer	Mile 85.9 of Green River	Muhlenberg
Calhoun Water Works	Mile 63.75 of Green River	McLean
Hartford Municipal Water Works	Mile 29.8 of Rough River	Ohio
Greenville Utilities Commission	Luzerne Lake (Luzerne Lake no longer connected to Ganey Creek at mile 2.3)	Muhlenberg
Ohio County Water Plant	Mile 131.8 of Green River	Ohio

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Franklin Water Plant	Mile 23.4 of West Fork Drake's Creek	Simpson
Glasgow Water Co/Plant A	Embayment of Barren River Lake upstream of mouth of Skaggs Creek	Barren
Leitchfield Municipal Water Works	Mile 107.7 of Rough River (Reservoir)	Grayson
Campbellsville Water Works	Mile 5.3 of Robinson Creek (Green River Reservoir)	Taylor
Campbellsville Water Works	Mile 2.1 of Stone Quarry Creek	Taylor
Edmonson County Water District	Mile 183.6 of Green River	Edmonson
Hardin County Water District 2 Elizabethtown	Mile 2.1 of Freeman Creek (Freeman Lake)	Hardin
Tompkinsville Municipal Water Works	Mile 6.0 of Mill Creek (Mill Creek Reservoir)	Monroe
Madisonville Municipal Water Works	Mile 53.9 of Green River	Hopkins
Liberty Water Works	Mile 1.4 of Hickman Creek (Lake Liberty)	Casey
Stanford Water Works	Mile 0.6 of UT to Green River (James C. Harris Reservoir)	Lincoln
Hardin County Water District #2	Nolin River at mile 80.4 (White Mills Spring)	Hardin
Green River Valley Water District	Mile 240.5 of Green River	Hart
Scottsville Municipal Water Works	Mile 88.5 of Barren River (Barren River Lake)	Allen
Butler County Water System	Mile 143.6 of Green River	Butler
Edmonson County Water District	Mile 23.6 of Nolin River (Nolin Lake)	Grayson
Henderson Water & Sewer Department	Raw Storage Lake	Henderson
Webster Cnty Water District	Mile 47.3 of Green River	Webster
Hodgenville Water Works	Mile 0.3 of UT at mile 116.9 of North Fork Nolin River (Salem Lake)	Larue
Grayson County Water District	Mile 97.7 of Rough River (Rough River Reservoir)	Grayson
Lower Cumberland River Basin		
Kentucky State Penitentiary	Mile 40.1 of Cumberland River (Lake Barkley)	Lyon
Hopkinsville Water Environmental Authority	Mile 74.83 of North Fork Little River	Christian
Hopkinsville Water Environmental Authority	Mile 14.2 of Little River (Lake Barkley)	Christian
Princeton Water Department	Mile 41.8 of Cumberland River (Lake Barkley)	Lyon
Kuttawa Municipal Water Plant	Mile 37.5 of Cumberland River (Lake Barkley)	Lyon
Barkley Lake Water District	Mile 1.3 of Hopson Creek (Lake Barkley)	Trigg
Crittenden-Livingston Co Water District	Mile 13.95 of Cumberland River	Livingston
Hopkinsville Water Environmental Authority	From Hopkinsville Stone Quarry No. 1 (South Quarry) adjacent to North Fork Little River at mile 14.8	Christian
Hopkinsville Water Environmental Authority	Hopkinsville Stone Quarry No. 2 (North Quarry) adjacent to White Creek at mile 0.2	Christian
Eddyville Municipal Water Works	Mile 40.2 of Cumberland River (Lake Barkley)	Lyon
Logan Todd Regional Water Commission	Cumberland River at Clarksville TN	TN
Tradewater River Basin		
Providence Water Works	New Providence City Lake (mile 0.3 of Owens Creek)	Webster
Madisonville Municipal Water Works	Mile 6.3 of Greasy Creek (Lake Pewee).	Hopkins
Dawson Springs City Water & Sewer	Mile 0.1 of Piney Creek (Lake Beshear)	Caldwell
Providence Municipal Water Works	Mile 41.3 of Tradewater River	Webster
Ohio River Basin (Main Stem And Minor Tributaries)		
Maysville Utility Commission	Mile 408.0 of Ohio River	Mason
Ashland Municipal Water Works	Mile 320.3 of Ohio River	Boyd
Northern Ky Water Service District - Newport Plant	Mile 464.0 of Ohio River	Campbell
Paducah Water Works	Mile 935.6 of Ohio River	McCracken
Louisville Water Company /ZPS A	Mile 600.6 of Ohio River	Jefferson
Henderson Water & Sewer Department	Mile 803.6 of Ohio River	Henderson
Northern Ky Water Service District Plant B	Mile 462.9 of Ohio River	Campbell
Morganfield Municipal Water Works	Mile 840.0 of Ohio River	Union
Russell Water Plant	Mile 327.7 of Ohio River	Greenup
Marion Municipal Water Works	Mile 25.6 of Crooked Creek (City Lake)	Crittenden
US Army Ft Knox A	Mile 8.5 of Otter Creek	Meade
Louisville Water Company BEPWTP B	Mile 594.7 of Ohio River	Jefferson
Sturgis Municipal Water Works	Mile 868.8 of Ohio River	Union]

(3)(3)(a) Table C in this subsection lists waters that have an added:

1. A] designated use of CAH or OSRW. The WAH designated use does not apply to waters designated as CAH unless both WAH and CAH are indicated in Table C]; or

2. Exceptions to specific criteria in 401 KAR 10:031.

(b) All other criteria in 401 KAR 10:031 applicable to the listed use designations shall apply to surface waters listed in Table C in this subsection.

(c)1. DWS use shall apply to all waters listed in Table C in this section.

2. DWS use criteria found in 401 KAR 10:031, Section 6, shall apply only at the surface water intakes listed in Table B of this section].

Table C WATERS WITH ADDED DESIGNATED USES				
Waterbody and Receiving Water	Boundary Description	Latitude, Longitude (Downstream/Upstream; Decimal Degrees)	County	Designated Uses
BIG SANDY RIVER BASIN				
Blackberry Creek of Tug Fork*	Mouth to Left and Right Fork Blackberry Creek	37.60787, -82.16325/ 37.55270, -82.20019	Pike	OSRW

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Elkhorn Creek of Russel Fork*	Mouth to Lower Pigeon Branch	37.30106, -82.35480/ 37.24900, -82.49153	Pike	OSRW
Hobbs Fork of Pigeonroost Fork	Mouth to Headwaters	37.70738, -82.43272/ Headwaters	Martin	OSRW
Knox Creek of Tug Fork*	Mouth to Virginia State Line	37.53601, -82.05993/ 37.47100, -82.06294	Pike	OSRW
Levisa Fork of Big Sandy River*	Johns Creek to Abbott Creek	37.74193, -82.76698/ 37.68716, -82.78300	Floyd	OSRW
Levisa Fork of Big Sandy River*	KY-1426 Cedar Hills Road to Russel Fork	37.46442, -82.52603/ 37.40715, -82.44037	Pike	OSRW
Long Fork of Shelby Creek*	Mouth to Left and Right Fork Long Fork	37.33899, -82.58588/ 37.28648, -82.66347	Pike	OSRW
Lower Pigeon Branch of Elkhorn Creek	Left Fork Lower Pigeon Branch to Headwaters	37.24194, -82.48681/ Headwaters	Pike	OSRW
Paint Creek of Levisa Fork	Mouth to Paintville Lake Dam	37.81444, -82.79142/ 37.83823, -82.87146	Johnson	CAH
Paintsville Lake of Paint Creek	From Dam to 0.18 River Miles Upstream of Gullett Branch	37.84032, -82.87137/ 37.87501, -82.91378	Johnson, Morgan	WAH, CAH
Peter Creek of Tug Fork*	Mouth to Left and Right Fork Peter Creek	37.56663, -82.14491/ 37.51424, -82.15258	Pike	OSRW
Russell Fork of Levisa Fork*	Mouth to Virginia State Line	37.40704, -82.44006/ 37.29579, -82.31462	Pike	OSRW
Shelby Creek of Levisa Fork*	Mouth to Beefhide Creek	37.42698, -82.49738/ 37.28949, -82.59865	Pike	OSRW
Thompson Fork of Souders Branch	Mouth to Headwaters	37.68474, -82.66775/ Headwaters	Floyd	OSRW
Toms Branch of Elkhorn Creek	Mouth to Headwaters	37.26119, -82.45249/ Headwaters	Pike	OSRW
Tug Fork of Big Sandy River*	Big Elk Creek to Chaffin Branch	37.89945, -82.47094/ 37.90368, -82.44690	Martin	OSRW
Tug Fork of Big Sandy River*	Blackberry Creek to Virginia/West Virginia State Line	37.60818, -82.16339/ 37.53822, -81.96754	Pike	OSRW
Unnamed Tributary of Hobbs Fork of Pigeonroost Fork	Mouth to Headwaters	37.68319, -82.40511/ Headwaters	Martin	OSRW
Unnamed Tributary of Open Fork Paint Creek of Paintsville Lake (Paint Creek)	Mouth to Headwaters	37.97373, -83.05614/ Headwaters	Morgan	OSRW
GREEN RIVER BASIN				
Barren River of Green River*	Green River to Lock and Dam #1	37.18112, -86.62376/ 37.08677, -86.50316	Butler, Warren	OSRW
Beaverdam Creek of Green River	Mouth to Headwaters	37.19637, -86.27598/ Headwaters	Edmonson	CAH, OSRW
Big Brush Creek of Green River	Brush Creek to Poplar Grove Branch	37.38472, -85.59302/ 37.42787, -85.57944	Green	OSRW
Cane Run of Nolin River Lake (Nolin River)	Nolin River Lake Backwaters to Headwaters	37.33240, -86.07132/ Headwaters	Hart	OSRW
Caney Fork of Peter Creek	Mouth to Headwaters	36.84608, -85.97090/ Headwaters	Barren	OSRW
Clifty Creek of Rough River	Barton Run to Western Kentucky Parkway	37.54800, -86.23505/ 37.51366, -86.15115	Grayson	OSRW
Clifty Creek of Wolf Lick Creek	Little Clifty Creek to Sulphur Lick	36.99759, -87.05518/ 36.98189, -87.12934	Todd	OSRW
Double Sink (Sandhouse Cave Spring) of Green River*	Groundwater Basin	37.16583, -86.15863/ Groundwater Basin Extent	Barren, Edmonson	CAH, OSRW
East Fork Little Barren River of Little Barren River	Leatherwood Creek to Flat Rock Creek	37.00149, -85.52277/ 36.98390, -85.52892	Metcalfe	OSRW
Echo River of Green River*	Groundwater Basin	37.17909, -86.10842/ Groundwater Basin Extent	Edmonson	CAH, OSRW
Elk Lick Creek of Wolf Lick Creek	Duck Lick Creek to Barren Fork and Edger Creek	36.96003, -86.98838/ 36.91651, -86.97280	Logan	OSRW
Ellis Fork of Damron Creek	Mouth to Headwaters	37.15744, -85.06621/ Headwaters	Adair, Russell	OSRW
Falling Timber Creek of Skaggs Creek	Land Use Change (0.1 River Miles Upstream of Taylor Branch) to Headwaters	36.93680, -85.74424/ Headwaters	Metcalfe	OSRW
Fiddlers Creek of North Fork Rough River	Mouth to Headwaters	37.70782, -86.34660/ Headwaters	Breckinridge	OSRW
Forbes Creek of Buck Creek	Mouth to Unnamed Tributary (0.3 River Miles Downstream of CR-1021 Owen West Road)	36.98832, -87.32847/ 36.95495, -87.34872	Christian	OSRW
Ganter Bluehole of Green River*	Groundwater Basin	37.18741, -86.14763/ Groundwater Basin Extent	Edmonson	CAH, OSRW
Gasper River of Barren River	Clear Fork Creek to Wiggington Creek	36.98618, -86.63216/ 36.91698, -86.74175	Logan, Warren	OSRW
Goose Creek of Green River	Mouth to Little Goose Creek	37.20311, -85.01074/ 37.11575, -84.99617	Casey, Russell	OSRW
Green River of Ohio River*	1 River Mile Downstream of Lock and Dam #4 to Lock and Dam #5	37.19532, -86.63151/ 37.16870, -86.40334	Butler, Warren	OSRW

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Green River of Ohio River*	0.5 River Miles Upstream of Davenport Landing to 0.75 River Miles Downstream of Lock & Dam #3	37.23620, -86.91085/ 37.22238, -86.90769	Muhlenberg, Ohio	OSRW
Green River of Ohio River*	0.9 River Miles Upstream of I-65 to 2.0 River Miles Downstream of US-231	37.27954, -86.73226/ 37.25580, -86.71360	Butler	OSRW
Green River of Ohio River*	Eastern Mammoth Cave National Park Boundary to	37.24995, -86.02769/	Hart,	OSRW
Green River of Ohio River*	Western Mammoth Cave National Park Boundary to Green River Lake Dam	37.21698, -86.26334/ 37.24560, -85.34149	Edmonson, Green, Hart, Taylor	OSRW
Halls Creek of Rough River	Unnamed Tributary (Downstream of Wolf Creek) to Headwaters	37.51441, -86.79138/ Headwaters	Ohio	OSRW
Lick Creek of West Fork Drakes Creek	Mouth to Headwaters	36.80165, -86.49463/ Headwaters	Simpson	CAH, OSRW
Linders Creek of Rough River	Mouth to Sutzer Creek	37.63677, -86.20180/ 37.63368, -86.14513	Hardin	OSRW
Little Beaverdam Creek of Green River	Mouth to KY-743 Boiling Springs Road	37.17474, -86.34748/ 37.09866, -86.31160	Edmonson, Warren	OSRW
Little Short Creek of Rough River	Mouth to Headwaters	37.55200, -86.57632/ Headwaters	Grayson	OSRW
Lynn Camp Creek of Green River	Lindy Creek to Headwaters	37.39027, -85.70372/ Headwaters	Hart	CAH
Lynn Camp Creek of Green River	Mouth to Lindy Creek	37.31994, -85.71503/ 37.39027, -85.70372	Hart	CAH, OSRW
McCoy Spring of Green River*	Groundwater Basin	37.24996, -86.00975/ Groundwater Basin Extent	Hart	CAH, OSRW
McFarland Creek of West Fork Pond River	Grays Branch to Unnamed Tributary	37.13299, -87.38653/ 37.11248, -87.40630	Christian	OSRW
Meeting Creek of Rough River	Little Meeting Creek to Petty Branch	37.58021, -86.22663/ 37.56328, -86.15925	Grayson, Hardin	OSRW
Mile 205.7 Spring of Green River*	Groundwater Basin	37.22587, -86.03956/ Groundwater Basin Extent	Hart	CAH, OSRW
Muddy Creek of Rough River	Land Use Change (1.2 River Miles Upstream of CR-1125 Mt Pleasant Road) to Headwaters	37.42276, -86.73440/ Headwaters	Ohio	OSRW
Nolin River of Green River	Mouth to Nolin River Reservoir Dam	37.21540, -86.24918/ 37.27672, -86.24798	Edmonson	CAH
North Fork Rough River of Rough River Lake	Buffalo Creek to Reservoir Dam	37.70023, -86.38206/ 37.71212, -86.32604	Breckinridge	OSRW
Peter Creek of Barren River	Caney Fork to Dry Fork	36.84608, -85.97090/ 36.80042, -85.90772	Barren	OSRW
Pike Spring of Green River*	Groundwater Basin	37.21436, -86.05560/ Groundwater Basin Extent	Edmonson	CAH, OSRW
Pond Run of Rough River	Land Use Change (0.2 River Miles Downstream of CR-1503 White Road) to Headwaters	37.57381, -86.60506/ Headwaters	Breckinridge, Ohio	OSRW
Puncheon Creek of Figure Eight Branch	Mouth to Tennessee State Line	36.67503, -85.99483/ 36.62953, -86.00534	Allen	OSRW
Rough River of Green River	Big Slough to KY-54 Owensboro Road	37.53770, -86.59739/ 37.54196, -86.59707	Grayson, Ohio	CAH
Rough River of Green River	Linders Creek to Vertrees Creek	37.63677, -86.20180/ 37.69001, -86.13664	Hardin	OSRW
Rough River of Green River	Unnamed Tributary (on Right Descending Bank) to Rough River Lake Dam	37.62313, -86.50975/ 37.62109, -86.50111	Breckinridge, Grayson	CAH
Round Stone Creek of Nolin River Lake (Nolin River)	KY-1140 Raider Hollow Road to Headwaters	37.41002, -86.00232/ Headwaters	Hart	CAH
Running Branch Spring of Green River*	Groundwater Basin	37.18990, -86.12567/ Groundwater Basin Extent	Edmonson	CAH, OSRW
Russell Creek of Green River	Mouth to Columbia Waste Water Treatment Plant	37.22938, -85.51040/ 37.10942, -85.30532	Adair, Green	OSRW
Russell Creek of Green River	Reynolds Creek to Hudson Creek and Mount Olive Creek	37.04137, -85.18825/ 37.09160, -85.10334	Adair, Russell	OSRW
Sixes Creek of Wild Branch	Mouth to Headwaters	37.34154, -86.69993/ Headwaters	Ohio	OSRW
Suds Spring of Green River*	Groundwater Basin	37.23862, -86.01611/ Groundwater Basin Extent	Hart	CAH, OSRW
Sulphur Branch of Alexander Creek	Mouth to Headwaters	37.12892, -86.26930/ Headwaters	Edmonson	OSRW
Thompson Branch of West Fork Drakes Creek	Webb Branch to Tennessee State Line	36.65809, -86.49862/ 36.65202, -86.47973	Simpson	OSRW
Trammel Creek of Drakes Creek	Mouth to Tennessee State	36.87579, -86.37443/ 36.63973, -86.19775	Allen,	CAH,

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	Line		Warren	OSRW
Turnhole Spring of Green River*	Groundwater Basin	37.16558, -86.15771/ Groundwater Basin Extent	Barren, Edmonson	CAH, OSRW
Underground River System	Within Mammoth Cave National Park	Not Applicable	Edmonson, Hart, Barren	CAH, OSRW
Unnamed Tributary of Green River of Ohio River	Mouth to Headwaters	37.19160, -85.12732/ Headwaters	Adair	OSRW
Unnamed Tributary of White Oak Creek of Green River Lake	CR-1073 Hovious Ridge Road to KY-76 Elkhorn Road	37.23736, -85.22392/ 37.26178, -85.19616	Adair	OSRW
West Fork Pond River of Pond River	Unnamed Tributary (0.8 River Miles Downstream of CR-1078 J P Grace Road) to East Branch Pond River	37.09098, -87.36698/ 37.03070, -87.40602	Christian	OSRW
KENTUCKY RIVER BASIN				
Backbone Creek of Sixmile Creek	Mouth to Scrabble Creek	38.33978, -84.99690/ 38.32025, -84.99355	Franklin, Henry, Shelby	OSRW
Bear Branch of North Fork Kentucky River	Upstream of Sediment Pond to Headwaters	37.13248, -83.10152/ Headwaters	Perry	OSRW
Big Double Creek of Red Bird River*	Basin Upstream of Mouth	37.14045, -83.58768/ Upstream Basin Extent	Clay	OSRW
Big Laurel Creek of Greasy Creek*	Basin Upstream of Mouth	36.97893, -83.21906/ Upstream Basin Extent	Harlan	OSRW
Bill Branch of Laurel Fork	Mouth to Right and Left Fork Bill Branch	36.93025, -83.30921/ 36.93249, -83.30578	Harlan	OSRW
Bill Oak Branch of Laurel Fork*	Mouth to Headwaters	37.33478, -83.56541/ Headwaters	Owsley	OSRW
Billey Fork of Millers Creek	Land Use Change (1.0 River Mile Upstream of Wodward Creek) to Headwaters	37.67957, -83.79653/ Headwaters	Estill, Lee	OSRW
Blue Hole Creek of Red Bird Creek*	Basin Upstream of Mouth	36.99288, -83.53679/ Upstream Basin Extent	Clay	OSRW
Bowen Creek of Red Bird River*	Basin Upstream of Mouth	37.06668, -83.53803/ Upstream Basin Extent	Leslie	OSRW
Boyd Run of North Elkhorn Creek	Mouth to Cherry Run	38.21316, -84.48529/ 38.21731, -84.47430	Scott	OSRW
Buckhorn Creek of Troublesome Creek*	Basin Upstream of Emory Branch and Downstream of Pond on Fallenrock Branch	37.42006, -83.07758/ 37.41953, -83.06109	Knott	OSRW
Buffalo Creek of South Fork Kentucky River*	Basin Upstream of Mouth	37.35051, -83.65233/ Upstream Basin Extent	Owsley	OSRW
Bullskin Creek of South Fork Kentucky River*	Basin Upstream of Mouth	37.27322, -83.64441/ Upstream Basin Extent	Clay, Leslie	OSRW
Cavanaugh Creek of South Fork Station Camp Creek	Mouth to Headwaters	37.55370, -83.94222/ Headwaters	Jackson	OSRW
Chester Creek of Middle Fork Red River	Mouth to Headwaters	37.72746, -83.65906/ Headwaters	Wolfe	OSRW
Chimney Top Creek of Red River	Basin Upstream of Mouth	37.82314, -83.62673/ Upstream Basin Extent	Wolfe	CAH
Clear Creek of Kentucky River	Mouth to East Fork Clear Creek	37.93654, -84.79613/ 37.92667, -84.72576	Woodford	OSRW
Clemons Fork of Buckhorn Creek*	Basin Upstream of Mouth	37.45511, -83.16582/ Upstream Basin Extent	Breathitt	OSRW
Coles Fork of Buckhorn Creek*	Basin Upstream of Mouth	37.45720, -83.13468/ Upstream Basin Extent	Breathitt, Knott	OSRW
Combs Lake of Beech Creek	Entire Reservoir	37.16765, -83.70832/ Upstream Lake Extent	Clay	WAH, CAH
Craig Creek of Kentucky River	Mouth to Unnamed Tributary	37.97902, -84.82058/ 37.98133, -84.78474	Woodford	OSRW
Deep Ford Branch of Cutshin Creek	Upstream of Pond to Headwaters	37.19085, -83.34793/ Headwaters	Leslie	OSRW
Dix River of Kentucky River	Mouth to Herrington Lake Dam	37.81489, -84.71642/ 37.78539, -84.70388	Garrard, Mercer	CAH
Dog Fork of Swift Camp Creek	Basin Upstream of Mouth	37.78481, -83.56667/ Upstream Basin Extent	Wolfe	CAH
Drennon Creek of Kentucky River	Fivemile Creek to Town Creek	38.46577, -85.09825/ 38.43094, -85.11912	Henry	OSRW
East Fork Indian Creek of Indian Creek	Mouth to Headwaters	37.86030, -83.67480/ Headwaters	Menifee	CAH, OSRW
Eli Fork of Elisha Fork*	Basin Upstream of Mouth	37.43271, -83.05620/ Upstream Basin Extent	Knott	OSRW
Elisha Creek of Red Bird River*	Basin Upstream of Mouth	37.08769, -83.54680/ Upstream Basin Extent	Leslie	OSRW
Emily Run of Drennon Creek	Mouth to Unnamed Tributary	38.50114, -85.07706/ 38.51135, -85.12727	Henry	OSRW

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	<u>(0.5 River Miles Downstream of CR-1010 New Cut Road)</u>			
<u>Evans Fork of Billye Fork</u>	<u>Mouth to Headwaters</u>	<u>37.69659, -83.77567/ Headwaters</u>	<u>Estill</u>	<u>OSRW</u>
<u>Falling Rock Branch of Clemons Fork*</u>	<u>Mouth to Headwaters</u>	<u>37.47650, -83.14005/ Headwaters</u>	<u>Breathitt</u>	<u>OSRW</u>
<u>Fishpond Lake of Fishpond Branch</u>	<u>Entire Reservoir</u>	<u>37.15714, -82.67861/ Upstream Lake Extent</u>	<u>Letcher</u>	<u>WAH, CAH</u>
<u>Frozen Creek of North Fork Kentucky River*</u>	<u>Basin Upstream of and Including (Lower) Negro Branch</u>	<u>37.62940, -83.38253/ Upstream Basin Extent</u>	<u>Breathitt</u>	<u>OSRW</u>
<u>Gilbert Creek of Kentucky River</u>	<u>Mouth to Unnamed Tributary (at Milepost 7.06 KY-513 Gilberts Creek Road)</u>	<u>37.97571, -84.85305/ 37.97570, -84.85305</u>	<u>Anderson</u>	<u>OSRW</u>
<u>Gilberts Big Creek of Red Bird River*</u>	<u>Basin Upstream of Mouth</u>	<u>37.10785, -83.55591/ Upstream Basin Extent</u>	<u>Clay, Leslie</u>	<u>OSRW</u>
<u>Gladie Creek of Red River</u>	<u>Basin Upstream of Mouth</u>	<u>37.83425, -83.61231/ Upstream Basin Extent</u>	<u>Menifee</u>	<u>CAH</u>
<u>Gladie Creek of Red River</u>	<u>Land Use Change (Downstream of Sargent Branch) to Long Branch</u>	<u>37.83977, -83.60773/ 37.86994, -83.53192</u>	<u>Menifee</u>	<u>CAH, OSRW</u>
<u>Goose Creek of Red Bird River</u>	<u>Mouth to Laurel Creek</u>	<u>37.26982, -83.64347/ 37.21607, -83.71750</u>	<u>Clay</u>	<u>OSRW</u>
<u>Granny Dismal Creek of Sturgeon Creek*</u>	<u>Basin Upstream of Mouth</u>	<u>37.49587, -83.81628/ Upstream Basin Extent</u>	<u>Jackson, Lee, Owsley</u>	<u>OSRW</u>
<u>Grier Creek of Kentucky River</u>	<u>Kentucky River Backwaters to Unnamed Tributary</u>	<u>38.02224, -84.82900/ 38.01901, -84.78975</u>	<u>Woodford</u>	<u>OSRW</u>
<u>Grindstone Creek of Kentucky River</u>	<u>Kentucky River Backwaters to Pond</u>	<u>38.27095, -84.87841/ 38.25169, -84.86151</u>	<u>Franklin</u>	<u>OSRW</u>
<u>Hardwick Creek of Red River</u>	<u>Mouth to Little Hardwick Creek</u>	<u>37.83287, -83.92629/ 37.80637, -83.91057</u>	<u>Powell</u>	<u>OSRW</u>
<u>Hell Creek of North Fork Kentucky River*</u>	<u>Basin Upstream of Mouth to Reservoir</u>	<u>37.60498, -83.65443/ 37.64906, -83.68880</u>	<u>Lee</u>	<u>OSRW</u>
<u>Hell For Certain Creek of Middle Fork Kentucky River*</u>	<u>Basin Upstream of Mouth</u>	<u>37.24590, -83.38193/ Upstream Basin Extent</u>	<u>Leslie</u>	<u>OSRW</u>
<u>Hines Creek of Kentucky River</u>	<u>Kentucky River Backwaters to Unnamed Tributary</u>	<u>37.87669, -84.37216/ 37.87346, -84.35034</u>	<u>Madison</u>	<u>OSRW</u>
<u>Holly Creek of North Fork Kentucky River*</u>	<u>Basin Upstream of Mouth</u>	<u>37.62268, -83.49947/ Upstream Basin Extent</u>	<u>Breathitt, Wolfe</u>	<u>OSRW</u>
<u>Honey Branch of Greasy Creek</u>	<u>Mouth to Headwaters</u>	<u>37.01785, -83.35630/ Headwaters</u>	<u>Leslie</u>	<u>OSRW</u>
<u>Hopper Cave Branch of Cavanaugh Creek</u>	<u>Mouth to Headwaters</u>	<u>37.54046, -83.96364/ Headwaters</u>	<u>Jackson</u>	<u>OSRW</u>
<u>Horse Creek of of Goose Creek*</u>	<u>Basin Upstream of Pigeon Roost Branch</u>	<u>37.09917, -83.84599/ Upstream Basin Extent</u>	<u>Clay, Laurel</u>	<u>OSRW</u>
<u>Hunting Creek of Quicksand Creek*</u>	<u>Basin Upstream of Mouth</u>	<u>37.59235, -83.22803/ Upstream Basin Extent</u>	<u>Breathitt</u>	<u>OSRW</u>
<u>Indian Creek of Eagle Creek</u>	<u>Mouth to Headwaters</u>	<u>38.64460, -84.97133/ Headwaters</u>	<u>Carroll</u>	<u>OSRW</u>
<u>Indian Creek of Red River</u>	<u>East Fork Indian Creek to 0.3 River Miles Downstream of Bear Branch</u>	<u>37.86041, -83.67498/ 37.90919, -83.67233</u>	<u>Menifee</u>	<u>CAH</u>
<u>Indian Fork of Sixmile Creek</u>	<u>Mouth to Headwaters</u>	<u>38.30060, -85.04584/ Headwaters</u>	<u>Shelby</u>	<u>OSRW</u>
<u>Jacks Creek of Red Bird River*</u>	<u>Basin Upstream of Mouth</u>	<u>37.19116, -83.59160/ Upstream Basin Extent</u>	<u>Clay</u>	<u>OSRW</u>
<u>Jessamine Creek of Kentucky River</u>	<u>Stream Segment Within the R. J. Corman Natural Area</u>	<u>37.87160, -84.61153/ 37.88356, -84.60430</u>	<u>Jessamine</u>	<u>OSRW</u>
<u>John Carpenter Fork of Clemons Fork*</u>	<u>Mouth to Headwaters</u>	<u>37.48191, -83.13306/ Headwaters</u>	<u>Breathitt</u>	<u>OSRW</u>
<u>Joyce Fork of Cortland Fork*</u>	<u>Mouth to Headwaters</u>	<u>37.35043, -83.55770/ Headwaters</u>	<u>Owsley</u>	<u>OSRW</u>
<u>Katies Creek of Red Bird River*</u>	<u>Basin Upstream of Mouth</u>	<u>37.03516, -83.54001/ Upstream Basin Extent</u>	<u>Clay</u>	<u>OSRW</u>
<u>Laurel Creek of Left Fork Rockhouse Creek*</u>	<u>Basin Upstream of Mouth</u>	<u>37.13092, -83.43722/ Upstream Basin Extent</u>	<u>Leslie</u>	<u>OSRW</u>
<u>Laurel Fork of Left Fork Buffalo Creek*</u>	<u>Cortland Fork to Big Branch</u>	<u>37.34758, -83.56464/ 37.32795, -83.56754</u>	<u>Owsley</u>	<u>OSRW</u>
<u>Laurel Fork Quicksand Creek of Quicksand Creek*</u>	<u>Basin Upstream of Patten Fork</u>	<u>37.45106, -83.02310/ Upstream Basin Extent</u>	<u>Knott</u>	<u>OSRW</u>
<u>Left Fork Big Double Creek of Big Double Creek*</u>	<u>Mouth to Headwaters</u>	<u>37.09053, -83.60245/ Headwaters</u>	<u>Clay</u>	<u>OSRW</u>
<u>Line Fork of North Fork Kentucky River</u>	<u>Defeated Creek to Headwaters</u>	<u>37.05325, -82.98858/ Headwaters</u>	<u>Letcher</u>	<u>OSRW</u>
<u>Little Double Creek of Red Bird River*</u>	<u>Basin Upstream of Mouth</u>	<u>37.14012, -83.59198/ Upstream Basin Extent</u>	<u>Clay</u>	<u>OSRW</u>
<u>Little Fork of Lower Devil Creek*</u>	<u>Basin Upstream of Mouth</u>	<u>37.66154, -83.59962/ Upstream Basin Extent</u>	<u>Lee, Wolfe</u>	<u>OSRW</u>

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Little Middle Fork Elisha Creek of Big Middle Fork Elisha Creek*	Mouth to Headwaters	37.08174, -83.51566/ Headwaters	Leslie	OSRW
Little Millseat Branch of Clemons Fork*	Mouth to Headwaters	37.47206, -83.14624/ Headwaters	Breathitt	OSRW
Little Sixmile Creek of Sixmile Creek	Mouth to Headwaters	38.38438, -85.00254/ Headwaters	Henry	OSRW
Little Sturgeon Creek of Sturgeon Creek	Mouth to Warren Chapel Branch	37.47837, -83.81345/ 37.44863, -83.78872	Owsley	OSRW
Long Fork of Hector Branch*	Basin Upstream of Mouth	37.17743, -83.63474/ Upstream Basin Extent	Clay	OSRW
Low Gap Branch of Elk Creek	Mouth to Headwaters	37.15340, -82.98357/ Headwaters	Letcher	OSRW
Lower Buffalo Creek of South Fork Kentucky River*	Basin Upstream of Mouth	37.53161, -83.68702/ Upstream Basin Extent	Lee, Owsley	OSRW
Lower Devil Creek of North Fork Kentucky River	Mouth to Middle Fork Lower Devil Creek	37.64419, -83.60972/ 37.68891, -83.60403	Lee, Wolfe	OSRW
Lower Howard Creek of Kentucky River	Mouth to West Fork Lower Howard Creek	37.91807, -84.27256/ 37.93369, -84.26952	Clark	OSRW
Lulbegrud Creek of Red River	Mouth to Falls Branch	37.83781, -84.00193/ 37.88288, -83.99603	Clark, Powell	OSRW
Middle Fork Kentucky River of North Fork Kentucky River	Hurts Creek to Greasy Creek	37.15444, -83.37052/ 37.07658, -83.39234	Leslie	OSRW
Middle Fork Kentucky River of North Fork Kentucky River	Mouth to Upper Twin Creek	37.58669, -83.67003/ 37.54597, -83.56307	Lee, Breathitt	OSRW
Middle Fork Quicksand Creek of Quicksand Creek*	Basin Upstream of Mouth	37.49826, -83.09294/ Upstream Basin Extent	Knott	OSRW
Middle Fork Red River of Kentucky River	0.7 River Miles Downstream of Sinking Fork to Headwaters	37.75452, -83.66588/ Headwaters	Wolfe	CAH
Middle Fork Red River of Red River	South Fork Red River to Natural Bridge State Park Lake	37.82360, -83.75245/ 37.77769, -83.67745	Powell	CAH, OSRW
Mike Branch of Laurel Fork*	Mouth to Headwaters	37.33908, -83.56338/ Headwaters	Owsley	OSRW
Mill Creek Lake of Mill Creek	Entire Reservoir	37.76750, -83.67341/ Upstream Lake Extent	Wolfe, Powell	WAH, CAH
Mill Creek of Kentucky River	0.05 River Miles Upstream of PS-1306 Perry Park Road to Headwaters	38.54565, -84.99933/ Headwaters	Owen	OSRW
Millseat Branch of Clemons Fork*	Mouth to Headwaters	37.47440, -83.14367/ Headwaters	Breathitt	OSRW
Muddy Creek of Kentucky River	0.1 River Mile Upstream of KY-52 Irvine Road to Viny Fork	37.74039, -84.15691/ 37.70998, -84.18205	Madison	OSRW
Musselman Creek of Eagle Creek	Mouth to Headwaters	38.56845, -84.67732/ Headwaters	Grant	OSRW
Parched Corn Creek of Red River	Mouth to Headwaters	37.81819, -83.59009/ Headwaters	Wolfe	CAH
Red Bird River of South Fork Kentucky River	Mouth to Big Creek	37.26973, -83.64341/ 37.16648, -83.58233	Clay	OSRW
Red River of Kentucky River	Schoolhouse Branch to KY-746	37.84422, -83.67583/ 37.79871, -83.48947	Menifee, Powell, Wolfe	OSRW
Right Fork Buffalo Creek of Buffalo Creek*	Mouth to Headwaters	37.35163, -83.63575/ Headwaters	Owsley	OSRW
Right Fork Elisha Creek of Elisha Creek*	Mouth to Headwaters	37.08165, -83.51802/ Headwaters	Leslie	OSRW
Roaring Fork of Lewis Fork	Mouth to Headwaters	37.46327, -83.17081/ Headwaters	Breathitt	OSRW
Rock Lick Creek of South Fork Station Camp Creek	Mouth to Headwaters	37.53951, -84.01077/ Headwaters	Jackson	OSRW
Rockbridge Fork of Swift Camp Creek*	Basin Upstream of Mouth	37.76941, -83.56135/ Upstream Basin Extent	Wolfe	OSRW
Sand Ripple Creek of Kentucky River	Kentucky River Backwaters to Headwaters	38.37772, -84.89991/ Headwaters	Franklin, Henry	OSRW
Severn Creek of Kentucky River	Kentucky River Backwaters to North Fork Severn Creek	38.46397, -84.91060/ 38.46646, -84.89242	Owen	OSRW
Shaker Creek of Kentucky River	Kentucky River Backwaters to Shawnee Run	37.84717, -84.76738/ 37.84378, -84.76810	Mercer	OSRW
Shelly Rock Fork of Millseat Branch*	Mouth to Headwaters	37.48162, -83.15038/ Headwaters	Breathitt	OSRW
Silver Creek of Kentucky River*	Basin Upstream of Mouth	37.57276, -83.71234/ Upstream Basin Extent	Lee	OSRW
Sixmile Creek of Kentucky River	Little Sixmile Creek to Cedarmore Lake Dam	38.38448, -85.00261/ 38.32816, -85.01600	Henry, Shelby	OSRW
South Fork Kentucky River of Kentucky River	Mouth to Sexton Creek	37.56996, -83.71085/ 37.35900, -83.68198	Lee, Owsley	OSRW

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South Fork Red River of Middle Fork Kentucky River	Mouth to Sand Lick Fork	37.82360, -83.75245/ 37.78067, -83.73355	Powell	OSRW
South Fork Station Camp Creek of Station Camp Creek	Mouth to Rock Lick Creek	37.53286, -83.90931/ 37.55370, -83.94222	Jackson	OSRW
Spring Creek of Red Bird River*	Basin Upstream of Mouth	37.06192, -83.54144/ Upstream Basin Extent	Clay	OSRW
Spring Fork Quicksand Creek of Quicksand Creek*	Basin from 0.3 River Miles Upstream of Laurel Fork to Headwaters	37.51567, -82.98484/ Headwaters	Breathitt	OSRW
Spruce Branch of Red Bird Creek	Mouth to Headwaters	36.95696, -83.53108/ Headwaters	Clay	OSRW
Squabble Creek of Middle Fork Kentucky River*	Basin Upstream of Mouth	37.34604, -83.46895/ Upstream Basin Extent	Perry	OSRW
Station Camp Creek of Kentucky River	Land Use Change (1.25 River Miles Upstream of Sparks Branch) to South Fork Station Camp Creek	37.58261, -83.92802/ 37.53287, -83.90929	Estill	OSRW
Steeles Run of South Elkhorn Creek	Mouth to Unnamed Tributary (0.1 River Miles Upstream of PV-3002 Miss Alleged Drive)	38.11099, -84.62871/ 38.06735, -84.59554	Fayette, Woodford	OSRW
Steer Fork of War Fork	Mouth to Headwaters	37.45466, -83.92700/ Headwaters	Jackson	CAH, OSRW
Sturgeon Creek of Kentucky River	Duck Fork to Little Sturgeon Creek	37.53576, -83.78177/ 37.47850, -83.81356	Lee, Owsley	OSRW
Sugar Creek of Red Bird River*	Basin Upstream of Mouth	37.11807, -83.55952/ Upstream Basin Extent	Clay, Leslie	OSRW
Sulphur Lick Creek of Elkhorn Creek	Mouth to Headwaters	38.28765, -84.80211/ Headwaters	Franklin	OSRW
Swift Camp Creek of Red River	Mouth to Headwaters	37.82010, -83.57341/ Headwaters	Wolfe	CAH
Travis Creek of Sturgeon Creek*	Basin Upstream of Mouth	37.43601, -83.84609/ Upstream Basin Extent	Jackson	OSRW
Unnamed Tributary of Cawood Branch of Beech Fork	Mouth to Headwaters	36.93676, -83.37278/ Headwaters	Leslie	OSRW
Unnamed Tributary of Cedar Creek of Kentucky River	Mouth to Headwaters	38.37196, -84.79664/ Headwaters	Owen	OSRW
Unnamed Tributary of Glenss Creek of Kentucky River	Mouth to Headwaters	38.14826, -84.83651/ Headwaters	Woodford	OSRW
Unnamed Tributary of Jacks Creek of Kentucky River	Mouth to Headwaters	37.85200, -84.36529/ Headwaters	Madison	OSRW
Unnamed Tributary of Kentucky River of Ohio River	Mouth to Land Use Change	38.21913, -84.87712/ 38.23174, -84.86242	Franklin	OSRW
Unnamed Tributary of Line Fork of North Fork Kentucky River	Mouth to Headwaters	37.07769, -82.99241/ Headwaters	Letcher	OSRW
Upper Bear Creek of Red Bird River*	Basin Upstream of Mouth	37.02103, -83.53428/ Upstream Basin Extent	Clay	OSRW
Walker Creek of North Fork Kentucky River*	Basin Upstream of Mouth	37.60700, -83.64678/ Upstream Basin Extent	Lee, Wolfe	OSRW
War Fork of Station Camp Creek	Basin Including all Tributaries from 0.3 River Miles Downstream of Tarpin Lick Branch to Steer Fork	37.51193, -83.91470/ 37.45467, -83.92699	Jackson	CAH, OSRW
War Fork of Station Camp Creek	Basin Including all Tributaries from Mouth to 0.3 River Miles Downstream of Tarpin Lick Branch	37.53264, -83.90929/ 37.51193, -83.91470	Jackson	OSRW
War Fork of Station Camp Creek	Steer Fork to Headwaters	37.45467, -83.92699/ Headwaters	Jackson	CAH, OSRW
Watches Fork of Laurel Fork*	Mouth to Headwaters	37.34456, -83.56203/ Headwaters	Owsley	OSRW
Wild Dog Creek of Sturgeon Creek*	Basin Upstream of Mouth	37.48729, -83.82329/ Upstream Basin Extent	Jackson, Owsley	OSRW
Wolfpen Creek of Red River	Mouth to Headwaters	37.82549, -83.63094/ Headwaters	Menifee	OSRW
LICKING RIVER BASIN				
Blackwater Creek of Licking River	Eaton Creek to Greasy Fork	37.94073, -83.41328/ 37.87922, -83.43981	Morgan	OSRW
Blanket Creek of Licking River	Mouth to Unnamed Tributary	38.65560, -84.28532/ 38.64266, -84.29929	Pendleton	OSRW
Botts Fork of Brushy Fork	Mouth to Land Use Change	37.94933, -83.50601/ 37.93022, -83.53288	Menifee	OSRW
Bowman Creek of Licking River	Mouth to Unnamed Tributary at CR-1135 Martin Road	38.89246, -84.44237/ 38.89404, -84.50217	Kenton	OSRW
Brushy Fork of Beaver Creek	Cave Run Lake Backwaters to Headwaters	37.98439, -83.50523/ Headwaters	Menifee	OSRW
Brushy Fork of South Fork Grassy Creek	Mouth to Headwaters	38.70106, -84.44697/ Headwaters	Pendleton	OSRW

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<u>Bucket Branch of North Fork Licking River</u>	<u>Mouth to Headwaters</u>	<u>38.05169, -83.31594/ Headwaters</u>	<u>Morgan</u>	<u>OSRW</u>
<u>Cedar Creek of Licking River</u>	<u>Mouth to North Branch Cedar Creek</u>	<u>38.47637, -84.12301/ 38.49051, -84.10732</u>	<u>Robertson</u>	<u>OSRW</u>
<u>Craney Creek of North Fork Licking River</u>	<u>Mouth to Headwaters</u>	<u>38.06493, -83.35154/ Headwaters</u>	<u>Morgan, Rowan</u>	<u>CAH, OSRW</u>
<u>Devils Fork of North Fork Licking River</u>	<u>Mouth to Headwaters</u>	<u>38.04413, -83.30378/ Headwaters</u>	<u>Elliott, Morgan</u>	<u>OSRW</u>
<u>Flour Creek of Licking River</u>	<u>Mouth to Unnamed Tributary (0.05 River Miles Upstream of CR-1021 Vater Road)</u>	<u>38.78982, -84.34388/ 38.80192, -84.32458</u>	<u>Pendleton</u>	<u>OSRW</u>
<u>Grovers Creek of Kincaid Lake Licking River of Ohio River</u>	<u>Kincaid Lake Backwaters to Unnamed Tributary</u>	<u>38.70547, -84.25273/ 38.70795, -84.21217</u>	<u>Bracken, Pendleton</u>	<u>OSRW</u>
	<u>US-60 to Cave Run Lake Dam</u>	<u>38.13995, -83.55773/ 38.11777, -83.53434</u>	<u>Bath, Rowan</u>	<u>CAH</u>
<u>Licking River of Ohio River*</u>	<u>1 River Mile Downstream of Fox Creek to 0.75 River Miles Downstream of Haven Branch</u>	<u>38.25141, -83.69320/ 38.24770, -83.69193</u>	<u>Bath, Fleming</u>	<u>OSRW</u>
<u>Licking River of Ohio River*</u>	<u>End of KY-211 Auora Road to 0.6 River Miles Downstream of Salt Lick Creek</u>	<u>38.17659, -83.61805/ 38.13064, -83.60581</u>	<u>Bath, Rowan</u>	<u>OSRW</u>
<u>Licking River of Ohio River*</u>	<u>KY-536 Creektrace Road to 1.3 River Miles Upstream of Fishtrap Creek</u>	<u>38.92019, -84.44823/ 38.35982, -83.88405</u>	<u>Bracken, Campbell, Fleming, Harrison, Kenton, Nicholas, Pendleton, Robertson</u>	<u>OSRW</u>
<u>Licking River of Ohio River*</u>	<u>Unnamed Tributary to 0.1 River Miles Upstream of Turkey Run</u>	<u>38.27224, -83.73700/ 38.26861, -83.71665</u>	<u>Bath, Fleming</u>	<u>OSRW</u>
<u>Minor Creek of Craney Creek</u>	<u>Mouth to River Mile 2.9</u>	<u>38.08552, -83.32772/ 38.10070, -83.29392</u>	<u>Morgan, Rowan</u>	<u>CAH</u>
<u>North Fork Licking River of Cave Run Lake</u>	<u>Cave Run Lake Backwaters (0.25 River Miles Downstream of Lick Branch) to Devils Fork</u>	<u>38.06587, -83.36149/ 38.04413, -83.30378</u>	<u>Morgan, Rowan</u>	<u>OSRW</u>
<u>Sawyers Fork of Cruises Creek</u>	<u>Mouth to Headwaters</u>	<u>38.84833, -84.54035/ Headwaters</u>	<u>Kenton</u>	<u>OSRW</u>
<u>Slabcamp Creek of Craney Creek</u>	<u>Mouth to Headwaters</u>	<u>38.09987, -83.32893/ Headwaters</u>	<u>Rowan</u>	<u>CAH, OSRW</u>
<u>Slate Creek of Licking River</u>	<u>Mouth to Mill Creek</u>	<u>38.21841, -83.69863/ 38.11220, -83.74665</u>	<u>Bath</u>	<u>OSRW</u>
<u>South Fork Grassy Creek of Middle Fork Grassy Creek</u>	<u>Mouth to Greasy Creek</u>	<u>38.79193, -84.42895/ 38.68302, -84.48375</u>	<u>Pendleton</u>	<u>OSRW</u>
<u>Unnamed Tributary of Shannon Creek of North Fork Licking River</u>	<u>Mouth to Headwaters</u>	<u>38.55443, -83.93335/ Headwaters</u>	<u>Mason</u>	<u>OSRW</u>
<u>Welch Fork of Brushy Fork</u>	<u>Mouth to Unnamed Tributary (Downstream of CR-1160 Fox Chase Road)</u>	<u>37.94405, -83.50360/ 37.93209, -83.51361</u>	<u>Menifee</u>	<u>OSRW</u>
<u>West Creek of Licking River</u>	<u>Mouth to Headwaters</u>	<u>38.53643, -84.20046/ Headwaters</u>	<u>Harrison, Robertson</u>	<u>OSRW</u>
LITTLE SANDY RIVER BASIN				
<u>Arabs Fork of Big Sinking Creek</u>	<u>Mouth to Headwaters</u>	<u>38.22358, -83.15918/ Headwaters</u>	<u>Elliott</u>	<u>OSRW</u>
<u>Big Caney Creek of Grayson Lake (Little Sandy River)</u>	<u>Grayson Lake Backwaters to Headwaters</u>	<u>38.15880, -83.09431/ Headwaters</u>	<u>Elliott, Rowan</u>	<u>CAH, OSRW</u>
<u>Big Sinking Creek of Little Sandy River</u>	<u>KY-986 to Arabs Fork</u>	<u>38.24972, -83.11729/ 38.22360, -83.15915</u>	<u>Carter, Elliott</u>	<u>OSRW</u>
<u>Greenbo Lake</u>	<u>Entire Reservoir</u>	<u>38.49152, -82.86667/ Upstream Lake Extent</u>	<u>Greenup</u>	<u>WAH, CAH</u>
<u>Laurel Creek of Little Sandy River</u>	<u>CR-1352 Stegall Cold Spring Road to Headwaters</u>	<u>38.12912, -83.18963/ Headwaters</u>	<u>Elliott, Rowan</u>	<u>CAH, OSRW</u>
<u>Laurel Creek of Little Sandy River</u>	<u>Mouth to CR-1352 Stegall Cold Spring Road</u>	<u>38.11806, -83.10726/ 38.12912, -83.18963</u>	<u>Elliott, Rowan</u>	<u>CAH</u>
<u>Meadow Branch of Little Fork Little Sandy River</u>	<u>Mouth to Headwaters</u>	<u>38.07711, -82.99544/ Headwaters</u>	<u>Elliott</u>	<u>OSRW</u>
<u>Middle Fork Little Sandy River of Little Sandy River</u>	<u>Mouth to Sheepskin Branch</u>	<u>38.12135, -83.09262/ 38.09139, -83.09075</u>	<u>Elliott</u>	<u>OSRW</u>
<u>Nichols Fork of Little Fork Little Sandy River</u>	<u>Green Branch to Headwaters</u>	<u>38.08073, -83.00200/ Headwaters</u>	<u>Elliott</u>	<u>OSRW</u>
LOWER CUMBERLAND RIVER BASIN				
<u>Casey Creek of Little River</u>	<u>Mouth to Headwaters</u>	<u>36.77793, -87.72181/ Headwaters</u>	<u>Triqq</u>	<u>CAH</u>
<u>Crooked Creek of Energy Lake</u>	<u>Energy Lake Backwaters to Headwaters</u>	<u>36.85193, -88.03311/ Headwaters</u>	<u>Triqq</u>	<u>OSRW</u>

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Cumberland River of Ohio River*	0.2 River Miles Downstream of Hickory Creek to 0.6 River Miles Upstream of Sugar Creek	37.18554, -88.30832/ 37.18578, -88.26806	Livingston	OSRW
Donaldson Creek of Lake Barkley	Lake Barkley Backwaters to Unnamed Tributary	36.74924, -87.91006/ 36.74970, -87.86754	Trigg	OSRW
Elk Fork of Red River	Tennessee State Line to Dry Branch	36.64264, -87.08560/ 36.74638, -87.13221	Todd	OSRW
Skinframe Creek of Livingston Creek	Mouth to Headwaters	37.15463, -88.12204/ Headwaters	Lyon	CAH
Sugar Creek of Cumberland River	Lick Creek to Left Descending Unnamed Tributary (Upstream of KY-2232 Sugar Creek Road)	37.17547, -88.26578/ 37.13054, -88.28340	Livingston	OSRW
Sulphur Spring Creek of Red River	Mouth to Headwaters	36.69054, -86.74797/ Headwaters	Simpson	CAH
West Fork Red River of Red River	Montgomery Creek to 0.5 River Miles Downstream of US-41 Dixie Beeline Highway	36.70964, -87.32988/ 36.74547, -87.30999	Christian	CAH
West Fork Red River of Red River	Tennessee State Line to Montgomery Creek	36.64154, -87.35589/ 36.70964, -87.32988	Christian	CAH, OSRW
Whippoorwill Creek of Red River*	Mouth to Headwaters	36.66568, -86.96368/ Headwaters	Logan, Todd	OSRW
MISSISSIPPI RIVER BASIN				
Bayou de Chien of Obion Creek*	Midway Between KY-239 and US-51 Bridges to Headwaters	36.62284, -88.99961/ Headwaters	Graves, Hickman	OSRW
Cane Creek of Bayou de Chien*	Basin Upstream of Mouth	36.62393, -88.98208/ Upstream Basin Extent	Fulton, Hickman	OSRW
Jackson Creek of Bayou de Chien*	Basin Upstream of Mouth	36.58204, -88.80298/ Upstream Basin Extent	Graves	OSRW
Mississippi River of Gulf of Mexico*	Mississippi River Miles 930 to 935	36.67834, -89.15372/ 36.74116, -89.12826	Hickman	OSRW
Mississippi River of Gulf of Mexico*	Mississippi River Miles 945 to 947	36.87387, -89.12754/ 36.90093, -89.11782	Carlisle	OSRW
Murphy Pond	Entire Pond and Preserve Area	Not Applicable	Hickman	OSRW
Obion Creek of Mississippi River	Hurricane Creek to Little Creek	36.75483, -89.01154/ 36.76673, -88.91258	Carlisle, Hickman	OSRW
Reelfoot Lake	Surface Waters Within the National Wildlife Refuge Proclamation Boundary in Kentucky	Not Applicable	Fulton	OSRW
Sand Creek of Bayou de Chien*	Basin Upstream of Mouth	36.61179, -88.87892/ Upstream Basin Extent	Hickman	OSRW
South Fork Bayou de Chien of Bayou de Chien*	Basin Upstream of Mouth	36.58094, -88.80311/ Upstream Basin Extent	Graves	OSRW
Swan Pond	Entire Lake	Not Applicable	Ballard	OSRW
Terrapin Creek of North Fork Obion River	Tennessee State Line to East and West Forks Terrapin Creek	36.50113, -88.49244/ 36.55040, -88.52493	Graves	OSRW
OHIO RIVER BASIN				
Ashbys Fork of Woolper Creek	Mouth to KY-20 Petersburg Road	39.03846, -84.81574/ 39.07729, -84.79534	Boone	OSRW
Blue Fork of Sinking Creek	Mouth to Headwaters	37.76832, -86.26254/ Headwaters	Breckinridge, Hardin	CAH
Crooked Creek of Ohio River	Rush Creek to Marion City Lake Dam	37.35915, -88.06775/ 37.31055, -88.09185	Crittenden	OSRW
Doe Run Creek of Doe Valley Lake	KY-1638 Old Mill Road to Headwaters	37.95830, -86.12196/ Headwaters	Meade	CAH
Double Lick Creek of Woolper Creek	Mouth to Headwaters	39.03416, -84.78650/ Headwaters	Boone	OSRW
Garrison Creek of Ohio River	Mouth to Headwaters	39.10565, -84.80643/ Headwaters	Boone	OSRW
Kinniconick Creek of Ohio River	McDowell Creek to Headwaters	38.57479, -83.18862/ Headwaters	Lewis	OSRW
Little South Fork of Big South Fork	Land Use Change to Headwaters	38.82216, -84.74115/ Headwaters	Boone	OSRW
Metropolis Lake of Ohio River	Entire Lake	37.15096, -88.77076/ 37.14475, -88.76100	McCracken	OSRW
Middle Fork Massac Creek of Massac Creek	CR-1207 Hines Road to Pond	37.01626, -88.74480/ 36.97538, -88.72982	McCracken	OSRW
Ohio River of Mississippi River*	Ohio River Mile 343.3 to 341.3	38.67798, -82.87151/ 38.65117, -82.85916	Greenup	OSRW
Ohio River of Mississippi River*	Ohio River Mile 438.0 to 436.25	38.80040, -84.20307/ 38.79490, -84.17168	Bracken	OSRW

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Ohio River of Mississippi River*	Ohio River Mile 461.7 to 459.6	39.05467, -84.42783/ 39.04288, -84.39398	Campbell	OSRW
Ohio River of Mississippi River*	Ohio River Mile 562.0 to 559.7	38.71397, -85.44516/ 38.73441, -85.41449	Trimble	OSRW
Ohio River of Mississippi River*	Ohio River Mile 727.1 to 725.2	37.94561, -86.77691/ 37.92197, -86.75912	Hancock	OSRW
Ohio River of Mississippi River*	Ohio River Mile 736.0 to 732.9	37.96209, -86.88316/ 37.99066, -86.84099	Hancock	OSRW
Ohio River of Mississippi River*	Ohio River Mile 760.7 to 758.7	37.82156, -87.14861/ 37.79466, -87.14007	Daviess	OSRW
Ohio River of Mississippi River*	Ohio River Mile 786.6 to 784.7	37.90503, -87.54663/ 37.90370, -87.51220	Henderson	OSRW
Ohio River of Mississippi River*	Ohio River Mile 850.0 to 848.0	37.77224, -88.03829/ 37.79841, -88.02688	Union	OSRW
Ohio River of Mississippi River*	Ohio River Mile 861.0 to 852.0	37.65719, -88.15864/ 37.74592, -88.05353	Union	OSRW
Ohio River of Mississippi River*	Ohio River Mile 867.0 to 865.0	37.57648, -88.12541/ 37.60261, -88.13862	Union	OSRW
Ohio River of Mississippi River*	Ohio River Mile 926.0 to 918.6	37.07565, -88.45613/ 37.16628, -88.42400	Livingston	OSRW
Ohio River of Mississippi River*	Ohio River Mile 930.0 to 927.0	37.06268, -88.52132/ 37.06746, -88.47053	Livingston	OSRW
Ohio River of Mississippi River*	Ohio River Mile 943.4 to 933.0	37.14058, -88.73044/ 37.07656, -88.57154	McCracken	OSRW
Ohio River of Mississippi River*	Ohio River Mile 949.5 to 946.8	37.19063, -88.81825/ 37.16742, -88.78193	McCracken	OSRW
Ohio River of Mississippi River*	Ohio River Mile 974.1 to 952.7	37.07197, -89.16240/ 37.20664, -88.87221	Ballard, McCracken	OSRW
Otter Creek of Ohio River	Mouth to 1.8 River Miles Upstream of US-60 Owensboro Highway	37.96401, -86.03019/ 37.88584, -86.01741	Meade	CAH
Second Creek of Ohio River	Ohio River Backwaters to Headwaters	39.08518, -84.84280/ Headwaters	Boone	OSRW
Sinking Creek of Ohio River	KY-259 to Blue and Stony Fork	37.89513, -86.48439/ 37.76832, -86.26254	Breckinridge	CAH
Stony Fork of Sinking Creek	Mouth to Headwaters	37.76832, -86.26254/ Headwaters	Breckinridge	CAH
Unnamed Tributary of Big Sugar Creek of Ohio River	I-71 to Headwaters	38.74961, -84.81112/ Headwaters	Gallatin	OSRW
Unnamed Tributary of Corn Creek of Ohio River	Mouth to Headwaters	38.60284, -85.42320/ Headwaters	Trimble	OSRW
Unnamed Tributary of Massac Creek of Ohio River	Mouth to Headwaters	36.99350, -88.69103/ Headwaters	McCracken	OSRW
West Fork Massac Creek of Massac Creek	KY-724 Woodville Road to Little Massac Creek	37.08238, -88.77790/ 37.06021, -88.79830	McCracken	OSRW
Yellowbank Creek of Ohio River	KY-259 to Headwaters	37.98102, -86.50810/ Headwaters	Breckinridge	OSRW
SALT RIVER BASIN				
Brashears Creek of Salt River	Guist Creek to Bullskin and Clear Creeks	38.09923, -85.28643/ 38.16191, -85.28012	Shelby, Spencer	OSRW
Cedar Creek of Salt River	Mouth to Greens Branch	38.00214, -85.66327/ 37.98224, -85.60071	Bullitt	OSRW
Chaplin River of Beech Fork	Thompson Creek to Cornishville, KY	37.85567, -85.03830/ 37.80423, -84.98705	Mercer, Washington	OSRW
Doctors Fork of Chaplin River	Mouth to Begley Branch	37.67567, -84.96085/ 37.64612, -84.99949	Boyle	OSRW
Guist Creek of Brashears Creek	Mouth to Jephtha Creek	38.09920, -85.28615/ 38.13244, -85.19651	Spencer	OSRW
Harts Run of Wilson Creek	Mouth to Headwaters	37.86326, -85.61160/ Headwaters	Bullitt	OSRW
Indian Creek of Thompson Creek	Mouth to Unnamed Tributary	37.85118, -84.97889/ 37.87350, -84.94786	Mercer	OSRW
Lick Creek of Long Lick Creek	Mouth to 0.1 River Miles Downstream of Dam	37.81851, -85.21553/ 37.82616, -85.16402	Washington	OSRW
Otter Creek of Rolling Fork	Land Use Change (0.04 River Miles Downstream of West Fork Otter Creek) to East and Middle Fork Otter Creek	37.50830, -85.58171/ 37.49520, -85.57644	Larue	OSRW
Overalls Creek of Wilson Creek	Mouth to West Fork Overalls Creek	37.87053, -85.60352/ 37.88749, -85.60604	Bullitt	OSRW
Plum Run of Glens Creek	Mouth to Headwaters	37.85773, -85.12186/ Headwaters	Washington	OSRW
Rolling Fork of Salt River*	0.8 River Mile Upstream of KY-84 Stiles Road/Howardstown Road to 0.5 River Mile Upstream of Otter Creek	37.56323, -85.60776/ 37.52819, -85.57651	Larue, Nelson	OSRW
Salt Lick Creek of Rolling Fork	Mouth to Headwaters	37.55415, -85.52125/ Headwaters	Larue, Marion	OSRW
Sulphur Creek of Chaplin River	Mouth to Cheese Lick and Brush Creek	37.88144, -85.09987/ 37.88844, -85.02061	Anderson, Mercer, Washington	OSRW
West Fork Otter Creek of Otter Creek	Mouth to Headwaters	37.50770, -85.58158/ Headwaters	Larue	OSRW
Wilson Creek of Rolling Fork	Mouth to Headwaters	37.81170, -85.73756/ Headwaters	Bullitt, Nelson	OSRW
TENNESSEE RIVER BASIN				
Blood River of Kentucky Lake	McCullough Fork to Tennessee State Line	36.52538, -88.17089/ 36.49911, -88.17594	Calloway	OSRW
Clarks River of Tennessee River	Persimmon Slough Creek to Middle Fork Creek	36.91438, -88.42009/ 36.90303, -88.40517	Marshall	OSRW

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Clarks River of Tennessee River*	Mouth to Horse Branch	37.04760, -88.54247/ 37.02132, -88.55686	McCracken	OSRW
Grindstone Creek of Kentucky Lake	Kentucky Lake Backwaters to Headwaters	36.58230, -88.11886/ Headwaters	Calloway	OSRW
Panther Creek of Kentucky Lake (Blood River)	Kentucky Lake Backwaters (0.05 River Miles Downstream From End of CR-1137 Deerberry Lane) to Headwaters	36.56275, -88.15697/ Headwaters	Calloway	OSRW
Soldier Creek of West Fork Clarks River	Mouth to North Fork and South Fork Soldier Creek	36.79642, -88.47535/ 36.78881, -88.39095	Marshall	OSRW
Sugar Creek of Kentucky Lake (Blood River)	Kentucky Lake Backwaters (0.05 River Miles Upstream of KY-732 Irvine Cobb Road) to CR-1014 Old Newburg Road	36.65222, -88.15062/ 36.65780, -88.15776	Calloway	OSRW
Sugar Creek of West Fork Clarks River	Mouth to Unnamed Reservoir	36.90001, -88.54781/ 36.87609, -88.49180	Graves	OSRW
Tennessee River of Ohio River*	Island Creek to Kentucky Lake Dam	37.07328, -88.58419/ 37.01558, -88.26650	Livingston, Marshall, McCracken	OSRW
Trace Creek of West Fork of Clarks River	Mouth to Neely Branch	36.84213, -88.53168/ 36.80975, -88.56009	Graves	OSRW
Unnamed Tributary of Unnamed Tributary of Panther Creek of West Fork Clarks River	Mouth to Headwaters	36.79894, -88.53176/ Headwaters	Graves	OSRW
West Fork Clarks River of Clarks River	Soldier Creek to Duncan Creek	36.79646, -88.47554/ 36.76359, -88.45642	Marshall	OSRW
Wildcat Creek of Blood River	CR-1131 Wright Road to Headwaters	36.61320, -88.18308/ Headwaters	Calloway	OSRW
TRADEWATER RIVER BASIN				
East Fork Flynn Fork of Flynn Fork	US-62 Dawson Road to Headwaters	37.14805, -87.76320/ Headwaters	Caldwell	OSRW
Piney Creek of Lake Beshear	Lake Beshear Backwaters to Headwaters	37.10253, -87.70751/ Headwaters	Caldwell, Christian	OSRW
Sandlick Creek of Tradewater River	Camp Creek to Headwaters	37.02761, -87.59583/ Headwaters	Christian	OSRW
Tradewater River of Ohio River	Drippings Spring Branch to Buntin Lake Dam	37.03680, -87.52727/ 36.95621, -87.48714	Christian	OSRW
Unnamed Tributary of Piney Creek of Lake Beshear	Mouth to Headwaters	37.08000, -87.71066/ Headwaters	Caldwell	OSRW
Unnamed Tributary of Sandlick Creek of Tradewater River	Mouth to Headwaters	37.00769, -87.59282/ Headwaters	Christian	OSRW
UPPER CUMBERLAND RIVER BASIN				
Acorn Fork of Stinking Creek*	Basin Upstream of River Mile 1.0	36.93545, -83.63816/ Upstream Basin Extent	Knox	OSRW
Adams Branch of Pigeon Roost Creek*	Basin Upstream of Mouth	36.61499, -84.13273/ Upstream Basin Extent	Whitley	OSRW
Archers Creek of Cumberland River*	Basin Upstream of Mouth	36.75944, -84.28923/ Upstream Basin Extent	Whitley	OSRW
Bad Branch of Poor Fork Cumberland River*	Basin Upstream of Mouth	37.06615, -82.77128/ Upstream Basin Extent	Letcher	CAH, OSRW
Bain Branch of Hubbs Creek*	Basin Upstream of Mouth	36.77756, -83.88968/ Upstream Basin Extent	Knox	OSRW
Bark Camp Creek of Cumberland River	Basin Upstream of Cumberland River Backwaters	36.90856, -84.30678/ Upstream Basin Extent	Whitley	CAH, OSRW
Barren Fork of Indian Creek*	Basin Upstream of Mouth	36.78654, -84.41626/ Upstream Basin Extent	McCreary	OSRW
Beaver Creek of Cumberland River*	Basin Upstream of Mouth	36.94623, -84.41643/ Upstream Basin Extent	McCreary	CAH, OSRW
Bee Lick Creek of Brushy Creek	Mouth to Warren Branch	37.26772, -84.43760/ 37.30223, -84.49337	Pulaski	OSRW
Bens Fork of Little Clear Creek*	Basin Upstream of Mouth	36.67945, -83.77275/ Upstream Basin Extent	Bell	OSRW
Beulah Lake	Entire Reservoir	37.37680, -83.91197/ Upstream Lake Extent	Jackson	WAH, CAH
Big Branch of Marsh Creek*	Basin Upstream of River Mile 0.8	36.69604, -84.35589/ Upstream Basin Extent	McCreary	OSRW
Big Lick Branch of Lake Cumberland (Cumberland River)*	Basin Upstream of Lake Cumberland Backwaters	36.96682, -84.37200/ Upstream Basin Extent	Pulaski	OSRW
Big South Fork Cumberland River of Lake Cumberland (Cumberland River)*	Wild River Boundary at Blue Heron to Tennessee State Line	36.66769, -84.54570/ 36.59880, -84.60518	McCreary	OSRW

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<u>Blacksnake Branch of Brownies Creek*</u>	<u>Basin Upstream of Mouth</u>	<u>36.70310, -83.51607/ Upstream Basin Extent</u>	<u>Bell</u>	<u>OSRW</u>
<u>Breedens Creek of Clover Fork Cumberland River*</u>	<u>Basin Upstream of Mouth</u>	<u>36.88389, -83.01497/ Upstream Basin Extent</u>	<u>Harlan</u>	<u>OSRW</u>
<u>Brices Creek of Road Fork Creek*</u>	<u>Basin Upstream of Mouth</u>	<u>36.88992, -83.73561/ Upstream Basin Extent</u>	<u>Knox</u>	<u>OSRW</u>
<u>Brownies Creek of Cumberland River*</u>	<u>Basin Upstream of Blacksnake Branch</u>	<u>36.70309, -83.51605/ Upstream Basin Extent</u>	<u>Bell, Harlan</u>	<u>OSRW</u>
<u>Brush Creek of Roundstone Creek</u>	<u>Wolf Creek to Reemergence of Sinking Creek</u>	<u>37.38934, -84.26451/ 37.46557, -84.22675</u>	<u>Rockcastle</u>	<u>OSRW</u>
<u>Brushy Creek of Buck Creek</u>	<u>Mouth to Headwaters</u>	<u>37.21223, -84.46737/ Headwaters</u>	<u>Pulaski, Rockcastle</u>	<u>OSRW</u>
<u>Buck Creek of Clear Fork*</u>	<u>Basin Upstream of Mouth</u>	<u>36.64657, -84.10477/ Upstream Basin Extent</u>	<u>Whitley</u>	<u>OSRW</u>
<u>Buck Creek of Lake Cumberland (Cumberland River)*</u>	<u>Backwaters of Lake Cumberland to 0.8 River Miles Upstream of Hurricane Creek</u>	<u>37.04922, -84.42953/ 37.35997, -84.59522</u>	<u>Lincoln, Pulaski</u>	<u>OSRW</u>
<u>Bucks Branch of Jellico Creek*</u>	<u>Basin Upstream of Mouth</u>	<u>36.66358, -84.26444/ Upstream Basin Extent</u>	<u>McCreary, Whitley</u>	<u>OSRW</u>
<u>Buffalo Creek of Clear Fork*</u>	<u>Basin Upstream of Tennessee State Line</u>	<u>36.58833, -83.95070/ Upstream Basin Extent</u>	<u>Whitley</u>	<u>OSRW</u>
<u>Bunches Creek of Cumberland River*</u>	<u>Basin Upstream of Mouth</u>	<u>36.83271, -84.31786/ Upstream Basin Extent</u>	<u>Whitley</u>	<u>CAH, OSRW</u>
<u>Campbell Branch of Jellico Creek*</u>	<u>Basin Upstream of Mouth</u>	<u>36.64277, -84.24080/ Upstream Basin Extent</u>	<u>Whitley</u>	<u>OSRW</u>
<u>Cane Creek of Rockcastle River</u>	<u>Mouth to Dam/Pond in Headwaters</u>	<u>37.02646, -84.30837/ 37.05336, -84.17792</u>	<u>Laurel</u>	<u>OSRW</u>
<u>Caney Creek of Left Fork of Straight Creek*</u>	<u>Basin Upstream of Mouth</u>	<u>36.81124, -83.64638/ Upstream Basin Extent</u>	<u>Bell</u>	<u>OSRW</u>
<u>Cannon Creek Lake of Yellow Creek</u>	<u>Entire Reservoir</u>	<u>36.68471, -83.69184/ Upstream Lake Extent</u>	<u>Bell</u>	<u>WAH, CAH</u>
<u>Cannon Creek of Yellow Creek*</u>	<u>Basin Upstream of Cannon Creek Lake</u>	<u>36.67978, -83.72075/ Upstream Basin Extent</u>	<u>Bell</u>	<u>OSRW</u>
<u>Capuchin Creek of Jellico Creek*</u>	<u>Basin Upstream of Mouth to Tennessee State Line</u>	<u>36.60528, -84.23493/ 36.59205, -84.22764</u>	<u>McCreary, Whitley</u>	<u>OSRW</u>
<u>Clear Creek of Roundstone Creek</u>	<u>Scaffold Cane Branch to Davis Branch</u>	<u>37.44240, -84.27859/ 37.48595, -84.25532</u>	<u>Rockcastle</u>	<u>OSRW</u>
<u>Clifty Creek of Brushy Creek</u>	<u>Mouth to Rocky Branch</u>	<u>37.21642, -84.46933/ 37.24147, -84.48323</u>	<u>Pulaski</u>	<u>OSRW</u>
<u>Clover Bottom Creek of Horse Lick Creek</u>	<u>Mouth to River Mile 1.4</u>	<u>37.40908, -84.12219/ 37.41811, -84.10529</u>	<u>Jackson</u>	<u>CAH</u>
<u>Coqur Fork of Indian Creek*</u>	<u>Basin Upstream of Mouth</u>	<u>36.79972, -84.39768/ Upstream Basin Extent</u>	<u>McCreary</u>	<u>CAH, OSRW</u>
<u>Coles Branch of Road Fork Creek*</u>	<u>Basin Upstream of Mouth</u>	<u>36.93807, -83.74180/ Upstream Basin Extent</u>	<u>Knox</u>	<u>OSRW</u>
<u>Colliers Creek of Poor Fork Cumberland River*</u>	<u>Basin Upstream of Mouth</u>	<u>37.01476, -82.88105/ Upstream Basin Extent</u>	<u>Letcher</u>	<u>OSRW</u>
<u>Criscillis Branch of Jellico Creek*</u>	<u>Basin Upstream of Mouth</u>	<u>36.62993, -84.23245/ Upstream Basin Extent</u>	<u>McCreary, Whitley</u>	<u>OSRW</u>
<u>Cumberland River of Lake Cumberland</u>	<u>Kentucky Wild River Boundaries</u>	<u>36.87220, -84.32413/ 36.75173, -84.28413</u>	<u>McCreary, Whitley</u>	<u>OSRW</u>
<u>Cumberland River of Ohio River</u>	<u>Tennessee State Line to Wolf Creek Dam</u>	<u>36.61486, -85.50216/ 36.86870, -85.14743</u>	<u>Clinton, Cumberland, Monroe, Russell</u>	<u>CAH</u>
<u>Davis Branch of Little Yellow Creek*</u>	<u>Basin Upstream of Mouth</u>	<u>36.60574, -83.69090/ Upstream Basin Extent</u>	<u>Bell</u>	<u>OSRW</u>
<u>Dog Slaughter Creek of Cumberland River*</u>	<u>Basin Upstream of Mouth</u>	<u>36.85996, -84.31441/ Upstream Basin Extent</u>	<u>Whitley</u>	<u>CAH, OSRW</u>
<u>Dolen Branch of Rock Creek*</u>	<u>Basin Upstream of Mouth</u>	<u>36.66133, -84.66299/ Upstream Basin Extent</u>	<u>McCreary</u>	<u>OSRW</u>
<u>Eagle Creek of Cumberland River*</u>	<u>Basin Upstream of Mouth</u>	<u>36.84359, -84.34359/ Upstream Basin Extent</u>	<u>McCreary</u>	<u>OSRW</u>
<u>Elisha Branch of Laurel Creek*</u>	<u>Basin Upstream of Mouth</u>	<u>36.71662, -84.40795/ Upstream Basin Extent</u>	<u>McCreary</u>	<u>OSRW</u>
<u>Fish Trap Branch of Lake Cumberland*</u>	<u>Basin Upstream of Lake Cumberland Backwaters</u>	<u>36.94073, -84.37039/ Upstream Basin Extent</u>	<u>McCreary</u>	<u>OSRW</u>
<u>Four Mile Creek of Cumberland River*</u>	<u>Basin from 0.05 River Miles Downstream of Buffalo Branch</u>	<u>36.80768, -83.71526/ Upstream Basin Extent</u>	<u>Bell</u>	<u>OSRW</u>
<u>Fourmile Run of Yellow Creek Bypass*</u>	<u>Basin Upstream of Land Use Change (at River Mile 1.0)</u>	<u>36.64389, -83.72786/ Upstream Basin Extent</u>	<u>Bell</u>	<u>OSRW</u>
<u>Fugitt Creek of Clover Fork Cumberland River*</u>	<u>Basin Upstream of Mouth</u>	<u>36.91136, -83.08647/ Upstream Basin Extent</u>	<u>Harlan</u>	<u>CAH, OSRW</u>

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Hale Fork of Road Fork Creek*	Basin Upstream of Mouth	36.89875, -83.74720/ Upstream Basin Extent	Knox	OSRW
Hawk Creek of Rockcastle River	Basin Upstream of Mouth	37.17702, -84.27770/ Upstream Basin Extent	Laurel	CAH
Hinkle Branch of Road Fork Creek*	Basin Upstream of Mouth	36.92360, -83.74351/ Upstream Basin Extent	Knox	OSRW
Honeycutt Branch of Turkey Creek*	Basin Upstream of Mouth	36.87018, -83.79030/ Upstream Basin Extent	Knox	OSRW
Horse Lick Creek of Rockcastle River*	Mouth to Clover Bottom Creek	37.31994, -84.13808/ 37.40908, -84.12219	Jackson, Rockcastle	OSRW
Howard Branch of Left Fork Straight Creek*	Basin Upstream of Mouth	36.79492, -83.66440/ Upstream Basin Extent	Bell	OSRW
Howards Creek of Dale Hollow Lake	Dale Hollow Lake Backwaters to Headwaters	36.69404, -85.22579/ Headwaters	Clinton	OSRW
Hunting Shirt Branch of Richland Creek*	Basin Upstream of Mouth	36.98273, -83.88465/ Upstream Basin Extent	Knox	OSRW
Indian Creek of Cumberland River*	Basin Upstream of and Including Barren Fork	36.78655, -84.41622/ Upstream Basin Extent	McCreary	CAH, OSRW
Indian Creek of Cumberland River*	Kilburn Fork to Barren Fork	36.80492, -84.37957/ 36.78654, -84.41624	McCreary	OSRW
Jackie Branch of Bark Camp Creek	Mouth to Headwaters	36.90449, -84.27945/ Headwaters	Whitley	CAH, OSRW
Jellico Creek of Cumberland River*	Basin from Capuchin Creek to Tennessee State Line	36.60528, -84.23493/ 36.59171, -84.27089	McCreary	OSRW
Jenneys Branch of Laurel Creek*	Basin Upstream of Mouth	36.73481, -84.39945/ Upstream Basin Extent	McCreary	OSRW
Kelly Branch of Clover Fork Cumberland River*	Basin Upstream of Mouth	36.88349, -83.02086/ Upstream Basin Extent	Harlan	OSRW
Kennedy Creek of Little South Fork*	Mouth to River Mile 1.0	36.73904, -84.69372/ 36.74025, -84.69890	Wayne	OSRW
Kettle Creek of Cumberland River	Tennessee State Line to Wells Creek	36.61526, -85.49117/ 36.65104, -85.44504 36.80503, -84.37958/ Upstream Basin Extent	Monroe	OSRW
Kilburn Fork of Indian Creek*	Basin Upstream of Mouth	36.80492, -84.37957/ 36.78654, -84.41624	McCreary	OSRW
Laurel Creek of Marsh Creek*	Basin Upstream of Jenneys Branch to Laurel Creek Lake Dam	36.73481, -84.39944/ 36.69308, -84.44385	McCreary	OSRW
Laurel Creek of Marsh Creek*	Jenneys Branch to Laurel Creek Lake Dam	36.73481, -84.39944/ 36.69308, -84.44385	McCreary	CAH, OSRW
Laurel Fork of Clear Fork*	Basin Upstream of CR-1232 John Partin Road	36.64180, -83.92494/ Upstream Basin Extent	Bell	OSRW
Laurel Fork of Clear Fork*	Tennessee State Line to CR-1232 John Partin Road	36.58947, -83.98760/ 36.64180, -83.92494	Bell, Whitley	OSRW
Laurel Fork of Kilburn Fork*	Basin Upstream of Mouth	36.81514, -84.38294/ Upstream Basin Extent	McCreary	OSRW
Laurel Fork of Middle Fork Rockcastle River*	Mouth to Headwaters	37.36733, -84.04829/ Headwaters	Jackson	OSRW
Laurel River Lake of Laurel River	Entire Reservoir	36.96153, -84.26760/ Upstream Lake Extent	Laurel, Whitley	WAH, CAH
Laurel River of Lake Cumberland	0.2 River Miles Downstream of Fall Creek to Laurel River Lake Dam	36.95416, -84.28790/ 36.96166, -84.27035	Laurel, Whitley	CAH
Lick Fork of Yellow Creek Bypass*	Basin Upstream of Mouth	36.62865, -83.73387/ Upstream Basin Extent	Bell	OSRW
Little Poplar Creek of Cumberland River*	Basin Upstream of Hubbs Creek	36.77122, -83.92088/ Upstream Basin Extent	Knox	OSRW
Little South Fork of Cumberland River*	Backwaters of Lake Cumberland to Langham Branch	36.80583, -84.59556/ 36.64854, -84.78912	McCreary, Wayne	OSRW
Little White Oak Creek of White Oak Creek	Mouth to Headwaters	37.10204, -84.19978/ Headwaters	Laurel	CAH, OSRW
Long Branch of Left Fork of Straight Creek*	Basin Upstream of Mouth	36.82239, -83.64199/ Upstream Basin Extent	Bell	OSRW
Looney Creek of Poor Fork Cumberland River	Basin Upstream of and Including Long Rock Branch	36.96008, -82.89345/ Upstream Basin Extent	Harlan	CAH
Marsh Creek of Cumberland River*	Basin Upstream of Murphy Creek to Tennessee State Line	36.61826, -84.39374/ 36.59540, -84.40845	McCreary	OSRW
Marsh Creek of Cumberland River*	Mouth to Murphy Creek	36.77776, -84.34903/ 36.61826, -84.39374	McCreary	OSRW
Martins Fork of Cumberland River	Basin Upstream of Cumberland Gap National	36.68496, -83.44376/ Upstream Basin Extent	Bell	CAH

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	<u>Historical Park Boundary</u>			
<u>Martins Fork of Cumberland River</u>	<u>Eastern Boundary of Cumberland Gap National Historical Park to Headwaters</u>	<u>36.68496, -83.44376/ Headwaters</u>	<u>Bell, Harlan</u>	<u>CAH</u>
<u>Martins Fork of Cumberland River</u>	<u>Rough Branch to Eastern Boundary of Cumberland Gap National Historical Park</u>	<u>36.69766, -83.39220/ 36.68496, -83.44376</u>	<u>Harlan</u>	<u>CAH, OSRW</u>
<u>McFarland Creek of Cumberland River</u>	<u>Poore Branch to Tennessee State Line</u>	<u>36.63276, -85.50960/ 36.61585, -85.55184</u>	<u>Monroe</u>	<u>OSRW</u>
<u>McFarland Creek of Cumberland River</u>	<u>Tennessee State Line to Tennessee State Line</u>	<u>36.61628, -85.57728/ 36.61646, -85.58620</u>	<u>Monroe</u>	<u>OSRW</u>
<u>Meadow Branch of Poor Fork Cumberland River*</u>	<u>Mouth to Headwaters</u>	<u>37.06908, -82.76151/ Headwaters</u>	<u>Letcher</u>	<u>OSRW</u>
<u>Meadow Fork of Franks Creek*</u>	<u>Basin Upstream of Mouth</u>	<u>37.05288, -82.79381/ Upstream Basin Extent</u>	<u>Letcher</u>	<u>OSRW</u>
<u>Meshack Creek of Cumberland River</u>	<u>Mouth to Pitcock Branch</u>	<u>36.70211, -85.53507/ 36.73160, -85.54153</u>	<u>Monroe</u>	<u>OSRW</u>
<u>Middle Fork Rockcastle River of Rockcastle River*</u>	<u>Mouth to Indian Creek and Laurel Fork</u>	<u>37.33585, -84.11898/ 37.36739, -84.04838</u>	<u>Jackson</u>	<u>OSRW</u>
<u>Mill Branch of Stinking Creek*</u>	<u>Basin Upstream of Mouth</u>	<u>36.87342, -83.73238/ Upstream Basin Extent</u>	<u>Knox</u>	<u>OSRW</u>
<u>Mill Creek of Lake Cumberland (Cumberland River)*</u>	<u>Basin Upstream of Reservoir Backwaters</u>	<u>36.92980, -84.35567/ Upstream Basin Extent</u>	<u>McCreary</u>	<u>OSRW</u>
<u>Mill Creek of Straight Creek*</u>	<u>Basin Upstream of Mouth</u>	<u>36.79634, -83.57596/ Upstream Basin Extent</u>	<u>Bell</u>	<u>OSRW</u>
<u>Moore Creek of Stinking Creek*</u>	<u>Basin Upstream of Mouth</u>	<u>36.85653, -83.75554/ Upstream Basin Extent</u>	<u>Knox</u>	<u>OSRW</u>
<u>Mud Camp Creek of Cumberland River</u>	<u>Mouth to Collins Branch</u>	<u>36.76461, -85.51225/ 36.77858, -85.51607</u>	<u>Cumberland</u>	<u>OSRW</u>
<u>Mud Camp Creek of Cumberland River</u>	<u>Unnamed Tributary (at Milepost 0.25 of CR-1335 Sawmill Hollow Road) to Headwaters</u>	<u>36.78298, -85.55654/ Headwaters</u>	<u>Cumberland, Monroe</u>	<u>OSRW</u>
<u>Mud Creek of Clear Fork*</u>	<u>Basin Upstream of Unnamed Tributary (Near Milepost 4.35 of CR-1221 Mud Creek - Lot Road)</u>	<u>36.61075, -84.03320/ Upstream Basin Extent</u>	<u>Whitley</u>	<u>OSRW</u>
<u>Mud Lick of Stinking Creek*</u>	<u>Basin Upstream of Mouth</u>	<u>36.86077, -83.75270/ Upstream Basin Extent</u>	<u>Knox</u>	<u>OSRW</u>
<u>Ned Branch of Rockcastle River*</u>	<u>Basin Upstream of Backwaters (Upstream of First Tributary)</u>	<u>36.96743, -84.34134/ Upstream Basin Extent</u>	<u>Laurel</u>	<u>OSRW</u>
<u>Otter Creek of Lake Cumberland</u>	<u>0.75 River Miles Upstream of Gap Creek to Carpenter Fork</u>	<u>36.76911, -84.96678/ 36.70801, -84.95672</u>	<u>Wayne</u>	<u>OSRW</u>
<u>Paint Gap Branch of Pigeon Fork*</u>	<u>Basin Upstream of Mouth</u>	<u>36.93402, -83.60110/ Upstream Basin Extent</u>	<u>Knox</u>	<u>OSRW</u>
<u>Patterson Creek of Cumberland River*</u>	<u>Basin Upstream of Rose Creek</u>	<u>36.65785, -84.04232/ Upstream Basin Extent</u>	<u>Whitley</u>	<u>OSRW</u>
<u>Poor Fork Cumberland River of Cumberland River</u>	<u>Franks Creek to CR-1530 Joseph Road</u>	<u>37.05547, -82.80558/ 37.07179, -82.73044</u>	<u>Letcher</u>	<u>OSRW</u>
<u>Poor Fork Cumberland River of Cumberland River*</u>	<u>Basin Upstream of CR-1530 Joseph Road</u>	<u>37.07179, -82.73044/ Upstream Basin Extent</u>	<u>Letcher</u>	<u>CAH, OSRW</u>
<u>Presley House Branch of Poor Fork Cumberland River</u>	<u>Mouth to Headwaters</u>	<u>37.06433, -82.79065/ Headwaters</u>	<u>Letcher</u>	<u>OSRW</u>
<u>Puncheoncamp Branch of Rock Creek</u>	<u>Mouth to Headwaters</u>	<u>36.65874, -84.64042/ Headwaters</u>	<u>McCreary</u>	<u>OSRW</u>
<u>Richland Creek of Cumberland River*</u>	<u>Basin Upstream of CR-1549 Golden Oak Drive</u>	<u>36.99443, -83.88040/ Upstream Basin Extent</u>	<u>Knox</u>	<u>OSRW</u>
<u>Roaring Fork of Stinking Creek*</u>	<u>Basin Upstream of Mouth</u>	<u>36.88204, -83.69234/ Upstream Basin Extent</u>	<u>Knox</u>	<u>OSRW</u>
<u>Rock Creek of Big South Fork Cumberland River*</u>	<u>CR-1236 Rock Creek Road to Tennessee State Line</u>	<u>36.70306, -84.59619/ 36.60241, -84.73999</u>	<u>McCreary</u>	<u>CAH, OSRW</u>
<u>Rock Creek of Jellico Creek*</u>	<u>Basin Upstream of Mouth</u>	<u>36.59548, -84.27000/ Upstream Basin Extent</u>	<u>McCreary</u>	<u>OSRW</u>
<u>Rockcastle River of Lake Cumberland*</u>	<u>Lower End of The Narrows (0.25 River Miles Upstream of Cane Creek) to Middle and South Fork Rockcastle River</u>	<u>37.03017, -84.30832/ 337.33577, -84.11906</u>	<u>Jackson, Laurel, Pulaski, Rockcastle</u>	<u>OSRW</u>
<u>Ross Branch of Jellico Creek*</u>	<u>Basin Upstream of Mouth</u>	<u>36.62966, -84.23068/ Upstream Basin Extent</u>	<u>Whitley</u>	<u>OSRW</u>
<u>Roundstone Creek of Rockcastle River*</u>	<u>Renfro Creek to Interstate-75</u>	<u>37.38296, -84.29197/ 37.51810, -84.31923</u>	<u>Rockcastle</u>	<u>OSRW</u>
<u>Ryans Creek of Jellico Creek*</u>	<u>Basin Upstream of Mouth</u>	<u>36.64587, -84.25140/ Upstream Basin</u>	<u>McCreary,</u>	<u>OSRW</u>

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		Extent	Whitley	
Sanders Creek of Cumberland River*	Basin Upstream of Mouth	36.76365, -84.23232/ Upstream Basin Extent	Whitley	OSRW
Seng Branch of Poplar Creek*	Basin Upstream of Mouth	36.68130, -83.95908/ Upstream Basin Extent	Whitley	OSRW
Shilalah Creek of Clear Fork*	Cumberland Gap National Historical Park Boundary to Headwaters	36.64890, -83.57973/ Headwaters	Bell	CAH, OSRW
Shilalah Creek of Clear Fork*	Mouth to Cumberland Gap National Historical Park Boundary	36.66632, -83.59259/ 36.64890, -83.57973	Bell	OSRW
Shut-in Branch of Jellico Creek*	Basin Upstream of Mouth	36.60402, -84.25813/ Upstream Basin Extent	McCreary	OSRW
Sims Fork of Left Fork Straight Creek*	Basin Upstream of Mouth	36.83066, -83.63028/ Upstream Basin Extent	Bell	OSRW
Sinking Creek of Rockcastle River*	Mouth to Headwaters	37.10193, -84.27981/ Headwaters	Laurel	OSRW
Smith Creek of Franks Creek*	Basin Upstream of Mouth	37.05103, -82.79217/ Upstream Basin Extent	Letcher	OSRW
South Fork Rockcastle River of Rockcastle River	0.15 River Miles Upstream of Black Lick Branch to White Oak Creek	37.31595, -84.10113/ 37.29097, -84.08801	Jackson, Laurel	OSRW
South Fork Rockcastle River of Rockcastle River*	Mouth to 0.15 River Miles Upstream of Black Lick Branch	37.33576, -84.11903/ 37.31595, -84.10113	Jackson, Laurel	OSRW
Stevenson Branch of Yellow Creek Bypass*	Basin Upstream of Mouth	36.62513, -83.73543/ Upstream Basin Extent	Bell	OSRW
Sulphur Creek of Dale Hollow Lake (Wolf River)	Dale Hollow Reservoir Backwaters to Headwaters	36.64784, -85.20342/ Headwaters	Clinton	OSRW
Trace Branch of Stinking Creek*	Basin Upstream of Mouth	36.91912, -83.64859/ Upstream Basin Extent	Knox	OSRW
Trammel Fork of Marsh Creek*	Basin Upstream of Mouth	36.62326, -84.39085/ Upstream Basin Extent	McCreary	OSRW
Turkey Creek of Stinking Creek*	Basin Upstream of Mouth	36.85630, -83.79854/ Upstream Basin Extent	Knox	OSRW
Tyes Fork of Bennetts Branch*	Basin Upstream of Mouth	36.68434, -84.03062/ Upstream Basin Extent	Whitley	OSRW
Unnamed Tributary of Buffalo Creek of Clear Fork*	Basin Upstream of Tennessee State Line	36.58854, -83.95749/ Upstream Basin Extent	Whitley	OSRW
Unnamed Tributary of Cane Creek of Rockcastle River	Mouth to Headwaters	37.05162, -84.19761/ Headwaters	Laurel	OSRW
Unnamed Tributary of Meadow Branch of Poor Fork Cumberland River*	Basin Upstream of Mouth	37.06055, -82.75766/ Upstream Basin Extent	Letcher	OSRW
Unnamed Tributary of Rock Creek of Big South Fork Cumberland River	Mouth to Headwaters	36.66420, -84.62917/ Headwaters	McCreary	OSRW
Unnamed Tributary of Rock Creek of Big South Fork Cumberland River	Mouth to Headwaters	36.64450, -84.71115/ Headwaters	McCreary	OSRW
Watts Branch of Rock Creek*	Basin Upstream of Mouth	36.65759, -84.65619/ Upstream Basin Extent	McCreary	OSRW
Watts Creek of Cumberland River*	Basin Upstream of Camp Blanton Lake	36.86035, -83.37971/ Upstream Basin Extent	Harlan	OSRW
White Oak Creek of Jones Branch*	Basin Upstream of Mouth	36.70228, -84.59731/ Upstream Basin Extent	McCreary	OSRW
White Oak Creek of Sinking Creek	Basin from 0.05 River Miles Downstream of Little White Oak Creek (Includes Little White Oak Creek)	37.10105, -84.20010/ Upstream Basin Extent	Laurel	CAH
Wolf Creek of Clear Fork*	Basin Upstream of Little Wolf Creek	36.65715, -84.15624/ Upstream Basin Extent	Whitley	OSRW
Wood Creek Lake of Wood Creek	Entire Reservoir	37.21479, -84.19935/ Upstream Lake Extent	Laurel	WAH, CAH
Wood Creek of Little Rockcastle River	Mouth to Wood Creek Lake Dam	37.23233, -84.19928/ 37.21479, -84.19935	Laurel	CAH
Youngs Creek of Cumberland River*	Basin Upstream of Mouth	36.77668, -84.20617/ Upstream Basin Extent	Whitley	OSRW

* Waters that support federally recognized endangered or threatened species pursuant to the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531-1544.

Table C: SURFACE WATER USE DESIGNATIONS

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Stream	Zone (Descriptive and water body or segment river miles)	County	Use Designation	Exceptions to Specific Criteria
BIG SANDY RIVER BASIN				
Hobbs Fork of Pigeonroost Fork of Wolf Creek	Mouth to Headwaters (0.0-3.9)	Martin	WAH, PCR, SCR, OSRW	
Lower Pigeon Branch of Elkhorn Creek	Left Fork to Headwaters (0.6-1.9)	Pike	WAH, PCR, SCR, OSRW	
Paint Creek of Levisa Fork	Levisa Fork to Paintsville Dam (0.0-8.3)	Johnson	CAH, PCR, SCR	
Russell Fork of Levisa Fork of Big Sandy River	Clinch Field RR Yard off HWY 80 to Virginia State Line (15.0-16.5)	Pike	WAH, PCR, SCR, OSRW	
Thompson Fork of Souders Branch	Mouth to Headwaters (0.0-1.0)	Floyd	WAH, PCR, SCR, OSRW	
Toms Branch of Elkhorn Creek	Mouth to Headwaters (0.0-1.6)	Pike	WAH, PCR, SCR, OSRW	
Unidentified Tributary of Hobbs Fork	Hobbs Fork of Pigeonroost Fork to Headwaters (0.0-0.55)	Martin	WAH, PCR, SCR, OSRW	
Unidentified Tributary of Open Fork Paint Creek	Mouth to Headwaters (0.0-0.8)	Morgan	WAH, PCR, SCR, OSRW	
LAKES AND RESERVOIRS				
Paintsville	Entire reservoir	Johnson	WAH, CAH, PCR, SCR	
LITTLE SANDY RIVER BASIN				
Arabs Fork of Big Sinking Creek	Clay Fork to Headwaters (0.0-5.1)	Elliott	WAH, PCR, SCR, OSRW	
Big Caney Creek	Grayson Lake to source (1.8-15.3)	Elliott/Rowan	CAH, PCR, SCR, OSRW	
Big Sinking Creek of Little Sandy River	SR 986 to Clay Fork and Arab Fork (11.0-15.9)	Carter/ Elliott	WAH, PCR, SCR, OSRW	
Laurel Creek of Little Sandy River	Little Sandy River to Carter School Rd (0.0-7.6)	Elliott/ Rowan	CAH, PCR, SCR,	
Laurel Creek of Little Sandy River	Carter School Rd Bridge to Headwaters (7.6-14.7)	Elliott/ Rowan	CAH, PCR, SCR, OSRW	
Meadow Branch of Little Fork of Little Sandy River	Mouth to Headwaters (0.0-1.4)	Elliott	WAH, PCR, SCR, OSRW	
Middle Fork of Little Sandy River	Mouth to Sheepskin Branch (0.0-3.4)	Elliott	WAH, PCR, SCR, OSRW	
Nichols Fork of Little Fork of Little Sandy River	Green Branch to Headwaters (0.0-2.0)	Elliott	WAH, PCR, SCR, OSRW	
LAKES AND RESERVOIRS				
Greenbo	Entire Reservoir	Greenup	WAH, CAH, PCR, SCR	
LICKING RIVER BASIN				
Blackwater Creek of Licking River	Eaton Creek to Greasy Fork (3.8-11.7)	Morgan	WAH, PCR, SCR, OSRW	
Blanket Creek of Licking River	Mouth to Unidentified Tributary (0.0-1.9)	Pendleton	WAH, PCR, SCR, OSRW	
Botts Fork of Brushy Fork of Licking River	Mouth to Landuse Change (0.0-2.1)	Menifee	WAH, PCR, SCR, OSRW	
Bowman Creek	Mouth to Unidentified Tributary (0.0-6.0)	Kenton	WAH, PCR, SCR, OSRW	
Brushy Fork of Meyers Creek	Cave Run Lake Backwaters to Headwaters (0.7-5.6)	Menifee	WAH, PCR, SCR, OSRW	
Bucket Branch of North Fork of Licking River	Mouth to Headwaters (0.0-1.9)	Morgan	WAH, PCR, SCR, OSRW	
Cedar Creek of Licking River	Mouth to North Branch of Cedar Creek (0.0-1.7)	Robertson	WAH, PCR, SCR, OSRW	
Craney Creek	Source to North Fork of Licking River (0.0-11.2)	Rowan/ Morgan	CAH, PCR, SCR, OSRW	
Devils Fork of North Fork of Licking River	Mouth to Headwaters (0.0-8.5)	Elliott/ Morgan	WAH, PCR, SCR, OSRW	
Flour Creek of Licking River	Mouth to Unidentified Tributary (0.0-2.2)	Pendleton	WAH, PCR, SCR, OSRW	
Grovers Creek of Kincaid Creek	Kincaid Lake Backwaters to Unidentified Tributary (0.5-3.4)	Bracken/ Pendleton	WAH, PCR, SCR, OSRW	

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Licking River	Mouth of UT entering on the right descending bank to 0.1 mile upstream of Turkey Run (River mile 138.3-140.3)	Bath/Fleming	WAH, PCR, SCR, OSRW	
Licking River	River Mile 144.0 (38.25141-83.6932) to River Mile 146.1 (0.75 mile downstream of Haven Branch)	Bath/Fleming	WAH, PCR, SCR, OSRW	
Licking River	River Mile 175.6 (U.S. Highway 60 Bridge) to River Mile 180.8 (Cave Run Lake Dam (175.6-180.8))	Bath/Rowan	CAH, PCR, SCR	
Licking River	River Mile 159.3 (SR 211) to River Mile 170.5 (Unnamed Road off Slate Point Road)	Bath/Rowan/Fleming	WAH, PCR, SCR, OSRW	
Licking River	River Mile 19.3 (Hwy 536 Bridge) to River Mile 117.6 (1.3 miles above Fishtrap Creek)	Kenton/ Campbell/ Pendleton/ Harrison/ Robertson/ Fleming	WAH, PCR, SCR, OSRW	
Minor Creek of Craney Creek	Mouth to river mile 2.8 (0.0-2.8)	Morgan/ Rowan	CAH, PCR, SCR	
North Fork of Licking River	Cave Run Lake Backwaters to Devils Fork (8.4-13.4)	Morgan	WAH, PCR, SCR, OSRW	
Sawyers Fork of Cruises Creek	Mouth to Headwaters (0.0-3.3)	Kenton	WAH, PCR, SCR, OSRW	
Slabcamp Creek of Craney Creek of Licking River	Mouth to Headwaters (0.0-3.7)	Rowan	CAH, PCR, SCR, OSRW	
Slate Creek of Licking River	Mouth to Mill Creek (0.0-13.55)	Bath	WAH, PCR, SCR, OSRW	
South Fork Grassy Creek of Grassy Creek of Licking River	Mouth to Greasy Creek (0.0-19.8)	Kenton/ Pendleton	WAH, PCR, SCR, OSRW	
Unidentified Tributary of Shannon Creek of North Fork of Licking River	Mouth to Headwaters 0.0-2.2)	Mason	WAH, PCR, SCR, OSRW	
Welch Fork of Brushy Fork of Licking River	Mouth to First Unnamed Tributary (0.0-1.0)	Menifee	WAH, PCR, SCR, OSRW	
West Creek of Licking River	Mouth to Headwaters (0.0-9.8)	Harrison/ Robertson	WAH, PCR, SCR, OSRW	
KENTUCKY RIVER BASIN				
Backbone Creek of Sixmile Creek of Kentucky River	Mouth to Scrabble Creek (0.0-1.65)	Franklin/ Henry/ Shelby	WAH, PCR, SCR, OSRW	
Bear Branch of North Fork of Kentucky River	Above Sediment Pond to Headwaters (0.3-1.2)	Perry	WAH, PCR, SCR, OSRW	
Big Double Creek of Red Bird River	Mouth to Confluence of Left and Right Forks of Big Double Creek (0.0-4.4)	Clay	WAH, PCR, SCR, OSRW	
Bill Branch of Laurel Fork of Greasy Creek	Mouth to Right Fork and Left Fork Creek (0.0-0.3)	Leslie	WAH, PCR, SCR, OSRW	
Billey Fork of Millers Creek	Land Use Change to Headwaters (2.6-8.8)	Lee/Elliott	WAH, PCR, SCR, OSRW	
Bill Oak Branch of Left Fork of Buffalo Creek	Mouth to Headwaters (0.0-0.3)	Owsley	WAH, PCR, SCR, OSRW	
Buffalo Creek of South Fork of Kentucky River	Mouth to Right Fork and Left Fork (0.0-1.6)	Owsley	WAH, PCR, SCR, OSRW	
Bullskin Creek of South Fork Kentucky River	Mouth to Headwaters (0.0-14.55)	Clay	WAH, PCR, SCR, OSRW	
Cavanaugh Creek	South Fork of Station Camp Creek to Foxtown Rd (0.0-8.3)	Jackson	WAH, PCR, SCR, OSRW	
Cherry Run of Boyd Run of North Elkhorn Creek	Mouth to Boyd Run (0.0-0.9)	Scott	WAH, PCR, SCR, OSRW	
Chester Creek of Middle Fork of Red River	Mouth to Headwaters (0.0-2.8)	Wolfe	WAH, PCR, SCR, OSRW	
Chimney Top Creek of Red River	Basin (0.0-4.6)	Wolfe	CAH, PCR, SCR	
Clear Creek of Kentucky River	Mouth to East Fork Clear Creek (0.0-9.0)	Woodford	WAH, PCR, SCR, OSRW	

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Clemons Fork of Buckhorn Creek	Mouth to Headwaters (0.0-4.8)	Breathitt	WAH, PCR, SCR, OSRW
Coles Fork of Buckhorn Creek	Mouth to Headwaters (0.0-6.2)	Breathitt	WAH, PCR, SCR, OSRW
Craig Creek of Kentucky River	Mouth (Kentucky River Backwaters) to Unidentified Tributary (0.0-2.7)	Woodford	WAH, PCR, SCR, OSRW
Deep Ford Branch of Cutshin Creek	Above Pond to Headwaters (0.3-1.35)	Leslie	WAH, PCR, SCR, OSRW
Dix River	Mouth (Kentucky River) to River Mile 3.1 (Herrington Lake Dam) (0.0-3.1)	Garrard/Mercer	CAH, PCR, SCR
Dog Fork of Swift Camp Creek	Basin	Wolfe	CAH, PCR, SCR
Drennon Creek of Kentucky River	Fivemile Creek to Town Branch (8.7-12.2)	Henry	WAH, PCR, SCR, OSRW
East Fork of Indian Creek of Indian Creek of Red River	Headwaters East Fork of Indian Creek to Indian Creek (0.0-9.0)	Menifee	CAH, PCR, SCR, OSRW
Elisha Creek of Red Bird River	Land Use Change (Residential) to the confluence of Right Fork and Middle Fork Elisha Creek (0.8-1.8)	Leslie	WAH, PCR, SCR, OSRW
Emily Run of Drennon Creek	Mouth to Unidentified Tributary (0.0-4.0)	Henry	WAH, PCR, SCR, OSRW
Evans Fork of Billey Fork of Millers Creek	Mouth to Headwaters (0.0-3.0)	Estill	WAH, PCR, SCR, OSRW
Falling Rock Branch of Clemons Fork of Buckhorn Creek	Mouth to Headwaters (0.0-0.7)	Breathitt	WAH, PCR, SCR, OSRW
Gilberts Creek of Kentucky River	Mouth to Unidentified Tributary (0.0-2.6)	Anderson	WAH, PCR, SCR, OSRW
Gladie Creek of Red River	Basin	Menifee	CAH, PCR, SCR
Gladie Creek of Red River	Land Use Change to Long Branch (0.5-7.25)	Menifee	CAH, PCR, SCR, OSRW
Goose Creek of South Fork of Kentucky River	Mouth to Laurel Creek (0.0-9.1)	Clay/Leslie	WAH, PCR, SCR, OSRW
Griers Creek of Kentucky River	Kentucky River Backwaters to Unidentified Tributary (0.1-3.5)	Woodford	WAH, PCR, SCR, OSRW
Grindstone Creek of Kentucky River	Kentucky River Backwaters to Headwaters (0.1-1.9)	Franklin	WAH, PCR, SCR, OSRW
Hardwick Creek of Red River	Mouth to Little Hardwick Creek (0.0-3.25)	Powell	WAH, PCR, SCR, OSRW
Hell For Certain of Middle Fork of Red River	Mouth to Big Fork (0.0-2.1)	Leslie	WAH, PCR, SCR, OSRW
Hines Creek of Kentucky River	Kentucky River Backwaters to confluence with Unidentified Tributary (0.1-1.9)	Madison	WAH, PCR, SCR, OSRW
Honey Branch of Greasy Creek of Middle Fork of Kentucky River	Mouth to Headwaters (0.0-1.35)	Leslie	WAH, PCR, SCR, OSRW
Hopper Cave Branch of Cavanaugh Creek	Mouth to Headwaters (0.0-1.8)	Jackson	WAH, PCR, SCR, OSRW
Indian Creek of Eagle Creek	Mouth to Headwaters (0.0-5.4)	Carroll	WAH, PCR, SCR, OSRW
Indian Creek of Red River	River Mile 1.25 (East Fork of Indian Creek) to River Mile 5.2 (0.3 miles below Bear Branch)	Menifee	CAH, PCR, SCR
Indian Fork of Sixmile Creek of Kentucky River	Mouth to Headwaters (0.0-3.3)	Shelby	WAH, PCR, SCR, OSRW
Jessamine Creek of Kentucky River	Stream segment within the R.J. Corman Natural Area (12.3-13.55)	Jessamine	WAH, PCR, SCR, OSRW
John Carpenter Fork of Clemons Fork of Buckhorn Creek	Mouth to Headwaters (0.0-1.2)	Breathitt	WAH, PCR, SCR, OSRW
Joyce Fork of Cortland Fork	Mouth to Headwaters (0.0-1.2)	Owsley	WAH, PCR, SCR, OSRW

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Katies Creek of Red Bird River	Mouth to Headwaters (0.0-4.0)	Clay	WAH, PCR, SCR, OSRW
Laurel Fork of Left Fork Buffalo Creek of Buffalo Creek	Cortland Fork to Big Branch (0.0-3.75)	Owsley	WAH, PCR, SCR, OSRW
Left Fork of Big Double Creek of Kentucky River	Mouth to Headwaters (0.0-1.5)	Clay	WAH, PCR, SCR, OSRW
Line Fork of North Fork of Kentucky River	Defeated Creek to Headwaters (12.2-28.6)	Letcher	WAH, PCR, SCR, OSRW
Little Middle Fork of Elisha Creek of Red Bird River	Mouth to Headwaters (0.0-0.75)	Leslie	WAH, PCR, SCR, OSRW
Little Millseat Branch of Clemons Fork of Buckhorn Creek	Mouth to Headwaters (0.0-1.2)	Breathitt	WAH, PCR, SCR, OSRW
Little Sixmile Creek of Sixmile Creek of Kentucky River	Mouth to Headwaters (0.0-5.3)	Henry	WAH, PCR, SCR, OSRW
Little Sturgeon Creek of Sturgeon Creek	Mouth to Warren Chapel Branch (0.0-3.0)	Owsley	WAH, PCR, SCR, OSRW
Low Gap Branch of Elk Creek	Mouth to Headwaters (0.0-0.8)	Letcher	WAH, PCR, SCR, OSRW
Lower Devil Creek of North Fork Kentucky River	Mouth to Middle Fork Lower Devil Creek (0.0-4.65)	Lee	WAH, PCR, SCR, OSRW
Lower Howard Creek of Kentucky River	Mouth to West Fork (0.5- 6.6)	Clark	WAH, PCR, SCR, OSRW
Lulbegrad Creek of Red River	Mouth to Falls Branch (0.0-7.3)	Clark/Powell	WAH, PCR, SCR, OSRW
Middle Fork of Kentucky River	Mouth to Upper Twin Creek (0.0-12.7)	Lee/Owsley	WAH, PCR, SCR, OSRW
Middle Fork of Kentucky River	Hurts Creek to Greasy Creek (75.2-85.5)	Leslie	WAH, PCR, SCR, OSRW
Middle Fork of Red River	River Mile 10.7 (0.7 miles below Sinking Fork) to Headwaters (15.3)	Powell	CAH, PCR, SCR
Middle Fork of Red River	South Fork of Red River to Natural Bridge State Park Lake (1.8-7.2)	Powell	CAH, PCR, SCR, OSRW
Mikes Branch of Laurel Fork of Left Fork of Buffalo Creek	Mouth to Headwaters (0.0-0.7)	Owsley	WAH, PCR, SCR, OSRW
Mill Creek of Kentucky River	Near Mouth to Headwaters (0.0-1.85)	Owen	WAH, PCR, SCR, OSRW
Millseat Branch of Clemons Fork of Buckhorn Creek	Mouth to Headwaters (0.0-1.85)	Breathitt	WAH, PCR, SCR, OSRW
Muddy Creek of Kentucky River	Elliston, Kentucky to Viney Fork (13.8-20.65)	Madison	WAH, PCR, SCR, OSRW
Musselman Creek of Eagle Creek	Mouth to Headwaters (0.0-9.0)	Grant	WAH, PCR, SCR, OSRW
Parched Corn Creek	Source to Red River (0.0-2.25)	Wolfe	CAH, PCR, SCR
Red River	River Mile 70.4 (SR 746) to River Mile 50.3 (0.1 miles below Auxier Branch)	Menifee/Wolfe	WAH, PCR, SCR, OSRW
Red Bird River of South Fork of Kentucky River	Mouth to Big Creek (0.0-15.3)	Clay	WAH, PCR, SCR, OSRW
Right Fork of Buffalo Creek of Kentucky River	Mouth to Headwaters (0.0-2.1)	Owsley	WAH, PCR, SCR, OSRW
Right Fork of Elisha Creek of Redbird River	Mouth to Headwaters (0.0-3.3)	Leslie	WAH, PCR, SCR, OSRW
Roaring Fork of Lewis Fork of Buckhorn Creek	Mouth to Headwaters (0.0-0.9)	Breathitt	WAH, PCR, SCR, OSRW
Rock Lick Creek	Mouth to Headwaters (0.0-9.6)	Jackson	WAH, PCR, SCR, OSRW
Sand Ripple Creek of Kentucky River	Kentucky River Backwaters to Headwaters (0.1-3.9)	Henry	WAH, PCR, SCR, OSRW

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Severn Creek of Kentucky River	Kentucky River Backwaters to North Fork of Severn Creek (1.35-3.0)	Owen	WAH, PCR, SCR, OSRW
Shaker Creek of Kentucky River	Near Mouth to Shawnee Run (0.1-1.4)	Mercer	WAH, PCR, SCR, OSRW
Shelly Rock Fork of Millseat Branch of Clemons Fork	Mouth to Headwaters (0.0-0.6)	Breathitt	WAH, PCR, SCR, OSRW
Sixmile Creek of Kentucky River	Little Sixmile Creek to Dam (7.1-15.3)	Henry	WAH, PCR, SCR, OSRW
South Fork of Kentucky River	Mouth to Sexton Creek (0.0-27.8)	Owsley	WAH, PCR, SCR, OSRW
South Fork of Red River	Mouth to Sandlick Fork (0.0-4.2)	Powell	WAH, PCR, SCR, OSRW
South Fork of Station Camp Creek of Kentucky River	Mouth to Rock Lick Creek (0.0-9.7)	Jackson	WAH, PCR, SCR, OSRW
Spruce Branch of Redbird River	Mouth to Headwaters (0.0-1.0)	Clay	WAH, PCR, SCR, OSRW
Station Camp Creek of Kentucky River	Landuse Change (Crooked Cr.) to South Fork of Station Camp Creek (3.3-22.7)	Estill	WAH, PCR, SCR, OSRW
Steeles Run of Elkhorn Creek	Mouth to Unidentified Tributary (0.0-4.2)	Fayette	WAH, PCR, SCR, OSRW
Steer Fork of War Fork of Station Camp Creek	Mouth to Headwaters (0.0-2.7)	Jackson	CAH, PCR, SCR, OSRW
Sturgeon Creek of Kentucky River	Duck Fork to Little Sturgeon Creek (1.3-13.7)	Lee/Owsley	WAH, PCR, SCR, OSRW
Sugar Creek of Redbird River	Landuse Change to Headwaters (0.6-5.4)	Leslie	WAH, PCR, SCR, OSRW
Sulphur Lick Creek of Elkhorn Creek	Mouth to Headwaters (0.0-5.2)	Franklin	WAH, PCR, SCR, OSRW
Swift Camp Creek	Red River to Source (0.0-13.9)	Wolfe	CAH, PCR, SCR
Unidentified Tributary of Cawood Branch of Beech Fork	Mouth to Headwaters (0.0-2.1)	Leslie	WAH, PCR, SCR, OSRW
Unidentified Tributary of Cedar Creek of Kentucky River	Mouth to Headwaters (0.0-1.4)	Owen	WAH, PCR, SCR, OSRW
Unidentified Tributary of Glenss Creek of Kentucky River	Mouth to Headwaters (0.0-1.9)	Woodford	WAH, PCR, SCR, OSRW
Unidentified Tributary of Jacks Creek of Kentucky River	Mouth to Headwaters (0.0-1.15)	Madison	WAH, PCR, SCR, OSRW
Unidentified Tributary of Kentucky River	Mouth at Kentucky River Backwaters to Land Use Change (0.1-1.4)	Franklin	WAH, PCR, SCR, OSRW
Unidentified Tributary of Line Fork of North Fork of Kentucky River (LCW)	Mouth to Headwaters (0.0-0.6)	Letcher	WAH, PCR, SCR, OSRW
War Fork of Station Camp Creek	Mouth to Headwaters (0.0-13.8)	Jackson	CAH, PCR, SCR, OSRW
War Fork of Station Camp Creek	Basin above River Mile 1.9 (0.3 miles below Tarpin Lick Branch (2.5))	Jackson	CAH, PCR, SCR
Watches Fork of Laurel Fork of Left Fork of Buffalo Creek	Mouth to Headwaters (0.0-1.0)	Owsley	WAH, PCR, SCR, OSRW
Wolfpen Creek of Red River	Mouth to Headwaters (0.0-3.6)	Menifee	WAH, PCR, SCR, OSRW
LAKES AND RESERVOIRS			
Bert Combs	Entire Reservoir	Clay	WAH, CAH, PCR, SCR
Fishpond	Entire Reservoir	Letcher	WAH, CAH, PCR, SCR
Mill Creek	Entire Reservoir	Wolfe	WAH, CAH, PCR, SCR
SALT RIVER BASIN			
Brashears Creek of Salt River	Guist Creek to Bullskin and Clear Creek (13.0-25.9)	Shelby/Spencer	WAH, PCR, SCR, OSRW

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Cedar Creek of Salt River	Mouth to Greens Branch (0.0-5.2)	Bullitt	WAH, PCR, SCR, OSRW	
Chaplin River of Salt River	Thompson Creek to Cornishville, Kentucky (40.9-54.2)	Washington	WAH, PCR, SCR, OSRW	
Doctors Fork of Chaplin River	Mouth to Begley Branch (0.0-3.8)	Boyle	WAH, PCR, SCR, OSRW	
Guist Creek of Brashears Creek	Mouth to Jephtha Creek (0.0-15.7)	Spencer	WAH, PCR, SCR, OSRW	
Harts Run of Wilson Creek of Rolling Fork of Salt River	Mouth to Headwaters (0.0-1.8)	Bullitt	WAH, PCR, SCR, OSRW	
Indian Creek of Thompson Creek of Chaplin River of Salt River	Mouth to Unidentified Tributary (0.0-2.9)	Mercer	WAH, PCR, SCR, OSRW	
Lick Creek of Long Lick Creek of Beech Fork of Salt River	Mouth to 0.1 miles below Dam (0.0-4.1)	Washington	WAH, PCR, SCR, OSRW	
Otter Creek of Rolling Fork of Salt River	Landuse Change to confluence of East Fork and Middle Fork Otter Creek (1.7-2.9)	Larue	WAH, PCR, SCR, OSRW	
Overalls Creek of Wilson Creek of Rolling Fork of Salt River	Mouth to Headwaters of Middle Fork of Overalls Creek (0.0-3.2)	Bullitt	WAH, PCR, SCR, OSRW	
Paddy's Run	Mouth (Ohio River) to headwaters	Jefferson	PCR, SCR	401 KAR 10:031, Section 2(1)(d) and 2(3)(2) do not apply.
Rolling Fork of Salt River	River Mile 53.6 (0.8 mi upstream of Stiles Rd Bridge) to River Mile 62.5 (0.5 mi upstream of Otter Cr)	Larue/ Nelson	WAH, PCR, SCR, OSRW	
Salt Lick Creek of Rolling Fork of Salt River	Mouth to Headwaters (0.0-8.6)	Larue, Marion	WAH, PCR, SCR, OSRW	
Sulphur Creek of Chaplin River	Mouth to confluence of Cheese Lick and Brush Creek (0.0-10.0)	Anderson/ Mercer/ Washington	WAH, PCR, SCR, OSRW	
Unidentified Tributary of Glens Creek of Chaplin River	Mouth to Headwaters (0.0-2.3)	Washington	WAH, PCR, SCR, OSRW	
West Fork of Otter Creek of Rolling Fork of Salt River	Mouth to Headwaters (0.0-5.4)	Larue	WAH, PCR, SCR, OSRW	
Wilson Creek of Rolling Fork of Salt River	Mouth to Headwaters (0.0-18.4)	Bullitt/ Nelson	WAH, PCR, SCR, OSRW	
GREEN RIVER BASIN				
Barren River	Green River to River Mile Lock and Dam #1 to Green River (0.0-15.1)	Butler/ Warren	WAH, PCR, SCR, OSRW	
Beaverdam Creek	Source to Green River (14.5-0.0)	Edmonson	CAH, PCR, SCR, OSRW	
Big Brush Creek	Brush Creek to Poplar Grove Branch (13.0-17.3)	Green	WAH, PCR, SCR, OSRW	
Cane Run of Nolin River	Nolin River Lake Backwaters to Headwaters (0.8-6.5)	Hart	WAH, PCR, SCR, OSRW	
Caney Fork of Peter Creek	Mouth to Headwaters (0.0-6.7)	Barren	WAH, PCR, SCR, OSRW	
Clifty Creek of Rough River	Barton Run to Western Kentucky Parkway (7.5-17.3)	Grayson	WAH, PCR, SCR, OSRW	
Clifty Creek of Wolf Lick Creek	Little Clifty Creek to Sulphur Lick 0.0-13.4)	Todd	WAH, PCR, SCR, OSRW	
Double Sink Spring	Basin Outside Mammoth Cave National Park Boundary	Edmonson/ Barren	CAH, PCR, SCR, OSRW	
East Fork of Little Barren River	Red Lick Creek to Flat Creek (18.9-20.6)	Metcalf	WAH, PCR, SCR, OSRW	
Echo River	Basin Outside Mammoth Cave National Park Boundary (underground system)	Edmonson	CAH, PCR, SCR, OSRW	

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Elk Lick Creek	0.1 mile Downstream of Mouth of Duck Lick Creek to Barren Fork Creek and Edger Creek (3.6-11.8)	Logan	WAH, PCR, SCR, OSRW	
Ellis Fork of Damron Creek	Mouth to Headwaters (0.0-2.2)	Adair/ Russell	WAH, PCR, SCR, OSRW	
Falling Timber Creek of Skaggs Creek	Landuse Change to Headwaters (10.8-15.2)	Barren/ Metcalfe	WAH, PCR, SCR, OSRW	
Fiddlers Creek of North Fork of Rough River	Mouth to Headwaters (0.0-5.9)	Breckinridge	WAH, PCR, SCR, OSRW	
Forbes Creek of Buck Creek of East Fork of Pond River	Mouth to Unidentified Tributary (0.0-4.1)	Christian	WAH, PCR, SCR, OSRW	
Ganter Spring	Basin Outside Mammoth Cave National Park Boundary	Edmonson	CAH, PCR, SCR, OSRW	
Gasper River of Barren River	Clear Fork to Wiggington Creek (17.2-35.6)	Logan/ Warren	WAH, PCR, SCR, OSRW	
Goose Creek of Green River	Mouth to Little Goose Creek (0.0-8.5)	Casey/ Russell	WAH, PCR, SCR, OSRW	
Green River	0.5 miles upstream of Davenport Landing to 0.75 miles downstream of Lock & Dam #3 (105.9-108.4)	Muhlenburg/Ohio	WAH, PCR, SCR, OSRW	
Green River	0.9 miles upstream of William Natcher Parkway to 0.1 miles upstream of Unidentified Tributary on right descending bank (139.7-140.7)	Butler	WAH, PCR, SCR, OSRW	
Green River	River Mile 210.6 (eastern Mammoth Cave National Park Boundary to River Mile 309.1 (Green River Lake Dam)	Hart/Taylor/ Green	WAH, PCR, SCR, OSRW	
Green River	River Mile 185.0 (western Mammoth Cave National Park Boundary) to River Mile 210.6 (eastern Mammoth Cave National Park Boundary)	Edmonson/ Hart	WAH, PCR, SCR, OSRW	
Green River	Downstream Mammoth Cave National Park Boundary to Lynn Camp Creek (185.0-250.3)	Edmonson/ Hart	WAH, PCR, SCR, OSRW	
Green River	River Mile 148.5 (1.0 river mile below Lock and Dam #4) to River Mile 170.0 (Lock and Dam #5)	Butler/ Warren	WAH, PCR, SCR, OSRW	
Halls Creek of Rough River	Unidentified Tributary to Headwaters (4.8-9.6)	Ohio	WAH, PCR, SCR, OSRW	
Lick Creek of West Fork of Drakes Creek	Mouth to Headwaters (0.0-10.2)	Simpson	CAH, PCR, SCR, OSRW	
Linders Creek of Rough River	Mouth to Sutzer Creek (0.0-7.9)	Hardin	WAH, PCR, SCR, OSRW	
Little Beaverdam Creek of Green River	Mouth to SR 743 (0.0-11.4)	Edmonson/ Warren	WAH, PCR, SCR, OSRW	
Little Short Creek of Rough River	Mouth to Headwaters (0.0-3.1)	Grayson	WAH, PCR, SCR, OSRW	
Lynn Camp Creek	Green River to Source (0.0-8.3)	Hart	CAH, PCR, SCR	
Lynn Camp Creek of Green River	Mouth to Lindy Creek (0.0-8.5)	Hart	CAH, PCR, SCR, OSRW	
McFarland Creek of West Fork of Pond River	Grays Branch to Unidentified Tributary (1.5-5.0)	Christian	WAH, PCR, SCR, OSRW	
McCoy Spring	Basin Outside Mammoth Cave National Park Boundary	Hart	CAH, PCR, SCR, OSRW	
Meeting Creek of Rough River	Little Meeting Creek to Petty Branch (5.2-14.0)	Grayson/ Hardin	WAH, PCR, SCR, OSRW	
Mile 205.7 Spring	Basin Outside Mammoth Cave National Park Boundary	Hart	CAH, PCR, SCR, OSRW	
Muddy Creek of Caney Creek of Rough River	Landuse Change to Headwaters (13.5-15.5)	Ohio	WAH, PCR, SCR, OSRW	
Nolin River	River Mile 7.7 (Nolin Lake Dam) to Green River (0.0-7.7)	Edmonson	CAH, WAH, PCR, SCR	
North Fork of Rough River	Buffalo Creek to Reservoir Dam (22.1 -26.9)	Breckinridge	WAH, PCR, SCR, OSRW	

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Peter Creek of Barren River	Caney Fork to Dry Fork (11.6-18.5)	Barren	WAH, PCR, SCR, OSRW	
Pike Spring	Basin Outside Mammoth Cave National Park Boundary	Edmonson	CAH, PCR, SCR, OSRW	
Pond Run of Rough River	Landuse Change to Headwaters (1.4-6.8)	Breckinridge/Ohio	WAH, PCR, SCR, OSRW	
Puncheon Creek	Mouth to state line	Allen	WAH, PCR, SCR, OSRW	
Rough River	Linders Creek to Vertrees Creek (138.0-149.4)	Hardin	WAH, PCR, SCR, OSRW	
Rough River	River Mile 89.6 to Rough River Lake Dam to 90.4	Ohio/ Grayson	CAH, WAH, PCR, SCR	
Rough River	River Mile 74.5 to River Mile 74.2 (Hwy 54 Bridge)	McLean/ Ohio	CAH, PCR, SCR	
Roundstone Creek of Nolin River	Hwy 1140 (River Mile 3.8) to Headwaters (River Mile 10.25)	Hart	CAH, PCR, SCR	
Running Spring	Basin Outside Mammoth Cave National Park Boundary	Edmonson	CAH, PCR, SCR, OSRW	
Russell Creek of Green River	Mouth to Columbia WWTP (0.0-40.0)	Green/ Adair	WAH, PCR, SCR, OSRW	
Russell Creek of Green River	Reynolds Creek to confluence with Hudson Creek and Mount Olive Creek (56.9-66.3)	Adair, Russell	WAH, PCR, SCR, OSRW	
Sixes Creek of Indian Camp Creek	Wild Branch to Headwaters (2.0-7.5)	Ohio	WAH, PCR, SCR, OSRW	
Suds Spring	Basin Outside Mammoth Cave National Park Boundary	Hart/ Barren	CAH, PCR, SCR, OSRW	
Sulphur Branch of Alexander Creek	Mouth to Headwaters (0.0-3.0)	Edmonson	WAH, PCR, SCR, OSRW	
Thompson Branch	Webb Branch to Tennessee State Line (0.3-1.5)	Simpson	WAH, PCR, SCR, OSRW	
Trammel Fork of West Fork of Drakes Creek	River Mile 30.6 (Kentucky/Tennessee State Line) to Hwy 31E (River Mile 23.8)	Allen	CAH, PCR, SCR,	
Trammel Fork of West Fork of Drakes Creek	Mouth to Tennessee State Line (0.0-30.6)	Allen/Warren	CAH, PCR, SCR, OSRW	
Turnhole Spring	Basin Outside Mammoth Cave National Park Boundary	Edmonson/ Barren	CAH, PCR, SCR, OSRW	
Underground River System	Mammoth Cave National Park	Edmonson/ Hart/Barren	CAH, PCR, SCR, OSRW	
Unidentified Tributary of Green River	Landuse Change to Headwaters (1.7-3.2)	Adair	WAH, PCR, SCR, OSRW	
Unidentified Tributary of White Oak Creek	Hovious Rd Crossing to SR 76 (0.0-2.1)	Adair	WAH, PCR, SCR, OSRW	
West Fork of Pond River	Unidentified Tributary to East Branch of Pond River (12.45-22.5)	Christian	WAH, PCR, SCR, OSRW	
TRADEWATER RIVER BASIN				
East Fork of Flynn Fork of Tradewater River	Landuse Change (US Hwy 62) to Headwaters (2.15-4.6)	Caldwell	WAH, PCR, SCR, OSRW	
Piney Creek of Tradewater River	Lake Beshear Backwaters to Headwaters (4.5-10.2)	Caldwell, Christian	WAH, PCR, SCR, OSRW	
Sandlick Creek of Tradewater River	Camp Creek to Headwaters (4.5-8.6)	Christian	WAH, PCR, SCR, OSRW	
Tradewater River	Dripping Springs Branch to Buntin Lake Dam (126.2-133.9)	Christian	WAH, PCR, SCR, OSRW	
Unidentified Tributary of Piney Creek of Tradewater River	Mouth to Headwaters (0.0-2.9)	Caldwell	WAH, PCR, SCR, OSRW	
Unidentified Tributary of Sandlick Creek of Tradewater River	Mouth to Headwaters (0.0-1.4)	Christian	WAH, PCR, SCR, OSRW	
LOWER CUMBERLAND RIVER BASIN				
Casey Creek	Mouth to headwaters (0.0-10.5)	Trigg	CAH, PCR, SCR	
Crooked Creek of Cumberland River	Energy Lake Backwaters to Headwaters (3.0-9.1)	Trigg	WAH, PCR, SCR, OSRW	
Cumberland River	0.2 Mile Downstream of Hickory Creek to 0.6 mile Upstream of Sugar Creek (10.2-11.9)	Livingston	WAH, PCR, SCR, OSRW	
Donaldson Creek of Cumberland River	Barkley Lake Backwaters to Unnamed Tributary (4.0-7.2)	Trigg	WAH, PCR, SCR, OSRW	

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Elk Fork of Red River of Cumberland River	Tennessee State Line to Dry Branch (7.5-23.1)	Todd	WAH, PCR, SCR, OSRW	
Skinframe Creek	Livingston Creek to Headwaters (0.0-7.8)	Lyon	CAH, PCR, SCR	
Sugar Creek of Cumberland River	Lick Creek to Unidentified Tributary (2.2-6.9)	Livingston	WAH, PCR, SCR, OSRW	
Sulphur Spring Creek	Red River to Headwaters (0.0-9.1)	Simpson	CAH, PCR, SCR	
West Fork Red River	State Line to River Mile 32.2 (14.75-32.2)	Christian	CAH, PCR, SCR,	
West Fork Red River	State Line to mouth of Montgomery Creek (14.75-26.85)	Christian	CAH,[FC,] PCR, SCR, OSRW	
Whipporwill Creek	Red River to Headwaters (0.0-45.4)	Logan/Todd	WAH, PCR, SCR, OSRW	
UPPER CUMBERLAND RIVER BASIN				
Acorn Fork of Stinking Creek	Basin above River Mile 1.0	Knox	WAH, PCR, SCR, OSRW	
Adams Branch of Pigeon Roost Creek	Basin	Whitley	WAH, PCR, SCR, OSRW	
Archers Creek of Cumberland River	Basin (above RM 0.05 mi backwater at mouth)	Whitley	WAH, PCR, SCR, OSRW	
Bad Branch of Poor Fork of Cumberland River	Basin	Letcher	CAH, PCR, SCR, OSRW	
Bain Branch	Basin	Knox	WAH, PCR, SCR, OSRW	
Bark Camp Creek of Cumberland River	Basin (above RM 0.1 backwater at mouth)	Whitley	CAH, PCR, SCR, OSRW	
Barren Fork of Indian Creek	Basin	McCreary	WAH, PCR, SCR, OSRW	
Beaver Creek of Cumberland River	Basin	McCreary	CAH, PCR, SCR, OSRW	
Bee Lick Creek of Brushy Creek of Buck Creek	Mouth to Warren Branch (0.0-5.7)	Pulaski	WAH, PCR, SCR, OSRW	
Bens Fork of Little Clear Creek	Basin	Bell	WAH, PCR, SCR, OSRW	
Big Branch of Marsh Creek	Basin above River Mile 0.8	McCreary	WAH, PCR, SCR, OSRW	
Big Lick Branch of Cumberland River	Basin (above 1.1, Cumberland River backwaters)	Pulaski	WAH, PCR, SCR, OSRW	
Blacksnake Branch of Brownies Creek	Basin	Bell	WAH, PCR, SCR, OSRW	
Breedens Creek of Clover Fork of Cumberland River	Basin	Harlan	WAH, PCR, SCR, OSRW	
Brices Creek of Road Fork of Stinking Creek	Basin	Knox	WAH, PCR, SCR, OSRW	
Brownies Creek of Cumberland River	Basin above Blacksnake Branch (river mile 10.3)	Harlan	WAH, PCR, SCR, OSRW	
Brush Creek of Roundstone Creek	Wolf Creek to Reemergence of Sinking Creek (1.1-7.6)	Rockcastle	WAH, PCR, SCR, OSRW	
Brushy Creek of Buck Creek	Mouth to Headwaters (0.0-16.5)	Pulaski	WAH, PCR, SCR, OSRW	
Buck Creek of Cumberland River	River Mile 11.7 (Backwaters of Lake Cumberland) to RM 55.0 (0.8 miles upstream of confluence of Hurricane Creek)	Pulaski	WAH, PCR, SCR, OSRW	
Buck Creek of Clear Fork of Cumberland River	Basin	Whitley	WAH, PCR, SCR, OSRW	
Bucks Branch of Jellico Creek	Basin	Whitley	WAH, PCR, SCR, OSRW	
Buffalo Creek of Laurel Fork of Clear Fork of Cumberland River	Basin (including the unidentified tributary to the west) above Kentucky/ Tennessee State Line	Whitley	WAH, PCR, SCR, OSRW	
Bunches Creek of Cumberland River	Basin	Whitley	CAH, PCR, SCR, OSRW	
Campbell Branch of Jellico Creek	Basin	Whitley	WAH, PCR, SCR, OSRW	

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Cane Creek of Rockcastle River	Mouth to Dam (0.0-11.85)	Laurel	WAH, PCR, SCR, OSRW
Caney Creek of Left Fork of Straight Creek	Basin	Bell	WAH, PCR, SCR, OSRW
Cannon Creek of Yellow Creek	Basin above Cannon Creek Lake (RM 5.1)	Bell	WAH, PCR, SCR, OSRW
Capuchin Creek of Jellico Creek	Basin from Mouth to Kentucky/Tennessee State Line (0.0-1.25)	McCreary	WAH, PCR, SCR, OSRW
Clear Creek of Roundstone Creek	Scaffold Cane Branch to Davis Branch (3.45-7.8)	Rockcastle	WAH, PCR, SCR, OSRW
Clifty Creek of Brushy Creek of Buck Creek	Mouth to Rocky Branch (0.0-2.7)	Pulaski	WAH, PCR, SCR, OSRW
Glover Bottom Creek	Horse Lick Creek to River Mile 1.4	Jackson	CAH, PCR, SCR
Cogur Fork of Indian Creek	Basin	McCreary	CAH, PCR, SCR, OSRW
Coles Branch of Road Fork of Stinking Creek	Basin	Knox	WAH, PCR, SCR, OSRW
Colliers Creek of Poor Fork of Cumberland River	Basin	Bell	WAH, PCR, SCR, OSRW
Crisillis Branch of Jellico Creek	Basin	Whitley	WAH, PCR, SCR, OSRW
Cumberland River	River Mile 549.65 (Backwaters Lake Cumberland) to River Mile 566.1 (0.2 mile below Summer Shoals)	McCreary/ Whitley	WAH, PCR, SCR, OSRW
Cumberland River	Kentucky/Tennessee state line (River Mile 379.8) to River Mile 456.7 (Lake Cumberland Dam)	Clinton, Cumberland, Russell, Monroe	CAH, PCR, SCR
Davis Branch of Little Yellow Creek	Basin	Bell	WAH, PCR, SCR, OSRW
Dog Slaughter Creek of Cumberland River	Basin	Whitley	CAH, PCR, SCR, OSRW
Dolen Branch of Rock Creek	Basin	McCreary	WAH, PCR, SCR, OSRW
Eagle Creek of Cumberland River	Basin	McCreary	WAH, PCR, SCR, OSRW
Elisha Branch of Laurel Creek	Basin	McCreary	WAH, PCR, SCR, OSRW
Fish Trap Branch	Basin above River Mile 0.5 (Lake Cumberland backwaters)	McCreary	WAH, PCR, SCR, OSRW
Four Mile Creek of Cumberland River	Basin above River Mile 2.5	Bell	WAH, PCR, SCR, OSRW
Four Mile Run of Yellow Creek Bypass	Basin above River Mile 1.0	Bell	WAH, PCR, SCR, OSRW
Fugitt Creek of Clover Fork of Cumberland River	Basin	Harlan	CAH, PCR, SCR, OSRW
Hale Fork of Road Fork of Stinking Creek	Basin	Knox	WAH, PCR, SCR, OSRW
Hawk Creek of Rockcastle River	Basin	Laurel	CAH, PCR, SCR
Hinkle Branch of Road Fork of Stinking Creek	Basin	Knox	WAH, PCR, SCR, OSRW
Honeycutt Branch of Turkey Creek of Stinking Creek	Basin	Knox	WAH, PCR, SCR, OSRW
Horse Lick Creek	Mouth (0.0) at Middle Fork of Rockcastle River to River Mile 12.3 (Clover Bottom Creek)	Jackson/ Rockcastle	WAH, PCR, SCR, OSRW
Howards Creek of Illwill Creek of Wolf River	Dale Hollow Reservoir Backwaters to Headwaters	Clinton	WAH, PCR, SCR, OSRW
Hunting Shirt Branch of Richland Creek	Basin	Knox	WAH, PCR, SCR, OSRW
Indian Creek of Cumberland River	Kilburn Fork to Barren Fork (2.4-6.8)	McCreary	WAH, PCR, SCR, OSRW
Indian Creek of Cumberland River	Basin above and including Barren Fork	McCreary	CAH, PCR, SCR, OSRW
Jackie Branch of Bark Camp Creek	Mouth to Headwaters (0.0-1.65)	Whitley	CAH, PCR, SCR, OSRW

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Jellico Creek of Cumberland River	River Mile 22.5 (confluence with Capuchin Creek) to River Mile 25.25 (Kentucky/Tennessee State Line)	McCreary	WAH, PCR, SCR, OSRW
Jellico Creek of Cumberland River	Basin From and Including Capuchin Creek to the Kentucky/Tennessee State Line (22.5 to 25.25)	McCreary	WAH, PCR, SCR, OSRW
Jennys Branch of Laurel Creek of Marsh Creek	Basin	McCreary	WAH, PCR, SCR, OSRW
Kelly Branch of Clover Fork of Cumberland River	Basin	Harlan	WAH, PCR, SCR, OSRW
Kennedy Creek of Little South Fork of Cumberland River	Little South Fork of Cumberland River to River Mile 1.0	Wayne	WAH, PCR, SCR, OSRW
Kettle Creek	Kentucky/Tennessee State Line to Wells Creek (1.75-6.1)	Monroe	WAH, PCR, SCR, OSRW
Kilburn Fork of Indian Creek	Basin	McCreary	WAH, PCR, SCR, OSRW
Laurel Creek of Marsh Creek	River Mile 3.1 (Jennys Branch) to River Mile 9.0 (Dam)	McCreary	CAH, PCR, SCR, OSRW
Laurel Creek of Marsh Creek	Basin above Mouth of Jennys Branch to Laurel Creek Lake Dam (3.2-9.0)	McCreary	WAH, CAH, PCR, SCR, OSRW
Laurel Fork of Clear Fork of Cumberland River	Basin above River Mile 16.0 (John Partin Road off Hwy 190)	Bell	WAH, PCR, SCR, OSRW
Laurel Fork of Clear Fork of Cumberland River	River Mile 4.3 (Kentucky/Tennessee state line) to River Mile 16.0 (John Partin Road off Hwy 90)	Whitley	WAH, PCR, SCR, OSRW
Laurel Fork of Kilburn Fork	Basin	McCreary	WAH, PCR, SCR, OSRW
Laurel Fork of Middle Fork Rockcastle River	Middle Fork of Rockcastle River to Headwaters (0.0-12.3)	Jackson	WAH, PCR, SCR, OSRW
Laurel River	River Mile 0.9 to Laurel River Lake Dam (0.9-2.4)	Laurel, Whitley	CAH, PCR, SCR
Lick Fork of Yellow Creek By-Pass of Yellow Creek	Basin	Bell	WAH, PCR, SCR, OSRW
Little Popular Creek of Cumberland River	Basin above Hubbs Creek (4.4)	Knox	WAH, PCR, SCR, OSRW
Little South Fork of Cumberland River	River Mile 4.4 (backwaters of Lake Cumberland) to River Mile 35.5 (Confluence with Langham Branch)	Wayne, McCreary	WAH, PCR, SCR, OSRW
Little White Oak Creek	Mouth to Headwaters (0.0-2.6)	Laurel	WAH, PCR, SCR, OSRW
Long Branch of Left Fork of Straight Creek	Basin	Bell	WAH, PCR, SCR, OSRW
Looney Creek of Poor Fork of Cumberland River	Basin above River Mile 5.9 (Lynch City Limits)	Harlan	CAH, PCR, SCR
Marsh Creek	Basin above River Mile 24.6 (Confluence with Murphy Creek) to River Mile 26.5 (within Kentucky)	McCreary	WAH, PCR, SCR, OSRW
Marsh Creek	River Mile 0.05 (confluence with Cumberland River) to River Mile 24.6 (confluence with Murphy Creek)	McCreary	WAH, PCR, SCR, OSRW
Martins Fork	Basin above River Mile 32.7 (Cumberland Gap National Historical Park Boundary)	Bell	CAH, PCR, SCR
Martins Fork	River Mile 27.2 to River Mile 32.7 (Cumberland Gap National Historical Park Boundary)	Bell, Harlan	CAH, PCR, SCR, OSRW
McFarland Creek of Cumberland River	Little McFarland Creek to Spring Branch (0.8-6.2)	Monroe	WAH, PCR, SCR, OSRW

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Meadow Branch of Poor Fork Cumberland River	Mouth to River Mile 1.95 and Basin above the East-Southeast Unnamed Tributary	Harlan	WAH, PCR, SCR, OSRW
Meadow Fork of Franks Creek	Basin	Letcher	WAH, PCR, SCR, OSRW
Meshack Creek of Cumberland River	Mouth to Pitcock Branch (0.0-2.8)	Monroe	WAH, PCR, SCR, OSRW
Middle Fork of Rockcastle River	Confluence of Middle and South Forks of Rockcastle River (River Mile 0.0) to River Mile 7.9 (confluence of Indian Creek and Laurel Fork)	Jackson	WAH, PCR, SCR, OSRW
Mill Branch of Stinking Creek	Basin above reservoir backwaters (0.8)	Knox	WAH, PCR, SCR, OSRW
Mill Creek of Straight Creek	Basin	Bell	WAH, PCR, SCR, OSRW
Mill Creek of Cumberland River	Basin	McCreary	WAH, PCR, SCR, OSRW
Moore Creek of Stinking Creek	Basin	Knox	WAH, PCR, SCR, OSRW
Mud Creek of Clear Fork of Cumberland River	Basin above River Mile 6.5 (0.3 miles above Siler Cemetery Road Bridge)	Whitley	WAH, PCR, SCR, OSRW
Mud Camp Creek of Cumberland River	Mouth to Collins Branch (0.0-1.2)	Cumberland	WAH, PCR, SCR, OSRW
Mud Camp Creek of Cumberland River	Unidentified Tributary to Headwaters (3.8-8.8)	Cumberland/ Monroe	WAH, PCR, SCR, OSRW
Mud Lick of Stinking Creek	Basin	Knox	WAH, PCR, SCR, OSRW
Ned Branch of Rockcastle River	Basin above backwaters (RM 0.45)	Laurel	WAH, PCR, SCR, OSRW
Otter Creek of Cumberland River	Lake Cumberland Backwaters to Carpenter Fork (14.0-22.1)	Wayne	WAH, PCR, SCR, OSRW
Paint Gap Branch of Sinking Creek	Basin	Knox	WAH, PCR, SCR, OSRW
Patterson Creek of Cumberland River	Basin above River Mile 7.3 (confluence with Rose Creek)	Whitley	WAH, PCR, SCR, OSRW
Poor Fork of Cumberland River	Franks Creek to Headwaters (41.4-51.7)	Letcher	WAH, PCR, SCR, OSRW
Poor Fork of Cumberland River	Basin above River Mile 48.1 (at Joseph Road off of Hwy 932)	Letcher	CAH, PCR, SCR, OSRW
Presley House Branch of Poor Fork of Cumberland River	Mouth to Headwaters (0.0-1.5)	Letcher	WAH, PCR, SCR, OSRW
Puncheoncamp Branch of Rock Creek of South Fork of Cumberland River	Mouth to Headwaters (0.0-1.85)	McCreary	WAH, PCR, SCR, OSRW
Richland Creek of Cumberland River	Basin above River Mile 15.8 (0.5 miles above Hubbard Branch) to River Mile 21.4	Knox	WAH, PCR, SCR, OSRW
Roaring Fork of Stinking Creek	Basin	Knox	WAH, PCR, SCR, OSRW
Rock Creek of South Fork of Cumberland River	Kentucky/Tennessee State Line (River Mile 21.5) to White Oak Creek	McCreary	CAH, PCR, SCR, OSRW
Rock Creek of Jellico Creek	Basin	McCreary	WAH, PCR, SCR, OSRW
Rockcastle River	River Mile 8.95 (backwaters of Lake Cumberland) to River Mile 54.7 (confluence of Middle Fork and South Fork Rockcastle River)	Laurel/ Pulaski	WAH, PCR, SCR, OSRW
Ross Branch of Jellico Creek	Basin	Whitley	WAH, PCR, SCR, OSRW
Roundstone Creek of Rockcastle River	River Mile 13.5 (confluence of Renfro Creek) to River Mile 26.4 (Interstate -75)	Rockcastle	WAH, PCR, SCR, OSRW
Ryans Creek of Jellico Creek	Basin	Whitley	WAH, PCR, SCR, OSRW
Sanders Creek of Cumberland River	Basin	Whitley	WAH, PCR, SCR, OSRW

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Seng Branch	Basin	Whitley	WAH, PCR, SCR, OSRW	
Shillalah Creek of Clear Fork of Yellow Creek	Cumberland Gap National Historical Park Boundary to Headwaters (1.5-5.5)	Bell	CAH, PCR, SCR, OSRW	
Shillalah Creek of Clear Fork of Yellow Creek	Mouth to Cumberland Gap National Historical Park Boundary (0.0-1.5)	Bell	WAH, PCR, SCR, OSRW	
Shut-in Branch of Jellico Creek	Basin	McCreary	WAH, PCR, SCR, OSRW	
Sinking Creek	Headwaters to Rockcastle River (0.0-20.3)	Laurel	WAH, PCR, SCR, OSRW	
Sims Fork of Left Fork of Straight Creek	Basin	Bell	WAH, PCR, SCR, OSRW	
Smith Creek of Franks Creek	Basin	Letcher	WAH, PCR, SCR, OSRW	
South Fork of Cumberland River	River Mile 44.3 (Blue Heron) to River Mile 54.8 (Kentucky/Tennessee State Line)	McCreary	WAH, PCR, SCR, OSRW	
South Fork of Rockcastle River	River Mile 2.1 to White Oak Creek (River Mile 5.8)	Laurel	WAH, PCR, SCR, OSRW	
South Fork of Rockcastle River	Rockcastle River (River Mile 0.0) to River Mile 2.1	Rockcastle	WAH, PCR, SCR, OSRW	
Stevenson Branch of Bennetts Fork of Yellow Creek	Basin	Bell	WAH, PCR, SCR, OSRW	
Sulphur Creek of Wolf River of Obey River	Dale Hollow Reservoir Backwaters to Headwaters (1.7-5.1)	Clinton	WAH, PCR, SCR, OSRW	
Trace Branch of Stinking Creek	Basin	Knox	WAH, PCR, SCR, OSRW	
Trammel Fork of Marsh Creek	Basin	McCreary	WAH, PCR, SCR, OSRW	
Turkey Creek of Stinking Creek	Basin	Knox	WAH, PCR, SCR, OSRW	
Tyes Fork of Bennetts Fork of Patterson Creek	Basin	Whitley	WAH, PCR, SCR, OSRW	
Unidentified Tributary of Cane Creek of Rockcastle River	Mouth to Headwaters (0.0-1.2)	Laurel	WAH, PCR, SCR, OSRW	
Unidentified Tributary (across from Hemlock Grove at river mile 9.3 of Rock Creek) of Rock Creek of South Fork of Cumberland River	Mouth to Headwaters (0.0-1.2)	McCreary	WAH, PCR, SCR, OSRW	
Unidentified Tributary (RMI 17.05 of Rock Creek) of Rock Creek of South Fork of Cumberland River	Mouth to Headwaters (0.0-1.9)	McCreary	WAH, PCR, SCR, OSRW	
Watts Branch of Rock Creek	Basin	McCreary	WAH, PCR, SCR, OSRW	
Watts Creek of Cumberland River	Basin above Camp Blanton Lake (2.4)	Harlan	WAH, PCR, SCR, OSRW	
White Oak Creek of Rock Creek	Basin	McCreary	WAH, PCR, SCR, OSRW	
White Oak Creek of Sinking Creek	Basin above River Mile 0.9 (includes Little White Oak Creek)	Laurel	CAH, PCR, SCR	
Wolf Creek of Clear Fork	Basin above Little Wolf Creek (2.0-5.9)	Whitley	WAH, PCR, PSOR, OSRW	
Wood Creek of Little Rockcastle River	Confluence with Hazel Patch Creek (0.0) to River Mile 1.9 (Wood Creek Lake Dam)	Laurel	CAH, PCR, SCR	
Youngs Creek of Cumberland River	Basin	Whitley	WAH, PCR, SCR, OSRW	
LAKES AND RESERVOIRS				
Beulah (=Tyner)	Entire Reservoir	Jackson	WAH, CAH, PCR, SCR	

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Cannon Creek	Entire Reservoir	Bell	WAH, CAH, PCR, SCR	
Laurel River	Entire Reservoir	Laurel/Whitley	WAH, CAH, PCR, SCR	
Wood Creek	Entire Reservoir	Laurel	WAH, CAH, PCR, SCR	
TENNESSEE RIVER BASIN				
Blood River of Kentucky Lake (Tennessee River)	McCullough Fork to Tennessee State-Line (15.15-18.7)	Calloway	WAH, PCR, SCR, OSRW	
Clarks River of Tennessee River	Persimmon Slough to Middle Fork Creek (28.6-30.6)	Marshall	WAH, PCR, SCR, OSRW	
Grindstone Creek of Kentucky Lake (Blood River of Tennessee River)	Kentucky Lake Backwaters to Headwaters (0.7-2.9)	Calloway	WAH, PCR, SCR, OSRW	
Panther Creek of Kentucky Lake (Blood River of Tennessee River)	Kentucky Lake Backwaters to Headwaters (0.5-5.7)	Calloway	WAH, PCR, SCR, OSRW	
Soldier Creek of West Fork of Clarks River	Mouth to South Fork of Soldier Creek (0.0-5.7)	Marshall	WAH, PCR, SCR, OSRW	
Sugar Creek of Kentucky Lake (Tennessee River)	Kentucky Lake Backwaters to Buzzard Roost Road (2.5-3.2)	Calloway	WAH, PCR, SCR, OSRW	
Sugar Creek of West Fork Clarks River	Mouth to Unnamed Reservoir (0.0-3.9)	Graves	WAH, PCR, SCR, OSRW	
Tennessee River	0.4 miles upstream of White Oak Creek to 12.0 (approximately 0.4 miles above Mud Creek) (4.2-12.0)	Livingston/Marshall	WAH, PCR, SCR, OSRW	
Tennessee River	River 12.0 (approximately 0.4 miles above Mud Creek) to 22.8 (Kentucky Lake Dam)	Livingston/Marshall	WAH, PCR, SCR, OSRW	
Tennessee River	River Mile 23.1 (Kentucky Lake Dam) to River Mile 12.4 (12.4-23.1)	Livingston/ McCracken/ Marshall	WAH, PCR, SCR, OSRW	
Trace Creek of West Fork of Clarks River	Mouth to Neeley Branch (0.0-3.35)	Graves	WAH, PCR, SCR, OSRW	
Unidentified Tributary of Unidentified Tributary of Panther Creek of West Fork of Clarks River	Mouth to Headwaters (0.0-1.7)	Graves	WAH, PCR, SCR, OSRW	
West Fork of Clarks River	Soldier Creek to Duncan Creek (20.1-23.5)	Graves	WAH, PCR, SCR, OSRW	
Wildcat Creek of Kentucky Lake (Blood River of Tennessee River)	Ralph Wright Road Crossing to Headwaters (3.6-6.8)	Calloway	WAH, PCR, SCR, OSRW	
OHIO RIVER BASIN (Main Stem and Minor Tributaries)				
Ashbys Fork	Mouth to Petersburg Road (SR 20) (0.0-3.7)	Boone	WAH, PCR, SCR, OSRW	
Crooked Creek	Rush Creek to City Lake Dam (17.9-26.2)	Crittenden	WAH, PCR, SCR, OSRW	
Doe Run Creek	Hwy 1638 to Headwaters (5.2-8.3)	Meade	CAH, PCR, SCR	
Double Lick Creek of Woolper Creek	Mouth to Headwaters (0.0-3.5)	Boone	WAH, PCR, SCR, OSRW	
Garrison Creek	Mouth to Headwaters (0.0-4.85)	Boone	WAH, PCR, SCR, OSRW	
Kinniconick Creek	McDowell Creek to Headwaters (5.05-50.9)	Lewis	WAH, PCR, SCR, OSRW	
Little South Fork of Big South Fork	Land Use Change to Headwaters (1.2-5.9)	Boone	WAH, PCR, SCR, OSRW	
Middle Fork of Massac Creek	Hines Road to Headwaters (3.1-6.4)	McCracken	WAH, PCR, SCR, OSRW	
Ohio River	River Mile 341.3 to 343.3	Greenup	WAH, PCR, SCR, OSRW	
Ohio River	River Mile 436.25 to 438.0	Bracken	WAH, PCR, SCR, OSRW	

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Ohio River	River Mile 459.6 to 461.7	Campbell	WAH, PCR, SCR, OSRW	
Ohio River	River Mile 559.7 to 562.0	Trimble	WAH, PCR, SCR, OSRW	
Ohio River	River Mile 725.2 to 727.1	Hancock	WAH, PCR, SCR, OSRW	
Ohio River	River Mile 732.9 to 734.9	Hancock	WAH, PCR, SCR, OSRW	
Ohio River	River Mile 758.7 to 760.7	Daviess	WAH, PCR, SCR, OSRW	
Ohio River	River Mile 784.7 to 786.6	Henderson	WAH, PCR, SCR, OSRW	
Ohio River	River Mile 848.0 to River Mile 850.0	Union	WAH, PCR, SCR, OSRW	
Ohio River	River Mile 856.4-852.0	Union	WAH, PCR, SCR, OSRW	
Ohio River	River Mile 859.0 to River Mile 861.0	Union	WAH, PCR, SCR, OSRW	
Ohio River	River Mile 865.0 to River Mile 867.0	Union	WAH, PCR, SCR, OSRW	
Ohio River	River Mile 923.5 to River Mile 926.0	Livingston	WAH, PCR, SCR, OSRW	
Ohio River	River Mile 927.0 to River Mile 930.0	Livingston	WAH, PCR, SCR, OSRW	
Ohio River	River Mile 933.0 to 937.0	McCracken	WAH, PCR, SCR, OSRW	
Ohio River	River Mile 937.0 to River Mile 939.8	McCracken	WAH, PCR, SCR, OSRW	
Ohio River	River Mile 933.1 to 943.4	McCracken	WAH, PCR, SCR, OSRW	
Ohio River	River Mile 948.2 to River Mile 949.5	McCracken	WAH, PCR, SCR, OSRW	
Ohio River	River Mile 946.8 to 949.1	McCracken	WAH, PCR, SCR, OSRW	
Ohio River	River Mile 952.7 to 956.1	McCracken	WAH, PCR, SCR, OSRW	
Ohio River	River Mile 960.0 to River Mile 962.7 (above Lock and Dam 53)	Ballard	WAH, PCR, SCR, OSRW	
Ohio River	River Mile 966.3 to River Mile 969.5	Ballard	WAH, PCR, SCR, OSRW	
Ohio River	River Mile 922.0 to River Mile 923.5 (Channel East of Towhead Island)	Livingston	WAH, PCR, SCR, OSRW	
Ohio River	River Mile 956.1 to 974.1	Ballard/McCracken	WAH, PCR, SCR, OSRW	
Otter Creek	Ohio River to River Mile 9.7	Meade	CAH, PCR, SCR	
Second Creek	Ohio River Backwaters to Headwaters (0.2-2.7)	Boone	WAH, PCR, SCR, OSRW	
Sinking Creek	Hwy 259 to Headwaters (includes Blue & Stony Forks)	Breckinridge	CAH, PCR, SCR	
Unidentified Tributary of Big Sugar Creek	I-71 to Headwaters (1.0-3.4)	Gallatin	WAH, PCR, SCR, OSRW	
Unidentified Tributary of Corn Creek	Mouth to Headwaters (0.0-2.3)	Trimble	WAH, PCR, SCR, OSRW	
Unidentified Tributary of Massac Creek	Mouth to Headwaters (0.0-1.7)	McCracken	WAH, PCR, SCR, OSRW	
West Fork of Massac Creek	SR 724 to Little Massac Creek (1.0-6.2)	McCracken	WAH, PCR, SCR, OSRW	
White Oak Creek	Mouth (Ohio River) to River Mile 1.08	Greenup	SCR	401 KAR 10:031, Section 2(1)(d) and 2(3)[2(2)] do not apply.
Yellowbank Creek	Ohio River Backwaters to Headwaters (1.5-11.8)	Breckinridge	WAH, PCR, SCR, OSRW	
LAKES AND RESERVOIRS				
Metropolis	Entire Lake	McCracken	WAH, PCR, SCR, OSRW	
MISSISSIPPI RIVER BASIN (Main Stem and Minor Tributaries)				
Bayou de Chien	River Mile 15.4 to Headwaters (River Mile 32.9)	Hickman/ Graves	WAH, PCR, SCR, OSRW	

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Cane Creek of Bayou de Chien	Basin	Graves	WAH, PCR, SCR, OSRW
Jackson Creek of Bayou de Chien	Basin	Graves	WAH, PCR, SCR, OSRW
Jackson Creek	Mouth to Headwaters	Graves	WAH, PCR, SCR, OSRW
Mississippi River	River Mile 947.0 to River Mile 942.3	Hickman	WAH, PCR, SCR, OSRW
Mississippi River	River Mile 959.1 to River Mile 957.1	Carlisle	WAH, PCR, SCR, OSRW
Obion Creek	Hurricane Creek to Little Creek (26.35-36.55)	Hickman	WAH, PCR, SCR, OSRW
Sand Creek of Bayou de Chien	Basin	Graves	WAH, PCR, SCR, OSRW
South Fork of Bayou de Chien	Basin	Graves	WAH, PCR, SCR, OSRW
Terrapin Creek	Tennessee State Line to Headwaters (2.7-6.0)	Graves	WAH, PCR, SCR, OSRW
LAKES AND RESERVOIRS			
Murphy's Pond	Entire Pond and Preserve Area	Hickman	WAH, PCR, SCR, OSRW
Swan Pond	Entire Lake	Ballard	WAH, PCR, SCR, OSRW

(b) Table D in this subsection lists waters that have been redesignated pursuant to Section 2 of this administrative regulation or have approved exceptions to criteria pursuant to 401 KAR 10:031 Section 10 or Section 11.

Table D WATERS WITH DESIGNATED USES REMOVED OR EXCEPTIONS TO CRITERIA					
Waterbody and Receiving Water	Boundary Description	Latitude (Downstream/Decimal Degrees)	Longitude (Upstream/Decimal Degrees)	County	Uses Removed and Exceptions to Criteria
OHIO RIVER BASIN					
White Oak Creek of Ohio River	Mouth to Culvert Along KY-693 Diederick Boulevard	38.51661, 38.50421	-82.68142, -82.68801	Greenup	Designated Uses Removed: WAH, PCR. Exceptions to Criteria: 401 KAR 10:031, Section 2(1)(d) and 2(3) do not apply.
SALT RIVER BASIN					
Paddy Run of Ohio River	Mouth to Headwaters	38.21944	-85.84961	Jefferson	Designated Uses Removed: WAH. Exceptions to Criteria: 401 KAR 10:031, Sections 2(1)(d) and 2(3) do not apply.

Section 6. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Interim Economic Guidance for Water Quality Standards Workbook", EPA, March 1995 Publication EPA-823-B-95-002. U.S. Environmental Protection Agency, Office of Water, Washington, D.C.; [is incorporated by reference.]

(b) "Combined Sewer Overflows - Guidance for Financial Capability Assessment and Schedule Development", EPA, February 1997; and

(c) "Combined Sewer Overflow (CSO) Control Policy", U.S. EPA, 59 Federal Register 18688, April 1994.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Division of Water, 300 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(3)(a) "Interim Economic Guidance for Water Quality Standards Workbook", EPA, March 1995 may also be obtained at <https://www.epa.gov/sites/production/files/2016-03/documents/econworkbook-complete.pdf>;

(b) "Combined Sewer Overflows - Guidance for Financial Capability Assessment and Schedule Development", EPA, February 1997 may also be obtained at https://www.epa.gov/sites/production/files/2015-10/documents/csofc_0.pdf; and

(c) "Combined Sewer Overflow (CSO) Control Policy", U.S. EPA, 59 Federal Register 18688, April 1994 may also be obtained at <https://www3.epa.gov/npdes/pubs/owm0111.pdf>.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: June 11, 2019

FILED WITH LRC: June 12, 2019 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 23, 2019 at 6:00 p.m. Eastern Time at the Energy and Environment Cabinet, Training Room B, 300 Sower Boulevard, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through July 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: Carole J. Catafo, Internal Policy Analyst, RPPS, Division of Water, 3rd Floor, 300 Sower Boulevard, Frankfort, Kentucky 40601, phone (502) 564-3410, fax (502) 564-9003, email water@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Carole J. Catafo
(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation lists the types of designated uses for surface waters of the Commonwealth, provides and describes the process of redesignation of surface waters, and lists designated uses for specific surface waters of the Commonwealth that have been assigned.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to inform the public of the types of and provisions for redesignation of, and lists the designated uses assigned, to surface waters of the Commonwealth. The list of designated uses is a reference tool necessary for the public to identify which designated uses apply to specific surface waters of the Commonwealth.

Additionally, in order for Kentucky to maintain its delegation authority over the National Pollution Discharge Elimination System permit program, the Clean Water Act requires that Kentucky review its water quality standards every three years (known as the "Triennial Review") and comply with the programmatic requirements of 40 C.F.R. Part 131, including implementing the antidegradation policy.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100 requires the cabinet to develop and conduct a comprehensive program for the management of water resources and to provide for the prevention, abatement, and control of pollution. This administrative regulation and 401 KAR 10:001, 10:029, 10:030, and 10:031 establish procedures to protect the surface waters of the Commonwealth, and thus protect water resources. This administrative regulation applies the designated uses described in 401 KAR 10:031 to the surface waters of the Commonwealth. This administrative regulation also establishes that all surface waters shall be subject to the general criteria specified in 401 KAR 10:031, Section 2.

Additionally, in order for Kentucky to maintain its delegation authority over the National Pollution Discharge Elimination System permit program, the Clean Water Act requires that Kentucky review its water quality standards every three years (known as the "Triennial Review") and comply with the programmatic requirements of 40 C.F.R. Part 131, including implementing the antidegradation policy.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the administration of the statutes by providing for redesignation of surface waters and by listing those uses assigned to specific waters of the Commonwealth. This enables the public to know which regulatory criteria relate to specific waters and supports compliance with the 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 revises Sections 2(1)(a) and 2(4) to be consistent with 40 C.F.R. 131.10(g). The amendment adds a requirement for re-examination of waters with uses removed every three years in Section 2(5) to be consistent with 40 C.F.R. 131.20(a).

This amendment adds designated uses for 57 basins, streams, or stream segments. The latter changes are being made pursuant to Section 3(2) of this regulation, and the automatic inclusion clause of 401 KAR 10:031 Section 8(1)(a)3, based on the presence of threatened or endangered species. The amendment revises Table B – Surface Water Intakes for Domestic Water Supply Use - by updating the table to reflect the current locations of domestic water intakes, removing the "Description" column, and adding columns for Wastewater and Public Water System permit identification numbers, as well as location by latitude and longitude, to more accurately identify intake locations. The amendment revises Table C by adding waterbodies and receiving waters, boundary description, and latitude and longitude, to more accurately identify locations, and removes waters with a removed use or exception to criteria in a new Table D. Table D also corrects a previous error that references 401 KAR 10:031, Section 2(2) instead of Section 2(3). The amendment adds re-examination of waterbodies that do not include specified uses every 5 years to determine if new information is available, adds references to

C.F.R. regarding affirmative findings for redesignation to align with federal requirements, and add alternatives for examining economic and social impacts of unattainable uses.

The amendment newly incorporates by reference the "Combined Sewer Overflows – Guidance for Financial Capability Assessment and Schedule Development", EPA, February 1997 which is used to evaluate and consider economics during the process of establishing or revising water quality standards. The amendment also newly incorporates by reference the CSO Control Policy of April 1994 which is used, in part, to develop and update CSO alternatives analyses.

The amendment clarifies that documentation listed in Section 3(3) is not required for proposed Outstanding State Resource Waters due to supporting federally-listed threatened or endangered species. Section 1 already specifies the designated uses applicable to all waters, the amendment removes redundancy in Sections 5(2) and 5(3).

(b) The necessity of the amendment to this administrative regulation: These amendments are necessary to protect the Commonwealth's Outstanding State Resource Waters. Additionally, in order for Kentucky to maintain its delegation authority over the National Pollution Discharge Elimination System permit program, the Clean Water Act requires that Kentucky review its water quality standards every three years (known as the "Triennial Review") and comply with the programmatic requirements of 40 C.F.R. Part 131, including implementing the antidegradation policy.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100 requires the cabinet to develop and conduct a comprehensive program for the management of water resources and to provide for the prevention, abatement, and control of pollution. This administrative regulation and 401 KAR 10:001, 10:029, 10:030, and 10:031 establish procedures to protect the surface waters of the Commonwealth, and thus protect water resources. This administrative regulation applies the designated uses described in 401 KAR 10:031 to the surface waters of the Commonwealth. This administrative regulation also establishes that all surface waters shall be subject to the general criteria specified in 401 KAR 10:031, Section 2.

Additionally, in order for Kentucky to maintain its delegation authority over the National Pollution Discharge Elimination System permit program, the Clean Water Act requires that Kentucky review its water quality standards every three years (known as the "Triennial Review") and comply with the programmatic requirements of 40 C.F.R. Part 131, including implementing the antidegradation policy.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in effective administration of the statutes by adding designated uses for 57 basins, streams or stream segments, more accurate identification of intake locations, aligning compliance with federal regulations, and incorporating by reference a document used to consider economics during the process of establishing or revising water quality standards.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation applies to designated uses of the surface waters of the Commonwealth. All individuals, businesses, organizations, and governments that use the Commonwealth's surface waters for residential, commercial, industrial, or recreational purposes could be impacted by this regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: If a regulated entity applies for a KPDES permit for a new or expanded discharge into a surface water of the commonwealth, or submits an application for the renewal of an existing permit to discharge to a surface water of the commonwealth, the permit conditions may result in additional treatment outlays, training costs, or operational changes. The

permit conditions will depend on the nature of the discharge.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The costs to comply with this administrative regulation will vary considerably depending on the site location, type of activity, and other factors.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Direct and indirect savings may be realized through reduced drinking water treatment costs, maintenance of good agricultural water, maintenance of fisheries, and healthy recreational waters.

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

(a) Initially: This administrative regulation will not result in additional costs.

(b) On a continuing basis: This administrative regulation will not result in additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue are a combination of General Funds appropriated by the Kentucky General Assembly, and federal funds from the US EPA.

(7) Provide an assessment of whether an 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 will not be necessary to implement these amendments.

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

(9) TIERING: Is tiering applied? Yes, tiering is applied in this administrative regulation. The discharge requirements of 401 KAR 10:031 into a water designated as a cold water aquatic habitat are more stringent than those designated for warm water aquatic habitats. 401 KAR 10:031 also establishes special requirements for any discharge into a designated OSRW under this regulation. Waters listed in Table B that have a surface water intake are subject to the Domestic Water Supply criteria of 401 KAR 10:031.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation applies to designated uses of the surface waters of the Commonwealth. All governments that use those waters for residential, commercial, industrial, or recreational purposes could be impacted by this regulation. This administrative regulation may affect the wastewater treatment operations of local governments if they discharge into surface waters of the Commonwealth that have been redesignated 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 146.220, 146.241, 146.270, 146.410, 146.450, 146.460, 146.465, 224.10-100, 224.16-050, 224.16-060, 224.70-100, 224.70-110, 40 C.F.R. Part 131, 16 U.S.C. 1271-1287, 1531-1544, 33 U.S.C. 1311, 1313, 1314, 1316, 1341

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

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

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

(c) How much will it cost to administer this program for the first year? This administrative regulation will not result in additional costs.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation will not result in additional costs.

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

Revenues (+/-): NA

Expenditures (+/-): NA

Other Explanation: This amended administrative regulation establishes instream uses designated by the cabinet that, in combination with the criteria of 401 KAR 10:031, provide for the protection of water quality in the Commonwealth. Local governments will be required to discharge effluents that assure attainment of the receiving surface water's designated uses. Criteria that apply to these redesignations will be implemented when a permit is issued. Local governments withdrawing drinking water from these waters may have lower treatment costs because of lower pollutant loads. Additional costs may be incurred where criteria are more stringent or when new criteria are established, and fewer costs may be incurred when criteria are less stringent or have been eliminated.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal mandate to implement a water pollution control program. For Kentucky to maintain its delegation authority over the National Pollution Discharge Elimination System permit program, the Clean Water Act requires that Kentucky review its water quality standards every three years (known as the "Triennial Review") and comply with the programmatic requirements of 40 C.F.R. Part 131, including implementing the antidegradation policy.

2. State compliance standards. KRS 146.220, 146.241, 146.270, 146.410, 146.450, 146.460, 146.465, 224.10-100, 224.16-050, 224.16-060, 224.70-100, 224.70-110

3. Minimum or uniform standards contained in the federal mandate. 40 C.F.R. Part 131, 16 U.S.C. 1271-1287, 1531-1544, 33 U.S.C. 1311, 1313, 1314, 1316, 1341

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate? No.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There are no stricter standards or additional or different responsibilities or requirements.

**ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Water
(Amendment)**

401 KAR 10:029. General provisions.

RELATES TO: KRS 146.200 through 146.360[~~146.200-146.360~~], 146.410 through 146.535[~~146.410-146.535~~], 146.550 through 146.570[~~146.550-146.570~~], 146.600 through 146.619[~~146.600-146.619~~], 146.990, 224.1-010, 224.1-400, 224.16-050, 224.16-070, 224.70-100 through 224.70-140[~~224.70-100-224.70-140~~], 224.71-100 through 224.71-145[~~224.71-100-224.71-145~~], 224.73-100 through 224.73-120[~~224.73-100-224.73-120~~], 40 C.F.R. 136, 33 U.S.C. 1326(a)

STATUTORY AUTHORITY: KRS 146.220, 146.241, 146.270, 146.410, 146.450, 146.460, 146.465, 224.10-100, 224.16-050, 224.16-060, 224.70-100, 224.70-110, 40 C.F.R. 131, 136, 16 U.S.C. 1531 through 1544[~~1531-1544~~], 33 U.S.C. 1311, 1312, 1313, 1314, 1316, 1341

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the cabinet to develop and conduct a comprehensive program for the management of water resources and to provide for the prevention, abatement, and control of water pollution. This administrative regulation and 401 KAR 10:001, 10:026, 10:030, and 10:031 establish procedures to protect the surface waters of the commonwealth, and thus protect water resources. This

administrative regulation establishes the commonwealth's surface water antidegradation policy, provides for withdrawals of waters not meeting water quality standards, and addresses sample collection and analytical methodology and mixing zones.

Section 1. Antidegradation Policy. (1) The purpose of 401 KAR 10:026 through 401 KAR 10:031 is to safeguard the surface waters of the commonwealth for their existing and designated uses, to prevent the creation of new pollution of these waters, and to abate existing pollution.

(2) Where the quality of surface waters exceeds that necessary to support propagation of fish, shellfish, wildlife and recreation in and on the water, that quality shall be maintained and protected unless the cabinet finds, after full satisfaction of the intergovernmental coordination and public participation provisions of the cabinet's continuing planning process required by 33 U.S.C. 1313 and 40 C.F.R. 130.5, that allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located.

(a) For point source discharges, water quality shall be maintained and protected in these waters according to the procedures specified in 401 KAR 10:030, Section 1(2)(b) or (3)(b).

(b) In allowing degradation or lower water quality, the cabinet shall assure water quality adequate to protect existing uses fully.

(c) The cabinet shall assure that there shall be achieved the highest statutory and regulatory requirements for waste treatment by all new and existing point sources and that nonpoint sources of pollutants be controlled by application of all cost effective and reasonable best management practices.

(3) Water quality shall be maintained and protected in a water categorized as an outstanding national resource water according to the procedures specified in 401 KAR 10:030, Section 1(1)(b).

(4) Water quality shall be maintained and protected in those waters designated as outstanding state resource waters according to the procedures specified in 401 KAR 10:031, Section 8.

(5) If potential water quality impairment associated with a thermal discharge is involved, a successful demonstration conducted under Section 316 of the Clean Water Act, 33 U.S.C. 1326, shall be in compliance with this section.

Section 2. Withdrawal of Contaminated Water. Surface waters occasionally do not meet the criteria established in 401 KAR 10:031.

(1) Withdrawal and subsequent discharge of these waters without alteration of the physical or chemical characteristics into the same or similar surface water shall not be considered a violation of water quality standards.

(2) The cabinet shall determine KPDES permit limitations in these situations based on the quality of the raw and receiving waters.

(3) The cabinet retains the right to require permit modification under the provisions of 401 KAR 5:035, 5:065, 5:070, 5:075, and 5:080.

Section 3. Sample Collection and Analytical Methodology. (1) All methods of preservation and analysis used to determine conformity or nonconformity with water quality standards shall be governed by 40 C.F.R. 136, as amended, if applicable.

(2) Sample collection and other methods not established in subsection (1) of this section may be used as appropriate if they:

(a) Meet commonly accepted quality assurance and quality control principles;

(b) Are within the accuracy required for determining conformity or nonconformity with water quality standards; and

(c) Receive prior written approval by the cabinet.

Section 4. Mixing Zones. (1) The cabinet may assign definable geometric limits for mixing zones for a discharge of a pollutant or pollutants within a discharge based on the following criteria:

(a) Applicable limits shall include the linear distances from the point of discharge, surface area involvement, volume of receiving water, and shall take into account other nearby mixing zones;

(b) Dilution provided by assigned mixing zones shall not be allowed until applicable limits are assigned by the cabinet in

accordance with this section;

(c) In a stream or river, unless assigned on or before December 8, 1999, an assigned mixing zone, from the point of discharge in a spatial direction, shall not exceed one-third (1/3) of the width of the receiving stream or one-half (1/2) of the cross-sectional area;

(d) In a lake or a reservoir, unless assigned on or before December 8, 1999, an assigned mixing zone, from the point of discharge in any spatial direction, shall not exceed one-tenth (1/10) of the width of the lake, or reservoir at the discharge point;

(e) An assigned mixing zone shall be limited to an area or volume that shall not adversely affect the designated uses of the receiving water and shall not be so large as to adversely affect an established community of aquatic organisms;

(f) The location of a mixing zone shall not:

1. Interfere with fish spawning or nursery areas, fish migration routes, public water supply intakes, or bathing areas;

2. Preclude the free passage of fish or other aquatic life; or

3. Jeopardize the continued existence of endangered or threatened aquatic species listed under Section 4 of the Endangered Species Act, 16 U.S.C. 1531 through 1544, or result in the destruction or adverse modification of their critical habitat;

(g) For thermal discharges, a successful demonstration conducted under Section 316(a) of the Clean Water Act, 33 U.S.C. Section 1326(a), shall constitute compliance with this section; and

(h) ~~Unless assigned by the cabinet on or before September 8, 2004,~~ There shall not be mixing zones or other dilution provisions assigned for bioaccumulative chemicals of concern.

~~1. [A mixing zone that was assigned by the cabinet for a bioaccumulative chemical of concern shall not expire later than September 8, 2014.~~

~~2.a.] A bioaccumulative chemical of concern is one that accumulates in one (1) or more aquatic organisms by a human health bioaccumulation factor of greater than 1,000.~~

~~2. [b.] For the purposes of this administrative regulation, bioaccumulative chemicals of concern shall consist of the following:~~

(i) alpha-Hexachlorocyclohexane;

(ii) beta-Hexachlorocyclohexane;

(iii) Chlordane;

(iv) DDD;

(v) DDE;

(vi) DDT;

(vii) delta-Hexachlorocyclohexane;

(viii) Dieldrin;

(ix) Hexachlorobenzene;

(x) Hexachlorobutadiene;

(xi) Hexachlorocyclohexane;

(xii) Lindane;

(xiii) Mercury;

(xiv) Mirex;

(xv) Octachlorostyrene;

(xvi) PCBs;

(xvii) Pentachlorobenzene;

(xviii) Photomirex;

(xix) Toxaphene;

(xx) 1,2,3,4-Tetrachlorobenzene;

(xxi) 1,2,4,5-Tetrachlorobenzene; and

(xxii) 2,3,7,8-TCDD (Dioxin).

(2) Concentrations of toxic substances that exceed the acute criteria for protection of aquatic life in 401 KAR 10:031 shall not exist within an assigned mixing zone or in the discharge itself unless a zone of initial dilution is assigned.

(a) A zone of initial dilution shall be assigned pursuant to subsection (3) of this section.

(b) Chronic criteria for the protection of aquatic life and criteria for the protection of human health regarding the consumption of fish tissue shall be met at the edge of the assigned mixing zone.

(3) The following requirements shall apply to a zone of initial dilution:

(a) The cabinet shall require an applicant to provide a technical evaluation for a zone of initial dilution;

(b) Concentrations of toxic substances shall not exceed the acute criteria for the protection of aquatic life at the edge of the

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assigned zone of initial dilution, except, numeric acute criteria may be exceeded within the zone if the frequency and duration of exposure of aquatic organisms are not sufficient to cause acute toxicity; and

(c) Unless assigned on or before December 8, 1999, a zone of initial dilution for a pollutant shall not be allowed in an exceptional water.

(4) Unless assigned on or before July 6, 2009, a zone of initial dilution for a pollutant shall be available only to a submerged high-rate multiport outfall structure and shall be limited in size to the most restrictive of the acute criteria which shall be met:

(a) Within ten (10) percent of the distance from the edge of the outfall structure to the edge of the regulatory mixing zone in a spatial direction;

(b) Within a distance of fifty (50) times the square root of the cross-sectional area of a discharge port, in a spatial direction; or

(c) In a horizontal direction within a distance of five (5) times the natural water depth that prevails under mixing zone design conditions, and exists before the installation of a discharge outlet.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: June 11, 2019

FILED WITH LRC: June 12, 2019 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 23, 2019 at 6:00 p.m. Eastern Time at the Department for Environmental Protection, Training Room B, 300 Sower Boulevard, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through July 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: Carole J. Catalfo, Internal Policy Analyst, RPPS, Division of Water, 3rd Floor, 300 Sower Boulevard, Frankfort, Kentucky 40601, phone (502) 564-3410, fax (502) 564-9003, email water@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Carole J. Catalfo

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes general operating provisions for water quality regulations that protect the surface waters of the Commonwealth. This administrative regulation provides for withdrawal of contaminated water, sample collection and methodology, and mixing zones. This administrative regulation is also used in conjunction with 401 KAR 10:030 to implement antidegradation requirements. The purpose of this administrative regulation is to address water quality protection issues not covered in 10:026, 10:030, or 10:031 to form a complete protection program.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish requirements for the protection of the surface waters of the Commonwealth.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100 requires the cabinet to develop and conduct a comprehensive program for the management of water resources and to provide for the prevention, abatement, and control of water pollution. This administrative regulation and 401 KAR 10:001, 10:026, 10:030, and 10:031 establish procedures to protect the surface waters of the commonwealth, and thus protect water resources. This administrative regulation establishes the commonwealth's surface water antidegradation policy, provides for withdrawals of waters not

meeting water quality standards, and addresses sample collection and analytical methodology and mixing zones.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the administration of the statutes by providing specific requirements for the protection of surface waters of the Commonwealth as required by the authorizing statutes.

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

(a) How the amendment will change this existing administrative regulation: The amendment clarifies that the purpose of 401 KAR Chapter 10 is to protect both existing and designated uses of surface waters of the commonwealth, and formalizes the removal of mixing zones for bioaccumulative chemicals of concern which were phased out on September 8, 2014 and clarifies that dilution provisions are mixing zones.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to formalize the removal of mixing zones for bioaccumulative chemicals of concern which were phased out on September 8, 2014 and clarifies that dilution provisions are mixing zones.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100 requires the cabinet to develop and conduct a comprehensive program for the management of water resources and to provide for the prevention, abatement, and control of water pollution. This administrative regulation and 401 KAR 10:001, 10:026, 10:030, and 10:031 establish procedures to protect the surface waters of the commonwealth, and thus protect water resources. This administrative regulation establishes the commonwealth's surface water antidegradation policy, provides for withdrawals of waters not meeting water quality standards, and addresses sample collection and analytical methodology and mixing zones.

(d) How the amendment will assist in the effective administration of the statutes: The amendment formalizes the removal of mixing zones for bioaccumulative chemicals of concern which were phased out on September 8, 2014 and clarifies that dilution provisions are mixing zones.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All individuals, businesses, organizations, and governments that use the Commonwealth's surface waters for residential, commercial, industrial, or recreational purposes could be impacted by this regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The regulated entities will not need to take additional actions to comply with the amendment to this administrative regulation. The amendment formalizes the removal of mixing zones for bioaccumulative chemicals of concern which were phased out on September 8, 2014 and clarifies that dilution provisions are mixing zones.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amendment to this administrative regulation will not result in additional costs. The amendment formalizes the removal of mixing zones for bioaccumulative chemicals of concern which were phased out on September 8, 2014 and clarifies that dilution provisions are mixing zones.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Maintaining existing water quality may have a positive influence on revenues derived from water-based tourism and can lower the costs of treating drinking water.

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

(a) Initially: This administrative regulation will not result in additional costs.

(b) On a continuing basis: This administrative regulation will not result in additional costs.

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(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 a combination of general funds appropriated by the Kentucky General Assembly and federal funds from the U.S. Environmental Protection Agency.

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

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

(9) TIERING: Is tiering applied? Yes, tiering is applied in this administrative regulation. Dischargers must meet certain criteria depending on the nature of the discharge established in 401 KAR 10:029, Section 4.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What 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 may affect the wastewater treatment operations of local government if they have new or expanded discharges into surface waters of the Commonwealth.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation relates to local government wastewater treatment service. KRS 224.10-100, 224.70-100, and 224.70-110 mandate action taken by this administrative regulation.

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

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

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

(c) How much will it cost to administer this program for the first year? This administrative regulation will not result in additional costs.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation will not result in additional costs.

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

Revenues (+/-): NA

Expenditures (+/-): NA

Other Explanation: The amendment will not generate revenue or result in additional costs. The amendment formalizes the removal of mixing zones for bioaccumulative chemicals of concern which were phased out on September 8, 2014.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal mandate to implement a water pollution control program. For Kentucky to maintain its delegation authority of the NPDES permit program, the Clean Water Act requires that Kentucky review its water quality standards every three years (known as the "Triennial Review") and comply with the programmatic requirements of 40 C.F.R. Part 131, including implementing the antidegradation policy.

2. State compliance standards. KRS 146.220, 146.241,

146.270, 146.410, 146.450, 146.460, 146.465, 224.10-100, 224.16-050, 224.16-060, 224.70-100, and 224.70-110

3. Minimum or uniform standards contained in the federal mandate. 40 C.F.R. Part 131, 16 U.S.C. 1531-1544, 33 U.S.C. 1311, 1312, 1313, 1314, 1316, and 1341. The Clean Water Act requires designated uses, criteria, standards, and antidegradation policies in water quality standards.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate? No, this administrative regulation does not impose stricter, additional, or different responsibilities or requirements than the federal standard.

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

ENERGY AND ENVIRONMENT CABINET Department for Environmental Protection Division of Water (Amendment)

401 KAR 10:030. Antidegradation policy implementation methodology.

RELATES TO: KRS ~~146.200 through 146.360~~[146.200-146.360], ~~146.410 through 146.535~~[146.410-146.535], ~~146.550 through 146.570~~[146.550-146.570], ~~146.600 through 146.619~~[146.600-146.619], 146.990, 176.430, 224.1-010, 224.1-400, 224.16-050, 224.16-070, ~~224.70-100 through 224.70-140~~[224.70-100-224.70-140], ~~224.71-100 through 224.71-145~~[224.71-100-224.71-145], ~~224.73-100 through 224.73-120~~[224.73-100-224.73-120], 30 U.S.C. 1201 -1328

STATUTORY AUTHORITY: KRS 146.220, 146.241, 146.270, 146.410, 146.450, 146.460, 146.465, 224.10-100, 224.16-050, 224.16-060, 224.70-100, 224.70-110, 40 C.F.R. 130, 131, 16 U.S.C. 1271 through 1287[~~1271-1287~~], 1531 through 1544[~~1531-1544~~], 33 U.S.C. 1311, 1313, 1314, 1315, 1316, 1341, 1342, 1344

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the cabinet to develop and conduct a comprehensive program for the management of water resources and to provide for the prevention, abatement, and control of all water pollution. KRS 224.70-100 authorizes the policy of the commonwealth to conserve its waters for legitimate uses, safeguard from pollution the uncontaminated waters of the commonwealth, prevent the creation of any new pollution in the waters of the commonwealth, and abate any existing pollution. This administrative regulation and 401 KAR 10:001, 10:026, 10:029, and 10:031 establish procedures to protect the surface waters of the Commonwealth, and thus protect water resources. This administrative regulation establishes a methodology to implement the antidegradation policy contained in 401 KAR 10:029 by establishing procedures to control water pollution in waters affected by that policy.

Section 1. Categorization and Implementation. The antidegradation procedures established in this administrative regulation shall not preempt the power or authority of a local government to provide by ordinance for a higher level of protection through antidegradation implementation for a discharger located within that local government's jurisdiction to a surface water of the commonwealth. The procedures established in this section shall govern implementation of the antidegradation policy of 401 KAR 10:029, Section 1, for a point source discharge. Surface waters shall be placed into one (1) of four (4) categories listed in this section and each category shall have a corresponding implementation procedure. (1) Outstanding national resource water. Surface waters of the commonwealth categorized as outstanding national resource waters are listed in Table 1 of this subsection.

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Table 1 SURFACE WATERS CATEGORIZED AS OUTSTANDING NATIONAL RESOURCE WATER (ONRW)			
Waterbody and Receiving Water	Boundary Description	Latitude, Longitude (Downstream/Upstream; Decimal Degrees)	County
Big South Fork Cumberland River of Lake Cumberland (Cumberland River)	Wild River Boundary at Blue Heron to Tennessee State Line	36.66769, -84.54570/ 36.59880, -84.60518	McCreary
Marsh Creek of Cumberland River	Mouth to Laurel Creek	36.77776, -84.34903/ 36.73182, -84.37118	McCreary
Marsh Creek of Cumberland River*	Laurel Creek to Ford Crossing at CR-1060 East Kidd School Road and CR-1110 Kidd School Road	36.73182, -84.37118/ 36.69964, -84.34471	McCreary
Red River of Kentucky River	School House Branch to KY-746	37.84422, -83.67583/ 37.79871, -83.48947	Menifee, Powell, Wolfe
Reelfoot Lake	Surface Waters Within the National Wildlife Refuge Proclamation Boundary in Kentucky	Not Applicable	Fulton
Rock Creek of Big South Fork Cumberland River*	CR-1236 Rock Creek Road to Tennessee State Line	36.70306, -84.59619/ 36.60241, -84.73999	McCreary
Rockcastle River of Lake Cumberland	Lower End of The Narrows (0.25 River Miles Upstream of Cane Creek) to KY-1956 Billows Road	37.03017, -84.30832/ 37.17136, -84.29679	Laurel, Pulaski, Rockcastle
Underground River System	Within Mammoth Cave National Park	Not Applicable	Edmonson, Hart, Barren
War Fork of Station Camp Creek	Basin Including all Tributaries from Mouth to to Steer Fork	37.53264, -83.90929/ 37.45467, -83.92699	Jackson

*Waterbodies in the cabinet's reference reach network.

Table 1 SURFACE WATERS CATEGORIZED AS OUTSTANDING NATIONAL RESOURCE WATER			
Stream	Segment	River Miles	County
Red River	Upstream to Island off SR 1067 to Downstream Wild River Boundary at SR 746	49.2 to 68.6	Menifee/Wolfe
Underground River System	Within Mammoth Cave National Park Boundary		Edmonson/Hart/Barren
Big South Fork Cumberland River	Downstream Wild River Boundary to Tennessee State line	44.3 to 54.8	McCreary
Surface Waters within Reelfoot Lake National Wildlife Refuge	Reelfoot Lake National Wildlife Refuge Proclamation Boundary in Kentucky	2040 Acres	Fulton
War Fork Station Camp Creek	Basin above South Fork of Station Camp Creek to Steer Fork	0.0 to 13.8	Jackson
Marsh Creek	Mouth to 1.9 miles upstream of Kentucky 478	0.0 to 15.0	McCreary
Rock Creek	State border to White Oak Creek	4.1 to 21.9	McCreary
Rockcastle River	Lower end of Narrows to 0.2 miles downstream of Kentucky 80 bridge	8.95 to 22.4	Laurel/Pulaski

(a) Categorization criteria. A surface water shall be categorized as an outstanding national resource water if:

1. The surface water meets, at a minimum, the requirements for an outstanding state resource water as provided in 401 KAR 10:031, Section 8; and

2. The surface water demonstrates national ecological or recreational significance.

(b) Implementation procedure.

1. Water quality shall be maintained and protected in an outstanding national resource water.

2. A new discharger or expanded discharge that may result in permanent or long-term changes in water quality shall be prohibited.

3. The cabinet may approve temporary or short-term changes in water quality if the changes to the outstanding national resource water do not have a demonstrable impact on the ability of the water to support the designated uses.

(2) Exceptional water. Surface waters of the commonwealth categorized as an exceptional water are listed in Table 2 of this subsection.

Table 2 SURFACE WATERS CATEGORIZED AS EXCEPTIONAL WATER			
Waterbody and Receiving Water	Boundary Description	Latitude, Longitude (Downstream/Upstream; Decimal Degrees)	County
BIG SANDY RIVER BASIN			
Hobbs Fork of Pigeonroost Fork*	Mouth to Headwaters	37.70738, -82.43272/ Headwaters	Martin
Lower Pigeon Branch of Elkhorn Creek*	Left Fork Lower Pigeon Branch to Headwaters	37.24194, -82.48681/ Headwaters	Pike
Russell Fork of Levisa Fork*	Upstream End of Clinchfield Railroad Yard (0.6 RM Upstream of Big Island Branch) to Virginia State Line	37.29283, -82.32741/ 37.29579, -82.31462	Pike
Thompson Fork of Souders Branch*	Mouth to Headwaters	37.68474, -82.66775/ Headwaters	Floyd

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<u>Toms Branch of Elkhorn Creek*</u>	<u>Mouth to Headwaters</u>	<u>37.26119, -82.45249/ Headwaters</u>	<u>Pike</u>
<u>Unnamed Tributary of Hobbs Fork of Pigeonroost Fork*</u>	<u>Mouth to Headwaters</u>	<u>37.68319, -82.40511/ Headwaters</u>	<u>Martin</u>
<u>Unnamed Tributary of Open Fork Paint Creek of Paintsville Lake (Paint Creek)</u>	<u>Mouth to Headwaters</u>	<u>37.97373, -83.05614/ Headwaters</u>	<u>Morgan</u>
GREEN RIVER BASIN			
<u>Beaverdam Creek of Green River*</u>	<u>Mouth to Headwaters</u>	<u>37.19637, -86.27598/ Headwaters</u>	<u>Edmonson</u>
<u>Big Brush Creek of Green River</u>	<u>Brush Creek to Poplar Grove Branch</u>	<u>37.38472, -85.59302/ 37.42787, -85.57944</u>	<u>Green</u>
<u>Brushy Pond Creek of Caney Creek</u>	<u>Above Pond to Headwaters</u>	<u>37.40290, -86.59473/ Headwaters</u>	<u>Butler, Grayson</u>
<u>Cane Run of Nolin River Lake (Nolin River)*</u>	<u>Nolin River Lake Backwaters to Headwaters</u>	<u>37.33240, -86.07132/ Headwaters</u>	<u>Hart</u>
<u>Caney Fork of Peter Creek*</u>	<u>Mouth to Headwaters</u>	<u>36.84608, -85.97090/ Headwaters</u>	<u>Barren</u>
<u>Clifty Creek of Rough River*</u>	<u>Barton Run to Western Kentucky Parkway</u>	<u>37.54800, -86.23505/ 37.51366, -86.15115</u>	<u>Grayson</u>
<u>Clifty Creek of Wolf Lick Creek*</u>	<u>Little Clifty Creek to Sulphur Lick</u>	<u>36.99759, -87.05518/ 36.98189, -87.12934</u>	<u>Todd</u>
<u>Dismal Creek of Nolin River</u>	<u>Mouth to Headwaters</u>	<u>37.27478, -86.24986/ Headwaters</u>	<u>Edmonson</u>
<u>East Fork Little Barren River of Little Barren River*</u>	<u>Leatherwood Creek to Flat Rock Creek</u>	<u>37.00149, -85.52277/ 36.98390, -85.52892</u>	<u>Metcalfe</u>
<u>Elk Lick Creek of Wolf Lick Creek*</u>	<u>Duck Lick Creek to Barren Fork and Edger Creek</u>	<u>36.96003, -86.98838/ 36.91651, -86.97280</u>	<u>Logan</u>
<u>Ellis Fork of Damron Creek*</u>	<u>Mouth to Headwaters</u>	<u>37.15744, -85.06621/ Headwaters</u>	<u>Adair, Russell</u>
<u>Falling Timber Creek of Skaggs Creek*</u>	<u>Land Use Change (0.1 River Miles Upstream of Taylor Branch) to Headwaters</u>	<u>36.93680, -85.74424/ Headwaters</u>	<u>Metcalfe</u>
<u>Fiddlers Creek of North Fork Rough River*</u>	<u>Mouth to Headwaters</u>	<u>37.70782, -86.34660/ Headwaters</u>	<u>Breckinridge</u>
<u>Forbes Creek of Buck Creek*</u>	<u>Mouth to Unnamed Tributary (0.3 River Miles Downstream of CR-1021 Owen West Road)</u>	<u>36.98832, -87.32847/ 36.95495, -87.34872</u>	<u>Christian</u>
<u>Gaspar River of Barren River*</u>	<u>Clear Fork Creek to Wiggington Creek</u>	<u>36.98618, -86.63216/ 36.91698, -86.74175</u>	<u>Logan, Warren</u>
<u>Goose Creek of Green River*</u>	<u>Mouth to Little Goose Creek</u>	<u>37.20311, -85.01074/ 37.11575, -84.99617</u>	<u>Casey, Russell</u>
<u>Green River of Ohio River</u>	<u>Western Mammoth Cave National Park Boundary to Lynn Camp Creek</u>	<u>37.21698, -86.26334/ 37.31974, -85.71529</u>	<u>Edmonson, Hart</u>
<u>Halls Creek of Rough River*</u>	<u>Unnamed Tributary (0.2 River Miles Upstream of CR-1131 Halls Creek Road) to Headwaters</u>	<u>37.49338, -86.76189/ Headwaters</u>	<u>Ohio</u>
<u>Lick Creek of West Fork Drakes Creek*</u>	<u>Mouth to Headwaters</u>	<u>36.80165, -86.49463/ Headwaters</u>	<u>Simpson</u>
<u>Linders Creek of Rough River*</u>	<u>Mouth to Sutzer Creek</u>	<u>37.63677, -86.20180/ 37.63368, -86.14513</u>	<u>Hardin</u>
<u>Little Beaverdam Creek of Green River*</u>	<u>Mouth to KY-743 Boiling Springs Road</u>	<u>37.17474, -86.34748/ 37.09866, -86.31160</u>	<u>Edmonson, Warren</u>
<u>Little Meeting Creek of Meeting Creek</u>	<u>Mouth to Loss of Riparian Buffer (near Unnamed Tributary)</u>	<u>37.58031, -86.22664/ 37.59732, -86.21150</u>	<u>Hardin</u>
<u>Little Short Creek of Rough River*</u>	<u>Mouth to Headwaters</u>	<u>37.55200, -86.57632/ Headwaters</u>	<u>Grayson</u>
<u>Lynn Camp Creek of Green River*</u>	<u>Mouth to Lindy Creek</u>	<u>37.31994, -85.71503/ 37.39027, -85.70372</u>	<u>Hart</u>
<u>McFarland Creek of West Fork Pond River*</u>	<u>Grays Branch to Unnamed Tributary</u>	<u>37.13299, -87.38653/ 37.11248, -87.40630</u>	<u>Christian</u>
<u>Meeting Creek of Rough River*</u>	<u>Little Meeting Creek to Petty Branch</u>	<u>37.58021, -86.22663/ 37.56328, -86.15925</u>	<u>Grayson, Hardin</u>
<u>Muddy Creek of Rough River*</u>	<u>Land Use Change (1.2 River Miles Upstream of CR-1125 Mt Pleasant Road) to Headwaters</u>	<u>37.42276, -86.73440/ Headwaters</u>	<u>Ohio</u>
<u>North Fork Rough River of Rough River Lake*</u>	<u>Buffalo Creek to Reservoir Dam</u>	<u>37.70023, -86.38206/ 37.71212, -86.32604</u>	<u>Breckinridge</u>
<u>Nosey Creek of Nolin River</u>	<u>Mouth to Dry Run</u>	<u>37.45730, -86.06752/ 37.46694, -86.08128</u>	<u>Grayson</u>
<u>Peter Creek of Barren River*</u>	<u>Caney Fork to Dry Fork</u>	<u>36.84608, -85.97090/ 36.80042, -85.90772</u>	<u>Barren</u>

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<u>Pond Run of Rough River*</u>	<u>Land Use Change (0.2 River Miles Downstream of CR-1503 White Road) to Headwaters</u>	<u>37.57381, -86.60506/ Headwaters</u>	<u>Breckinridge, Ohio</u>
<u>Puncheon Creek of Figure Eight Branch</u>	<u>Mouth to Tennessee State Line</u>	<u>36.67503, -85.99483/ 36.62953, -86.00534</u>	<u>Allen</u>
<u>Rough River of Green River*</u>	<u>Linders Creek to Vertrees Creek</u>	<u>37.63677, -86.20180/ 37.69001, -86.13664</u>	<u>Hardin</u>
<u>Russell Creek of Green River*</u>	<u>Mouth to Columbia Waste Water Treatment Plant</u>	<u>37.22938, -85.51040/ 37.10942, -85.30532</u>	<u>Adair, Green</u>
<u>Russell Creek of Green River*</u>	<u>Reynolds Creek to Hudson Creek and Mount Olive Creek</u>	<u>37.04137, -85.18825/ 37.09160, -85.10334</u>	<u>Adair, Russell</u>
<u>Sixes Creek of Wild Branch*</u>	<u>Mouth to Headwaters</u>	<u>37.34154, -86.69993/ Headwaters</u>	<u>Ohio</u>
<u>Sulphur Branch of Alexander Creek*</u>	<u>Mouth to Headwaters</u>	<u>37.12892, -86.26930/ Headwaters</u>	<u>Edmonson</u>
<u>Thompson Branch of West Fork Drakes Creek*</u>	<u>Webb Branch to Tennessee State Line</u>	<u>36.65809, -86.49862/ 36.65202, -86.47973</u>	<u>Simpson</u>
<u>Trammel Creek of Drakes Creek*</u>	<u>Mouth to Tennessee State Line</u>	<u>36.87579, -86.37443/ 36.63973, -86.19775</u>	<u>Allen, Warren</u>
<u>Unnamed Tributary of Big Run Branch of Big Run Branch</u>	<u>Mouth to Loss of Riparian Buffer and Unnamed Tributary from the South West</u>	<u>37.50894, -86.33964/ 37.48244, -86.32314</u>	<u>Grayson</u>
<u>Unnamed Tributary of Green River of Ohio River*</u>	<u>Mouth to Headwaters</u>	<u>37.19160, -85.12732/ Headwaters</u>	<u>Adair</u>
<u>Unnamed Tributary of White Oak Creek of Green River Lake*</u>	<u>CR-1073 Hovious Ridge Road to KY-76 Elkhorn Road</u>	<u>37.23736, -85.22392/ 37.26178, -85.19616</u>	<u>Adair</u>
<u>West Fork Pond River of Pond River*</u>	<u>Unnamed Tributary (0.8 River Miles Downstream of CR-1078 J P Grace Road) to East Branch Pond River</u>	<u>37.09098, -87.36698/ 37.03070, -87.40602</u>	<u>Christian</u>
KENTUCKY RIVER BASIN			
<u>Backbone Creek of Sixmile Creek*</u>	<u>Mouth to Scrabble Creek</u>	<u>38.33978, -84.99690/ 38.32025, -84.99355</u>	<u>Franklin, Henry, Shelby</u>
<u>Bear Branch of North Fork Kentucky River</u>	<u>Upstream of Sediment Pond to Headwaters</u>	<u>37.13248, -83.10152/ Headwaters</u>	<u>Perry</u>
<u>Big Double Creek of Red Bird River*</u>	<u>Mouth to Left and Right Fork Big Double Creek</u>	<u>37.14045, -83.58768/ 37.09053, -83.60245</u>	<u>Clay</u>
<u>Bill Branch of Laurel Fork*</u>	<u>Mouth to Right and Left Fork Bill Branch</u>	<u>36.93025, -83.30921/ 36.93249, -83.30578</u>	<u>Harlan</u>
<u>Bill Oak Branch of Laurel Fork</u>	<u>Mouth to Headwaters</u>	<u>37.33478, -83.56541/ Headwaters</u>	<u>Owsley</u>
<u>Billey Fork of Millers Creek</u>	<u>Land Use Change (1.0 River Mile Upstream of Wodward Creek) to Headwaters</u>	<u>37.67957, -83.79653/ Headwaters</u>	<u>Estill, Lee</u>
<u>Boyd Run of North Elkhorn Creek</u>	<u>Mouth to Cherry Run</u>	<u>38.21316, -84.48529/ 38.21731, -84.47430</u>	<u>Scott</u>
<u>Buffalo Creek of South Fork Kentucky River*</u>	<u>Mouth to Right Fork and Left Fork Buffalo Creek</u>	<u>37.35051, -83.65233/ 37.35163, -83.63576</u>	<u>Owsley</u>
<u>Bullskin Creek of South Fork Kentucky River</u>	<u>Mouth to Headwaters</u>	<u>37.27322, -83.64441/ Headwaters</u>	<u>Clay, Leslie</u>
<u>Camp Branch of Spass Creek</u>	<u>Mouth to Headwaters</u>	<u>37.88067, -83.70589/ Headwaters</u>	<u>Menifee</u>
<u>Cavanaugh Creek of South Fork Station Camp Creek*</u>	<u>Mouth to Headwaters</u>	<u>37.55370, -83.94222/ Headwaters</u>	<u>Jackson</u>
<u>Chester Creek of Middle Fork Red River*</u>	<u>Mouth to Headwaters</u>	<u>37.72746, -83.65906/ Headwaters</u>	<u>Wolfe</u>
<u>Clear Creek of Kentucky River*</u>	<u>Mouth to East Fork Clear Creek</u>	<u>37.93654, -84.79613/ 37.92667, -84.72576</u>	<u>Woodford</u>
<u>Clemons Fork of Buckhorn Creek*</u>	<u>Mouth to Headwaters</u>	<u>37.45511, -83.16582/ Headwaters</u>	<u>Breathitt</u>
<u>Coles Fork of Buckhorn Creek *</u>	<u>Mouth to Headwaters</u>	<u>37.45720, -83.13468/ Headwaters</u>	<u>Breathitt, Knott</u>
<u>Craig Creek of Kentucky River*</u>	<u>Mouth to Unnamed Tributary</u>	<u>37.97902, -84.82058/ 37.98133, -84.78474</u>	<u>Woodford</u>
<u>Deep Ford Branch of Cutshin Creek</u>	<u>Upstream of Pond to Headwaters</u>	<u>37.19085, -83.34793/ Headwaters</u>	<u>Leslie</u>
<u>Drennon Creek of Kentucky River*</u>	<u>Fivemile Creek to Town Creek</u>	<u>38.46577, -85.09825/ 38.43094, -85.11912</u>	<u>Henry</u>
<u>East Fork Indian Creek of Indian Creek*</u>	<u>Mouth to Headwaters</u>	<u>37.86030, -83.67480/ Headwaters</u>	<u>Menifee</u>
<u>Elisha Creek of Red Bird River*</u>	<u>Land Use Change (0.4 River Miles Downstream of Left Fork Elisha Creek) to Right and Big Middle Fork Elisha Creek</u>	<u>37.08454, -83.53407/ 37.08165, -83.51802</u>	<u>Leslie</u>

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Emily Run of Drennon Creek	Mouth to Unnamed Tributary (0.5 River Miles Downstream of CR-1010 New Cut Road)	38.50114, -85.07706/ 38.51135, -85.12727	Henry
Evans Fork of Billey Fork*	Mouth to Headwaters	37.69659, -83.77567/ Headwaters	Estill
Falling Rock Branch of Clemons Fork*	Mouth to Headwaters	37.47650, -83.14005/ Headwaters	Breathitt
Gilbert Creek of Kentucky River	Mouth to Unnamed Tributary (at Milepost 7.06 KY-513 Gilberts Creek Road)	37.97571, -84.85305/ 37.97570, -84.85305	Anderson
Gladie Creek of Red River*	Land Use Change (Downstream of Sargent Branch) to Long Branch	37.83977, -83.60773/ 37.86994, -83.53192	Menifee
Goose Creek of Red Bird River	Mouth to Laurel Creek	37.26982, -83.64347/ 37.21607, -83.71750	Clay
Grier Creek of Kentucky River*	Kentucky River Backwaters to Unnamed Tributary	38.02224, -84.82900/ 38.01901, -84.78975	Woodford
Grindstone Creek of Kentucky River*	Kentucky River Backwaters to Pond	38.27095, -84.87841/ 38.25169, -84.86151	Franklin
Hardwick Creek of Red River	Mouth to Little Hardwick Creek	37.83287, -83.92629/ 37.80637, -83.91057	Powell
Hell for Certain Creek of Middle Fork Kentucky River	Mouth to Cucumber Branch	37.25900, -83.38193/ 37.21916, -83.44410	Leslie
Hines Creek of Kentucky River*	Kentucky River Backwaters to Unnamed Tributary	37.87669, -84.37216/ 37.87346, -84.35034	Madison
Honey Branch of Greasy Creek	Mouth to Headwaters	37.01785, -83.35630/ Headwaters	Leslie
Hopper Cave Branch of Cavenaugh Creek*	Mouth to Headwaters	37.54046, -83.96364/ Headwaters	Jackson
Indian Creek of Eagle Creek*	Mouth to Headwaters	38.64460, -84.97133/ Headwaters	Carroll
Indian Fork of Sixmile Creek*	Mouth to Headwaters	38.30060, -85.04584/ Headwaters	Shelby
John Carpenter Fork of Clemons Fork*	Mouth to Headwaters	37.48191, -83.13306/ Headwaters	Breathitt
John Littles Branch of North Fork Kentucky River	Mouth to Headwaters	37.44138, -83.36137/ Headwaters	Breathitt
Joyce Fork of Cortland Fork*	Mouth to Headwaters	37.35043, -83.55770/ Headwaters	Owsley
Katies Creek of Red Bird River	Mouth to Headwaters	37.03516, -83.54001/ Headwaters	Clay
Laurel Fork of Left Fork Buffalo Creek*	Cortland Fork to Big Branch	37.34758, -83.56464/ 37.32795, -83.56754	Owsley
Left Fork Big Double Creek of Big Double Creek*	Mouth to Headwaters	37.09053, -83.60245/ Headwaters	Clay
Line Fork of North Fork Kentucky River*	Defeated Creek to Headwaters	37.05325, -82.98858/ Headwaters	Letcher
Little Middle Fork Elisha Creek of Big Middle Fork Elisha Creek*	Mouth to Headwaters	37.08174, -83.51566/ Headwaters	Leslie
Little Millseat Branch of Clemons Fork*	Mouth to Headwaters	37.47206, -83.14624/ Headwaters	Breathitt
Little Negro Creek of Negro Creek	Mouth to Unnamed Tributary	37.39375, -84.41432/ 37.36326, -84.42477	Rockcastle
Little Sixmile Creek of Sixmile Creek*	Mouth to Headwaters	38.38438, -85.00254/ Headwaters	Henry
Little Sturgeon Creek of Sturgeon Creek	Mouth to Headwaters	37.47837, -83.81345/ Headwaters	Owsley
Low Gap Branch of Elk Creek*	Mouth to Headwaters	37.15340, -82.98357/ Headwaters	Letcher
Lower Devil Creek of North Fork Kentucky River	Mouth to Middle Fork Lower Devil Creek	37.64419, -83.60972/ 37.68891, -83.60403	Lee, Wolfe
Lower Howard Creek of Kentucky River	Mouth to West Fork Lower Howard Creek	37.91807, -84.27256/ 37.93369, -84.26952	Clark
Lulbegrud Creek of Red River	Mouth to Falls Branch	37.83781, -84.00193/ 37.88288, -83.99603	Clark, Powell
Middle Fork Kentucky River of North Fork Kentucky River	Mouth to Upper Twin Creek	37.58669, -83.67003/ 37.54597, -83.56307	Lee, Breathitt
Middle Fork Kentucky River of North Fork Kentucky River*	Hurts Creek to Greasy Creek	37.15444, -83.37052/ 37.07658, -83.39234	Leslie
Middle Fork Red River of Red River	South Fork Red River to Natural Bridge State Park Lake	37.82360, -83.75245/ 37.77769, -83.67745	Powell
Mike Branch of Laurel Fork	Mouth to Headwaters	37.33908, -83.56338/ Headwaters	Owsley

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Mill Creek of Kentucky River*	0.05 River Miles Upstream of PS-1306 Perry Park Road to Headwaters	38.54565, -84.99933/ Headwaters	Owen
Millseat Branch of Clemons Fork*	Mouth to Headwaters	37.47440, -83.14367/ Headwaters	Breathitt
Muddy Creek of Kentucky River*	0.1 River Mile Upstream of KY-52 Irvine Road to Viny Fork	37.74039, -84.15691/ 37.70998, -84.18205	Madison
Musselman Creek of Eagle Creek*	Mouth to Headwaters	38.56845, -84.67732/ Headwaters	Grant
Red Bird River of South Fork Kentucky River	Mouth to Big Creek	37.26973, -83.64341/ 37.16648, -83.58233	Clay
Right Fork Beehive Branch of Beehive Branch	Residential Area to Headwaters	37.06172, -83.10148/ Headwaters	Perry
Right Fork Buffalo Creek of Buffalo Creek*	Mouth to Headwaters	37.35163, -83.63575/ Headwaters	Owsley
Right Fork Elisha Creek of Elisha Creek	Mouth to Headwaters	37.08165, -83.51802/ Headwaters	Leslie
Roaring Fork of Lewis Fork*	Mouth to Headwaters	37.46327, -83.17081/ Headwaters	Breathitt
Rock Lick Creek of South Fork Station Camp Creek*	Mouth to Headwaters	37.539508, -84.010769/ Headwaters	Jackson
Sand Ripple Creek of Kentucky River*	Kentucky River Backwaters to Headwaters	38.37772, -84.89991/ Headwaters	Franklin, Henry
Severn Creek of Kentucky River*	Kentucky River Backwaters to North Fork Severn Creek	38.46397, -84.91060/ 38.46646, -84.89242	Owen
Shaker Creek of Kentucky River	Kentucky River Backwaters to Shawnee Run	37.84717, -84.76738/ 37.84378, -84.76810	Mercer
Shelly Rock Fork of Millseat Branch*	Mouth to Headwaters	37.48162, -83.15038/ Headwaters	Breathitt
Sixmile Creek of Kentucky River*	Little Sixmile Creek to Cedarmore Lake Dam	38.38448, -85.00261/ 38.32816, -85.01600	Henry, Shelby
South Fork Kentucky River of Kentucky River	Mouth to Sexton Creek	37.56996, -83.71085/ 37.35900, -83.68198	Lee, Owsley
South Fork Red River of Middle Fork Kentucky River	Mouth to Sand Lick Fork	37.82360, -83.75245/ 37.78067, -83.73355	Powell
South Fork Station Camp Creek of Station Camp Creek*	Mouth to Rock Lick Creek	37.53286, -83.90931/ 37.55370, -83.94222	Jackson
Spring Creek of Red Bird River	Mouth to Little Spring Creek	37.06192, -83.54144/ 37.05562, -83.56302	Clay
Spruce Branch of Red Bird Creek*	Mouth to Headwaters	36.95696, -83.53108/ Headwaters	Clay
Station Camp Creek of Kentucky River*	Land Use Change (1.25 River Miles Upstream of Sparks Branch) to South Fork Station Camp Creek	37.58261, -83.92802/ 37.53287, -83.90929	Estill
Steeles Run of South Elkhorn Creek	Mouth to Unnamed Tributary (0.1 River Miles Upstream of PV-3002 Miss Alleged Drive)	38.11099, -84.62871/ 38.06735, -84.59554	Fayette, Woodford
Steer Fork of War Fork*	Mouth to Headwaters	37.45466, -83.92700/ Headwaters	Jackson
Sturgeon Creek of Kentucky River*	Duck Fork to Little Sturgeon Creek	37.53576, -83.78177/ 37.47850, -83.81356	Lee, Owsley
Sugar Creek of Red Bird River*	Land Use Change (at End of CR-1119 Sugar Creek Road) to Headwaters	37.11885, -83.55208/ Headwaters	Clay, Leslie
Sulphur Lick Creek of Elkhorn Creek*	Mouth to Headwaters	38.28765, -84.80211/ Headwaters	Franklin
Unnamed Tributary of Cawood Branch of Beech Fork*	Mouth to Headwaters	36.93676, -83.37278/ Headwaters	Leslie
Unnamed Tributary of Cedar Creek of Kentucky River*	Mouth to Headwaters	38.37196, -84.79664/ Headwaters	Owen
Unnamed Tributary of Glenss Creek of Kentucky River*	Mouth to Headwaters	38.14826, -84.83651/ Headwaters	Woodford
Unnamed Tributary of Jacks Creek of Kentucky River*	Mouth to Headwaters	37.85200, -84.36529/ Headwaters	Madison
Unnamed Tributary of Kentucky River of Ohio River*	Mouth to Land Use Change	38.21913, -84.87712/ 38.23174, -84.86242	Franklin
Unnamed Tributary of Line Fork of North Fork Kentucky River*	Mouth to Headwaters	37.07769, -82.99241/ Headwaters	Letcher
War Fork of Station Camp Creek*	Steer Fork to Headwaters	37.45467, -83.92699/ Headwaters	Jackson
Watches Fork of Laurel Fork	Mouth to Headwaters	37.34456, -83.56203/ Headwaters	Owsley
Wild Dog Creek of Sturgeon Creek	Mouth to Dry Fork	37.48729, -83.82329/ 37.48235, -83.82972	Owsley

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Wolfpen Creek of Red River*	Mouth to Headwaters	37.82549, -83.63094/ Headwaters	Menifee
LICKING RIVER BASIN			
Blackwater Creek of Licking River*	Eaton Creek to Greasy Fork	37.94073, -83.41328/ 37.87922, -83.43981	Morgan
Blanket Creek of Licking River	Mouth to Unnamed Tributary	38.65560, -84.28532/ 38.64266, -84.29929	Pendleton
Botts Fork of Brushy Fork*	Mouth to Land Use Change	37.94933, -83.50601/ 37.93022, -83.53288	Menifee
Bowman Creek of Licking River	Mouth to Unnamed Tributary at CR-1135 Martin Road	38.89246, -84.44237/ 38.89404, -84.50217	Kenton
Brushy Fork of Beaver Creek*	Cave Run Lake Backwaters to Headwaters	37.98439, -83.50523/ Headwaters	Menifee
Brushy Fork of Middle Fork Grassy Creek*	Mouth to Headwaters	38.70106, -84.44697/ Headwaters	Pendleton
Bucket Branch of North Fork Licking River*	Mouth to Headwaters	38.05169, -83.31594/ Headwaters	Morgan
Cedar Creek of Licking River	Mouth to North Branch Cedar Creek	38.47637, -84.12301/ 38.49051, -84.10732	Robertson
Craney Creek of North Fork Licking River	Mouth to Headwaters	38.06493, -83.35154/ Headwaters	Morgan, Rowan
Devils Fork of North Fork Licking River*	Mouth to Headwaters	38.04413, -83.30378/ Headwaters	Elliott, Morgan
Flour Creek of Licking River	Mouth to Unnamed Tributary (0.05 River Miles Upstream of CR-1021 Vater Road)	38.78982, -84.34388/ 38.80192, -84.32458	Pendleton
Grovers Creek of Kincaid Lake*	Kincaid Lake Backwaters to Unnamed Tributary	38.70547, -84.25273/ 38.70795, -84.21217	Bracken, Pendleton
Licking River of Ohio River	End of KY-211 Auora Road to 0.6 River Miles Downstream of Salt Lick Creek	38.17659, -83.61805/ 38.13064, -83.60581	Bath, Rowan
North Fork Licking River of Cave Run Lake*	Cave Run Lake Backwaters (0.25 River Miles Downstream of Lick Branch) to Devils Fork	38.06587, -83.36149/ 38.04413, -83.30378	Morgan, Rowan
Sawyers Fork of Cruises Creek	Mouth to Headwaters	38.84833, -84.54035/ Headwaters	Kenton
Slabcamp Creek of Craney Creek	Mouth to Headwaters	38.09987, -83.32893/ Headwaters	Rowan
Slate Creek of Licking River	Mouth to Mill Creek	38.21841, -83.69863/ 38.11220, -83.74665	Bath
South Fork Grassy Creek of Grassy Creek*	Mouth to Greasy Creek	38.79193, -84.42895/ 38.68302, -84.48375	Pendleton
Unnamed Tributary of Shannon Creek of North Fork Licking River	Mouth to Headwaters	38.55443, -83.93335/ Headwaters	Mason
Welch Fork of Brushy Fork*	Mouth to Unnamed Tributary (Downstream of CR-1160 Fox Chase Road)	37.94405, -83.50360/ 37.93209, -83.51361	Menifee
West Creek of Licking River*	Mouth to Headwaters	38.53643, -84.20046/ Headwaters	Harrison, Robertson
Willow Creek of North Fork Licking River	Mouth to Logans Branch	38.58589, -84.17627/ 38.63013, -84.16426	Bracken
LITTLE SANDY RIVER BASIN			
Arabs Fork of Big Sinking Creek*	Mouth to Headwaters	38.22358, -83.15918/ Headwaters	Elliott
Big Caney Creek of Grayson Lake (Little Sandy River)*	Grayson Lake Backwaters to Headwaters	38.15880, -83.09431/ Headwaters	Elliott, Rowan
Big Sinking Creek of Little Sandy River*	KY-986 to Arabs Fork	38.24972, -83.11729/ 38.22360, -83.15915	Carter, Elliott
Laurel Creek of Little Sandy River*	CR-1352 Stegall Cold Spring Road to Headwaters	38.12912, -83.18963/ Headwaters	Elliott, Rowan
Meadow Branch of Little Fork Little Sandy River*	Mouth to Headwaters	38.07711, -82.99544/ Headwaters	Elliott
Middle Fork Little Sandy River of Little Sandy River*	Mouth to Sheepskin Branch	38.12135, -83.09262/ 38.09139, -83.09075	Elliott
Nichols Fork of Little Fork Little Sandy River*	Green Branch to Headwaters	38.08073, -83.00200/ Headwaters	Elliott
LOWER CUMBERLAND RIVER BASIN			
Crooked Creek of Energy Lake*	Energy Lake Backwaters to Headwaters	36.85193, -88.03311/ Headwaters	Trigg
Donaldson Creek of Lake Barkley*	Lake Barkley Backwaters to Unnamed Tributary	36.74924, -87.91006/ 36.74970, -87.86754	Trigg

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<u>Elk Fork of Red River*</u>	<u>Tennessee State Line to Dry Branch</u>	<u>36.64264, -87.08560/ 36.74638, -87.13221</u>	<u>Todd</u>
<u>Sugar Creek of Cumberland River*</u>	<u>Lick Creek to Left Descending Unnamed Tributary (Upstream of KY-2232 Sugar Creek Road)</u>	<u>37.17547, -88.26578/ 37.13054, -88.28340</u>	<u>Livingston</u>
<u>West Fork Red River of Red River*</u>	<u>Tennessee State Line to Montgomery Creek</u>	<u>36.64154, -87.35589/ 36.70964, -87.32988</u>	<u>Christian</u>
<u>Whippoorwill Creek of Red River*</u>	<u>Mouth to Vicks Branch</u>	<u>36.66568, -86.96368/ 36.75027, -86.99652</u>	<u>Logan</u>
MISSISSIPPI RIVER BASIN			
<u>Jackson Creek of Bayou de Chien*</u>	<u>Mouth to Headwaters</u>	<u>36.58204, -88.80298/ Headwaters</u>	<u>Graves</u>
<u>Murphy Pond</u>	<u>Entire Pond and Preserve Area</u>	<u>Not Applicable</u>	<u>Hickman</u>
<u>Obion Creek of Mississippi River*</u>	<u>Hurricane Creek to Little Creek</u>	<u>36.75483, -89.01154/ 36.76673, -88.91258</u>	<u>Carlisle, Hickman</u>
<u>Swan Pond</u>	<u>Entire Lake</u>	<u>Not Applicable</u>	<u>Ballard</u>
<u>Terrapin Creek of North Fork Obion River*</u>	<u>Tennessee State Line to East and West Forks Terrapin Creek</u>	<u>36.50113, -88.49244/ 36.55040, -88.52493</u>	<u>Graves</u>
OHIO RIVER BASIN			
<u>Ashbys Fork of Woolper Creek</u>	<u>Mouth to KY-20 Petersburg Road</u>	<u>39.03846, -84.81574/ 39.07729, -84.79534</u>	<u>Boone</u>
<u>Blackford Creek of Ohio River</u>	<u>Little Yellow Creek to Butchers Branch</u>	<u>37.90127, -86.91300/ 37.88324, -86.89596</u>	<u>Davies, Hancock</u>
<u>Crooked Creek of Ohio River*</u>	<u>Rush Creek to Marion City Lake Dam</u>	<u>37.35915, -88.06775/ 37.31055, -88.09185</u>	<u>Crittenden</u>
<u>Double Lick Creek of Woolper Creek*</u>	<u>Mouth to Headwaters</u>	<u>39.03416, -84.78650/ Headwaters</u>	<u>Boone</u>
<u>Garrison Creek of Ohio River*</u>	<u>Mouth to Headwaters</u>	<u>39.10565, -84.80643/ Headwaters</u>	<u>Boone</u>
<u>Harrods Creek of Ohio River</u>	<u>Wolfpen Branch to Brush Creek</u>	<u>38.33388, -85.60350/ 38.44058, -85.42898</u>	<u>Henry, Jefferson, Oldham</u>
<u>Kinniconick Creek of Ohio River*</u>	<u>McDowell Creek to Headwaters</u>	<u>38.57479, -83.18862/ Headwaters</u>	<u>Lewis</u>
<u>Little South Fork of Big South Fork</u>	<u>Land Use Change to Headwaters</u>	<u>38.82216, -84.74115/ Headwaters</u>	<u>Boone</u>
<u>Metropolis Lake of Ohio River</u>	<u>Entire Lake</u>	<u>37.15096, -88.77076/ 37.14475, -88.76100</u>	<u>McCracken</u>
<u>Middle Fork Massac Creek of Massac Creek*</u>	<u>CR-1207 Hines Road to Pond</u>	<u>37.01626, -88.74480/ 36.97538, -88.72982</u>	<u>McCracken</u>
<u>Pryors Fork of Corn Creek</u>	<u>Mouth to Land Use Change</u>	<u>38.63666, -85.40210/ 38.64269, -85.33447</u>	<u>Trimble</u>
<u>Second Creek of Ohio River*</u>	<u>Ohio River Backwaters to Headwaters</u>	<u>39.08518, -84.84280/ Headwaters</u>	<u>Boone</u>
<u>Unnamed Tributary of Big Sugar Creek of Ohio River*</u>	<u>I-71 to Headwaters</u>	<u>38.74961, -84.81112/ Headwaters</u>	<u>Gallatin</u>
<u>Unnamed Tributary of Corn Creek of Ohio River*</u>	<u>Mouth to Headwaters</u>	<u>38.60284, -85.42320/ Headwaters</u>	<u>Trimble</u>
<u>Unnamed Tributary of Massac Creek of Ohio River*</u>	<u>Mouth to Headwaters</u>	<u>36.99350, -88.69103/ Headwaters</u>	<u>McCracken</u>
<u>West Fork Massac Creek of Massac Creek*</u>	<u>KY-724 Woodville Road to Little Massac Creek</u>	<u>37.08238, -88.77790/ 37.06021, -88.79830</u>	<u>McCracken</u>
<u>Yellowbank Creek of Ohio River*</u>	<u>KY-259 to Headwaters</u>	<u>37.98102, -86.50810/ Headwaters</u>	<u>Breckinridge</u>
SALT RIVER BASIN			
<u>Beech Fork of Rolling Fork</u>	<u>Hot Water Creek to Headwaters</u>	<u>37.59785, -85.04111/ Headwaters</u>	<u>Boyle, Marion</u>
<u>Brashears Creek of Salt River</u>	<u>Guist Creek to Bullskin and Clear Creeks</u>	<u>38.09923, -85.28643/ 38.16191, -85.28012</u>	<u>Shelby, Spencer</u>
<u>Cedar Creek of Salt River*</u>	<u>Mouth to Greens Branch</u>	<u>38.00214, -85.66327/ 37.98224, -85.60071</u>	<u>Bullitt</u>
<u>Chaplin River of Beech Fork*</u>	<u>Thompson Creek to Cornishville, KY</u>	<u>37.85567, -85.03830/ 37.80423, -84.98705</u>	<u>Mercer, Washington</u>

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<u>Doctors Fork of Chaplin River</u>	<u>Mouth to Begley Branch</u>	<u>37.67567, -84.96085/ 37.64612, -84.99949</u>	<u>Boyle</u>
<u>Guist Creek of Brashears Creek</u>	<u>Mouth to Jeptha Creek</u>	<u>38.09920, -85.28615/ 38.13244, -85.19651</u>	<u>Spencer</u>
<u>Harts Run of Wilson Creek*</u>	<u>Mouth to Headwaters</u>	<u>37.86326, -85.61160/ Headwaters</u>	<u>Bullitt</u>
<u>Indian Creek of Thompson Creek</u>	<u>Mouth to Unnamed Tributary</u>	<u>37.85118, -84.97889/ 37.87350, -84.94786</u>	<u>Mercer</u>
<u>Lick Creek of Long Lick Creek</u>	<u>Mouth to 0.1 River Miles Downstream of Dam</u>	<u>37.81851, -85.21553/ 37.82616, -85.16402</u>	<u>Washington</u>
<u>Otter Creek of Rolling Fork*</u>	<u>Land Use Change (0.04 River Miles Downstream of West Fork Otter Creek) to East and Middle Fork Otter Creek</u>	<u>37.50830, -85.58171/ 37.49520, -85.57644</u>	<u>Larue</u>
<u>Overalls Creek of Wilson Creek*</u>	<u>Mouth to West Fork Overalls Creek</u>	<u>37.87053, -85.60352/ 37.88749, -85.60604</u>	<u>Bullitt</u>
<u>Plum Run of Glens Creek</u>	<u>Mouth to Headwaters</u>	<u>37.85773, -85.12186/ Headwaters</u>	<u>Washington</u>
<u>Salt Lick Creek of Rolling Fork*</u>	<u>Mouth to Headwaters</u>	<u>37.55415, -85.52125/ Headwaters</u>	<u>Larue, Marion</u>
<u>Sulphur Creek of Chaplin River*</u>	<u>Mouth to Cheese Lick and Brush Creek</u>	<u>37.88144, -85.09987/ 37.88844, -85.02061</u>	<u>Anderson, Mercer, Washington</u>
<u>Unnamed Tributary of Unnamed Tributary of Sulphur Creek of Sulphur Creek</u>	<u>Mouth to End of Forested Reach</u>	<u>37.88903, -85.09514/ 37.89877, -85.09422</u>	<u>Anderson</u>
<u>West Fork Otter Creek of Otter Creek*</u>	<u>Mouth to Headwaters</u>	<u>37.50770, -85.58158/ Headwaters</u>	<u>Larue</u>
<u>Wilson Creek of Rolling Fork*</u>	<u>Mouth to Headwaters</u>	<u>37.81170, -85.73756/ Headwaters</u>	<u>Bullitt, Nelson</u>
TENNESSEE RIVER BASIN			
<u>Blood River of Kentucky Lake*</u>	<u>McCullough Fork to Tennessee State Line</u>	<u>36.52538, -88.17089/ 36.49911, -88.17594</u>	<u>Calloway</u>
<u>Clarks River of Tennessee River</u>	<u>Persimmon Slough Creek to Middle Fork Creek</u>	<u>36.91438, -88.42009/ 36.90303, -88.40517</u>	<u>Marshall</u>
<u>Grindstone Creek of Kentucky Lake*</u>	<u>Kentucky Lake Backwaters to Headwaters</u>	<u>36.58230, -88.11886/ Headwaters</u>	<u>Calloway</u>
<u>Panther Creek of Kentucky Lake (Blood River)*</u>	<u>Kentucky Lake Backwaters (0.05 River Miles Downstream From End of CR-1137 Deerberry Lane) to Headwaters</u>	<u>36.56275, -88.15697/ Headwaters</u>	<u>Calloway</u>
<u>Panther Creek of West Fork Clarks River*</u>	<u>Upstream of Channelization (at CR-1088 McKendree Church Road) to Impoundment</u>	<u>36.80551, -88.52235/ 36.74409, -88.51418</u>	<u>Graves</u>
<u>Rockhouse Creek of Clarks River</u>	<u>Mouth to East and West Fork Rockhouse Creek</u>	<u>36.74871, -88.27661/ 36.70430, -88.31580</u>	<u>Calloway</u>
<u>Soldier Creek of West Fork Clarks River*</u>	<u>Mouth to North Fork and South Fork Soldier Creek</u>	<u>36.79642, -88.47535/ 36.78881, -88.39095</u>	<u>Marshall</u>
<u>Sugar Creek of Kentucky Lake (Blood River)</u>	<u>Kentucky Lake Backwaters (0.05 River Miles Upstream of KY-732 Irvine Cobb Road) to CR-1014 Old Newburg Road</u>	<u>36.65222, -88.15062/ 36.65780, -88.15776</u>	<u>Calloway</u>
<u>Sugar Creek of West Fork Clarks River</u>	<u>Mouth to Unnamed Reservoir</u>	<u>36.90001, -88.54781/ 36.87609, -88.49180</u>	<u>Graves</u>
<u>Trace Creek of West Fork of Clarks River*</u>	<u>Mouth to Neely Branch</u>	<u>36.84213, -88.53168/ 36.80975, -88.56009</u>	<u>Graves</u>
<u>Unnamed Tributary of Unnamed Tributary of Panther Creek of West Fork Clarks River*</u>	<u>Mouth to Headwaters</u>	<u>36.79894, -88.53176/ Headwaters</u>	<u>Graves</u>
<u>West Fork Clarks River of Clarks River</u>	<u>Panther Creek to Soldier Creek</u>	<u>36.82217, -88.51448/ 36.79648, -88.47555</u>	<u>Graves</u>
<u>West Fork Clarks River of Clarks River*</u>	<u>Soldier Creek to Duncan Creek</u>	<u>36.79646, -88.47554/ 36.76359, -88.45642</u>	<u>Marshall</u>
<u>Wildcat Creek of Blood River*</u>	<u>CR-1131 Wright Road to Headwaters</u>	<u>36.61320, -88.18308/ Headwaters</u>	<u>Calloway</u>
TRADEWATER RIVER BASIN			
<u>East Fork Flynn Fork of Flynn Fork*</u>	<u>US-62 Dawson Road to Headwaters</u>	<u>37.14805, -87.76320/ Headwaters</u>	<u>Caldwell</u>
<u>Piney Creek of Lake Beshear*</u>	<u>Lake Beshear Backwaters to Headwaters</u>	<u>37.10253, -87.70751/ Headwaters</u>	<u>Caldwell, Christian</u>
<u>Sandlick Creek of Tradewater River*</u>	<u>Camp Creek to Headwaters</u>	<u>37.02761, -87.59583/ Headwaters</u>	<u>Christian</u>

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<u>Tradewater River of Ohio River</u>	<u>Caney Creek to Buffalo Creek</u>	<u>37.16249, -87.66399/ 37.15384, -87.64868</u>	<u>Hopkins</u>
<u>Tradewater River of Ohio River*</u>	<u>Drippings Spring Branch to Buntin Lake Dam</u>	<u>37.03680, -87.52727/ 36.95621, -87.48714</u>	<u>Christian</u>
<u>Unnamed Tributary of Piney Creek of Lake Beshear*</u>	<u>Mouth to Headwaters</u>	<u>37.08000, -87.71066/ Headwaters</u>	<u>Caldwell</u>
<u>Unnamed Tributary of Sandlick Creek of Tradewater River*</u>	<u>Mouth to Headwaters</u>	<u>37.00769, -87.59282/ Headwaters</u>	<u>Christian</u>
TYGARTS CREEK BASIN			
<u>Tygarts Creek of Ohio River</u>	<u>Lost Creek to Leatherwood Branch</u>	<u>38.51484, -82.97672/ 38.48574, -83.02801</u>	<u>Greenup</u>
UPPER CUMBERLAND RIVER BASIN			
<u>Bad Branch of Poor Fork Cumberland River*</u>	<u>Mouth to Headwaters</u>	<u>37.06615, -82.77128/ Headwaters</u>	<u>Letcher</u>
<u>Bark Camp Creek of Cumberland River*</u>	<u>Upstream of Cumberland River Backwaters to Martins Fork</u>	<u>36.90856, -84.30678/ 36.89760, -84.26548</u>	<u>Whitley</u>
<u>Bear Creek of Big South Fork Cumberland River</u>	<u>Mouth to Tennessee State Line</u>	<u>36.62673, -84.53343/ 36.59643, -84.52092</u>	<u>McCreary</u>
<u>Beaver Creek of Cumberland River*</u>	<u>Mouth to Freeman Fork and Middle Fork</u>	<u>36.94623, -84.41643/ 36.89501, -84.44078</u>	<u>McCreary</u>
<u>Bee Lick Creek of Brushy Creek</u>	<u>Mouth to Warren Branch</u>	<u>37.26772, -84.43760/ 37.30223, -84.49337</u>	<u>Pulaski</u>
<u>Brownies Creek of Cumberland River*</u>	<u>Blacksnake Branch to Headwaters</u>	<u>36.70309, -83.51605/ Headwaters</u>	<u>Bell, Harlan</u>
<u>Brush Creek of Roundstone Creek</u>	<u>Wolf Creek to Reemergence of Sinking Creek</u>	<u>37.38934, -84.26451/ 37.46557, -84.22675</u>	<u>Rockcastle</u>
<u>Brushy Creek of Buck Creek*</u>	<u>Mouth to Headwaters</u>	<u>37.21223, -84.46737/ Headwaters</u>	<u>Pulaski, Rockcastle</u>
<u>Buck Creek of Lake Cumberland (Cumberland River)*</u>	<u>Backwaters of Lake Cumberland to 0.8 River Miles Upstream of Hurricane Creek</u>	<u>37.04922, -84.42953/ 37.35997, -84.59522</u>	<u>Lincoln, Pulaski</u>
<u>Bunches Creek of Cumberland River*</u>	<u>Mouth to Amos Falls Branch and Seminary Branch</u>	<u>36.83271, -84.31786/ 36.82749, -84.26979</u>	<u>Whitley</u>
<u>Cane Creek of Rockcastle River*</u>	<u>Mouth to Dam/Pond in Headwaters</u>	<u>37.02646, -84.30837/ 37.05336, -84.17792</u>	<u>Laurel</u>
<u>Clear Creek of Roundstone Creek</u>	<u>Scaffold Cane Branch to Davis Branch</u>	<u>37.44240, -84.27859/ 37.48595, -84.25532</u>	<u>Rockcastle</u>
<u>Clifty Creek of Brushy Creek</u>	<u>Mouth to Rocky Branch</u>	<u>37.21642, -84.46933/ 37.24147, -84.48323</u>	<u>Pulaski</u>
<u>Cogur Fork of Indian Creek*</u>	<u>Mouth to Headwaters</u>	<u>36.79972, -84.39768/ Headwaters</u>	<u>McCreary</u>
<u>Cumberland River of Lake Cumberland</u>	<u>Kentucky Wild River Boundaries</u>	<u>36.87220, -84.32413/ 36.75173, -84.28413</u>	<u>McCreary, Whitley</u>
<u>Dog Slaughter Creek of Cumberland River*</u>	<u>Mouth to North and South Fork Dog Slaughter Creek</u>	<u>36.85996, -84.31441/ 36.85930, -84.30072</u>	<u>Whitley</u>
<u>Eagle Creek of Cumberland River*</u>	<u>Mouth to Headwaters</u>	<u>36.84359, -84.34359/ Headwaters</u>	<u>McCreary</u>
<u>Fishing Creek of Lake Cumberland (Cumberland River)</u>	<u>Lake Cumberland Backwaters to Puncheon Creek</u>	<u>37.12475, -84.71187/ 37.22878, -84.71567</u>	<u>Casey, Lincoln, Pulaski</u>
<u>Fugitt Creek of Clover Fork Cumberland River*</u>	<u>Land Use Change to Headwaters</u>	<u>36.91670, -83.08021/ Headwaters</u>	<u>Harlan</u>
<u>Horse Lick Creek of Rockcastle River*</u>	<u>Mouth to Clover Bottom Creek</u>	<u>37.31994, -84.13808/ 37.40908, -84.12219</u>	<u>Jackson, Rockcastle</u>
<u>Howards Creek of Dale Hollow Lake*</u>	<u>Dale Hollow Lake Backwaters to Headwaters</u>	<u>36.69404, -85.22579/ Headwaters</u>	<u>Clinton</u>
<u>Indian Creek of Cumberland River*</u>	<u>Kilburn Fork to Barren Fork</u>	<u>36.80492, -84.37957/ 36.78654, -84.41624</u>	<u>McCreary</u>
<u>Jackie Branch of Bark Camp Creek*</u>	<u>Mouth to Headwaters</u>	<u>36.90449, -84.27945/ Headwaters</u>	<u>Whitley</u>
<u>Jellico Creek of Cumberland River</u>	<u>Mouth to Jacks Creek</u>	<u>36.75172, -84.27458/ 36.72276, -84.27523</u>	<u>McCreary, Whitley</u>
<u>Kettle Creek of Cumberland River</u>	<u>Tennessee State Line to Wells Creek</u>	<u>36.61526, -85.49117/ 36.65104, -85.44504</u>	<u>Monroe</u>
<u>Kilburn Fork of Indian Creek</u>	<u>Mouth to Headwaters</u>	<u>36.80503, -84.37958/ Headwaters</u>	<u>McCreary</u>

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Laurel Creek of Marsh Creek	Mouth to Laurel Creek Lake Dam	36.73182, -84.37118/ 36.69308, -84.44385	McCreary
Laurel Fork of Clear Fork*	Tennessee State Line to Tiny Branch	36.58947, -83.98760/ 36.63172, -83.95268	Whitley
Laurel Fork of Middle Fork Rockcastle River*	Mouth to Headwaters	37.36733, -84.04829/ Headwaters	Jackson
Leatherwood Creek of Marrowbone Creek	Mouth to Headwaters	36.83564, -85.56409/ Headwaters	Cumberland, Metcalfe, Monroe
Left Fork Fugitt Creek of Fugitt Creek	Mouth to Headwaters	36.92528, -83.04509/ Headwaters	Harlan
Little South Fork of Cumberland River*	Backwaters of Lake Cumberland to Langham Branch	36.80583, -84.59556/ 36.64854, -84.78912	McCreary, Wayne
Little White Oak Creek of White Oak Creek	Mouth to Headwaters	37.10204, -84.19978/ Headwaters	Laurel
Marsh Creek of Cumberland River*	Ford Crossing at CR-1060 East Kidd School Road and CR-1110 Kidd School Road to Tennessee State Line	36.69964, -84.34471/ 36.59540, -84.40845	McCreary
Martins Fork of Cumberland River	Rough Branch to Headwaters	36.69766, -83.39220/ Headwaters	Bell, Harlan
McFarland Creek of Cumberland River	Poore Branch to Tennessee State Line	36.63276, -85.50960/ 36.61585, -85.55184	Monroe
McFarland Creek of Cumberland River	Tennessee State Line to Tennessee State Line	36.61628, -85.57728/ 36.61646, -85.58620	Monroe
Meshack Creek of Cumberland River	Mouth to Pitcock Branch	36.70211, -85.53507/ 36.73160, -85.54153	Monroe
Middle Fork Rockcastle River of Rockcastle River*	Mouth to Indian Cripple and Laurel Fork	37.33585, -84.11898/ 37.36739, -84.04838	Jackson
Mud Camp Creek of Cumberland River*	Mouth to Collins Branch	36.76461, -85.51225/ 36.77858, -85.51607	Cumberland
Mud Camp Creek of Cumberland River*	Unnamed Tributary (at Milepost 0.25 of CR-1335 Sawmill Hollow Road) to Headwaters	36.78298, -85.55654/ Headwaters	Cumberland, Monroe
Otter Creek of Lake Cumberland	0.75 River Miles Upstream of Gap Creek to Carpenter Fork	36.76911, -84.96678/ 36.70801, -84.95672	Wayne
Poor Fork Cumberland River of Cumberland River*	Franks Creek to Headwaters	37.05547, -82.80558/ Headwaters	Letcher
Presley House Branch of Poor Fork Cumberland River*	Mouth to Headwaters	37.06433, -82.79065/ Headwaters	Letcher
Puncheoncamp Branch of Rock Creek*	Mouth to Headwaters	36.65874, -84.64042/ Headwaters	McCreary
Sand Lick Creek of Crocus Creek	Mouth to Unnamed Tributary	36.92458, -85.27126/ 36.92129, -85.24942	Adair, Cumberland, Russell
Shilalah Creek of Clear Fork*	Mouth to to Headwaters	36.66632, -83.59259/ Headwaters	Bell
Sinking Creek of Rockcastle River*	Mouth to White Oak Creek	37.10193, -84.27981/ 37.09095, -84.20416	Laurel
South Fork Dog Slaughter Creek of Dog Slaughter Creek*	Mouth to Headwaters	36.85930, -84.30072/ Headwaters	Whitley
South Fork Rockcastle River of Rockcastle River	Mouth to to White Oak Creek	37.33576, -84.11903/ 337.29097, -84.08801	Jackson, Laurel
Sulphur Creek of Cumberland River	Little Sulphur Creek to Baxter Branch	36.68446, -85.57250/ 36.68327, -85.60582	Monroe
Sulphur Creek of Dale Hollow Lake (Wolf River)*	Dale Hollow Reservoir Backwaters to Headwaters	36.64784, -85.20342/ Headwaters	Clinton
Unnamed Tributary of Cane Creek of Rockcastle River	Mouth to Headwaters	37.05162, -84.19761/ Headwaters	Laurel
Unnamed Tributary of Rock Creek of Big South Fork Cumberland River*	Mouth to Headwaters	36.66420, -84.62917/ Headwaters	McCreary
Unnamed Tributary of Rock Creek of Big South Fork Cumberland River*	Mouth to Headwaters	36.64450, -84.71115/ Headwaters	McCreary
Watts Branch of Rock Creek*	Mouth to Headwaters	36.65759, -84.65619/ Headwaters	McCreary
Watts Creek of Cumberland River*	Camp Blanton Lake to Headwaters	36.86035, -83.37971/ Headwaters	Harlan
White Oak Creek of Sinking Creek	Little White Oak Creek to Headwaters	37.10204, -84.19978/ Headwaters	Laurel

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Table 2 SURFACE WATERS CATEGORIZED AS EXCEPTIONAL WATER			
Stream	Segment	River Miles	County
BIG SANDY RIVER BASIN			
Hobbs Fork of Pigeonroost Fork of Wolf Creek ²	Mouth to Headwaters	0.0-3.9	Martin
Lower Pigeon Branch of Elkhorn Creek ²	Left Fork to Headwaters	0.6-1.9	Pike
Russell Fork of Levisa Fork of Big Sandy River ²	Clinch Field RR Yard off HWY 80 to Virginia State Line	15.0-16.5	Pike
Thompson Fork of Souders Branch	Mouth to Headwaters	0.0-1.0	Floyd
Toms Branch of Elkhorn Creek ²	Mouth to Headwaters	0.0-1.6	Pike
Unidentified Tributary of Hobbs Fork ²	Hobbs Fork of Pigeonroost Fork to Headwaters	0.0-0.6	Martin
Unidentified Tributary of Open Fork Paint Creek	Mouth to Headwaters	0.0-0.8	Morgan
LITTLE SANDY RIVER BASIN			
Arabs Fork of Big Sinking Creek ²	Clay Fork to Headwaters	0.0-5.1	Elliott
Big Caney Creek ²	Grayson Lake to Headwaters	1.8-15.3	Elliott, Rowan
Big Sinking Creek of Little Sandy River ²	SR 986 to Clay Fork and Arab Fork	6.1-15.8	Carter, Elliott
Meadow Branch of Little Sandy River ²	Mouth to Headwaters	0.0-1.4	Elliott
Middle Fork Little Sandy River ²	Mouth to Sheepskin Branch	0.0-3.4	Elliott
Nichols Fork of Little Sandy River ²	Green Branch to Headwaters	0.0-2.0	Elliott
Laurel Creek of Little Sandy River ²	Carter School Rd Bridge to Headwaters	7.6-14.7	Elliott, Rowan
LICKING RIVER BASIN			
Blackwater Creek of Licking River ²	Eaton Creek to Greasy Fork	3.8-11.7	Morgan
Blanket Creek of Licking River	Mouth to Unidentified Tributary	0.0-1.9	Pendleton
Botts Fork of Brushy Fork of Licking River ²	Mouth to Landuse Change	0.0-2.1	Menifee
Bowman Creek of Licking River	Mouth to Unidentified Tributary	0.0-6.0	Kenton
Brushy Fork of Meyers Creek ²	Cave Run Lake Backwaters to Headwaters	0.7-5.6	Menifee
Brushy Fork of South Fork of Grassy Creek ²	Mouth to Headwaters	0.0-5.8	Pendleton
Bucket Branch of North Fork Licking River ²	Mouth to Headwaters	0.0-1.9	Morgan
Cedar Creek of Licking River	Mouth to North Branch of Cedar Creek	0.0-1.7	Robertson
Craney Creek of Licking River	Mouth to Headwaters	0.0-11.2	Morgan, Rowan
Devils Fork of North Fork Licking River ²	Mouth to Headwaters	0.0-8.5	Elliott, Morgan
Flour Creek of Licking River	Mouth to Unidentified Tributary	0.0-2.2	Pendleton
Grovers Creek of Kincaid Creek ²	Kincaid Lake Backwaters to Unidentified Tributary	0.5-3.4	Bracken, Pendleton
Licking River	SR 211 to unnamed Rd off Slatey Point Rd	159.5-170.6	Bath, Rowan
North Fork Licking River ²	Cave Run Lake Backwaters to Devils Fork	8.4-13.4	Morgan
Sawyers Fork of Cruises Creek	Mouth to Headwaters	0.0-3.3	Kenton
Slabcamp Creek of Craney Creek of Licking River	Mouth to Headwaters	0.0-3.7	Rowan
Slate Creek of Licking River	Mouth to Mill Creek	0.0-13.6	Bath
South Fork Grassy Creek of Grassy Creek of Licking River ²	Mouth to Greasy Creek	0.0-19.8	Kenton, Pendleton
Unidentified Tributary of Shannon Creek of North Fork Licking River	Mouth to Headwaters	0.0-2.2	Mason
Welch Fork of Brushy Fork Licking River ²	Mouth to First Road Crossing	0.0-1.0	Menifee
West Creek of Licking River ²	Mouth to Headwaters	0.0-9.8	Harrison, Robertson
KENTUCKY RIVER BASIN			
Backbone Creek of Sixmile Creek of Kentucky River ²	Mouth to Scrabble Creek	0.0-1.65	Franklin, Henry, Shelby
Bear Branch of North Fork Kentucky River	Above Sediment Pond to Headwaters	0.3-1.2	Perry
Big Double Creek of Red Bird River ²	Mouth to confluence of Left and Right Forks of Big Double Creek	0.0-4.4	Clay
Bill Branch of Laurel Fork Greasy Creek ²	Mouth to Right Fork and Left Fork Creek	0.0-0.3	Leslie
Billey Fork of Millers Creek	Land Use Change to Headwaters	2.6-8.8	Lee, Elliott
Boyd Run of North Elkhorn Creek	Mouth to Cherry Run	0.0-0.9	Scott
Bill Oak Branch of Left Fork Buffalo Creek	Mouth to Headwaters	0.0-0.6	Owsley
Buffalo Creek of South Fork Kentucky River ²	Mouth to Right Fork and Left Fork	0.0-1.6	Owsley
Bullskin Creek of Redbird River	Mouth to Headwaters	0.0-14.6	Clay
Cavanaugh Creek ²	South Fork Station Camp Creek to Foxtown Rd	0.0-8.3	Jackson
Chester Creek of Middle Fork Red River ²	Mouth to Headwaters	0.0-2.8	Wolfe
Clear Creek of Kentucky River ²	Mouth to East Fork Clear Creek	0.0-9.0	Woodford
Clemons Fork of Buckhorn Creek ²	Mouth to Headwaters	0.0-4.8	Breathitt

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Coles Fork of Buckhorn Creek ²	Mouth to Headwaters	0.0-6.2	Breathitt
Craig Creek of Kentucky River ²	Mouth to Unidentified Tributary	0.5-2.7	Woodford
Deep Ford Branch of Cutshin Creek	Above Pond to Headwaters	0.3-1.3	Leslie
Drennon Creek of Kentucky River ²	Fivemile Creek to Town Branch	8.7-12.2	Henry
East Fork Indian Creek of Indian Creek of Red River ²	West Fork Indian Creek to Headwaters	0.0-9.0	Menifee
Elisha Creek of Red Bird River ²	Land Use Change (Residential) to the confluence of Right Fork and Middle Fork Elisha Creek	0.8-1.8	Leslie
Emily Run of Drennon Creek	Mouth to Unidentified Tributary	0.0-4.0	Henry
Evans Fork of Billey Fork of Millers Creek ²	Mouth to Headwaters	0.0-3.0	Estill
Falling Rock Branch of Clemons Fork of Buckhorn Creek ²	Mouth to Headwaters	0.0-0.7	Breathitt
Gilberts Creek of Kentucky River	Mouth to Unidentified Tributary	0.0 to 2.6	Anderson
Gladie Creek of Red River ²	Land Use Change to Long Branch	0.35 to 7.3	Menifee
Goose Creek of South Fork Kentucky River	Mouth to Laurel Creek	0.0-9.1	Clay, Leslie
Griers Creek of Kentucky River ²	Kentucky River Backwaters to Unidentified Tributary	0.1 to 3.5	Woodford
Grindstone Creek of Kentucky River ²	Kentucky River Backwaters to Headwaters	0.1 to 1.9	Franklin
Hardwick Creek of Red River	Mouth to Little Hardwick Creek	0.0-3.25	Powell
Hell For Certain of Middle Fork Red River	Mouth to Big Fork	0.0-2.1	Leslie
Hines Creek of Kentucky River ²	Kentucky River Backwaters to confluence with Unidentified Tributary	0.1 to 1.9	Madison
Honey Branch of Greasy Creek of Middle Fork Kentucky River ²	Mouth to Headwaters	0.0-1.35	Leslie
Hopper Cave Branch of Cavanaugh Creek ²	Mouth to Headwaters	0.0-1.8	Jackson
Indian Creek of Eagle Creek ²	Mouth to Headwaters	0.0 to 5.4	Carroll
Indian Fork of Sixmile Creek of Kentucky River ²	Mouth to Headwaters	0.0-3.3	Shelby
John Carpenter Fork of Clemons Fork of Buckhorn Creek ²	Mouth to Headwaters	0.0-1.2	Breathitt
Joyce Fork of Cortland Fork	Mouth to Headwaters	0.0-1.2	Owsley
Katies Creek of Red Bird River	Mouth to Headwaters	0.0-4.0	Clay
Laurel Fork of Left Fork Buffalo Creek of Buffalo Creek ²	Cortland Fork to Big Branch	0.0-3.75	Owsley
Left Fork Big Double Creek of Kentucky River ²	Mouth to Headwaters	0.0-1.5	Clay
Line Fork of North Fork of Kentucky River ²	Defeated Creek to Headwaters	12.2-28.6	Letcher
Little Middle Fork of Elisha Creek of Red Bird River ²	Mouth to Headwaters	0.0-0.75	Clay
Little Millseat Branch of Clemons Fork of Buckhorn Creek ²	Mouth to Headwaters	0.0-1.2	Breathitt
Little Sixmile Creek of Sixmile Creek of Kentucky River ²	Mouth to Headwaters	0.0-5.3	Henry
Little Sturgeon Creek of Sturgeon Creek	Mouth to Headwaters	0.0-3.0	Owsley
Low Gap Branch of Elk Creek	Mouth to Headwaters	0.0-0.8	Letcher
Lower Devil Creek of North Fork Kentucky River	Mouth to Headwaters	0.0-4.65	Lee
Lower Howard Creek of Kentucky River	Mouth to West Fork	0.0-2.7	Clark
Lulbegrud Creek of Red River	Mouth to Falls Branch	0.0-7.3	Clark, Powell
Middle Fork Kentucky River	Mouth to Upper Twin Creek	0.0-12.7	Lee, Owsley
Middle Fork Kentucky River ²	Hurts Creek to Greasy Creek	75.6-85.8	Leslie
Middle Fork Red River	South Fork of Red River to Natural Bridge State Park Lake	1.8-8.5	Powell
Mikes Branch of Laurel Fork of Left Fork Buffalo Creek	Mouth to Headwaters	0.0-0.7	Owsley
Mill Creek of Kentucky River ²	Upstream of Mouth to Headwaters	0.5-8.3	Owen
Millseat Branch of Clemons Fork of Buckhorn Creek ²	Mouth to Headwaters	0.0-1.85	Breathitt
Muddy Creek of Kentucky River ²	Elliston, Kentucky to Viney Creek	13.8-20.65	Madison
Musselman Creek of Eagle Creek ²	Mouth to Headwaters	0.0-9.0	Grant
Red Bird River of South Fork Kentucky River	Mouth to Big Creek	0.0-15.3	Clay
Right Fork Buffalo Creek of Kentucky River ²	Mouth to Headwaters	0.0-11.75	Owsley
Right Fork Elisha Creek of Redbird River	Mouth to Headwaters	0.0-3.3	Leslie
Roaring Fork of Lewis Fork of Buckhorn Creek ²	Mouth to Headwaters	0.0-0.9	Breathitt
Rock Lick Creek of South Fork of Station Camp Creek ²	Mouth to Headwaters	0.0-9.6	Jackson
Sand Ripple Creek of Kentucky River ²	Kentucky River Backwaters to Headwaters	0.1-3.9	Henry
Severn Creek of Kentucky River ²	Kentucky River Backwaters to North Fork Severn Creek	1.35-3.0	Owen
Shaker Creek of Kentucky River	Near Mouth to Shawnee Run	0.1-1.4	Mercer
Shelly Rock Fork of Millseat Branch of Clemons Fork ²	Mouth to Headwaters	0.0-0.6	Breathitt

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Sixmile Creek of Kentucky River ²	Little Sixmile Creek to Dam	7.1-15.3	Henry
South Fork Kentucky River	Mouth to Sexton Creek	0.0-27.8	Owsley
South Fork Red River	Mouth to Sandlick Fork	0.0-4.2	Powell
South Fork Station Camp Creek of Kentucky River ²	Mouth to Rock Lick Creek	0.0-9.7	Jackson
Spruce Branch of Redbird River ²	Mouth to Headwaters	0.0-1.0	Clay
Station Camp Creek of Kentucky River ²	Landuse Change to South Fork Station Camp Creek	18.0-22.8	Estill
Steeles Run of Elkhorn Creek	Mouth to Unidentified Tributary	0.0-4.2	Fayette
Steer Fork of War Fork of Station Camp Creek ²	Mouth to Headwaters	0.0-2.7	Jackson
Sturgeon Creek of Kentucky River ²	Duck Fork to Little Sturgeon Creek	1.3-13.7	Lee, Owsley
Sugar Creek of Redbird River ²	Landuse Change to Headwaters	0.6-5.4	Leslie
Sulphur Lick Creek of Elkhorn Creek	Mouth to Headwaters	0.0-5.2	Franklin
Unidentified Tributary of Cawood Branch of Beech Fork ²	Mouth to Headwaters	0.0-2.1	Leslie
Unidentified Tributary of Cedar Creek of Kentucky River ²	Mouth to Headwaters	0.0-1.4	Owen
Unidentified Tributary of Glens Creek of Kentucky River ²	Mouth to Headwaters	0.0 to 1.9	Woodford
Unidentified Tributary of Jacks Creek of Kentucky River ²	Mouth to Headwaters	0.0-1.15	Madison
Unidentified Tributary of Kentucky River ²	Land Use Change to Headwaters	0.1-1.4	Franklin
Unidentified Tributary of Line Fork of North Fork Kentucky River ² (LCW)	Mouth to Headwaters	0.0-0.6	Letcher
War Fork of Station Camp Creek ²	Mouth to Headwaters	0.0-13.8	Jackson
Watches Fork of Laurel Fork of Left Fork Buffalo Creek	Mouth to Headwaters	0.0-1.0	Owsley
Wolfpen Creek of Red River ²	Mouth to Headwaters	0.0-3.6	Menifee
SALT RIVER BASIN			
Brashears Creek of Salt River	Guist Creek to Bullskin and Clear Creek	13.0-25.9	Shelby, Spencer
Cedar Creek of Salt River ²	Mouth to Greens Branch	0.0-5.2	Bullitt
Chaplin River of Salt River ²	Thompson Creek to Cornishville, KY	40.9-54.2	Washington
Doctors Fork of Chaplin River	Mouth to Begley Branch	0.0-3.8	Boyle
Guist Creek of Brashears Creek	Mouth to Jephtha Creek	0.0-15.7	Spencer
Harts Run of Wilson Creek of Rolling Fork Salt River ²	Mouth to Headwaters	0.0-1.8	Bullitt
Indian Creek of Thompson Creek of Chaplin River of Salt River	Mouth to Unidentified Tributary	0.0-0.9	Mercer
Lick Creek of Long Lick Creek of Beech Fork of Salt River ²	Mouth to 0.1 miles below Dam	0.0-4.0	Washington
Otter Creek of Rolling Fork of Salt River ²	Landuse Change to confluence of East Fork and Middle Fork Otter Creek	1.7-2.9	Larue
Overalls Creek of Wilson Creek of Rolling Fork of Salt River ²	Mouth to Headwaters of Middle Fork Overalls Creek	0.0-3.2	Bullitt
Salt Lick Creek of Rolling Fork of Salt River ²	Mouth to Headwaters	0.0-8.6	Larue, Marion
Sulphur Creek of Chaplin River ²	Mouth to confluence of Cheese Lick and Brush Creek	0.0-10.0	Anderson, Mercer, Washington
Unidentified Tributary of Glens Creek of Chaplin River	Mouth to Headwaters	0.0-2.3	Washington
West Fork Otter Creek of Rolling Fork of Salt River ²	Mouth to Headwaters	0.0-5.1	Larue
Wilson Creek of Rolling Fork of Salt River ²	Mouth to Headwaters	0.0-18.4	Bullitt, Nelson
GREEN RIVER BASIN			
Beaverdam Creek of Green River ²	Mouth to Headwaters	0.0-14.5	Edmonson
Big Brush Creek of Green River	Brush Creek to Poplar Grove Branch	13.0-17.3	Green
Cane Run of Nolin River ²	Nolin River Lake Backwaters to Headwaters	0.8-6.5	Hart
Caney Fork of Peter Creek ²	Mouth to Headwaters	0.0-6.7	Barren
Clifty Creek of Rough River ²	Barton Run to Western Kentucky Parkway	7.3-17.2	Grayson
Clifty Creek of Wolf Lick Creek ²	Little Clifty Creek to Sulphur Lick	7.6-13.4	Todd
East Fork Little Barren River ²	Red Lick Creek to Flat Creek	18.9-20.7	Metcalfe
Elk Lick Creek	Duck Lick Creek to Barren Fork Creek and Edger Creek	3.6 to 11.8	Allen
Ellis Fork of Damron Creek ²	Mouth to Headwaters	0.0-3.2	Adair, Russell
Falling Timber Creek of Skaggs Creek ²	Landuse Change to Headwaters	10.8-15.2	Barren, Metcalfe
Fiddlers Creek of North Fork Rough River ²	Mouth to Headwaters	0.0-5.9	Breckinridge

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Forbes Creek of Buck Creek of East Fork Pond River ²	Mouth to Unidentified Tributary	0.0-4.1	Christian
Gasper River of Barren River ²	Clear Fork to Wiggington Creek	17.2-35.6	Logan, Warren
Goose Creek of Green River ²	Mouth to Little Goose Creek	0.0-8.5	Casey, Russell
Green River	Downstream Mammoth Cave National Park Boundary to Lynn Camp Creek	185.0-250.3	Edmonson, Hart
Halls Creek of Rough River ²	Unidentified Tributary to Headwaters	7.15-9.6	Ohio
Lick Creek of West Fork Drakes Creek ²	Mouth to Headwaters	0.0-10.2	Simpson
Linders Creek of Rough River ²	Mouth to Sutzer Creek	0.0-7.9	Hardin
Little Beaverdam Creek of Green River ²	Mouth to SR 743	0.0-11.65	Edmonson, Warren
Little Short Creek of Rough River ²	Mouth to Headwaters	0.0-3.1	Grayson
Lynn Camp Creek of Green River ²	Mouth to Lindy Creek	0.0-8.5	Hart
McFarland Creek of West Fork Pond River ²	Grays Branch to Unidentified Tributary	1.5-5.0	Christian
Meeting Creek of Rough River ²	Little Meeting Creek to Petty Branch	6.2-14.0	Grayson, Hardin
Muddy Creek of Caney Creek of Rough River ²	Landuse Change to Headwaters	13.0-15.5	Ohio
North Fork Rough River ²	Buffalo Creek to Reservoir Dam	22.1-26.9	Breckinridge
Peter Creek of Barren River ²	Caney Fork to Dry Fork	11.6-18.5	Barren
Pond Run of Rough River ²	Landuse Change to Headwaters	1.4-6.8	Breckinridge, Ohio
Puncheon Creek	Mouth to Tennessee State Line	0.0-3.8	Logan
Rough River ²	Linders Creek to Vertrees Creek	138.0-149.4	Hardin
Russell Creek of Green River ²	Mouth to Columbia WWTP	0.0-40.0	Green, Adair
Russell Creek of Green River ²	Reynolds Creek to confluence with Hudson Creek and Mount Olive Creek	56.9-66.3	Adair, Russell
Sixes Creek of Indian Camp Creek ²	Wild Branch to Headwaters	2.0-7.5	Ohio
Sulphur Branch of Alexander Creek ²	Mouth to Headwaters	0.0-3.0	Edmonson
Thompson Branch of West Fork Drakes Creek	Webb Branch to Tennessee State Line	0.3-1.5	Simpson
Trammel Creek of Drakes Creek ²	Mouth to Tennessee State Line	0.0-30.6	Allen, Warren
Unidentified Tributary of Green River ²	Landuse Change to Headwaters	1.7-3.2	Adair
Unidentified Tributary of White Oak Creek ²	Hovious Rd Crossing to SR 76	0.4-2.9	Adair
West Fork Pond River ²	Unidentified Tributary to East Branch Pond River	12.45-22.5	Christian
LOWER CUMBERLAND RIVER BASIN			
Crooked Creek of Cumberland River ²	Energy Lake Backwaters to Headwaters	3.0-9.4	Trigg
Donaldson Creek of Cumberland River ²	Craig Branch to Unidentified Tributary	3.2-7.2	Trigg
Elk Fork Red River of Cumberland River ²	Tennessee State Line to Dry Branch	7.5-23.1	Todd
Sugar Creek of Cumberland River ²	Lick Creek to Unidentified Tributary	2.2-6.9	Livingston
West Fork Red River of Cumberland River ²	Tennessee State Line to Montgomery Creek	16.1-26.5	Christian
West Fork Red River	Tennessee State Line to Montgomery Creek	14.75-26.85	Christian
Whippoorwill Creek of Red River of Cumberland River ²	Mouth to Vicks Branch	0.0-13.2	Logan
TENNESSEE RIVER BASIN			
Blood River of Kentucky Lake (Tennessee River) ²	McCullough Fork to Tennessee State Line	15.15-18.7	Calloway
Clarks River of Tennessee River	Persimmon Slough to Middle Fork Creek	28.7-30.7	Marshall
Grindstone Creek of Kentucky Lake (Blood River of Tennessee River) ²	Kentucky Lake Backwaters to Headwaters	0.7-2.9	Calloway
Panther Creek of Kentucky Lake (Blood River of Tennessee River) ²	Kentucky Lake Backwaters to Headwaters	0.5-5.7	Calloway
Soldier Creek of West Fork Clarks River ²	Mouth to South Fork of Soldier Creek	0.0-5.7	Marshall
Sugar Creek of Kentucky Lake (Tennessee River) ²	Kentucky Lake Backwaters to Buzzard Roost Road	2.5-3.2	Calloway
Sugar Creek of West Fork Clarks River ²	Mouth to Unnamed Reservoir	0.0-3.9	Graves
Trace Creek of West Fork Clarks River ²	Mouth to Neeley Branch	0.0-3.35	Graves
Unidentified Tributary of Unidentified Tributary of Panther Creek of West Fork Clarks River ²	Mouth to Headwaters	0.0-1.7	Graves
West Fork Clarks River ²	Soldier Creek to Duncan Creek	20.1-23.5	Graves
Wildcat Creek of Kentucky Lake (Blood River of Tennessee River) ²	Ralph Wright Road Crossing to Headwaters	2.8-6.8	Calloway
TRADEWATER RIVER BASIN			
East Fork of Flynn Fork of Tradewater River ²	Landuse Change to Headwaters	2.15-4.6	Caldwell
Piney Creek of Tradewater River ²	Lake Beshear Backwaters to Headwaters	4.5-10.2	Caldwell, Christian
Sandlick Creek of Tradewater River ²	Camp Creek to Headwaters	4.5-8.6	Christian
Tradewater River ²	Dripping Springs Branch to Buntin Lake Dam	126.2-133.9	Christian
Unidentified Tributary of Piney Creek of Tradewater	Mouth to Headwaters	0.0-2.9	Caldwell

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River ²			
Unidentified Tributary of Sandlick Creek of Tradewater River ²	Mouth to Headwaters	0.0-1.4	Christian
OHIO RIVER BASIN (Minor Tributaries)			
Ashbys Fork of Woolper Creek	Mouth to SR 20	0.0-3.7	Boone
Crooked Creek* ²	Rush Creek to City Lake Dam	18.1-26.4	Crittenden
Double Lick Creek of Woolper Creek ²	Mouth to Headwaters	0.0-3.5	Boone
Garrison Creek ²	Mouth to Headwaters	0.0-4.85	Boone
Kinniconick Creek ²	McDowell Creek to Headwaters	5.2-50.9	Lewis
Little South Fork of Big South Fork	Land Use Change to Headwaters	4.2-5.8	Boone
Middle Fork of Massac Creek ²	Hines Road to Headwaters (Pond)	3.1-6.4	McCracken
Second Creek ²	Ohio River Backwaters to Headwaters	0.4-2.9	Boone
Unidentified Tributary of Big Sugar Creek ²	I-71 to Headwaters	1.0-1.8	Gallatin
Unidentified Tributary of Corn Creek ²	Mouth to Headwaters	0.0-2.3	Trimble
Unidentified Tributary of Massac Creek ²	Mouth to Headwaters	0.0-1.7	McCracken
West Fork Massac Creek ²	SR 724 to Little Massac Creek	3.6-6.2	McCracken
Yellowbank Creek ²	Ohio River Backwaters to Headwaters	2.0-12.0	Breckinridge
LAKE			
Metropolis	Entire Lake		McCracken
MISSISSIPPI RIVER BASIN (Main Stem and Minor Tributaries)			
Jackson Creek ²	Mouth to Headwaters	0.0-3.0	Graves
Obion Creek ²	Hurricane Creek to Little Creek	26.7-37.1	Hickman
Terrapin Creek ²	Tennessee State Line to Confluence of East and West Forks	2.7-6.0	Graves
LAKES			
Murphy's Pond	Entire Pond and Preserve Area		Hickman
Swan	Entire Lake		Ballard
UPPER CUMBERLAND RIVER BASIN			
Bad Branch of Poor Fork Cumberland River ²	Mouth to Headwaters	0.0-3.0	Letcher
Bark Camp Creek of Cumberland River ²	Mouth to Martins Fork	0.0-4.0	Whitley
Beaver Creek of Cumberland River ²	Lake Cumberland Backwaters to confluence of Freeman Fork and Middle Fork	2.4-7.1	McCreary
Bee Lick Creek of Brushy Creek of Buck Creek	Mouth to Warren Branch	0.0-5.7	Pulaski
Brownies Creek of Cumberland River ²	Blacksnake Branch to Headwaters	9.3-16.75	Bell, Harlan
Brush Creek of Roundstone Creek ²	Wolf Creek to Reemergence of Sinking Creek	1.1-7.6	Rockcastle
Brushy Creek of Buck Creek ²	Mouth to Headwaters	0.0-16.5	Pulaski
Buck Creek of Cumberland River ²	0.8 river mile upstream of confluence of Hurricane Creek to Lake Cumberland Backwaters	11.7-55.0	Lincoln, Pulaski
Bunches Creek of Cumberland River ²	Mouth to confluence of Amos Falls Branch and Seminary Branch	0.0-3.3	Whitley
Cane Creek of Rockcastle River ²	Mouth to Headwaters	0.0-11.85	Laurel
Clear Creek of Roundstone Creek	Scaffold Cane Branch to Davis Branch	3.45-7.8	Rockcastle
Clifty Creek of Brushy Creek of Buck Creek	Mouth to Rocky Branch	0.0-2.7	Pulaski
Cogur Fork of Indian Creek ²	Mouth to Headwaters	0.0-7.95	McCreary
Cumberland River	Wild River Boundaries	549.65-566.1	McCreary, Whitley
Dog Slaughter Creek of Cumberland River ²	Mouth to confluence of North Fork and South Fork Dog Slaughter Creek	0.05-1.15	Whitley
Eagle Creek of Cumberland River ²	Mouth to Headwaters	0.05-6.75	McCreary
Fugitt Creek of Clover Fork Cumberland River ²	Landuse Change to Headwaters	0.5-4.6	Harlan
Horse Lick Creek of Rockcastle River ²	Mouth to Clover Bottom	0.0-12.3	Jackson, Rockcastle
Howards Creek of Illwill Creek of Wolf River ²	Dale Hollow Reservoir Backwaters to Headwaters	0.6-4.6	Clinton
Indian Creek of Cumberland River ²	Laurel Fork to Barren Fork	2.4-6.8	McCreary
Jackie Branch of Bark Camp Creek ²	Mouth to Headwaters	0.0-1.65	Whitley
Kettle Creek of Cumberland River	State line to Wells Creek	1.75-6.1	Monroe
Kilburn Fork of Indian Creek	Mouth to Headwaters	0.0-7.2	McCreary
Laurel Creek of Marsh Creek	Mouth to Laurel Creek Dam	0.0-9.0	McCreary
Laurel Fork of Clear Fork of Cumberland River ²	Tennessee State Line to Tiny Branch	4.3-13.1	Whitley
Laurel Fork of Middle Fork of Rockcastle River ²	Mouth to Headwaters	0.0-12.3	Jackson
Left Fork of Fugitt Creek of Clover Fork Cumberland River	Mouth to Headwaters	0.0-1.5	Harlan
Little South Fork Cumberland River ²	Lake Cumberland Backwaters to Langham Branch	4.4-35.5	McCreary, Wayne
Little White Oak Creek of White Oak Creek	Mouth to Headwaters	0.0-2.6	Laurel

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Marsh Creek of Cumberland River ²	Laurel Creek to Kentucky/Tennessee State Line	8.8-26.5	McCreary
Martins Fork Cumberland River	Rough Branch to Headwaters	27.2-32.7	Harlan
McFarland Creek of Cumberland River	Little McFarland Creek to Spring Branch	0.8-6.2	Monroe
Meshack Creek of Cumberland River	Mouth to Pitcock Branch	0.0-2.8	Monroe
Middle Fork Rockcastle River ²	Mouth to confluence of Indian Creek and Laurel Fork	0.0-7.9	Jackson
Mud Camp Creek of Cumberland River ²	Mouth to Collins Branch	0.0-1.2	Cumberland
Mud Camp Creek of Cumberland River ²	Unidentified Tributary to Headwaters	3.8-8.8	Cumberland, Monroe
Otter Creek of Cumberland River	Lake Cumberland Backwaters to Carpenter Fork	14.0-22.1	Wayne
Poor Fork Cumberland River ²	Franks Creek to Headwaters	42.1-52.4	Letcher
Presley House Branch of Poor Fork Cumberland River ²	Mouth to Headwaters	0.0-1.5	Letcher
Puncheoncamp Branch of Rock Creek of Big South Fork Cumberland River ²	Mouth to Headwaters	0.0-1.85	McCreary
Rock Creek of Big South Fork Cumberland River ²	White Oak Creek to Tennessee State Line	4.0-21.5	McCreary
Rockcastle River	Wild River Boundaries	8.95-54.7	Laurel, Pulaski
Shillalah Creek of Clear Fork of Yellow Creek ²	Mouth to Headwaters	0.0-5.5	Bell
Sinking Creek of Rockcastle River ²	Mouth to White Oak Creek	0.0-9.9	Laurel
Sulphur Creek of Wolf River of Obey River ²	Dale Hollow Reservoir Backwaters to Headwaters	1.7-5.1	Clinton
South Fork of Dog Slaughter Creek of Cumberland River ²	Mouth to Headwaters	0.0-4.6	Whitley
South Fork Rockcastle River	Mouth to White Oak Creek	0.0-5.8	Laurel
Unidentified Tributary of Cane Creek of Rockcastle River	Mouth to Headwaters	0.0-1.2	Laurel
Unidentified Tributary (across from Hemlock Grove) of Rock Creek of Big South Fork Cumberland River ²	Mouth to Headwaters	0.0-1.3	McCreary
Unidentified Tributary (RMI 17.0 of Rock Creek) of Rock Creek of Big South Fork Cumberland River ²	Mouth to Headwaters	0.0-1.2	McCreary
Watts Branch of Rock Creek of South Fork Cumberland River ²	Mouth to Headwaters	0.0-2.6	McCreary
Watts Creek of Cumberland River ²	Camp Blanton Reservoir to Headwaters	2.4-4.4	Harlan

²Waterbodies in the cabinet's reference reach network

(a) Categorization criteria. A surface water shall be categorized as an exceptional water if the surface water:

1. Is designated as a Kentucky Wild River and is not categorized as an outstanding national resource water;
2. Is designated as an outstanding state resource water as established in 401 KAR 10:031, Section 8(1)(a)1. and 2. and Section 8(1)(b);
3. Contains a:
 - a. Fish community that is rated "excellent" by the use of the Index of Biotic Integrity included in Development and Application of the Kentucky Index of Biotic Integrity (KIBI), 2003; or
 - b. Macroinvertebrate community that is rated "excellent" by the Macroinvertebrate Bioassessment Index included in "The Kentucky Macroinvertebrate Bioassessment Index," 2003; or
4. Is in the cabinet's reference reach network.

(b) Implementation procedure. The implementation procedure for exceptional water shall be as established in subsection (3)(b) of this section.

(3) High quality water.

(a) Categorization criteria.

1. A surface water shall be categorized as high quality water if the surface water is not listed as an outstanding national resource water or an exceptional water in Table 1 or 2 of this section and if the surface water does not meet the criteria for impaired water as established in subsection (4)(a) of this section.

2. A surface water shall be categorized as a high quality water if the surface water is listed as an outstanding state resource water in 401 KAR 10:026 and is not listed as an outstanding national resource water in Table 1 or an exceptional water in Table 2 of this section.

(b) Implementation procedure. Existing instream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected. A KPDES permit application for a new or expanded discharge into a high quality or exceptional water shall be subject to the provisions of this paragraph, except:

- 1.a. The renewal of a KPDES permit that does not authorize

pollutant loading to the receiving stream in excess of that previously authorized;

b. An increase in pollutant loading within the limits previously approved by the KPDES permit; or

c. A new or expanded discharge that the applicant demonstrates:

(i) Shall not consume more than ten (10) percent of the available assimilative capacity of the receiving stream outside of a designated mixing zone or zone of initial dilution for each new or increased pollutant in the discharge; and

(ii) The cumulative impact of this category of discharges shall not consume more than ten (10) percent of the available assimilative capacity of the receiving stream outside of a designated mixing zone or zone of initial dilution.

2. The activities identified in clauses a. through d. of this subparagraph shall constitute compliance with the alternatives and socioeconomic analysis requirements if addressed in the manner established in this subparagraph rather than as established in subparagraph 1.c. of this paragraph, unless the permittee chooses to satisfy applicable antidegradation requirements pursuant to subparagraph 3. of this paragraph.

a. The cabinet may, upon receipt of a notice of intent to be covered under a general permit, require additional analyses or other information if necessary to comply with antidegradation requirements. A general permit issued pursuant to 401 KAR 5:050 through 5:080 shall be compliant with the alternatives and socioeconomic analysis requirements if:

(i) The activity permitted by the general permit may result in a lowering of water quality, the cabinet shall describe in the Fact Sheet how the general permit complies with the alternatives analysis, and socioeconomic demonstration requirements of subparagraph 1.c. of this paragraph upon each general permit issuance;

(ii) The requirements and conditions in a general permit will prevent a lowering of water quality, the cabinet shall describe in the Fact Sheet how the general permit complies with the

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antidegradation policy established in 401 KAR 10:029, Section 1; and

(iii) The cabinet notifies the public of an activity granted coverage under a general permit on the cabinet's Web page, which shall include the facility name, location, and receiving water.

b. The approval of a POTW's regional facility plan pursuant to 401 KAR 5:006 shall constitute compliance with the alternatives analysis and socioeconomic demonstration for a regional facility.

c. An antidegradation review shall not be required for maintenance of an existing highway facility. A new or expanded discharge associated with a project identified in the Kentucky Transportation Cabinet's six (6) year road plan, as established in KRS 176.430 shall satisfy the:

(i) Alternatives analysis for lowering water quality requirement if an alternatives analysis for the project has been submitted; and

(ii) Socioeconomic demonstration requirement if the project has been approved by the General Assembly and included in the Kentucky Transportation Cabinet's six (6) year road plan and evaluated pursuant to the provisions of KRS 176.430(4)(i).

d. An individual MS4 permit issued pursuant to 401 KAR 5:050 through 5:080 shall be compliant with the alternatives and socioeconomic analysis requirements if the:

(i) Activity permitted by the MS4 permit may result in a lowering of water quality, the cabinet shall describe in the Fact Sheet how the MS4 permit complies with the alternatives analysis and socioeconomic demonstration requirements of subparagraph 3.a. and b. of this paragraph; and

(ii) Requirements and conditions in the MS4 permit will prevent a lowering of water quality, the cabinet shall describe in the Fact Sheet how the MS4 permit complies with the antidegradation policy established in 401 KAR 10:029, Section 1.

3. An application for a KPDES permit subject to this paragraph shall contain information demonstrating that the lowering of water quality is necessary to accommodate important economic or social development in the area in which the water is located.

a. The socioeconomic demonstration shall consider:

(i) The boundaries of the affected community;

(ii) The potential effect on employment, including a comparison of local unemployment rates and state and national unemployment rates;

(iii) The potential effect on median household income levels, including a comparison of the present median household income level, projected median household income level, and number of households affected in the defined community;

(iv) The potential effect on tax revenues, including current tax revenues in the affected community compared to projected increase in tax revenues generated by the permitted project;

(v) The potential effect of the facility on the environment and public health; and

(vi) Other potential economic or social effect to the community that the applicant includes in the application.

b. The alternatives analysis shall consider:

(i) Pollution prevention measures, such as changes in plant processes, source reductions, or substitution with less toxic substances;

(ii) The use of best management practices to minimize impacts;

(iii) Recycle or reuse of wastewater, waste by-products, or production materials and fluids;

(iv) Application of water conservation methods;

(v) Alternative or enhanced treatment technology;

(vi) Improved operation and maintenance of existing treatment systems;

(vii) Seasonal or controlled discharge options;

(viii) Land application or infiltration to capture pollutants and reduce surface runoff, on-site treatment, or alternative discharge locations; and

(ix) Discharge to other treatment facilities.

c. Information required pursuant to this subparagraph shall be submitted on the Socioeconomic Demonstration and Alternatives Analysis form.

4. A permit applicant who has failed to demonstrate the necessity and social or economic development importance for lowering water quality shall not receive a permit unless:

a. The applicant demonstrates, through a revised submission, the necessity for lowering revised water quality in accordance with subparagraph 3. of this paragraph; or

b. The applicant demonstrates that the discharge can meet the requirements established in subparagraph 1.c. of this paragraph.

5. A permit applicant who demonstrates the necessity and social or economic development importance for lowering water quality shall meet the requirements of the KPDES program, 401 KAR 5:050 through 5:080.

6. The cabinet's determination shall be documented in the permit Fact Sheet and included in the administrative record for the permit or action.

(4) Impaired water.

(a) Categorization criteria. A surface water categorized as impaired for applicable designated uses shall be a water identified pursuant to 33 U.S.C. 1315(b).

1. Surface water ~~classified as impaired shall be~~ assessed by the cabinet as not fully supporting any applicable designated uses shall be categorized as impaired.

2. A surface water shall not be categorized as impaired water for the purposes of this administrative regulation if the surface water is listed;

a. As an outstanding state resource water in 401 KAR 10:026; or

b. As an exceptional water in 401 KAR 10:030; or

c. Only as mercury or methylmercury impaired for fish consumption. ~~3. A surface water shall not be categorized as impaired for the purposes of this administrative regulation if the surface water is listed only as mercury impaired for fish consumption.~~

(b) Implementation procedure.

1. All existing uses shall be protected and the level of water quality necessary to protect those existing uses shall be assured in impaired water.

2. The process to allow a discharge into an impaired water and to assure protection of the water shall be regulated by the requirements in the Kentucky Pollution Discharge Elimination System Program, 401 KAR 5:050 through 5:080 ~~5:050-5:080~~.

Section 2. Procedure for Recategorizing Water. This section shall apply to the recategorization of surface water to outstanding national resource water and exceptional water. The redesignation of water to outstanding state resource water shall be governed by the procedures in 401 KAR 10:026. (1) The cabinet may propose to recategorize certain water to outstanding national resource water and exceptional water if the water meets the criteria set forth in Section 1(1)(a) or (2)(a) of this administrative regulation.

(a) If the cabinet proposes to recategorize these waters, it shall provide notice and an opportunity for public hearing.

(b) The cabinet shall provide the documentation requirements of this section for those surface waters it proposes to recategorize.

(2) A person may request recategorization of a surface water to an outstanding national resource water or exceptional water by filing a petition with the cabinet.

(a) The petition shall include the name and address of the petitioner and the information and documentation necessary to recategorize the particular water as required by subsection (4) of this section.

(b) The petitioner shall have the burden of proof that the recategorization is appropriate.

(c) The cabinet shall provide notice of the petition and an opportunity for a public hearing.

(d) The cabinet shall review the petition, supporting documentation, and any comments received from the public to determine if the proposed water qualifies for recategorization.

(e) The cabinet shall document the determination to grant or deny recategorization as a result of a petition, and shall provide a copy of the decision to the petitioner and other interested parties.

(3) If a water is to be recategorized, the cabinet shall publish notice of the recategorization.

(a) A permit issued after the date of publication shall be issued with limitations based on the new category.

(b) When the cabinet reviews its water quality standards pursuant to the provisions of Section 303 of the Clean Water Act,

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33 U.S.C. 1313, the cabinet shall propose to have all recategorized water promulgated as an amendment to this administrative regulation.

(4) The following information, documentation, and data shall support a petition for recategorization:

(a) A petition for outstanding national resource water shall include:

1. A USGS 7.5 minute topographic map or its equivalent showing those surface waters to be recategorized including a description consisting of a river mile index with any existing and proposed discharge points;

2. Existing uses and water quality data for the surface water for which the recategorization is proposed. If adequate data are unavailable, additional studies shall be required by the cabinet;

3. Descriptions of general land uses and specific land uses adjacent to the surface water for which the recategorization is proposed;

4. The existing and designated uses of the water upstream and downstream of the proposed recategorized water;

5. General physical characteristics of the surface water including width, depth, bottom composition, and slope;

6. The frequency of occasions when there is no natural flow in the surface water and the 7Q₁₀ and harmonic mean flow values for the surface water and adjacent surface waters;

7. An assessment of the existing and potential aquatic life habitat in the surface water under consideration and the adjacent upstream surface waters. The existing aquatic life shall be documented including the occurrence of individuals or populations, indices of diversity and well-being, and abundance of species of any unique native biota;

8. A documented rationale as to why the water qualify for the recategorization; and

9. The rationale used to support the national significance of the water.

(b) A petition for exceptional water shall include:

1. A United States Geological Survey 7.5 minute topographic map or its equivalent showing the surface water to be recategorized including a description consisting of a river mile index with existing and proposed discharge points;

2. Descriptions of general land uses, including:

a. Mining;

b. Agriculture;

c. Recreation;

d. Low, medium, and high density residential, commercial, or industrial uses; and

e. Specific land uses adjacent to the surface water for which the recategorization is proposed;

3. The frequency of occasions when there is no natural flow in the surface water and the 7Q₁₀ and annual mean flow values for the surface water; and

4. Fish or benthic macroinvertebrate collection data and an Index of Biotic Integrity or Macroinvertebrate Bioassessment Index calculation from a waterbody if criteria specified in Section 1(2)(a)3 of this administrative regulation are utilized.

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

(a) "Development and Application of the Kentucky Index of Biotic Integrity (KIBI)", 2003, Kentucky Division of Water, Environmental and Public Protection Cabinet;

(b) "The Kentucky Macroinvertebrate Bioassessment Index", 2003, Kentucky Division of Water, Environmental and Public Protection Cabinet; and

(c) "Socioeconomic Demonstration and Alternative Analysis", KPDES Form SDAA, DEP Form 7032, May 2019[April-2009].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Water, 300 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(a) The Socioeconomic Demonstration and Alternative Analysis, KPDES Form SDAA, DEP Form 7032, May 2019, is also available on the division's web site at <https://eec.ky.gov/Environmental-Protection/Water/PermitCert/KPDES/Pages/default.aspx>.

(b) "Development and Application of the Kentucky Index of Biotic Integrity" and "Kentucky Macroinvertebrate Bioassessment Index" is also available on the division's website at <https://eec.ky.gov/Environmental-Protection/Water/QA/Pages/default.aspx>.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: June 11, 2019

FILED WITH LRC: June 12, 2019 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 23, 2019 at 6:00 p.m. Eastern Time at the Energy and Environment Cabinet, Training Room B, 300 Sower Boulevard, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through July 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: Carole J. Catalfo, Internal Policy Analyst, RPPS, Division of Water, 3rd Floor, 300 Sower Boulevard, Frankfort, Kentucky 40601, phone (502) 564-3410, fax (502) 564-9003, email water@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Carole J. Catalfo

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation implements the antidegradation policy of 401 KAR 10:029 by establishing procedures to control water pollution in waters affected by that policy. This administrative regulation provides categorization criteria, lists many surface waters assigned to specific categories, and provides for recategorization of water.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to manage water resources and to provide for the prevention, abatement, and control of water pollution.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100 requires the cabinet to develop and conduct a comprehensive program for the management of water resources and to provide for the prevention, abatement, and control of all water pollution. KRS 224.70-100 authorizes the policy of the commonwealth to conserve its waters for legitimate uses, safeguard from pollution the uncontaminated waters of the commonwealth, prevent the creation of any new pollution in the waters of the commonwealth, and abate any existing pollution. This administrative regulation and 401 KAR 10:001, 10:026, 10:029, and 10:031 establish procedures to protect the surface waters of the Commonwealth, and thus protect water resources. This administrative regulation establishes a methodology to implement the antidegradation policy contained in 401 KAR 10:029 by establishing procedures to control water pollution in waters affected by that policy.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation implements the antidegradation policy to protect surface waters of the Commonwealth required by the authorizing statutes.

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

(a) How the amendment will change this existing administrative regulation: This amendment revises Table 1 to include waterbodies and receiving waters, latitude and longitude instead of river miles, and boundary descriptions for more accurate location of streams

and stream segments. Table 2 was similarly revised. This amendment includes 29 additional streams or stream segments comprising approximately 114.35 miles of surface waters newly categorized as Exceptional Waters as a result of routine watershed monitoring and investigations of potential waters affected by permitted activities since the revisions to this administrative regulation in 2015. The amendment also clarifies that surface waters that do not fully support any designated use shall be categorized as impaired, except for outstanding or exceptional waters, or those that are impaired only for mercury or methylmercury as it applies to fish consumption.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to provide more accurate location information in the form of latitude and longitude, add waters that meet the criteria for Exceptional Waters since the 2015 revisions to this administrative regulation, and to clarify that a surface water shall not be categorized as impaired for the purposes of this administrative regulation if it is listed as an OSRW or Exceptional Water.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100 requires the cabinet to develop and conduct a comprehensive program for the management of water resources and to provide for the prevention, abatement, and control of all water pollution. KRS 224.70-100 authorizes the policy of the commonwealth to conserve its waters for legitimate uses, safeguard from pollution the uncontaminated waters of the commonwealth, prevent the creation of any new pollution in the waters of the commonwealth, and abate any existing pollution. This administrative regulation and 401 KAR 10:001, 10:026, 10:029, and 10:031 establish procedures to protect the surface waters of the Commonwealth, and thus protect water resources. This administrative regulation establishes a methodology to implement the antidegradation policy contained in 401 KAR 10:029 by establishing procedures to control water pollution in waters affected by that policy.

(d) How the amendment will assist in the effective administration of the statutes: The amendments will assist in the administration of the statutes by listing surface waters newly categorized as Exceptional, and provide clarification that OSRWs and Exceptional Waters shall not be categorized as impaired for the purposes of this administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Individuals, businesses, organizations, and state and local governments that will have new or expanded wastewater discharges into streams could be affected by either stricter discharge limits or the requirement to perform an alternatives analysis and socioeconomic demonstration.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Potential permit limits imposed on new or expanded point source discharges could result in additional treatment outlays, training costs, or operational changes. New or expanded point source dischargers covered under the KPDES permitting system may incur costs of alternatives, pollution prevention, and socioeconomic analyses. These requirements already exist in state and federal law.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The costs to comply with this administrative regulation will vary considerably depending on the location, type of activity, and other factors. Costs cannot be determined until an applicant applies for a KPDES permit for a new or expanded discharge which is regulated under 401 KAR Chapter 5.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Direct and indirect savings will be realized through reduced drinking water treatment costs, maintenance of good agricultural water and fisheries, and healthy recreational waters.

(5) Provide an estimate of how much it will cost the

administrative body to implement this administrative regulation:

(a) Initially: The amendment to this administrative regulation will not result in additional costs.

(b) On a continuing basis: The amendment to this administrative regulation will not result in additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funding sources are a combination of general funds appropriated by the Kentucky General Assembly and federal funds from the U.S. Environmental Protection Agency.

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

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

(9) TIERING: Is tiering applied? Yes, tiering is applied, however, the amendments do not change how the regulation is tiered. This regulation tiers the requirements of the antidegradation policy based on the water quality where the applicant proposed to discharge. The tiers are based on whether the receiving waters are categorized as Exceptional Waters, Outstanding National Resource Waters, High Quality Waters, or Impaired Waters.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The amendments may affect the wastewater treatment divisions of local government if they have new or expanded discharges into Exceptional Waters.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 146.220, 146.241, 146.270, 146.410, 146.450, 146.460, 146.465, 224.10-100, 224.16-050, 224.16-060, 224.70-100, 224.70-110, 40 C.F.R. 130, 131, 16 U.S.C. 1271-1287, 1531-1544, 33 U.S.C. 1311, 1313, 1314, 1315, 1316, 1341, 1342, 1344

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

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

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

(c) How much will it cost to administer this program for the first year? This administrative regulation will not result in additional costs.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation will not result in additional costs.

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

Revenues (+/-): NA

Expenditures (+/-): NA

Other Explanation: Wastewater treatment costs may increase for those local governments requesting new or expanded discharges into Exceptional Waters. Local governments withdrawing drinking water from these waters may have lower treatment costs because the waters should have lower pollutant loads.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal

mandate. There is no federal mandate to implement a water pollution control program. For Kentucky to maintain its delegation authority over the National Pollution Discharge Elimination System permit program, the Clean Water Act requires that Kentucky review its water quality standards every three years (known as the "Triennial Review") and comply with the programmatic requirements of 40 C.F.R. Part 131, including implementing the antidegradation policy. The U.S. Environmental Protection Agency provides guidance to the states, but individual decisions regarding water quality programs are left to the states.

2. State compliance standards. KRS 146.220, 146.241, 146.270, 146.410, 146.450, 146.460, 146.465, 224.10-100, 224.16-050, 224.16-060, 224.70-100, and 224.70-110

3. Minimum or uniform standards contained in the federal mandate. 40 C.F.R. 130, 131, 16 U.S.C. 1271-1287, 1531-1544, 33 U.S.C. 1311, 1313, 1314, 1315, 1316, 1341, 1342, 1344

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate? No.

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

**ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Water
(Amendment)**

401 KAR 10:031. Surface water standards.

RELATES TO: KRS ~~146.200 through 146.360~~[146.200-146.360], ~~146.410 through 146.535~~[146.410-146.535], ~~146.550 through 146.570~~[146.550-146.570], ~~146.600 through 146.619~~[146.600-146.619], 146.990, 224.1-010, 224.1-400, 224.16-050, 224.16-070, ~~224.70-100 through 224.70-140~~[224.70-100-224.70-140], ~~224.71-100 through 224.71-145~~[224.71-100-224.71-145], ~~224.73-100 through 224.73-120~~[224.73-100-224.73-120.]

STATUTORY AUTHORITY: KRS 146.220, 146.241, 146.270, 146.410, 146.450, 146.460, 146.465, 224.10-100, 224.16-050, 224.16-060, 224.70-100, 224.70-110, 40 C.F.R. Part 131, 16 U.S.C. ~~1271 through 1287~~[1271-1287], ~~1531 through 1544~~[1531-1544], 33 U.S.C. 1311, 1313, 1314, 1341

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the cabinet to develop and conduct a comprehensive program for the management of water resources and to provide for the prevention, abatement, and control of water pollution. This administrative regulation and 401 KAR 10:001, 10:026, 10:029, and 10:030 establish procedures to protect the surface waters of the Commonwealth, and thus protect water resources. This administrative regulation establishes water quality standards that consist of designated legitimate uses of the surface waters of the Commonwealth and the associated water quality criteria necessary to protect those uses. These water quality ~~criteria~~[standards] are minimum requirements that apply to all surface waters in the Commonwealth of Kentucky in order to maintain and protect them for designated uses. These water quality standards are subject to periodic review and revision in accordance with the Clean Water Act, 33 U.S.C. 1251-1387, 40 C.F.R. 131, and KRS Chapter 224.

Section 1. Nutrients Criterion. Nutrients shall not be elevated in a surface water to a level that results in a eutrophication problem.

Section 2. Minimum Criteria Applicable to All Surface Waters.

(1) The minimum water quality criteria established in this administrative regulation shall be applicable to all surface waters including mixing zones, with the exception that toxicity to aquatic life in mixing zones shall be subject to the provisions of 401 KAR 10:029, Section 4. Surface waters shall not be aesthetically or otherwise degraded by substances that:

- (a) Settle to form objectionable deposits;
- (b) Float as debris, scum, oil, or other matter to form a

nuisance;

- (c) Produce objectionable color, odor, taste, or turbidity;
- (d) Injure or are chronically or acutely toxic to or produce adverse physiological or behavioral responses in humans, animals, fish, and other aquatic life;
- (e) Produce undesirable aquatic life or result in the dominance of nuisance species; or
- (f) Cause fish flesh tainting.

(2) The concentration of phenol shall not exceed 300 µg/L as an instream value.

(3) The water quality criteria for the protection of human health related to fish consumption in Table 1 of Section 6 of this administrative regulation shall apply to all surface water at the edge of the assigned mixing zones except for those points where water is withdrawn for domestic water supply use.

(a) The criteria are established to protect human health regarding the consumption of fish tissue and shall not be exceeded.

(b) For those substances associated with a cancer risk, an acceptable risk level of not more than one (1) additional cancer case in a population of 1,000,000 people, or 1×10^{-6} shall be utilized to establish the allowable concentration.

Section 3. Use Designations and Associated Criteria. (1) Surface waters may be designated as having one (1) or more legitimate uses established in 401 KAR 10:026 and associated criteria protective of those uses. Nothing in this administrative regulation shall be construed to prohibit or impair the legitimate beneficial uses of these waters. The criteria in Sections 2, 4, 6, and 7 of this administrative regulation represent minimum conditions necessary to:

(a) Protect surface waters for the indicated designated use; and

(b) Protect human health regarding fish consumption.

(2) On occasion, surface water quality may be outside of the limits established to protect designated uses because of natural conditions. If this occurs during periods when stream flows are below the flow that is used by the cabinet to establish effluent limitations for wastewater treatment facilities, a discharger shall not be considered a contributor to instream violations of water quality standards, if treatment results in compliance with permit requirements.

(3) Stream flows for water quality-based permits. The following stream flows shall be utilized if deriving KPDES permit limitations to protect surface waters for the listed uses and purposes:

- (a) Aquatic life protection shall be $7Q_{10}$;
- (b) Water-based recreation protection shall be $7Q_{10}$;
- (c) Domestic water supply protection shall be determined at points of withdrawal as:

- 1. The harmonic mean for cancer-linked substances; and
- 2. $7Q_{10}$ for noncancer-linked substances;

(d) Human health protection regarding fish consumption and for changes in radionuclides shall be the harmonic mean; and

(e) Protection of aesthetics shall be $7Q_{10}$.

Section 4. Aquatic Life. (1) Warm water aquatic habitat. The following parameters and associated criteria shall apply for the protection of productive warm water aquatic communities, fowl, animal wildlife, arboreous growth, agricultural, and industrial uses:

(a) Natural alkalinity as CaCO_3 shall not be reduced by more than twenty-five (25) percent.

1. If natural alkalinity is below twenty (20) mg/L CaCO_3 , there shall not be a reduction below the natural level.

2. Alkalinity shall not be reduced or increased to a degree that may adversely affect the aquatic community;

(b) pH shall not be less than six and zero-tenths (6.0) nor more than nine and zero-tenths (9.0) and shall not fluctuate more than one and zero-tenths (1.0) pH unit over a period of twenty-four (24) hours;

(c) Flow shall not be altered to a degree that will adversely affect the aquatic community;

(d) Temperature shall not exceed thirty-one and seven-tenths (31.7) degrees Celsius (eighty-nine (89) degrees Fahrenheit).

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1. The normal daily and seasonal temperature fluctuations that existed before the addition of heat due to other than natural causes shall be maintained.

2. The cabinet may determine allowable surface water temperatures on a site-specific basis utilizing available data that shall be based on the effects of temperature on the aquatic biota that utilize specific surface waters of the commonwealth and that may be affected by person-induced temperature changes.

3.[a.] Effects on downstream uses shall also be considered in determining site-specific temperatures.[b. Values in the following table are guidelines for surface water temperature.]

Month/Date	Period Average		Instantaneous Maximum	
	(°F)	(°C)	(°F)	(°C)
January 1-31	45	7	50	10
February 1-29	45	7	50	10
March 1-15	51	11	56	13
March 16-31	54	12	59	15
April 1-15	58	14	64	18
April 16-30	64	18	69	21
May 1-15	68	20	73	23
May 16-31	75	24	80	27
June 1-15	80	27	85	29
June 16-30	83	28	87	31
July 1-31	84	29	89	32
August 1-31	84	29	89	32
September 1-15	84	29	87	31
September 16-30	82	28	86	30
October 1-15	77	25	82	28
October 16-31	72	22	77	25
November 1-30	67	19	72	22
December 1-31	52	11	57	14

4.[3.] A successful demonstration concerning thermal discharge limits carried out pursuant to Section 316(a) of the Clean Water Act, 33 U.S.C. 1326, shall constitute compliance with the temperature requirements of this subsection. A successful demonstration assures the protection and propagation of a balanced indigenous population of shellfish, fish, and wildlife in or on the water into which the discharge is made;

(e) Dissolved oxygen.

1.a. Dissolved oxygen shall be maintained at a minimum concentration of five and zero-tenths (5.0) mg/L as a twenty-four (24) hour average in water with WAH use.[.]

b. The instantaneous minimum shall not be less than four and zero-tenths (4.0) mg/L in water with WAH use.

2. The dissolved oxygen concentration shall be measured at mid-depth in waters having a total depth of ten (10) feet or less and at representative depths in other waters;

(f) Total dissolved solids or specific conductance. Total dissolved solids or specific conductance shall not be changed to the extent that the indigenous aquatic community is adversely affected;

(g) Total suspended solids. Total suspended solids shall not be changed to the extent that the indigenous aquatic community is adversely affected;

(h) Settleable solids. The addition of settleable solids that may alter the stream bottom so as to adversely affect productive aquatic communities shall be prohibited;

(i) Ammonia. The concentration of the un-ionized form shall not be greater than 0.05 mg/L at any time instream after mixing. Un-ionized ammonia shall be determined from values for total ammonia-N, in mg/L, pH and temperature, by means of the following equation:

$$Y = 1.2 (\text{Total ammonia-N}) / (1 + 10^{pK_a - \text{pH}})$$

$$pK_a = 0.0902 + (2730 / (273.2 + T_c))$$

Where:

T_c = temperature, degrees Celsius.

Y = un-ionized ammonia (mg/L);

(j) Toxics.

1. The allowable instream concentration of toxic substances, or whole effluents containing toxic substances, which are noncumulative or ~~non-persistent~~[nonpersistent] with a half-life of less than ninety-six (96) hours, shall not exceed:

a. One-tenth (0.1) of the ninety-six (96) hour median lethal concentration (LC₅₀) of representative indigenous or indicator aquatic organisms; or

b. A chronic toxicity unit of 1.00 utilizing the twenty-five (25) percent inhibition concentration, or IC₂₅[LC₂₅].

2. The allowable instream concentration of toxic substances, or whole effluents containing toxic substances, which are bioaccumulative or persistent, including pesticides, if not specified elsewhere in this section, shall not exceed:

a. 0.01 of the ninety-six (96) hour median lethal concentration (LC₅₀) of representative indigenous or indicator aquatic organisms; or

b. A chronic toxicity unit of 1.00 utilizing the IC₂₅.

3. In the absence of acute criteria for pollutants listed in Table 1 of Section 6 of this administrative regulation, for other substances known to be toxic but not listed in this administrative regulation, or for whole effluents that are acutely toxic, the allowable instream concentration shall not exceed the LC₁ or one-third (1/3) LC₅₀ concentration derived from toxicity tests on representative indigenous or indicator aquatic organisms or exceed three-tenths (0.3) acute toxicity units.

4. If specific application factors have been determined for a toxic substance or whole effluent such as an acute to chronic ratio or water effect ratio, the specific application factors may be used instead of the one-tenth (0.1) and 0.01 factors listed in this subsection upon demonstration by the applicant that the application factors are scientifically defensible.

5. Allowable instream concentrations for specific pollutants for the protection of warm water aquatic habitat are listed in Table 1 of Section 6 of this administrative regulation. These concentrations are based on protecting aquatic life from acute and chronic toxicity and shall not be exceeded; and

(k) Total residual chlorine. Instream concentrations for total residual chlorine shall not exceed an acute criteria value of nineteen (19) µg/L or a chronic criteria value of eleven (11) µg/L.

(2) Cold water aquatic habitat. The following parameters and criteria are for the protection of productive cold water aquatic communities and streams that support trout populations, whether self-sustaining or reproducing, on a year-round basis. The criteria adopted for the protection of warm water aquatic life also apply to the protection of cold water habitats with the following additions:

(a) Dissolved oxygen.

1. A minimum concentration of six and zero-tenths (6.0) mg/L as a twenty-four (24) hour average and five and zero-tenths (5.0) mg/L as an instantaneous minimum shall be maintained.

2. In lakes and reservoirs that support trout, the concentration of dissolved oxygen in waters below the epilimnion shall be kept consistent with natural water quality; and

(b) Temperature. Water temperature shall not be increased through human activities above the natural seasonal temperatures.

Section 5. Domestic Water Supply Use. Maximum allowable instream concentrations for specific substances, to be applicable at the point of withdrawal, as established in 401 KAR 10:026, Section 5(2)(b), Table B, for use for domestic water supply from surface water sources are specified in Table 1 of Section 6 of this administrative regulation and shall not be exceeded.

Section 6. Pollutants. (1) Allowable instream concentrations of pollutants are listed as water column values in Table 1 of this section unless otherwise indicated.

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Pollutant	CAS ¹ Number	Water Quality Criteria $\mu\text{g}/\text{L}^2$ [mg/L^2]			
		Human Health:		Warm Water Aquatic Habitat ³ :	
		DWS ⁴	Fish ⁵	Acute ⁶	Chronic ⁷
Acenaphthene	83-32-9[83329]	670	990	-	-
Acrolein	107-02-8[107028]	190	6	3	3
Acrylonitrile	107-13-1[107131]	0.051	0.25	-	-
Aldrin	309-00-2[309002]	0.000049	0.000050	3.0	-
alpha-BHC	319-84-6[319846]	0.0026	0.0049	-	-
alpha-Endosulfan	959-98-8[959988]	62	89	0.22	0.056
Anthracene	120-12-7[120127]	8,300	40,000	-	-
Antimony	744-03-60[7440360]	5.6	640	-	-
Arsenic	7440-38-2[7440382]	10.0	-	340	150
Asbestos	1332-21-4[1332214]	7 million fibers/L	-	-	-
Barium	7440-39-3[7440393]	1,000	-	-	-
Benzene	71-43-2[71432]	2.2	51	-	-
Benzidine	92-87-5[92875]	0.000086	0.00020	-	-
Benzo(a)anthracene	56-55-3[56553]	0.0038	0.018	-	-
Benzo(a)pyrene	50-32-8[50328]	0.0038	0.018	-	-
Benzo(b)fluoranthene	205-99-2[205992]	0.0038	0.018	-	-
Benzo(k)fluoranthene	207-08-9[207089]	0.0038	0.018	-	-
Beryllium	7440-41-7[7440417]	4	-	-	-
Beta-BHC	319-85-7[319857]	0.0091	0.017	-	-
Beta-Endosulfan	33213-65-9[33213659]	62	89	0.22	0.056
bis(chloromethyl)ether	542-88-1[542881]	0.00010	0.00029	-	-
bis(2-chloroethyl)ether	111-44-4[111444]	0.030	0.53	-	-
bis(2-chloroisopropyl)ether	108-60-1[108601]	1,400	65,000	-	-
bis(2-ethylhexyl)phthalate	117-81-7[117817]	1.2	2.2	-	-
Bromoform	75-25-2[75252]	4.3	140	-	-
Butylbenzyl phthalate	85-68-7[85687]	1,500	1,900	-	-
Cadmium	7440-43-9[7440439]	5	-	$e^{(0.9789(\ln \text{Hard}^*) - 3.866)}$ [$e^{(1.0166 (\ln \text{Hard}^*) - 3.924)}$]	$e^{(0.7977(\ln \text{Hard}^*) - 3.909)}$ [$e^{(0.7409 (\ln \text{Hard}^*) - 4.719)}$]
Carbaryl	63-25-2			2.1	2.1
Carbon tetrachloride	56-23-5[56235]	0.23	1.6	-	-
Chlordane	57-74-9[57749]	0.00080	0.00081	2.4	0.0043
Chloride	16887-00-6[16887006]	250,000	-	1,200,000	600,000
Chlorobenzene	108-90-7[108907]	130	1600	-	-
Chlorodibromomethane	124-48-1[124481]	0.40	13	-	-
Chloroform	67-66-3[67663]	5.7	470	-	-
Chloropyrifos	2921-88-2[2921882]	-	-	0.083	0.041
Chromium (total)	N/A	100	-	-	-
Chromium (III)	16065-83-1[16065831]	-	-	$e^{(0.8190(\ln \text{Hard}^*) + 3.7256)}$ [$e^{(0.8190 (\ln \text{Hard}^*) + 3.7256)}$]	$e^{(0.8190(\ln \text{Hard}^*) + 0.6848)}$ [$e^{(0.8190 (\ln \text{Hard}^*) + 0.6848)}$]
Chromium (VI)	18540-29-0[18540299]	-	-	16	11
Chrysene	218-01-9[218019]	0.0038	0.018	-	-
Color	N/A	75 Platinum Cobalt Units	-	-	-
Copper	7440-50-8[7440508]	1,300	-	$e^{(0.9422(\ln \text{Hard}^*) - 1.700)}$ [$e^{(0.9422 (\ln \text{Hard}^*) - 1.700)}$]	$e^{(0.8545(\ln \text{Hard}^*) - 1.702)}$ [$e^{(0.8545 (\ln \text{Hard}^*) - 1.702)}$]
Cyanide, Free	57-12-5[57125]	140	140	22	5.2
Demeton	8065-48-3[8065483]	-	-	-	0.1
Diazinon	333-41-5[333415]			0.17	0.17
Dibenzo(a,h)anthracene	53-70-3[53703]	0.0038	0.018	-	-
Dichlorobromomethane	75-27-4[75274]	0.55	17	-	-
Dieldrin	60-57-1[60571]	0.000052	0.000054	0.24	0.056
Diethyl phthalate	84-66-2[84662]	17,000	44,000	-	-
Dimethyl phthalate	131-11-3[131113]	270,000	1,100,000	-	-
Di-n-butyl phthalate	84-74-2[84742]	2,000	4,500	-	-
Dinitrophenols	25550-58-7[25550587]	69	5300	-	-
Endosulfan sulfate	1031-07-8[1031078]	62	89	-	-
Endrin	72-20-8[72208]	0.059	0.060	0.086	0.036
Endrin aldehyde	7421-93-4[7421934]	0.29	0.30	-	-
Ethylbenzene	100-41-4[100414]	530	2100	-	-
Fluoranthene	206-44-0[206440]	130	140	-	-
Fluorene	86-73-7[86737]	1,100	5,300	-	-
Fluoride	N/A	4,000	-	-	-

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Guthion	86-50-0[86500]	-	-	-	0.01
Heptachlor	76-44-8[76448]	0.000079	0.000079	0.52	0.0038
Heptachlor epoxide	1024-57-3[1024573]	0.000039	0.000039	0.52	0.0038
Hexachlorobenzene	118-74-1[118741]	0.00028	0.00029	-	-
Hexachlorobutadiene	87-68-3[87683]	0.44	18	-	-
Hexachlorocyclo-hexane- Technical	608-73-1[319868]	0.0123	0.0414	-	-
Hexachlorocyclopentadiene	77-47-4[77474]	40	1100	-	-
Hexachloroethane	67-72-1[67721]	1.4	3.3	-	-
Ideno(1,2,3-cd)pyrene	193-39-5[193395]	0.0038	0.018	-	-
Iron ⁸	7439-89-6[7439896]	300	-	4,000	1,000
Isophorone	78-59-1[78591]	35.0	960	-	-
Lead	7439-92-1[7439921]	15	-	$e^{(1.273(\ln \text{Hard}^*)-1.460)}$ [$e^{(1.273 - (\ln \text{Hard}^*)-1.460)}$]	$e^{(1.273(\ln \text{Hard}^*)-4.705)}$ [$e^{(1.273 - (\ln \text{Hard}^*)-4.705)}$]
Lindane (gamma-BHC)	58-89-9[58899]	0.98	1.8	0.95	-
Malathion	121-75-5[121755]	-	-	-	0.1
Mercury	7439-97-6[7439976]	2.0	0.051	1.4	0.77
Methylmercury	22967-92-6[22967926]	-	0.3 mg/Kg ⁹ [mg/Kg]	-	-
Methoxychlor	74-43-5[72435]	100	-	-	0.03
Methyl Bromide[Methylbromide]	74-83-9[74839]	47	1,500	-	-
Methylene Chloride	75-09-2[75092]	4.6	590	-	-
Mirex	2385-85-5[2385855]	-	-	-	0.001
Nickel	7440-02-0[7440020]	610	4,600	$e^{(0.8460(\ln \text{Hard}^*)+2.255)}$ [$e^{(0.8460 - (\ln \text{Hard}^*)+2.255)}$]	$e^{(0.8460(\ln \text{Hard}^*)+0.0584)}$ [$e^{(0.8460 - (\ln \text{Hard}^*)+0.0584)}$]
Nitrate (as N)	14797-55-8[14797558]	10,000	-	-	-
Nitrobenzene	98-95-3[98953]	17	690	-	-
Nitrosamines, Other	N/A	0.0008	1.24	-	-
N-Nitrosodibutylamine	924-16-3[924163]	0.0063	0.22	-	-
N-Nitrosodiethylamine	55-18-5[55185]	0.0008	1.24	-	-
N-Nitrosodimethylamine	62-75-9[62759]	0.00069	3.0	-	-
N-Nitrosodi-n-Propylamine	621-64-7[621647]	0.0050	0.51	-	-
N-Nitrosodiphenylamine	86-30-6[86306]	3.3	6.0	-	-
N-Nitrosopyrrolidine	930-55-2[930552]	0.016	34	-	-
Nonylphenol	1044-05-1[1044051]	-	-	28	6.6
Parathion	56-38-2[56382]	-	-	0.065	0.013
Pentachlorobenzene	608-93-5[608935]	1.4	1.5	-	-
Pentachlorophenol	87-65-5[87865]	0.27	3.0	$e^{(1.005(\text{pH})-4.869)}$ [$e^{(1.005(\text{pH})-4.869)}$]	$e^{(1.005(\text{pH})-5.134)}$ [$e^{(1.005(\text{pH})-5.134)}$]
Phenol ¹⁰	108-95-2[108952]	21,000	860,000	-	-
Polychlorinated Biphenyls (PCBs)	N/A	0.000064	0.000064	-	0.014
Pyrene	129-00-0[129000]	830	4,000	-	-
Selenium	7782-49-2[7782492]	170	4,200	-	5.0^{11} [5.0^9] $8.6^{12,13}$ [$8.6^{10,11}$] $11.3^{13,14}$ [$10.3^{11,12}$]
Silver	7440-22-4[7440224]	-	-	$e^{(1.72(\ln \text{Hard}^*)-6.59)}$ [$e^{(1.72 - (\ln \text{Hard}^*)-6.59)}$]	-
Sulfate	N/A	250,000	-	-	-
Hydrogen Sulfide, Undissociated	7783-06-4[7783064]	-	-	-	2.0
Tetrachloroethylene	127-18-4[127184]	0.69	3.3	-	-
Thallium	7440-28-0[7440280]	0.24	0.47	-	-
Toluene	108-88-3[108883]	1300	15,000	-	-
Total Dissolved Solids	N/A	250,000	-	-	-
Toxaphene	8001-35-2[8001352]	0.00028	0.00028	0.73	0.0002
Tributyltin (TBT)				0.46	0.072
Trichloroethylene	79-01-6[79016]	2.5	30	-	-
Vinyl Chloride	75-01-4[75014]	0.025	2.4	-	-
Zinc	7440-66-6[7440666]	7,400	26,000	$e^{(0.8473(\ln \text{Hard}^*)+0.884)}$ [$e^{(0.8473 - (\ln \text{Hard}^*)+0.884)}$]	$e^{(0.8473(\ln \text{Hard}^*)+0.884)}$ [$e^{(0.8473 - (\ln \text{Hard}^*)+0.884)}$]
1,1-dichloroethylene	75-35-4[75354]	330	7100	-	-
1,1,1-trichloroethane	71-55-6[71556]	200	-	-	-
1,1,2-trichloroethane	79-00-5[79005]	0.59	16	-	-

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1,1,2,2-tetrachloroethane	79-34-5[79345]	0.17	4.0	-	-
1,2-dichlorobenzene	95-50-1[95504]	420	1300	-	-
1,2-dichloroethane	107-06-2[107062]	0.38	37	-	-
1,2-dichloropropane	78-87-5[78875]	0.50	15	-	-
1,2-diphenylhydrazine	122-66-7[122667]	0.036	0.20	-	-
1,2-trans-dichloroethylene	156-60-5[156605]	140	10,000	-	-
1,2,4-trichlorobenzene	120-82-1[120821]	35	70	-	-
1,2,4,5-tetrachlorobenzene	95-94-3[95943]	0.97	1.1	-	-
1,3-dichlorobenzene	541-73-1[541731]	320	960	-	-
1,3-dichloropropene	542-75-6[542756]	0.34	21	-	-
1,4-dichlorobenzene	106-46-7[106467]	63	190	-	-
2-chloronaphthalene	91-58-7[91587]	1,000	1,600	-	-
2-chlorophenol	95-57-8[95578]	81	150	-	-
2-methyl-4,6-dinitrophenol	534-52-1[534521]	13	280	-	-
2,3,7,8-TCDD (Dioxin)	1746-01-6[1746016]	5.0 E - 9	5.1 E - 9	-	-
2,4-D	94-75-7[94757]	100	-	-	-
2,4-dichlorophenol	120-83-2[120832]	77	290	-	-
2,4-dimethylphenol	105-67-9[105679]	380	850	-	-
2,4-dinitrophenol	51-28-5[51285]	69	5,300	-	-
2,4-dinitrotoluene	121-14-2[121142]	0.11	3.4	-	-
2,4,5-TP (Silvex)	93-72-1[93721]	10	-	-	-
2,4,5-trichlorophenol	95-95-4[95954]	1,800	3,600	-	-
2,4,6-trichlorophenol	88-06-2[88062]	1.4	2.4	-	-
3,3'-dichlorobenzidine	91-94-1[91941]	0.021	0.028	-	-
4,4'-DDD	72-54-8[72548]	0.00031	0.00031	-	-
4,4'-DDE	72-55-9[72559]	0.00022	0.00022	-	-
4,4'-DDT	50-29-3[50293]	0.00022	0.00022	1.1	0.001

¹CAS = Chemical Abstracts Service.

²Water quality criteria in µg/L unless reported in different units.

³Metal concentrations shall be total recoverable metals to be measured in an unfiltered sample, unless it can be demonstrated that a more appropriate analytical technique is available that provides a measurement of that portion of the metal present which causes toxicity to aquatic life. An applicant for a Clean Water Act Section 402 permit may request site-specific copper aquatic life criteria using the Copper Biotic Ligand Model established in Aquatic Life Ambient Freshwater Quality Criteria-Copper, EPA, February 2007.

⁴DWS = Domestic Water Supply Source.

⁵Fish = protecting human health regarding fish consumption.

⁶Acute criteria = protective of aquatic life based on one (1) hour exposure that does not exceed the criterion for a given pollutant.

⁷Chronic = protective of aquatic life based on ninety-six (96) hour exposure that does not exceed the criterion of a given pollutant more than once every three (3) years on the average.

⁸The chronic criterion for iron shall not exceed three and five tenths (3.5) mg/L (thirty-five hundred µg/L) if aquatic life has not been shown to be adversely affected.

⁹ This value is the concentration in fish or shellfish tissue (wet weight).

¹⁰ Section 2 of this administrative regulation also contains a criterion for phenol.

¹¹ If fish tissue data are available, fish tissue data shall take precedence over water column data.

^{12[40]} This value is the concentration in micrograms/g (dry weight) of whole fish tissue.

^{13[44]} A concentration of five and zero tenths (5.0) µg/L or greater selenium in the water column shall trigger further sampling and analysis of whole-body fish tissue or alternately of fish fillet[egg/ovary tissue].

⁴² This value is the concentration in µg/g (dry weight) of fish egg/ovary tissue[.]

¹⁴ This value is the concentration in µg/g (dry weight) of skinless, boneless fish fillet which may be analyzed instead of whole body tissue when predator or bottom-feeding fish exceed twelve (12) inches in length.

*Hard = Hardness as mg/L CaCO₃.

(2) The following additional criteria for radionuclides shall apply for Domestic Water Supply use:

(a) The gross total alpha particle activity, including radium-226 but excluding radon and uranium, shall not exceed fifteen (15) pCi/L;

(b) Combined radium-226 and radium-228 shall not exceed five (5) pCi/L. Specific determinations of radium-226 and radium-228 are not necessary if dissolved gross alpha particle activity does not exceed five (5) pCi/L;

(c) The concentration of total gross beta particle activity shall not exceed fifty (50) pCi/L;

(d) The concentration of tritium shall not exceed 20,000 pCi/l;

(e) The concentration of total Strontium-90 shall not exceed eight (8) pCi/L; and

(f) The concentration of uranium shall not exceed thirty (30) mg/l.

Section 7. Recreational Waters. (1) Primary contact recreation water. The following criteria shall apply to waters designated as primary contact recreation use during the primary contact recreation season of May 1 through October 31:

(a)[~~Fecal coliform content or~~ Escherichia coli content shall not exceed[200 colonies per 100 ml or] 130 colonies per 100 ml[respectively] as a geometric mean based on not less than five (5) samples taken during a thirty (30) day period. Content also shall not exceed 240[400] colonies per 100 ml in twenty (20) percent or more of all samples taken during a thirty (30) day period for[~~fecal coliform or~~ 240 colonies per 100 ml] for Escherichia coli. Fecal coliform criteria listed in subsection (2)(a) of this section shall apply during the remainder of the year;

(b) pH shall be between six and zero-tenths (6.0) to nine and zero-tenths (9.0) and shall not change more than one and zero-tenths (1.0) pH unit within this range over a period of twenty-four (24) hours; and

(c) 1. PCR criteria may be suspended in CSO receiving waters during CSO events for a duration determined by the cabinet-approved Long-Term Control Plan as established in 401 KAR 5:005 and the facility KPDES permit; if:

a. A variance is approved:

(i) In accordance with Section 10 or Section 11 of this administrative regulation; and

(ii) Consistent with 40 C.F.R. 131.14; or

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b. A redesignation pursuant to a use attainability analysis has been approved:

(i) In accordance with 401 KAR 10:026, Sections 2 through 4; and

(ii) Consistent with 40 C.F.R. 131.10(g), [pH shall be between six and zero-tenths (6.0) to nine and zero-tenths (9.0) and shall not change more than one and zero-tenths (1.0) pH unit within this range over a period of twenty-four (24) hours; and]

2. A table of CSO-impacted waters for which a suspension of the Primary Contact Recreation has been approved shall be located in 401 KAR 10:026. [(e) Fecal coliform content criteria listed in paragraph (a) of this subsection shall no longer apply beginning November 1, 2019.]

(2) Secondary contact recreation water. The following criteria shall apply to waters designated for secondary contact recreation use during the entire year:

(a) Fecal coliform content shall not exceed 1,000 colonies per 100 ml as a thirty (30) day geometric mean based on not less than five (5) samples; nor exceed 2,000 colonies per 100 ml in twenty (20) percent or more of all samples taken during a thirty (30) day period;[and]

(b) pH shall be between six and zero-tenths (6.0) to nine and zero-tenths (9.0) and shall not change more than one and zero-tenths (1.0) pH unit within this range over a period of twenty-four (24) hours;[.]

(c)1. SCR criteria may be suspended in CSO receiving waters during CSO events for a duration determined by the cabinet-approved Long-Term Control Plan as established in 401 KAR 5:005 and the facility KPDES permit; if:

a. A variance is approved:

(i) In accordance with Section 10 or Section 11 of this administrative regulation; and

(ii) Consistent with 40 C.F.R. 131.14; or

b. A redesignation pursuant to a use attainability analysis has been approved:

(i) In accordance with 401 KAR 10:026, Sections 2 through 4; and

(ii) Consistent with 40 C.F.R. 131.10(g).

2. A table of CSO-impacted waters for which a suspension of the Secondary Contact Recreation criteria has been approved shall be located in 401 KAR 10:026.

Section 8. Outstanding State Resource Waters. This designation category includes certain unique waters of the commonwealth. (1) Water for inclusion.

(a) Automatic inclusion. The following surface waters shall automatically be included in this category:

1. Waters designated pursuant to the Kentucky Wild Rivers Act, KRS 146.200 through 146.360[146.200-146.360];

2. Waters designated pursuant to the Federal Wild and Scenic Rivers Act, 16 U.S.C. 1271-1287; and

3. Waters that support federally recognized endangered or threatened species pursuant to the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531-1544.

(b) Permissible consideration. Other surface waters shall be considered for inclusion in this category if:

1. The surface waters flow through or are bounded by state or federal forest land, or are of exceptional aesthetic or ecological value or are within the boundaries of national, state, or local government parks, or are a part of a unique geological, natural, or historical area recognized by state or federal designation; or

2. The surface water is a component part of an undisturbed or relatively undisturbed watershed that can provide basic scientific data and possess outstanding water quality characteristics, or fulfill two (2) of the following conditions[eriteria]:

a. Support a diverse or unique native aquatic flora or fauna;

b. Possess physical or chemical characteristics that provide an unusual and uncommon aquatic habitat; or

c. Provide a unique aquatic environment within a physiographic region.

(2) Outstanding state resource waters protection.[The designation of certain waters as outstanding state resource waters shall fairly and fully reflect those aspects of the waters for which the designation is proposed.] The[cabinet shall determine] water

quality criteria for protection of an OSRW shall be[these waters] as established in paragraphs (a) through (d) of this section.

(a) At a minimum, the criteria of Section 2 and Table 1 of Section 6 of this administrative regulation and the appropriate criteria associated with the stream use designation assignments in 401 KAR 10:026, shall be applicable to these waters.

(b) Outstanding state resource waters that are listed as Exceptional Waters in 401 KAR 10:030, Section 1(2) shall have dissolved oxygen maintained at a minimum concentration of six and zero-tenths (6.0) mg/L as a twenty-four (24) hour average and an instantaneous minimum concentration of not less than five and zero-tenths (5.0) mg/L.

~~(c) [1. If the values identified for an outstanding state resource water are dependent upon or related to instream water quality, the cabinet shall review existing water quality criteria and determine if additional criteria or more stringent criteria are necessary for protection, and evaluate the need for the development of additional data upon which to base the determination.~~

~~2.] Existing water quality and habitat shall be maintained and protected in those waters designated as outstanding state resource waters that support federally threatened and endangered species of aquatic organisms, unless the cabinet determines[it can be demonstrated] that lowering[er] water quality or a habitat modification will not have an adverse[a harmful] effect on the threatened or endangered species that the water supports.~~

(d) 1. The cabinet shall evaluate the need for and shall establish more stringent instream water quality criteria if necessary to protect the basis for the Outstanding State Resource Water designation.

2. Adoption of additional protective criteria as established in subsection (2)(d) shall be listed with the respective stream segment in 401 KAR 10:026[Adoption of more protective criteria in accordance with this section shall be listed with the respective stream segment in 401 KAR 10:026].

(3) Determination of designation. (a) A person may present a proposal to designate certain waters pursuant to this section. Documentation requirements in support of an outstanding state resource water proposal shall contain those elements outlined in 401 KAR 10:026, Section 3(3)(a) through (h).

(b)1. The cabinet shall review the proposal and supporting documentation to determine if the proposed waters qualify as outstanding state resource waters within the conditions[eriteria] established by this administrative regulation.

2. The cabinet shall document the determination to deny or to propose redesignation, and a copy of the decision shall be served upon the petitioner and other interested parties.

(c) After considering all of the pertinent data, a redesignation, if appropriate, shall be made pursuant to 401 KAR 10:026.

Section 9. Water Quality Criteria for the Main Stem of the Ohio River. (1) The water quality standards established in this Chapter provide for the protection of the designated uses of the Ohio River and the achievement of the goals of the Ohio River Valley Water Sanitation Compact. The[following] criteria established in this Section shall apply to the main stem of the Ohio River from its juncture with the Big Sandy River at River Mile 317.1 to its confluence with the Mississippi River, and shall not be exceeded.

(2) These waters shall be subject to all applicable provisions of 401 KAR 10:001, 10:026, 10:029, 10:030, and this administrative regulation, except in-stream[for these criteria in paragraphs (a) and (b) of this subsection].

~~(a) Dissolved oxygen. Instream] concentrations of dissolved oxygen shall:~~

(a) Average at least five and zero-tenths (5.0) mg/L per calendar day; and

(b) Shall not be less than four and zero-tenths (4.0) mg/L except during the April 15 - June 15 spawning season when a minimum of five and one-tenth (5.1) mg/L shall be maintained. [(b) Maximum allowable instream concentrations for nitrite nitrogen for the protection of human health shall be one and zero-tenths (1.0) mg/L and shall be met at the edge of the assigned mixing zone.]

Section 10. Exceptions to Criteria for Specific Surface Waters.

(1) The cabinet may grant exceptions to the criteria contained in

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Sections 2, 4, 6, 7, 8, and 9 of this administrative regulation for specific surface water upon demonstration by an applicant that maintenance of applicable water quality criteria is not attainable or scientifically valid but the use designation is still appropriate.

(2) The analysis shall show that the water quality criteria cannot be reasonably achieved, either on a seasonal or year-round basis due to natural conditions or site-specific factors differing from the conditions used to derive criteria in Sections 2, 4, 6, 7, 8, and 9 of this administrative regulation.

(a) Site-specific criteria shall be developed by the applicant utilizing toxicity tests, indicator organisms, and application factors that shall be consistent with those outlined in Chapter 3 of Water Quality Standards Handbook, EPA, 2017[1994].

(b) In addition, an applicant shall supply the documentation established[listed] in 401 KAR 10:026, Section 3 and 40 C.F.R. 131.14(b).

(c) The documentation required by subparagraph (b) shall be subject to the public notice and comment requirements established in 40 C.F.R. 130.20(b) and 131.14.

(3) An exception to criteria listed in Table 1 of Section 6 of this administrative regulation for the protection of human health from the consumption of fish tissue may be granted if it is demonstrated that natural, ephemeral, intermittent, or low flow conditions or water levels preclude the year-round support of a fishery, unless these conditions may be compensated for by the discharge of sufficient volume of effluent discharges.

(4) Before granting an exception to water quality criteria, the cabinet shall ensure the maintenance of downstream water quality and that the variance does not preclude the attainment of designated uses[that the water quality standards] of downstream surface waters[shall be attained and maintained].

(5)(a) All exceptions to water quality criteria shall be subject to reevaluation[review] at least every five (5)[~~three (3)~~] years.

(b) If reevaluation results are not submitted, the exception to criteria shall no longer be the applicable water quality standard for the purposes of this administrative regulation and the federal Clean Water Act.

(6) Exceptions to water quality criteria shall be adopted as an administrative regulation by listing them with the respective surface water in 401 KAR 10:026.

Section 11. Exceptions to Criteria for Individual Dischargers.

(1) An exception to criteria may be granted to an individual discharger based on a demonstration by the discharger, that KPDES permit compliance with existing instream criteria cannot be attained because of factors specified in 401 KAR 10:026, Section 2(4)(a) through (f) and 40 C.F.R. 131.14(b)(1)(A)(1) through (3).

(2) The demonstration shall include:

(a) An assessment of alternative pollution control strategies and biological assessments that indicated designated uses are being met; and

(b) The documentation established in 40 C.F.R. 131.14(b).

(3) Before granting an exception to water quality criteria, the cabinet shall ensure the maintenance of downstream water quality and that the variance does not preclude the attainment of designated uses[water quality standards] of downstream surface waters[shall be attained and maintained].

(4)(a) All exceptions shall be submitted to the cabinet for reevaluation[review] at least every five (5)[~~three (3)~~] years.

(b) Upon review, the discharger shall demonstrate to the cabinet the effort the discharger made to reduce the pollutants in the discharge to levels that would achieve existing applicable water quality criteria.

(c) If reevaluation results are not submitted, the exception to criteria shall no longer be the applicable water quality standard for the purposes of this administrative regulation and the federal Clean Water Act.

(5) The highest level of effluent quality that can be economically and technologically achieved shall be ensured while the exception is in effect.

(6) Exceptions to criteria for individual discharges shall be subject to the public participation requirements as established in 40 C.F.R. 131.20(b)[The Kentucky Pollution Discharge Elimination System permitting program shall be the mechanism for the review

and public notification of intentions to grant exceptions to criteria].

Section 12. Compliance Schedules. (1) The cabinet may allow a compliance schedule to give a permittee time to comply with water quality based effluent limitations that derive from and comply with water quality standards.

(2) Compliance schedules shall be as established in 40 C.F.R. 122.47.

Section 13. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Water Quality Standards Handbook-Chapter 3", EPA 2017, Publication No. EPA-823-B-17-001[August 1994, Publication EPA-823-B-94-005a], U.S. Environmental Protection Agency, Office of Water, Washington, D.C.:[and]

(b) "Interim Economic Guidance for Water Quality Standards Workbook", [EPA] March 1995, Publication EPA-823-B-95-002, U.S. Environmental Protection Agency, Office of Water, Washington, D.C.; and

(c) "Aquatic Life Ambient Freshwater Quality Criteria-Copper", EPA, February 2007, Publication No. EPA 822-R-07-001, U.S. Environmental Protection Agency, Office of Water, Washington D.C.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Water, 300 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(3)(a) "Water Quality Standards Handbook-Chapter 3", EPA 2017, Publication EPA-823-B-17-001, U.S. Environmental Protection Agency, Office of Water can also be found at <https://www.epa.gov/sites/production/files/2014-10/documents/handbook-chapter3.pdf>.

(b) "Interim Economic Guidance for Water Quality Standards Workbook", March 1995, Publication EPA-823-B-95-002, U.S. Environmental Protection Agency, Office of Water can also be found at <https://www.epa.gov/sites/production/files/2016-03/documents/econworkbook-complete.pdf>.

(c) "Aquatic Life Ambient Freshwater Quality Criteria-Copper", February 2007, Publication No. EPA-822-R-07-001, U.S. Environmental Protection Agency, Office of Water can also be found at <https://www.epa.gov/sites/production/files/2019-02/documents/al-freshwater-copper-2007-revision.pdf>.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: June 11, 2019

FILED WITH LRC: June 12, 2019 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 23, 2019 at 6:00 p.m. Eastern Time at the Energy and Environment Cabinet, Training Room B, 300 Sower Boulevard, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through July 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: Carole J. Catalfo, Internal Policy Analyst, RPPS, Division of Water, 3rd Floor, 300 Sower Boulevard, Frankfort, Kentucky 40601, phone (502) 564-3410, fax (502) 564-9003, email water@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Carole J. Catalfo

(1) Provide a brief summary of:

(a) What this administrative regulation does: This

administrative regulation establishes water quality standards for surface waters of the Commonwealth and the associated water quality criteria necessary to protect designated uses.

(b) The necessity of this administrative regulation: This administrative regulation is necessary for the protection of public health, aquatic habitat, and designated uses of the surface waters of the Commonwealth.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100 requires the cabinet to develop and conduct a comprehensive program for the management of water resources and to provide for the prevention, abatement, and control of water pollution. This administrative regulation and 401 KAR 10:001, 10:026, 10:029, and 10:030 establish procedures to protect the surface waters of the Commonwealth, and thus protect water resources. This administrative regulation establishes water quality standards that consist of designated legitimate uses of the surface waters of the Commonwealth and the associated water quality criteria necessary to protect those uses. These water quality standards are minimum requirements that apply to all surface waters in the Commonwealth of Kentucky in order to maintain and protect them for designated uses. These water quality standards are subject to periodic review and revision in accordance with the Clean Water Act, 33 U.S.C. 1251-1387, 40 C.F.R. 131, and KRS Chapter 224.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the administration of the statutes by providing specific criteria and water quality standards for the protection of surface waters of the Commonwealth as required by the authorizing statutes.

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

(a) How the amendment will change this existing administrative regulation: The amendment updates the cadmium aquatic life criteria, establishes aquatic life criteria for carbaryl, establishes aquatic life criteria for selenium in fish tissue for specified fish, and allows application of the Copper Biotic Ligand Model for site-specific copper aquatic life criteria. The amendment removes the surface water temperature guideline table, removes the aquatic life selenium egg/ovary tissue criteria, removes the fecal coliform criteria for the primary contact recreation use, and removes the nitrite-nitrogen human health criterion for the main stem of the Ohio River. The amendment corrects Table 1 Chemical Abstracts Service number and formatting errors in hardness-based Warm Water Aquatic Habitat criteria equations, corrects an error for chronic toxicity referring to the LC₂₅ instead of the IC₂₅, clarifies the protections for OSRWs and clarifies that the human health methylmercury fish or shellfish tissue criteria is based on wet weight. The amendment adds a statement allowing the suspension of PCR and SCR criteria during CSO events for a specified time and duration, adds compliance schedule availability that aligns with federal NPDES requirements, aligns exceptions to criteria requirements with federal requirements, and updates the Water Quality Standards Handbook-Chapter 3 (EPA) to its 2017 version.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to clarify and update water quality standards, which are minimum requirements that apply to all surface waters in the Commonwealth of Kentucky, in order to maintain and protect them for designated uses.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100 requires the cabinet to develop and conduct a comprehensive program for the management of water resources and to provide for the prevention, abatement, and control of water pollution. This administrative regulation and 401 KAR 10:001, 10:026, 10:029, and 10:030 establish procedures to protect the surface waters of the Commonwealth, and thus protect water resources. This administrative regulation establishes water quality standards that consist of designated legitimate uses of the surface waters of the Commonwealth and the associated water quality criteria necessary to protect those uses. These water quality standards are minimum requirements that apply to all surface waters in the Commonwealth of Kentucky in order to maintain and protect them for designated uses. These water quality standards are subject to periodic review

and revision in accordance with the Clean Water Act, 33 U.S.C. 1251-1387, 40 C.F.R. 131, and KRS Chapter 224.

(d) How the amendment will assist in the effective administration of the statutes: The amendment clarifies and updates water quality standards, which are minimum requirements that apply to all surface waters in the Commonwealth of Kentucky, in order to maintain and protect them for designated uses.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation applies to the surface waters of the Commonwealth. All individuals, businesses, organizations, and governments that use the Commonwealth's surface waters for residential, commercial, industrial, or recreational purposes could be impacted by this regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: If an entity applies for a KPDES permit for a new or expanded discharge into a Surface Water of the Commonwealth, or submits application for the renewal of an existing permit for a discharge to a Surface Water of the Commonwealth, the permit conditions may result in additional treatment outlays, training costs, or operational changes. The permit conditions will depend on the nature of the discharge.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The costs to comply with this administrative regulation vary considerably depending on the site location, type of activity, and other factors. Therefore, it is not possible to quantify costs to implement this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Fewer costs may be incurred when criteria are less stringent. Direct and indirect savings will be realized through reduced drinking water treatment costs, maintenance of good agricultural water and fisheries, and healthy recreational waters.

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

(a) Initially: The amendments to this administrative regulation will not result in additional costs.

(b) On a continuing basis: The amendments to this administrative regulation will not result in additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of funding are a combination of general funds appropriated by the Kentucky General Assembly and federal funds from the U.S. Environmental Protection Agency.

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

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

(9) TIERING: Is tiering applied? Yes, tiering is applied in this administrative regulation. Water quality standards and associated criteria vary based on the designated use of the surface water.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What 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 the wastewater treatment operations of local government if it applies for a KPDES permit for a new or expanded discharge into a Surface Water of the Commonwealth, or submits an application for the renewal of an existing permit for a discharge to a Surface Water of the Commonwealth.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 146.220, 146.241, 146.270, 146.410, 146.450, 146.460, 146.465, 224.10-100, 224.16-050, 224.16-060, 224.70-100, 224.70-110, 40 C.F.R. Part 131, 16 U.S.C. 1271-1287, 1531-1544, 33 U.S.C. 1311, 1313, 1314, 1341

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

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

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

(c) How much will it cost to administer this program for the first year? This administrative regulation will not result in additional costs.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation will not result in additional costs.

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

Revenues (+/-): NA

Expenditures (+/-): NA

Other Explanation: Wastewater treatment costs may increase for those local governments that have discharges into surface waters of the Commonwealth. Local governments withdrawing drinking water from these waters may have lower treatment costs because these waters should have lower pollutant loads.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal mandate to implement a water pollution control program. For Kentucky to maintain its delegation authority over the National Pollution Discharge Elimination System permit program, the Clean Water Act requires that Kentucky review its water quality standards every three years (known as the "Triennial Review") and comply with the programmatic requirements of 40 C.F.R. Part 131, including the requirement for reviewing water quality criteria for appropriate revisions.

2. State compliance standards. KRS 146.220, 146.241, 146.270, 146.410, 146.450, 146.460, 146.465, 224.10-100, 224.16-050, 224.16-060, 224.70-100, and 224.70-110

3. Minimum or uniform standards contained in the federal mandate. 40 C.F.R. Part 131, 16 U.S.C. 1271-1287, 1531-1544, 33 U.S.C. 1311, 1313, 1314, 1341

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate? No.

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

**ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division for Air Quality
(Amendment)**

401 KAR 58:005. Accreditation of asbestos professionals.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 224.20-300, 224.20-310, 224.20-320, 224.99-010, 40 C.F.R. 763.80 through 763.99, Appendices A through E [(Subpart E)], as published in the Code of Federal Regulations, July 1, 1996, 15 U.S.C. 2601-2692, as amended November 28,

1990 (Toxic Substances Control Act)]

STATUTORY AUTHORITY: KRS 224.10-100, 224.20-100, 224.20-110[224.20-110], 224.20-120, 224.20-300, 224.20-310, 224.20-320[, 224.99-010, 40 C.F.R. 763.80-763.99, Appendices A-E Subpart E, as published in the Code of Federal Regulations, July 1, 1996, 15 U.S.C. 2601-2692 as amended November 28, 1990]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(5) ~~authorizes~~[requires] the ~~Environmental and Public Protection~~ cabinet to ~~promulgate~~[prescribe] administrative regulations for the prevention, abatement, and control of air pollution. KRS 224.20-300 ~~authorizes~~[allows] the cabinet to develop, adopt, and maintain a comprehensive statewide asbestos contractor accreditation program [relating to asbestos]. This administrative regulation ~~establishes the process~~[provides] for the accreditation of ~~individuals~~[persons] who inspect for asbestos in school, public, and commercial buildings; who design, supervise, or perform response actions in school, public, or commercial buildings; and who prepare plans addressing potential and actual asbestos hazards in school buildings. Additionally, this administrative regulation ~~establishes the process~~[provides] for the review and approval of training courses that are prerequisites for accreditation.

Section 1. Definitions. (1) "Abatement project design" means a plan specifying the scope of a proposed response action and the procedures, equipment, and controls to be used to conduct the response action, in compliance with applicable regulations, in a school, public, or commercial building.

(2) "Abatement project designer" means a person who prepares an abatement project design.

(3) "Accredited" means that a person has been issued an accreditation certificate pursuant to Section 5 of this administrative regulation.

(4) "Asbestos" means the asbestiform varieties of serpentinite (chrysotile), riebeckite (crocidolite), cummingtonite-grunerite (amosite), anthophyllite, actinolite, and tremolite.

(5) "Asbestos abatement activity" means an inspection, a management plan, an abatement project design, or a response action.

(6) "Asbestos abatement supervisor" means the person responsible for the on-site supervision of a response action in a school, public, or commercial building. An asbestos abatement supervisor may also perform the duties of an asbestos abatement worker.

(7) "Asbestos abatement worker" means a person who performs a response action.

(8) "Compliance inspection" means activity performed by federal, state, or local regulatory agencies to determine adherence to statutes and administrative regulations.

(9) "Contingent approval" means temporary approval contingent upon a training course provider's submitting to a site audit.

(10) "Day" means a calendar day.

(11) "Discipline" means inspection, management planning, abatement project design, asbestos abatement supervision, or asbestos abatement work.

(12) "EPA-approved state" means a state which has been authorized by the U.S. EPA to approve training courses for accreditation purposes.

(13) "EPA-approved training course" means an initial or refresher training course for the discipline for which accreditation is requested and which is approved by the U.S. EPA or an EPA-approved state at the time the course is taken to comply with the requirements of 15 U.S.C.[U.S.C.] 2646 (Section 206 of the Toxic Substances Control Act (TSCA)), as amended November 28, 1990.

(14) "Management plan" means a document submitted or maintained by a local education agency (LEA) to satisfy the requirements of 40 C.F.R.[C.F.R.] 763.93 and 401 KAR 58:010.[Inspection findings, asbestos management strategies, and required records are among the contents of a management plan, pursuant to 40 C.F.R. 763.93 through 763.94.]

(15) "Management planner" means a person who develops management plans. A management planner may also perform the

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duties of an inspector.

(16) "Proof of training" means a document issued by a training course provider to a course attendee pursuant to Unit I.D. of the Kentucky Asbestos Accreditation Program (KAAP). ~~[The KAAP document is incorporated by reference in Section 11 of this administrative regulation.]~~

(17) "State" means a state, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Northern Marianas, the Trust Territory of the Pacific Islands, and the Virgin Islands.

Section 2. Applicability. This administrative regulation shall apply to:

(1) Persons required to be accredited pursuant to 401 KAR 58:010 and the ~~KAAP~~[Kentucky Asbestos Accreditation Program (KAAP)]; and

(2) Persons who provide accreditation training in the Commonwealth of Kentucky pursuant to the KAAP.

Section 3. Prohibitions. (1) The cabinet shall not consider a person for initial accreditation or accreditation renewal unless the training requirements of Section 9 of this administrative regulation are completed prior to application.

(2) A person shall not engage in, nor allow a person to engage in, an asbestos abatement project at a school on or after October 12, 1988, or at a public or commercial building on or after July 7, 1998~~[the effective date of this administrative regulation]~~, unless an accreditation certificate to engage in these projects has been issued to the person by the cabinet, is currently in effect, and is maintained on the person at all times while the asbestos abatement project is being conducted.

(3) A person shall not provide accreditation training in Kentucky unless the requirements of Section 10 of this administrative regulation have been met.

Section 4. Applications for Accreditation. (1) An application~~[Applications]~~ for initial accreditation and accreditation renewal shall be made on the Application for Asbestos Accreditation~~[form]~~ DEP 6038~~[- which is incorporated by reference in Section 11 of this administrative regulation]~~. The application shall include a copy of the most current proof of training in the discipline for which accreditation is requested.

(a) In lieu of a proof of training, the applicant may submit other proof of satisfactory completion from an EPA-approved state pursuant to Unit H of the KAAP document.

(b) The proof of training or other proof of satisfactory completion issued by the training provider shall contain the information required in Unit I.C. of the KAAP document.

(c) If original proofs of training are submitted with the request for accreditation, they shall be returned to the applicant when the requested accreditation certificate is provided or when the cabinet denies the request for accreditation in writing.

(2) An application~~[Applications]~~ for accreditation shall be signed by the individual requesting accreditation. The signature shall constitute personal affirmation that the statements made in the application are true and complete.

(3) An application~~[Applications]~~ shall be accompanied by the applicable accreditation fee as established~~[specified]~~ in Section 7(1) and (2) of this administrative regulation.

Section 5. Consideration of Applications. The cabinet shall make a determination regarding issuance or denial of accreditation based upon the information contained in the application and the qualification requirements of the KAAP document. The cabinet may deny an application for accreditation if the cabinet determines that the applicant willfully made a misstatement in the application, or if the applicant has violated a provision of this administrative regulation, the KAAP document, 401 KAR 58:010, or 401 KAR 58:025~~[- or for other good cause]~~. Failure by an applicant to supply information required by the cabinet to act upon the renewal application~~[applications]~~ shall result in denial of that renewal. (1) Application for initial accreditation. Within fifteen (15) days after receipt of an application for initial accreditation, the cabinet shall make a completeness determination concerning the application. If

the application is not complete, the cabinet shall identify the additional information that is necessary in order to evaluate the application. Issuance by the cabinet of the accreditation certificate within this fifteen (15) day period shall have the effect of documenting the completeness of the application.

(a) Within fifteen (15) days after the application is deemed complete, the cabinet shall make a determination to issue or deny the accreditation certificate, unless the cabinet determines, and the applicant concurs, that an additional period of time is necessary.

(b) If the application is approved, the cabinet shall issue an accreditation certificate. If accreditation is denied, the cabinet shall notify the applicant, in writing, of the reason for denial and shall provide an opportunity for appeal.

(2) Application for renewal of accreditation. The cabinet shall make its determination to approve or deny a request for renewal within fifteen (15) days of receipt of a complete renewal application.

(a) If the renewal is approved, the cabinet shall issue a renewed accreditation certificate pursuant to this administrative regulation and 401 KAR 58:010.

(b) If the renewal is denied, the cabinet shall notify the applicant, in writing, of the reason for denial and shall provide an opportunity for appeal.

Section 6. Duration of Accreditation Certificates. Unless the cabinet revokes an initial accreditation certificate, pursuant to Unit I.G. of the KAAP document, the certificate shall remain in effect until expiration of the proof of training issued pursuant to Unit I.D. of the KAAP document. (1) An expired accreditation certificate may be renewed if the applicant completes all requirements for renewal of accreditation within one (1) year after the accreditation certificate has expired.

(2) If a person fails to renew an accreditation certificate within one (1) year of expiration of a previously-issued accreditation certificate, the individual shall complete all requirements for initial accreditation to receive accreditation.

Section 7. Fees. Fees shall be submitted to the cabinet by check or money order, made payable to the Kentucky State Treasurer. (1) Initial accreditation.

(a) The fee for inspector, management planner, abatement project designer, or asbestos abatement supervisor accreditation shall be \$100.

(b) The fee for asbestos abatement worker accreditation shall be twenty (20) dollars.

(c) The fee for accreditation in more than one (1) discipline shall be obtained by summing the fees for each of the requested accreditations.

(2) Renewal of accreditation. The fee for renewal of accreditation for each discipline shall be one-half (1/2) the initial accreditation fee.

(3) Course review fees. Training providers who request cabinet review for approval of training courses shall submit the required fee with the request for a course review. The formula for the fee for course review shall be \$350 per day of training times the total number of days of training. The minimum review fee for course approval shall be \$350.

Section 8. Accreditation Revocation. The cabinet may revoke an accreditation issued under this administrative regulation pursuant to Unit I.G and Unit III of the KAAP document.

Section 9. Training Requirements. (1) Initial accreditation. To be eligible for initial accreditation, an applicant shall successfully complete an EPA-approved training course in the discipline for which accreditation is requested within one (1) year prior to the date on which the application is filed. Eligibility for accreditation shall expire one (1) year after successful completion of the training course.

(2) Renewal of accreditation. Accreditation shall be renewed annually.

(a) To be eligible for accreditation renewal, an applicant shall successfully complete an EPA-approved refresher course in the discipline for which accreditation renewal is requested, pursuant to

Unit I.E. of the KAAP document.

(b) An applicant may renew accreditation only in a discipline for which he has been accredited during the two (2) year period immediately preceding the date the application is filed.

Section 10. Approval of Training Courses. (1) Providers of courses that are not EPA-approved shall either gain approval from an EPA-approved state or apply for and receive contingent approval from the cabinet, pursuant to this administrative regulation and the KAAP document before presenting the course in Kentucky.

(2) EPA-approved training courses shall be considered approved by the cabinet at the same level as their approval by the U.S. EPA or an EPA-approved state (for example[i.e.], contingent or full).

(3) Training providers shall allow representatives of the cabinet to attend, evaluate, and monitor a training course presented in Kentucky without charge to the cabinet. Cabinet representatives shall not be required to give advance notice of their attendance to perform compliance inspections of training programs or to upgrade the approval of a course from contingent approval to full approval.

(a) The training provider shall provide written notification to the cabinet of:

1. An upcoming training course, at least ten (10) days before the course is presented;
2. The training provider's name, address, phone number, and a contact person;
3. Training course title;
4. Inclusive dates of the training course and examination;
5. Description of the training course as either a public offering, contract training, or in-house training for the provider's employees;
6. Location of and directions to the training facility; and
7. The language in which the course will be taught.

(b) If the training course is cancelled, the provider shall notify the cabinet at least twenty-four (24) hours before the scheduled start date.

(4) The application for course approval shall be accompanied by the applicable review fee as established[specified] in Section 7(3) of this administrative regulation. The cabinet shall receive the total applicable review fee prior to the course being granted contingent approval.

(5) Contingent approval. Applications for contingent approval by the cabinet shall be made pursuant to Unit III of the KAAP document.

(a) If the training course is to be presented in Kentucky, the application shall include written certification by the training provider that the requirements of subsection (3) of this section shall be met if the training course is approved.

(b) The cabinet shall review the training provider's request for course approval pursuant to the KAAP document and this administrative regulation. If there are no deficiencies, the cabinet shall give the training provider written notification that the training course has been given contingent approval. Unless suspended or revoked by the cabinet, contingent approval of a training course shall be valid for one (1) year and shall not be renewed. Throughout this year, the training provider shall meet the requirements of subsection (3) of this section.

(6) Full approval. For full approval of a training course, the training provider shall meet the contingent course approval criteria of subsection (5) of this section, the applicable course-content criteria of the KAAP document, and the criteria specified in paragraph (a) of this subsection.

(a) Full approval criteria.

1. Course administration. The physical environment in which the course is conducted shall be conducive to learning (for example[e.g.], adequate lighting and ventilation, minimal distractions, and adequate classroom layout). Teaching equipment shall operate properly. Classroom materials and instructional aids shall be organized in a logical fashion that is conducive to learning.

2. Teaching effectiveness. Instructors shall use clear and effective presentation methods, including stating the purpose and giving an overview for each topic, adhering to the agenda, checking for student comprehension, using teaching aids, and organizing presentation into logically-sequenced segments.

Instructors shall also demonstrate their own satisfactory knowledge of course content by defining terms clearly, emphasizing key concepts, using analogies and examples correctly and appropriately, and distinguishing fact from opinion.

3. Hands-on training administration. Physical environment and equipment shall be conducive to learning (for example[e.g.], functional equipment, appropriate student-to-work station ratio, appropriate student-trainer ratio, and adequate space and time[-]). The trainer shall demonstrate the techniques covered, use appropriate hands-on teaching materials, and ensure student participation.

4. Courses to be audited by the cabinet for full approval shall be presented in English, unless prior arrangements have been made with the cabinet. The cabinet may require course providers whose courses are not presented in English to seek approval from an EPA-approved state which has the linguistic capabilities to review these courses adequately.

(b) Duration of full approval. Full approval shall remain in effect unless suspended or revoked.

(7)[(e)] Suspension or revocation of training course approval. The cabinet may suspend or revoke the approval of a training course pursuant to this administrative regulation and Units II and III of the KAAP document.

Section 11. Materials Incorporated by Reference. (1) The following documents are incorporated by reference:

(a) "Application for Asbestos Accreditation [~~Form~~] DEP 6038, June 2019 [~~Application for Individual Accreditation/ Asbestos Abatement Program~~], [~~is incorporated by reference.~~]

(b) [~~The Division for Air Quality document for the~~] "Kentucky Asbestos Accreditation Program (KAAP), May 1998," [~~is incorporated by reference.~~]

(2) The material incorporated by reference is available on the internet at <http://eec.ky.gov>.

(3)[(2)] The material incorporated by reference may be obtained, inspected, or copied at the following offices of the Division for Air Quality, Monday through Friday, 8 a.m. to 4:30 p.m.:

(a) The Division for Air Quality, 300 Sower Boulevard, Frankfort, Kentucky 40601, Frankfort, Kentucky 40601, (502) 564-3999;

(b) Ashland Regional Office, 1550 Wolohan Drive, Suite 1, Ashland, Kentucky 41102[-8942], (606) 929-5285;

(c) Bowling Green Regional Office, 2642 Russellville Road, Bowling Green, Kentucky 42101, (270) 746-7475;

(d) Florence Regional Office, 8020 Veterans Memorial Drive, Suite 110, Florence, Kentucky 41042, (859) 525-4923;

(e) Frankfort Regional Office, 300 Sower Boulevard, Frankfort, Kentucky 40601, (502) 564-3358;

(f) Hazard Regional Office, 1332 South Kentucky Highway, Suite 100 [~~233 Birch Street, Suite 2~~], Hazard, Kentucky 41701, (606) 435-6022;

(g) London Regional Office, 875 S. Main Street, Room 345, London Kentucky 40741, (606) 330-2080;

(h) Owensboro Regional Office, 3032 Alvey Park Drive W, Suite 700, Owensboro, Kentucky 42303, (270) 687-7304; and

(i) Paducah Regional Office, 130 Eagle Nest Drive, Paducah, Kentucky 42003, (270) 898-8468.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: June 11, 2019

FILED WITH LRC: June 14, 2019 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A

public hearing on the proposed amendment for this administrative regulation will be held on July 26, 2019 at 10:00 a.m. (Eastern Time) in Conference Room 214 at 300 Sower Boulevard, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by July 22, 2019, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing shall be cancelled, and notification of the cancellation shall be posted at <http://air.ky.gov/pages/publicnoticesandhearings.aspx>. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public

hearing, you may submit written comments on the proposed amendment for this administrative regulation. Written comments shall be accepted until July 31, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed amendment for this administrative regulation to the contact person. The hearing facility is accessible to persons with disabilities. Requests for reasonable accommodations, including auxiliary aids and services necessary to participate in the hearing, may be made to the contact person at least five (5) workdays prior to the hearing.

CONTACT PERSON: Paige Stephens, Environmental Scientist II, Division for Air Quality, 300 Sower Boulevard, 2nd Floor, Frankfort, Kentucky 40601, phone (502) 782-6286, fax (502) 564-4245, e-mail Paige.Stephens@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Paige Stephens

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides for the accreditation of individuals who inspect for asbestos in schools, public, and commercial buildings; who design, supervise, or perform response actions in schools, public, or commercial buildings; and who prepare plans addressing potential and actual asbestos hazards in school buildings. This administrative regulation also establishes the review and approval of training courses that are prerequisites for accreditation.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the processes and requirements for individuals to obtain asbestos accreditation and to provide approved training courses for asbestos accreditation. The safe control and removal of asbestos is critical to protect human health and the environment.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100 authorizes the Energy and Environment Cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution. KRS 224.20-300 authorizes the cabinet to develop, adopt, and maintain a comprehensive statewide asbestos contractor accreditation program. This administrative regulation provides for the control of asbestos emissions by establishing requirements for individuals to obtain asbestos accreditation or provide training for asbestos accreditation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will continue to provide individuals with the information and applications necessary to be accredited or reaccredited in the asbestos field, resulting in the protection of human health and the environment.

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

(a) How the amendment will change this existing administrative regulation: The proposed amendment to the administrative regulation updates DEP 6038 and makes corrections to comply with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: This proposed amendment to the administrative regulation is necessary to incorporate all information required by the cabinet for the asbestos accreditation application. This includes eliminating the requirement for an individual to provide their full social security number, instead only requiring the last four digits.

(c) How the amendment conforms to the content of the authorizing statutes: The proposed amendment to this administrative regulation conforms to the content of the authorizing statutes by ensuring that the form required for asbestos accreditation is up to date and collects all necessary information.

(d) How the amendment will assist in the effective administration of the statutes: This proposed amendment to the administrative regulation updates form DEP 6038 to include additional information required by the cabinet for the application of asbestos accreditation.

(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 active 3465 individuals who are required to be asbestos accredited pursuant to 401 KAR 58:010, the Kentucky Asbestos Accreditation Program, and this administrative regulation, and those who provide asbestos accreditation training in the Commonwealth of Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Affected entities will be required to complete the updated DEP 6038 application form when applying for initial asbestos accreditation or renewing existing asbestos accreditation.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, affected entities will use the updated form to obtain asbestos accreditation.

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

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

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

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The proposed amendment to this administrative regulation will not establish, nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Yes, fees for accreditation are tiered based on whether it is an initial accreditation or a renewal. Fees are also tiered based on the accreditation type for which an individual is applying (asbestos worker or asbestos inspector).

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What 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 has the potential to impact any unit of state or local government that has asbestos in school, public, or commercial buildings; or that inspects those buildings. The Division for Air Quality will continue to certify individuals for asbestos accreditation in accordance with this administrative regulation.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 224.20-300, 224.20-310, 224.20-320, 40 C.F.R. 763.80-763.99, Appendices A-E and Subpart E, and 15 U.S.C. 2601-2692.

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

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

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

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

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

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

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

Other Explanation: There is no further explanation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The federal mandate for this administrative regulation is in 40 C.F.R. 763.80-763.99 and 15 U.S.C. 2601-2692.

2. State compliance standards.

administrative regulation provides for the accreditation standards for professionals working with asbestos and those who offer accreditation training courses.

3. Minimum or uniform standards contained in the federal mandate. 40 C.F.R. Part 763, Subpart E, Appendix C contains the asbestos model accreditation plan.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No, the administrative regulation does not impose stricter requirements or additional or different responsibilities than those required by the federal mandate. This administrative regulation establishes an asbestos accreditation program for the Commonwealth of Kentucky, in accordance with 40 C.F.R. Part 763, Subpart E, Appendix C.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards, or additional or different responsibilities or requirements are not imposed.

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(Amendment)

501 KAR 6:110. Roederer Correctional Complex.

RELATES TO: KRS Chapters 196, 197, 439

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

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

Section 1. Incorporation by Reference. (1) "Roederer Correctional Complex policies and procedures", June 14, 2019[October 10, 2017], are incorporated by reference. Roederer Correctional Complex policies and procedures include:

- RCC 01-08-01 Public Information and News Media Access (Amended 05/15/12)
RCC 02-02-02 Inmate Personal Funds (Amended 6/28/17)
RCC 02-02-05 Inmate Canteen Services (Amended 6/28/17)

- RCC 05-02-01 Consultants, Research, and Student Interns (Added 5/15/12)
RCC 06-03-01 Records Release of Information (Amended 05/15/12)
RCC 08-01-01 Fire Prevention (Amended 7/26/13)
RCC 09-08-01 Operation of a Licensed Vehicle by an Inmate (Added 6/14/19[05/15/12])
RCC 09-10-01 Fishing at Roederer Correctional Complex Lakes (Amended 6/14/19[6/28/17])
RCC 09-29-01 Tobacco and Smoke Free Environment (Amended 6/14/19[Added 8/4/16])
RCC 09-31-01 Firewood Cutting and Firewood Sales (Amended 6/14/19[Added 8/4/16])
RCC 10-01-02 Temporary Holding Cell (Amended 6/28/17)
RCC 11-01-01 Food Service (Amended 6/14/19[6/28/17])
RCC 11-04-01 Food Service: Meals, Storage, Menu Nutrition and Alternative Items (Amended 6/14/16)
RCC 11-05-02 Sanitation and Health Requirements of Food Handlers (Amended 6/28/17)
RCC 12-01-01 Sanitation, Living Conditions and Clothing Issuance (Amended 6/28/17)
RCC 12-01-02 Bed Areas (Amended 6/14/19[7/8/14])
RCC 12-01-03 General Guidelines for Living Units (Amended 7/8/14)
RCC 12-02-01 Laundry Services (Amended 6/14/16[6/14/16])
RCC 12-03-01 Personal Hygiene Items: Issuance and Replacement Schedule (Amended 6/28/17)
RCC 12-03-02 Barber Shop Services and Equipment Control (Amended 6/14/19[05/15/14])
RCC 12-07-01 Treatment of Inmates with Body Lice (Added 05/15/12)
RCC 13-02-01 Health Maintenance Services: Sick Call and Pill Call (Amended 10/10/17)
RCC 13-03-01 Dental Procedures and Sick Call (Amended 6/28/17)
RCC 13-04-01 Preliminary Health Evaluation and Establishment of Inmate Medical Records (Amended 05/15/12)
RCC 13-06-03 Emergency Medical and Dental Care Services (Amended 6/14/19[6/28/17])
RCC 13-07-03 Use of Pharmaceutical Products (Amended 10/10/17)
RCC 13-07-04 Self-Administered Medication Program (Amended 6/14/19[7/26/13])
RCC 13-09-01 Notification Due to Serious Illness, Surgery, or Death (Amended 6/28/17)
RCC 13-10-01 Health Education and Special Health Programs (Amended 6/14/19[05/15/12])
RCC 13-11-01 Informed Consent (Amended 05/15/12)
RCC 13-13-01 Identification and Transfer Procedures for Inmates with Psychological, Psychiatric, or Severe Medical Disabilities (Amended 6/14/19[8/4/16])
RCC 13-16-01 Specialized Health Services (Amended 6/14/19[7/8/14])
RCC 13-18-01 Infection Control (Amended 05/15/12)
RCC 13-19-01 Medical Waste Management (Amended 05/15/12)
RCC 13-20-01 Medical Services Co-pay (Amended 6/14/19[05/15/12])
RCC 13-21-01 Mental Health Services (Amended 6/14/16)
RCC 13-24-01 Substance Abuse and Chemical Dependency Program (Amended 6/28/17)
RCC 14-01-01 Inmate Rights and Responsibilities (Amended 6/14/16)
RCC 14-02-01 Legal Services Program (Amended 6/14/19[6/28/17])
RCC 14-03-01 Marriage of Inmates (Amended 05/15/12)
RCC 14-04-01 Lesbian, Gay, Bi-Sexual, Transgender and Intersex (LGBTI) (Added 6/14/19)
RCC 14-05-01 Americans with Disabilities Act and Inmate Program Access (Amended 6/14/19[10/10/17])
RCC 15-01-01 Inmate Rules for Housing Units (Added 6/14/19)
RCC 16-01-01 Inmate Visiting (Amended 6/14/19[6/28/17])
RCC 16-01-02 Restricted Visitation (Amended 8/4/16)
RCC 16-02-01 Telephone Communications (Amended 6/14/19[6/14/16])

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- RCC 16-03-01 Mail Regulations (Amended 10/10/17)
- RCC 16-04-01 Parole Hearings: Media and Visitors (Amended 6/28/17)
- RCC 17-01-01 Assessment and Orientation Procedure for Intra-system Transfers (Amended 6/14/16)
- RCC 17-01-02 Identification Department Admission and Discharge Procedures (Amended 6/14/19[6/28/17])
- RCC 17-05-05 Assessment Center Operations and Reception Program (Amended 6/14/19[6/14/16])
- RCC 18-01-01 Classification (Amended 6/14/19[6/28/17])
- RCC 19-01-01 Job and Program Assignments (Amended 6/14/19[6/28/17])
- RCC 19-01-02 Honor Program (Added 6/14/19)
- RCC 19-01-04 Dog Program (Added 6/14/19)
- RCC 20-01-01 Education Program (Amended 6/14/19[10/10/17])
- RCC 20-01-03 Vocational Horticulture Program (Amended 6/14/16)
- RCC 21-01-01 Library Services (Amended 6/14/16)
- RCC 22-01-01 Recreation and Inmate Activities (Amended 6/14/19[10/10/17])
- RCC 22-03-01 Inmate Clubs and Organizations (Amended 6/14/19[6/28/17])
- RCC 22-04-01 Arts and Crafts Program (Amended 6/14/19[6/28/17])
- RCC 23-01-01 Religious Services (Amended 6/14/19[6/28/17])
- RCC 24-01-01 Social Services and Counseling (Amended 6/14/19[6/28/17])
- RCC 25-01-01 Furloughs (Amended 05/15/12)
- RCC 25-05-01 Inmate Discharge Procedure (Amended 6/28/17)
- RCC 26-01-01 Citizens Involvement and Volunteer Services Program (Amended 6/14/19[6/28/17])

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Legal Services, Justice and Public Safety Cabinet, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

KATHLEEN KENNEY, Commissioner

APPROVED BY AGENCY: June 14, 2019

FILED WITH LRC: June 14, 2019 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 30, 2019 at 9:00 a.m. at Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 PM on July 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 below.

CONTACT PERSON: Amy V. Barker, Assistant General Counsel, Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686, email Justice.RegContact@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Amy V. Barker

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation incorporates by reference the policies and procedures governing the operation of Roederer Correctional Complex regarding the rights and responsibilities of Roederer Correctional Complex employees and the inmate population.

(b) The necessity of this administrative regulation: To conform

to the requirements of KRS 196.035 and 197.020 and to meet American Correctional Association (ACA) accreditation requirements.

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

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation and material incorporated by reference establish the policies and procedures that govern the operations of the Roederer Correctional Complex. It provides direction and information to employees and the inmate population concerning operations of the institution.

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

(a) How the amendment will change this existing administrative regulation: The amendment updates practices to reflect changes in operations and compliance with ACA standards.

(b) The necessity of the amendment to this administrative regulation: To conform to the requirements of KRS 196.035 and 197.020.

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

(d) How the amendment will assist in the effective administration of the statutes: The amendment provides employees and inmates information concerning the effective and orderly management of the institution.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects approximately 254 employees, 1238 inmates at the Roederer Correctional Complex, volunteers, and visitors to the institution.

(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: Staff, inmates, volunteers, and visitors will have to change their actions to comply with any operational changes made by this amendment. Others who enter RCC will have to comply with policies and procedures concerning entry, search, contraband, and others when they enter the institution.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: No additional cost is anticipated in implementing any of the policy changes.

(c) As a result of compliance, what benefits will accrue to the entities: The operational changes will assist in the effective and orderly management of the institution.

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

(a) Initially: No additional cost is anticipated.

(b) On a continuing basis: No additional cost is anticipated.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Kentucky Department of Corrections budgeted funds for Roederer Correctional Complex for the biennium.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The administrative regulation establishes fees for medical and dental copays, copies of records, and personal property repair. The amendment does not change any of the fees.

(9) TIERING: Is tiering applied? No. Tiering was not

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appropriate in this administrative regulation because the administrative regulations 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 amendment to this regulation impacts the operation of Roederer Correctional Complex.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 196.035, 197.020, 34 U.S.C. §§ 30301 – 30309, 42 U.S.C. § 12102, et seq., 28 C.F.R. §115.15, 28 C.F.R. §115.42.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 amendment does not generate any revenue.

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

(c) How much will it cost to administer this program for the first year? The amendment to this regulation impacts how the institution operates, but does not increase costs from what will be budgeted to the Roederer Correctional Complex for the biennium.

(d) How much will it cost to administer this program for subsequent years? The amendment to this regulation impacts how Roederer Correctional Complex operates, but is not expected to increase costs from what will be budgeted to the Department of Corrections.

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

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

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(Amendment)

501 KAR 6:160. Correctional Industries.

RELATES TO: KRS Chapters 196, 197, 439, 18 U.S.C. §1761, 64 FR 17000

STATUTORY AUTHORITY: KRS 196.035, 196.704, 197.020, 197.105, 197.200, 439.470, 439.590, 439.640, 18 U.S.C. 1761, 64 FR 17000

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

Section 1. Incorporation by Reference. (1) "Correctional Industries Policies and Procedures," June 14, 2019[14, 2016], are incorporated by reference. Correctional Industries Policies and Procedures include:

- CI 01-04-02 Code of Ethics, Prohibited Employee Conduct (Added 3/10/08)
CI 03-02-01 Delivery of Goods and Services (Amended 3/10/08)
CI 03-02-02 Pickup of Reupholstery and Repair Items (Amended 3/10/08)
CI 04-03-03 Customer Orders (Amended 3/10/08)
CI 04-03-04 Sale of Industry Products to Private Individuals (Amended 1/15/08)
CI 04-04-01 Warranty of Products (Amended 3/10/08)
CI 05-01-01 Inmate Job Descriptions (Amended 3/10/08)
CI 05-01-02 Equal Opportunity Employment (Amended 3/10/08)
CI 05-01-03 Job Performance Evaluations (Amended 3/10/08)
CI 05-01-04 Inmate Compensation (Amended 3/10/08)
CI 05-01-05 Job Assignments (Amended 3/10/08)
CI 05-02-01 Inmate Orientation (Amended 3/10/08)
CI 05-03-01 Standards for Working in Correctional Industries Plants (Amended 6/14/16)
CI 06-01-01 Safety and Working Conditions (Amended 3/10/08)
CI 06-02-01 Key and Tool Control (Amended 3/10/08)
CI 06-02-02 Searches (Amended 3/10/08)
CI 06-03-01 Inmate Supervision (Amended 3/10/08)
CI 07-02-01 Quality Control (Amended 3/10/08)
CI 07-03-01 Data Entry Unit Procedures (Added 3/10/08)
CI 08-01-01 Inmate Compensation in Prison Industry Enhancement (PIE) Certification Program (Added 6/14/19)
CI 08-02-01 Voluntary Participation and Agreement with Wage Deductions (PIECP) (Added 6/14/19)
CI 08-03-01 Local Business and Local Labor Consultation to Prison Industry Enhancement Certification Programs (PIECP) (Added 6/14/19)
CI 08-04-01 Non-Inmate Worker Displacement in Prison Industry Enhancement (PIE) Programs (Added 6/14/19)
CI 08-05-01 Management of Prison Industries Enhancement Program (PIECP) (Added 6/14/19)

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686, Monday through Friday, 8 a.m. to 4:30 p.m.

This is to certify that the Kentucky State Corrections Commission approved this administrative regulation prior to its filing by the Justice and Public Safety Cabinet with the Legislative Research Commission as required by KRS 13A.120(3), 13A.220(6)(a), and 196.704(8) as reflected by the signature below.

KATHLEEN KENNEY, Commissioner
TIM HAVRILEK, Chairperson

APPROVED BY AGENCY: June 12, 2019
FILED WITH LRC: June 14, 2019 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 30, 2019 at 9:00 a.m. at the Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through July 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: Amy V. Barker, Assistant General Counsel, Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686, email Justice.RegContact@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Amy Barker

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation incorporates by reference the policies and procedures for Kentucky Correctional Industries (KCI).

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 196.035, 196.704, 197.020, 197.105, and 197.200; to meet American Correctional Association (ACA) standards requirements; and to meet Federal Prison Industry Enhancement Certification Program requirements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation governs the operations of Kentucky Correctional Industries and the requirements for the Prison Industry Enhancement Certification Program (PIECP) for Kentucky. The authorizing statutes authorize the Secretary of the Cabinet or his delegate and the Commissioner to implement procedures to ensure the safe and efficient operation of the Kentucky Department of Corrections. The PIECP policies address the requirements of 18 U.S.C. §1761 and 64 FR 17000.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The policies and procedures incorporated by reference provide direction and information to Corrections employees concerning their duties and job responsibilities and to inmates concerning their rights and responsibilities in the Correctional Industries program.

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

(a) How the amendment will change this existing administrative regulation: The amendment establishes policies and procedures for the Prison Industry Enhancement Certification Program and its operations.

(b) The necessity of the amendment to this administrative regulation: To conform to the requirements of KRS 196.025, 197.020, 197.200, 18 U.S.C. §1761, and 64 FR 17000.

(c) How the amendment conforms to the content of the authorizing statutes: The authorizing statutes authorize the Secretary of the Cabinet or his delegate and the Commissioner to implement procedures to ensure the safe and efficient operation of the Kentucky Department of Corrections. The PIECP policies address the requirements of 18 U.S.C. §1761 and 64 FR 17000.

(d) How the amendment will assist in the effective administration of the statutes: The amendment establishes policies and procedures for the Prison Industry Enhancement Certification Program allowing the program to partner with private industry.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects approximately 55 KCI employees and an unknown number of inmates since private industry partnerships are not yet in place. It also affects a limited number of private businesses that partner with KCI in the PIECP.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Each entity will have to comply with the PIECP policies.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The costs will be incurred by the private industry that partners with KCI. KCI will not incur any of the costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The inmates that participate in the program will receive valuable job skills and have the possibility to make a greater wage to save funds to assist with the individual inmate's reentry efforts.

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

(a) Initially: No additional cost is anticipated.

(b) On a continuing basis: No additional cost is anticipated.

(6) What is the source of funding to be used for the

implementation and enforcement of this administrative regulation: The funding for the PIECP will come from the private businesses that partner with KCI in the PIECP.

(7) Provide an assessment of whether an 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. Any price increases are driven by production costs.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees are established.

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The amendments to this administrative regulation impact the operations of Kentucky Correctional Industries, the Department of Corrections, other state agencies involved with the Prison Industry Enhancement Certification Program (PIECP), and private industry.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 196.035, 196.704, 197.020, 197.105, 197.200, 18 U.S.C. §1761, and 64 FR 17000

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

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

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

(c) How much will it cost to administer this program for the first year? The amendment to this regulation impacts how KCI operates, but is not expected to increase costs from what will be budgeted to the Department of Corrections.

(d) How much will it cost to administer this program for subsequent years? The amendment to this regulation impacts how KCI operates, but is not expected to increase costs from what will be budgeted to the Department of Corrections.

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:

**TRANSPORTATION CABINET
Department of Vehicle Licensing
Division of Motor Licensing
(Amendment)**

601 KAR 9:130. Motor vehicle registration.

RELATES TO: KRS 43.010(2), 45.149, 186.010, 186.050, 186.053, 186.162, 186.172, 186.174, 186A.060, 186A.070, 186A.120, 369.102(8), 369.107[186, 186A]

STATUTORY AUTHORITY: KRS 186.020, 186.041, 186.042, 186.164[~~186.053, 186.162, 186.172~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 186.020 requires the owner of a motor vehicle[~~owners of motor vehicles~~] to apply for vehicle registration in accordance with administrative regulations promulgated[~~issued~~] by the Transportation Cabinet before operating the motor vehicle or permitting its operation. KRS 186.041 requires the cabinet to promulgate administrative

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~~regulations to establish the proof necessary for demonstrating current attendance, or graduation from a service academy. KRS 186.164 requires the cabinet to promulgate administrative regulations to establish rules related to the issuance of special license plates. This administrative regulation establishes the requirements for a member of a service academy to obtain a special license plate, establishes the rules and requirements for the public to obtain a special license plate for a motor vehicle or a motorcycle, and promulgates the auditing requirements and procedures related to special license plates. Other sections of KRS Chapter 186 either permit or require the Transportation Cabinet to adopt administrative regulations regarding the issuance of special license plates for motor vehicles and motorcycles during registration. KRS Chapter 186.164(15) requires the cabinet to promulgate administrative regulations to implement auditing requirements. This administrative regulation establishes auditing procedures].~~

~~Section 1. Definitions. (1) "Electronic signature" is defined by KRS 369.102(8) and acceptable as stated in KRS 369.107.~~

~~(2) "Resident" is defined by KRS 186.010(12).~~

~~(3) "Signature" means a person's name, a unique mark, or an inscription representing a person's name, either written by hand or in an electronic format.~~

~~Section 2[4]. (1) An application for Kentucky Certificate of Title and Registration Form, TC 96-182, [(1) The certificate of Title and Registration Form required by KRS 186A.060 shall serve as the application] shall be completed if a vehicle changes ownership for the first time[for first time vehicle registration]. A copy of the vehicle owner's Kentucky driver license and bill of sale shall be attached to TC 96-182. Transfer of ownership shall be executed by owner's signature which can be in an electronic format.~~

~~(2) A Kentucky certificate of registration shall serve as the application for renewal of registration.~~

~~Section 3[2]. Certificate of Title in Motor Vehicle. During the fifteen (15) day period established in KRS 186.020(1) and KRS 186A.070, in order[allows a person] to register a newly acquired motor vehicle, or for a new Kentucky resident to register his or her motor vehicle:~~

~~(1) An assigned title or bill of sale pursuant to KRS 186.020(1) shall be carried in the motor vehicle if the vehicle was last licensed in a[title issuing] jurisdiction other than Kentucky; or~~

~~(2) If the jurisdiction in which the motor vehicle was last licensed does not issue titles, the standard document for perfecting the sale of the motor vehicle in the licensing jurisdiction shall be carried in the vehicle.[Section 3. Found License Plate. A person finding a lost, unexpired registration plate shall deliver it to the Department of Vehicle Regulation or any Kentucky county clerk.]~~

~~Section 4. Residency[Temporary Kentucky Residents]. (1) [A full-time college student or member of the armed forces who is temporarily maintaining a place of residence in Kentucky while attending a Kentucky college or university or while stationed at a military facility shall not be required to register his or her vehicle in Kentucky if he or she maintains residency in another state.~~

~~(2) To establish that a vehicle owner is a resident of Kentucky and[therefore] required to register the vehicle in Kentucky, the vehicle owner shall[have]:~~

~~(a) Have a[Purchased] primary residence address[real estate property] in Kentucky;~~

~~(b) Be registered to vote in Kentucky; or~~

~~(c) Possess a valid[Applied for or possess a] Kentucky motor vehicle operator's license.~~

~~(2) A full-time college student or member of the armed forces who is temporarily maintaining a place of residence in Kentucky while attending a Kentucky college or university, or while stationed at a military facility shall not be required to register his or her vehicle in Kentucky if he or she maintains residency in the applicable home state.~~

~~(3) A Kentucky certificate of title shall not be issued to a non-Kentucky resident.~~

~~Section 5. Placement of License Plate and Renewal Decal. (1) A license plate shall not be placed on a motor vehicle other than the vehicle for which it was issued.~~

~~(2) A renewal decal shall not be placed on a license plate except the plate for which the renewal decal was issued.~~

~~(3) A renewal decal shall only be placed on its associated license plate in the indentation provided for a decal.~~

~~Section 6. Lost or Stolen License[Special] Plates. If a[special] license plate is lost or stolen, the individual responsible for the registration of the vehicle may secure a replacement[special] license plate by following the provisions established in KRS 186.162(2) through (4) and in KRS 186.180(2).~~

~~Section 7. Found License Plate. A person finding a lost, unexpired registration plate shall deliver it to the Department of Vehicle Regulation, or to the office of any Kentucky county clerk.~~

~~Section 8[7]. Renewal Decals on Special Plates. (1) Registration for a vehicle[Registrations for vehicles] with a special license plate[plates] issued pursuant to[as established in] KRS 186.162(2) through (4) shall be renewed each year[to remain valid].~~

~~(2)[The Transportation Cabinet shall issue a new license plate or, if the renewal is validated, place a renewal decal on the existing license plate.~~

~~(3) If the special license plate deteriorates to the point that the inscriptions are not discernible, the owner may obtain a replacement plate free of charge.~~

~~Section 9[8]. National Guard License Plates. (1) Taxicabs, airport shuttle vehicles, and limousines, registered as established in KRS 186.050(1) shall not be issued a national guard license plate as established in KRS 186.041(1).~~

~~(2) If the applicant for a national guard license plate is a Kentucky national guard retiree, the application shall be signed by the custodian of military records, Department of Military Affairs. The custodian's signature shall certify that the applicant is a retiree of the Kentucky National Guard with at least twenty (20)[twenty-five (25)] years of service.~~

~~Section 10[9]. Disabled Veterans and Disabled Persons License Plate. (1) A license plate shall[only] be issued to a disabled veteran as established in KRS 186.041(2) for use on a vehicle that would normally be registered as established in KRS 186.050(1) or (3)(a).~~

~~(2)(a) A license plate shall be issued to a disabled person who meets the requirements established in KRS 186.042 and provides the proof of disability established in KRS 186.042 (3)(a)(b).~~

~~(b) A person applying for a disabled license plate shall complete an Application for Special Registration Plate for Disabled Persons, Transportation Cabinet Form 96-347[96-205].~~

~~Section 11[40]. Armed Forces License Plate. The special armed forces license plate as established in KRS 186.041(1) shall be made available to any eligible current member of any branch of the United States military reserves. It shall also be made available to any eligible retired reservist with twenty (20)[twenty-five (25)] years of service.~~

~~Section 12. Military Academy Plates. (1) An applicant for a military academy license plate shall provide proof that he or she is currently enrolled, or is a graduate of the United States Airforce Academy, Military Academy, Naval Academy, Coast Guard Academy, or Merchant Marine Academy.~~

~~(2) An applicant shall provide:~~

~~(a) A formal, original letter on academy letterhead proving current enrollment; or~~

~~(b) A copy of the graduate's diploma.~~

~~Section 13. Gold Star License Plates[11. Gold Star Mother or Gold Star Spouse License Plate]. (1)(a) A Gold Star Mother license plate shall be authorized for a mother whose son or daughter died while serving the country in the United States Armed Forces.~~

(b) A Gold Star Father license plate shall be authorized for a father whose son or daughter died while serving in the United States Armed Forces.

(c) A Gold Star Spouse license plate shall be authorized for the spouse of a person who died while serving the country in the United States Armed Forces.

(2) To be eligible, the mother, father, or spouse shall submit a completed Report of Casualty DD Form 1300, accessible on the National Personnel Records Center Web site at <http://www.archives.gov/veterans/research/> to the Kentucky Department of Veterans Affairs.

Section 14[12]. Application for Special License Plate. (1) An applicant for a special license plate shall provide proof of eligibility as established in 186.162(2) through (4).

(2) Proof of eligibility shall be submitted to the county clerk in the applicable county of residence.

Section 15[13]. An applicant for one (1) of the special license plates listed in this section shall provide the following required information:

(1) Firefighter license plate: provide written evidence of the applicant's current status as a firefighter, signed by the fire chief, mayor, or county judge executive;

(2) Purple Heart recipient license plate: provide written proof from the United States Department of Defense or the Veterans Administration that the applicant received a Purple Heart medal;

(3) Street rod license plate: provide sufficient manufacturer's information, title documents, or photographs to prove that the vehicle either was manufactured prior to 1949 or was manufactured to look like it was built prior to 1949;

(4) Fraternal Order of Police license plate: provide a copy of the applicant's current membership card from the Fraternal Order of Police. The reverse side of the membership card shall be signed by the National Secretary of the Grand Lodge, Fraternal Order of Police;

(5) Emergency Management license plate: provide written evidence of the applicant's current status as a member of either a disaster and emergency services organization or a volunteer rescue squad signed by the appropriate mayor, county judge executive, or DES coordinator; or

(6) Masonic license plate: provide a current calendar year membership card in the Masonic Orders. A member of the Eastern Star affiliation shall not be eligible for the Masonic Order license plate. ~~[Section 14. A special license plate motor vehicle registration that does not have an expiration date established by KRS Chapter 186 shall expire annually.]~~

Section 16[15]. An applicant for a special license plate issued pursuant to KRS 186.041, 186.042, 186.053, 186.172, or 186.174 shall make an individual application for the special license plate to be issued for each separate motor vehicle.

Section 17[16]. (1) Special License Plate Committee. The Special License Plate Committee established in the Transportation Cabinet pursuant to KRS 186.164(15)(c) shall and:

(a) Review and consider the eligibility of each group or organization that applies for a special plate;

(b) Review and consider whether the proposed special plate meets required criteria and;

(c) Convene as necessary at the call of the chair in order to address issues related to the design and issuance of special license plates.

(2) The Special License Plate Committee shall be comprised of the following members:

(a) Commissioner of the Department of Vehicle Regulation or a designee, as a nonvoting member;

(b) Deputy Commissioner of the Department of Vehicle Regulation or a designee as chair;

(c) Director of the Division of Motor Vehicle Licensing or a designee;

(d) Assistant Director of the Division of Motor Vehicle Licensing or a designee;

(e) Executive Director, Office of Legal Services or a designee,

as a nonvoting member and;

(f) A designee selected by the Commissioner of the Department of Vehicle Regulation from within the office of the Commissioner and;

(g) Registration Branch Manager of the Division of Motor Vehicle Licensing or a designee.

(3)(a) Three (3) of the voting members of the committee shall constitute a quorum.

(b) A simple majority of the voting members present at a meeting with a quorum shall be required to recommend approval or denial of an application for a special plate.

(4) The chairman shall designate a person to provide a summary of each meeting and present the minutes for review and approval at the next meeting of the committee that has a quorum present.

(5)(a) Upon recommendation of the committee, the commissioner shall issue a written notice of approval or denial within thirty (30) days of the receipt of application.

(b) If the committee requires additional time in which to deliberate and make a recommendation, the thirty (30) day time period may be extended for an additional thirty (30) days, not to exceed an extended time of ninety (90) days from the date of the initial meeting. If an application is held in abeyance pursuant to Section 18[3][17(3)] of this administrative regulation, the time period shall be tolled until the legislative process is complete.

(6)(a) The committee may request an applicant to appear and make a presentation if questions arise that may include:

(1) The mission of the applicant;

(2) The design and logo of the special license plate; and

(3) Qualifications of the applicant.

(b) An applicant who fails to cooperate with the informational requests made by the committee[,] shall have his or her application dismissed by the commissioner.

(7) An aggrieved party may appeal the final decision of the commissioner pursuant to KRS 186.164(10).

Section 18[17]. Application Process. (1) A group or organization shall apply to the Office of the Commissioner, Department of Vehicle Regulation, Transportation Cabinet, for a special license plate pursuant to KRS 186.164.

(2)(a) An applicant shall not submit more than one (1) application per calendar year for the consideration of the committee. An application that is denied by the committee and later modified or altered by the applicant may be resubmitted to the committee not less than twelve (12) months from the original date of denial.

(b)1. An application to redesign a special license plate shall be submitted at a minimum of three (3) years from the date of issuance.

2. The redesign shall be approved or denied by the committee based on the criteria established in Section 17[16].

(3) Prior to final approval of an application, if a member of the General Assembly introduces a bill, files an amendment to a bill, or undertakes any other measure to sponsor a plate that is substantially similar to the plate for which the application is pending, the application shall be held in abeyance pending the outcome of the legislative process. If the bill or amendment becomes law, the application in abeyance shall be moot. If the legislation is withdrawn or is acted upon by the legislature, the application shall proceed with the committee from the point at which it was placed in abeyance. ~~[(4)(a) A group or organization shall obtain a minimum of 900 applications within two (2) consecutive calendar years from the original date of application to the Office of the Commissioner, Department of Vehicle Regulation.~~

~~(b) Failure to comply with paragraph (a) of this subsection shall disqualify the group or organization, and its application shall be withdrawn.~~

~~(5)(a) A group or organization shall electronically submit the name, address, and county of each individual applicant for a special license plate to the Registration Branch Manager of the Division of Motor Vehicle Licensing.~~

~~(b) The group or organization shall submit one (1) payment for its entire group of applicants.]~~

~~(4)[(6)] Each group or organization shall be limited to one (1)~~

special plate design.

(5)(7) The committee may consult with law enforcement relating to special license plate issues that may include design and visibility.

(6)(8) The committee may reconsider and change the design of a previously approved special license plate upon good cause, which may include:

(a) Questions or issues involving legibility of the license plate; or

(b) The normal replating cycle during which the design of all license plates may be changed.

(7)(a) The committee shall not consider an application that contains any trademarked or copyrighted statements or material or any statements or phrases that are commonly within the public domain, including short phrases, names, titles, or small groups of words that are considered common idioms of the English language.

Section 19. (1) A group or organization that has its application approved, shall submit to the Cabinet before the programming and the production of the plate, a check to cover the costs. The Cabinet shall make available a generalized estimate of the costs to the group or the organization.

(2) A group or organization with an approved special license plate shall maintain a minimum number of 500 registrations annually. Two (2) consecutive years of not maintaining a 500 annual registration shall result in cancellation and discontinuation of that plate.

Section 20[48]. Audit and Attestation Requirements. (1)(a) Groups or organizations that have the requisite number,[900,] of license plates purchased shall submit a Special Plate Donation Affidavit, Form 324[325] in accordance with KRS 186.164(13) to the Division of Motor Vehicle Licensing.

(b) Accounts shall be audited annually at the expense of the group or organization.

(2)(a) A group or organization that receives \$15,000 or less during its fiscal year shall submit Attestation form TC 96-324 attesting its compliance with KRS 186.164.

(b) The form shall be submitted to the Division of Motor Vehicle Licensing not later than ninety (90) days following the end of the group or organization's fiscal year.

(3)(a) A group or organization that receives \$15,001 to \$75,000 during its fiscal year shall have an internal or external audit of its account performed.

(b) The results of that audit shall be submitted to the Division of Motor Vehicle Licensing not later than ninety (90) days following the end of the group or organization's fiscal year.

(4)(a) A group or organization that receives \$75,001 or more annually shall have an external audit performed.

(b)1. Groups or organizations that are considered to be budget units in accordance with KRS 43.010(2) shall adhere to KRS 45.149, which gives the Auditor of Public Accounts the first right of refusal to perform audit work.

2. This audit shall be submitted to the Division of Motor Vehicle Licensing not later than ninety (90) days following the end of the group or organization's fiscal year.

Section 21[49]. Incorporation by Reference. The following material is incorporated by reference: (1)(a) Form TC 96-15[96-45E,] "Application for Special License Plate" revised October 2016[,-March 2009];

(b) Form TC 96-182, "Application for Kentucky Certificate of Title and Registration" revised March 2019[,-August 2009];

(c) Form TC 96-324, "Attestation" revised July 2017[,-May 2009];

(d) Form 332 [325], "[Special Plate Donation]Affidavit for Special License Plate Donation" May 2014[,-2009];

(e) DD Form 1300, "Report of Casualty", United States Department of Defense Instruction Number 1300.18[,-] March 2004; and

(f) Form TC 96-347, "Application for Disabled License Plate or Parking Placard" September 2018,[96-205, "Application for Special Registration Plate for Disabled Persons" revised August 1998.

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Transportation Cabinet Building, Department of Vehicle Regulation, Division of Motor Vehicle Licensing, Second Floor, Mero Street, Frankfort, Kentucky 40622, Monday through Friday, 8a.m. to 4:30 p.m.]~~

GREG THOMAS, Secretary
MATTHEW D. HENDERSON, Commissioner
LARISA PLECHA

FOR P. KEVIN MOORE, Executive Director

APPROVED BY AGENCY: June 14, 2019

FILED WITH LRC: June 14, 2019 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 22, 2019 at 10:00 a.m. local time at the Transportation Cabinet, Transportation Cabinet Building, Hearing Room C110, 200 Mero Street, Frankfort, Kentucky 40622. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing, of their intent to attend. If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirement five working days prior to the hearing. This request does not have to be in writing. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through July 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: 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.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: P. Kevin Moore

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for the administration and implementation of the motor vehicle registration.

(b) The necessity of this administrative regulation: This administrative regulation is required by KRS 186.020, KRS 186.041, KRS 186.042, and KRS 186.164.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation conforms to KRS 186.020 by requiring the owner of a motor vehicle to apply for vehicle registration before operating the motor vehicle or permitting its operation.

This regulation also conforms to KRS 186.041 by requiring proof necessary for demonstrating current attendance, or graduation from a service academy. This regulation also conforms to KRS 186.164 by establishing rules related to the issuance of special license plates for motor vehicle or a motorcycle, and promulgates the auditing requirements and procedures related to special license plates.

(d) How this administrative regulation currently assists or will assist in the effective administrative of the statute: This administrative regulation will establish the regulatory requirements of KRS 186.020, KRS 186.041, KRS 186.042, and KRS 186.164.

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

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

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to implement statutory changes to motor vehicle registration, and amendments to KRS 186.020, KRS 186.041, KRS 186.042, and KRS 186.164 to establish rules related to the issuance of special licenses plate for a motor vehicles or motorcycles, and promulgates the auditing requirements and procedures related to special license plates.

(c) How the amendment conforms to the content of the

authorizing statutes: This amendment conforms to KRS 186.020, KRS 186.042, and KRS 186.164 that requires implementation of the new procedures and standards regarding the issuance of special license plates for motor vehicles and motorcycles and auditing requirements.

(d) How the amendment will assist in the effective administration of the statutes: The amendment simplifies the application requirements for groups by reducing the 900 member requirement down to 500 annual registrants and also requires that the group or organization a check to cover costs of programming and production of the plate.

(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 Cabinet's Division of Motor Vehicle Licensing, Department of Vehicle Regulation, and all individuals and businesses intending to apply for motor vehicle title and registration.

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

(a) List 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 for motor vehicle title and regulation must submit form TC 96-182 and the requisite attachments to receive a certificate of title and registration.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no additional costs or fees as a result of this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Individuals and businesses that are compliant with the requirements of this administrative regulation will receive a certificate of title and motor vehicle license plates for their vehicles.

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

(a) Initially: There are no costs associated with these amendments.

(b) On a continuing basis: There are no continuing costs associated with these amendments.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Road 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: Fees are not established by this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: Fees are not established by this administrative regulation.

(9) TIERING: Is tiering applied? No, the process of issuing title and registration will be handled the same as the current process of reviewing applications for motor vehicle title and registration.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What 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 impacts procedures in the Division of Motor Vehicle Licensing and the Department of Vehicle Regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 186.020, 186.041, 186.042, 186.164, KRS 186A.020, 49 C.F.R. 571.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administration regulation is to be in effect. This amendment will not affect 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? This

administrative regulation is not expected to generate revenue.

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

(c) How much will it cost to administer this program for the first year? There would not be any costs associated with the implementation of this regulation.

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

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

Revenues (+/-): None. No fiscal impact.

Expenditures (+/-): None. No fiscal impact.

Other explanation: None.

**TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Driver Licensing
(Amendment)**

601 KAR 13:090. Medical Review Board; basis for examination, evaluation, tests.

RELATES TO: KRS 186.411, 186.444, 186.570

STATUTORY AUTHORITY: KRS 186.400, 186.411, 186.444, 186.570

NECESSITY, FUNCTION, AND CONFORMITY: KRS 186.444 and 186.570 require the Transportation Cabinet to promulgate administrative regulations establishing the Medical Review Board. This administrative regulation establishes the board, the procedures used by the board and the Department in a medical review case, the process for informal hearings and appeals to formal administrative hearings, and the forms adopted by the Department[and clarifies differences between the statutes].

Section 1. Medical Review Board Generally. (1) The Medical Review Board shall be chaired by the Commissioner of the Department of Vehicle Regulation of the Transportation Cabinet or the commissioner's [his] representative.

(2) The Medical Review Board shall be comprised of any number of physicians licensed to practice medicine in the Commonwealth of Kentucky, as established in KRS 186.444(2), and any number of medical and rehabilitation specialists, as established in KRS 186.570(1)(c).

(3)[(2)] A quorum of the Medical Review Board shall be at least three (3) physicians licensed to practice medicine in the Commonwealth of Kentucky.

(4)[(3)] Appointees to the Medical Review Board who are not physicians licensed pursuant to KRS Chapter 311 shall not count towards the quorum and may have their appointment restricted based on their[to a]specified area of expertise.

(5)[(4)] The Commissioner of the Department of Vehicle Regulation or the commissioner's [his] representative shall prescribe the time and place for the board to meet.

(6)[(5)] The non-state [nonstate] government members of the board who participate in a meeting shall be paid \$200 each day or part of a day and reimbursed for necessary expenses incurred in attending the meeting.

Section 2. Initiation of a Medical Review Board Case and Agency Actions in Response to Medical Conditions. (1)(a) A Medical Review Board case that requires investigation into a person's medical condition before the commissioner takes licensing action shall be initiated when the commissioner receives notice that one (1) or more of the following conditions exists in a person and the commissioner or the commissioner's representative determines that the person's physical or mental condition could render it unsafe for the person to operate a motor vehicle upon the public highways:[(1) If the Commissioner of the Department of Vehicle Regulation or his representative receives notice that one

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~~(1) or more of the conditions listed in Section 4 of this administrative regulation exists in a person and that the person's physical or mental condition may render it unsafe for him to operate a motor vehicle upon the public highways, the commissioner shall refuse to issue an operator's license to the person or he shall suspend the existing driving privilege of the person unless the person submits to an examination by a qualified physician within forty-five (45) days of notification of the commissioner's intentions.]~~

1. Driver has been named in a Medical Review Affidavit Form TC 94-61 by at least two (2) citizens as being incapable of properly operating a motor vehicle due to physical or mental condition;

2. Driver has been reported by a physician, licensed medical specialist as defined in 601 KAR 13:100, or rehabilitation specialist as being incapable of driving safely due to physical or mental condition or due to medication prescribed for an extended time;

3. Driver has been reported by a law enforcement officer or a Kentucky State Police license examiner who has reason to believe or who has observed an individual driving or behaving in an erratic or dangerous manner that indicates a possibility of a physical or mental condition that could impair driving ability;

4. Applicant for a motor vehicle operator's license or for license renewal indicates on the application form that the applicant has a physical or mental condition that could impair driving ability;

5. Driver's official record kept by the Department of Vehicle Regulation indicates a possibility of physical or mental condition that could impair driving ability;

6. Driver has been reported by a commonwealth attorney, county attorney, county clerk, circuit clerk, sheriff, or judge as being incapable of driving due to a physical or mental condition;

7. Driver has reported to the Transportation Cabinet or Medical Review Board that he or she has a mental or physical condition that could impair driving ability; or

8. Driver has been reported by a government agency as being incapable of driving safely due to a physical or mental condition.

(b) A Medical Review Board case that requires investigation into a person's medical condition and shall result in the automatic suspension of a person's driving privileges shall be initiated when the commissioner receives notice that one (1) or more of the following conditions exists in a person:

1. Driver has indicated that he or she "blacked out," lost consciousness, or suffered a seizure prior to a reportable motor vehicle accident as established in KRS 186.411; or

2. Driver has, by judicial decree, been adjudged incompetent as established in KRS 186.440(6).

(2)(a) If the commissioner or the commissioner's representative decides pursuant to this administrative regulation and 601 KAR 13:100 to take action regarding a person's driver license, the commissioner shall provide written notice to the person of the decision to take licensing action.

(b) Notice to the person of the commissioner's decision to take licensing action shall also inform the person that the licensing action shall take place unless the person submits to and completes a satisfactory examination by a qualified physician within thirty (30) days of the date of the notice. The required medical examinations and diagnostic testing shall be conducted at the person's own expense by a licensed physician of the person's choice.

(c) If the commissioner needs more information regarding a person's medical condition before making a decision about licensing actions, the commissioner shall require that a person submit to and complete one (1) or more additional examinations by a qualified physician. The required medical examinations shall be conducted at the person's own expense by a licensed physician of the person's choice. ~~[(2) If the department deems that an examination by a qualified physician is necessary, the required medical examination shall be conducted at the person's own expense by a licensed physician of his choice.]~~

(3)(a) Within thirty (30) days of the date that the commissioner provided written notice to the person pursuant to subsection (2)(b) of this section, the examining physician shall report and submit ~~within forty-five (45) days~~ the results of the person's ~~his~~ required medical examination directly to the Division of Driver Licensing on a form ~~provided~~ ~~furnished~~ by the Department of Vehicle Regulation. The ~~form~~ ~~Medical Review Board Form TC 94-~~

~~86, revised in November 1995,] is incorporated by reference in subsection (c) of this section~~ ~~[Section 5 of this administrative regulation].~~

(b) The commissioner may, pursuant to this administrative regulation, authorize the suspension of the person's driving privilege if the examining physician fails to submit the completed results of the required medical examination on the required form to the Medical Review Office within thirty (30) days of the date of the commissioner's notice.

(c) The Medical Review Affidavit Form TC 94-61, the Medical Review Examination Form TC 94-86, the Medical Review Vision Examination Form TC 94-174, and the Medical Review Psychiatric Examination Form TC 94-171 shall be used by examining physicians to submit the results of the required medical examination(s).

(4)(a) As soon as practicable ~~[possible]~~ after receipt of the completed form, the Department of Vehicle Regulation with the advice and instruction of the Medical Review Board shall evaluate the completed form ~~[it]~~ according to the medical standards established ~~[set forth]~~ in 601 KAR 13:100. (b) The Department of Vehicle Regulation shall submit a case in which medical or rehabilitation expertise is needed to evaluate the driving ability of a person to the Medical Review Board.

(c) The Medical Review Board may make recommendations to the Department of Vehicle Regulation for further medical examination, testing, or restriction of the person's driving privilege, or denial of driving privilege.

(d) Based on this administrative regulation and 601 KAR 13:100, if the Medical Review Board recommends further examination or investigative testing or if the Department of Vehicle Regulation determines it to be necessary, the Commissioner of the Department of Vehicle Regulation or the commissioner's ~~his~~ representative shall notify the person of the date by which the person ~~he~~ shall comply ~~[in order to retain or obtain his driving privilege]~~.

Section 3. Notice and Hearing. (1) If the Medical Review Board or Department of Vehicle Regulation, pursuant to ~~the evaluation in Section 2(3) of~~ this administrative regulation and 601 KAR 13:100, recommends total suspension of a person's driving privilege or any limitations thereon, the Commissioner of the Department of Vehicle Regulation or the commissioner's ~~his~~ representative shall notify the petitioner ~~[person]~~ at the last known address of the petitioner ~~[person]~~ that this action shall ~~will~~ be taken unless a written request for an informal hearing before the board is received from the petitioner within twenty (20) days following the first class mailing of the notice. The petitioner ~~[person]~~ shall also be informed of his or her right to:

(a) An informal hearing before the board; and

(b) If necessary, an appeal to the board for a formal administrative hearing pursuant to KRS Chapter 13B.

(2) An ~~The~~ informal hearing shall be scheduled as early as practicable at a time and place designated by the commissioner or his representative. Notice of the time and place of the informal hearing shall be mailed to the petitioner ~~[person involved]~~ no later than ten (10) days prior to the hearing date.

(3)(a) If the petitioner fails to appear at the informal hearing, the driving privilege of that petitioner shall be automatically suspended.

(b) The petitioner may request one (1) rescheduling of the informal hearing and the request shall be submitted to the Medical Review Office in writing no later than five (5) days prior to the hearing date.

1. The commissioner, following the recommendation of the Medical Review Office, shall grant or deny the request to reschedule or suspend the driving privilege of the petitioner.

2. The Medical Review Office shall notify the petitioner of the decision.

(4) ~~(3)~~ The commissioner or the commissioner's ~~his~~ representative shall preside at the hearing before the Medical Review Board, and at least three (3) physician members shall be present.

(5) ~~(4)~~ The presiding officer shall be appointed by the commissioner and may administer oaths and may issue

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subpoenas for the attendance of witnesses and the production of relevant ~~records~~[books and papers].

~~(6)~~[(5)] The scope of the hearing shall be limited to the presentation of the evidence upon which the Medical Review Board shall ~~make~~[made] a[their] recommendation to the commissioner and any medical evidence the petitioner wishes to present in explanation [or refutation] of this evidence.

~~(7)~~[(6)] Evidence may be presented at the hearing in the form of depositions.

~~(8)~~[(7)] All testimony at the hearing shall be recorded, and ~~together with any depositions or exhibits introduced at the hearing shall form the complete record~~ the complete record shall be comprised of any exhibits introduced at the informal hearing, any depositions, and other documents placed in the petitioner's medical review chart by the Medical Review Office.

~~(9)~~[(8)] Within ten (10) working days after the hearing, the commissioner shall issue a decision ~~that~~[which] shall be ~~promptly~~ forwarded to the petitioner along with the notice required pursuant to subsection ~~(10)~~[(9)] of this section.

~~(10)~~[(9)] The petitioner shall be informed of his ~~or her~~ right to ~~a~~[an] formal administrative hearing pursuant to the provisions of KRS Chapter 13B.

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

(a) "Medical Review Affidavit Form TC 94-182", revised March 2019;

(b) "Medical Review Examination Form TC 94-183," revised March 2019;

(c) "Medical Review Psychiatric Examination Form TC 94-184," revised March 2019; and

(d) "Medical Review Vision Examination Form TC 94-185," revised March 2019.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Vehicle Regulation, Medical Review Office, 200 Mero Street, Second Floor, Frankfort, Kentucky 40622 between 8:00 a.m. and 4:30 p.m. Monday through Friday. ~~The Commissioner of the Department of Vehicle Regulation or his representative shall promptly notify the person involved to submit to the physical examination set out in Section 2 of this administrative regulation when one (1) or more of the following conditions exists:~~

~~(1) Driver has indicated that he "blacked out", lost consciousness or suffered a seizure prior to a reportable motor vehicle accident;~~

~~(2) Driver has been named in an affidavit by at least two (2) citizens as being incapable of properly operating a motor vehicle due to physical or mental infirmities;~~

~~(3) Driver has been reported by a physician as being incapable of driving safely due to physical or mental condition or due to medication prescribed for an extended time;~~

~~(4) Driver has been reported by a law enforcement officer or a Kentucky State Police license examiner who has reason to believe or who has observed an individual driving or behaving in an erratic or dangerous manner which indicates a possibility of a physical or mental disability which may impair his driving ability;~~

~~(5) Applicant for a motor vehicle operator's license or for its renewal indicates on the application form that he has a physical or mental disability which may impair his driving ability;~~

~~(6) Driver's official record kept by the Department of Vehicle Regulation indicates a possibility of physical or mental impairment;~~

~~(7) Driver has been reported by a commonwealth attorney, county attorney, county clerk, circuit clerk, sheriff, or judge as being incapable of driving due to a physical or mental impairment; or~~

~~(8) Driver has reported to the Transportation Cabinet or Medical Review Board that he has a mental or physical impairment.~~

Section 5. ~~(1) Medical Review Board Form TC 94-86, revised November 1995, is incorporated by reference as a part of this administrative regulation.~~

~~(2) The material incorporated by reference in this administrative regulation can be viewed, copied, or obtained from~~

~~the Division of Driver Licensing. The address is 501 High Street, Second Floor, Frankfort, Kentucky 40601. The telephone number is (502) 564-5384. The business hours are 8 a.m. to 4:30 p.m. on weekdays.~~

GREG THOMAS, Secretary
MATTHEW D. HENDERSON, Commissioner
P. KEVIN MOORE, Executive Director & General Counsel

APPROVED BY AGENCY: June 14, 2019

FILED WITH LRC: June 14, 2019 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 22, 2019, at 10:00 a.m. local time at the Transportation Cabinet, Transportation Cabinet Building, Hearing Room C121, 200 Mero Street, Frankfort, Kentucky 40622. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working dates prior to the hearing of their intent to attend. If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirement five (5) working days prior to the hearing. This request does not have to be in writing. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through July 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: P. Kevin Moore, Executive Director & General Counsel, Transportation Cabinet, Office of Legal Services, 200 Mero Street, Frankfort, Kentucky 40622, phone (502) 564-7650, fax (502) 564-5238, email Kevin.Moore@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

CONTACT PERSON: P. Kevin Moore

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the Medical Review Board and provides information regarding how the board exists and functions. This administrative regulation details what happens when an individual is referred to the Medical Review Board, including how an individual is referred to the Medical Review Board, what actions the agency may take, and the nature of the informal hearings.

(b) The necessity of this administrative regulation: The cabinet is authorized to promulgate regulations to establish a Medical Review Board and to promote public safety by enforcing standards relative to the issuance of driver's licenses. The purpose of the Medical Review Board is to receive and review cases concerning the ability of a person seeking or holding a driver's license to safely operate a motor vehicle. This administrative regulation outlines the structure of the Medical Review Board and how that structure relates to the licensing actions that the cabinet may take.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 186.444 authorizes the cabinet to promulgate administrative regulations to establish a Medical Review Board with the purpose of receiving cases relating to the ability of an individual seeking to hold a driver's license. This regulation establishes the Medical Review Board and details how the Medical Review Board works in conjunction with the Department of Vehicle Regulation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This amended administrative regulation updates the processes of the Medical Review Board as it relates to the intake of cases, administration of hearings, and relationship to the agency actions available to the commissioner. This administrative regulation has not been amended since 1996.

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

(a) How the amendment will change this existing administrative regulation: This amendment will update: the organization of the Medical Review Board generally; the initiation and course of a Medical Review Board case; the notice, hearing, and right to appeal requirements; and forms incorporated by reference.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation is necessary to inform the public of the most current requirements of the Medical Review Board.

(c) How the amendment conforms to the content of the authorizing statutes: The administrative regulation is authorized by KRS 186.444, which allows the cabinet to create a Medical Review Board that reviews cases of drivers who may be unsafe as a result of a medical condition.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will update the administrative regulation and inform the public about the most current requirements as it concerns cases referred to the medical review board.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects individuals who may have a medical condition, either mental or physical. This administrative regulation affects individuals in the medical field and persons working in rehabilitation services. This administrative regulation impacts county clerks, police agencies, and the Transportation Cabinet's Division of Driver Licensing.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Each of the aforementioned entities will now have new forms to utilize should they opt to report a medical condition that may be impacting a driver. Physicians asked to complete forms regarding a patient with a medical condition that possibly impedes that patient's ability to safely operate a motor vehicle will have guidelines regarding the completion and timeliness of forms.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no costs or fees as a result of this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment will improve the safety of the traveling public and grant immunity to individuals seeking to refer a case for review to the medical review board.

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

(a) Initially: There are no costs associated with this amendment.

(b) On a continuing basis: There are no continuing costs associated with these amendments.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is necessary.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: Fees are not established by this administrative regulation.

(9) TIERING: Is tiering applied? Tiering is not applied. All individuals seeking to obtain and maintain a driver license are subject to the same scrutiny and regulations.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Division of Driver Licensing in the Kentucky Transportation Cabinet; the Cabinet for Health and Family Services; police agencies; county clerks.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 186.411, KRS 186.440, KRS 186.444, KRS 186.570.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This amendment will not affect 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? This administrative regulation is not expected to generate revenue.

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

(c) How much will it cost to administer this program for the first year? There will not be any costs.

(d) How much will it cost to administer this program for subsequent years? There will not be any costs.

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

Revenues (+/-):

Expenditure (+/-):

Other Explanation:

**TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Driver Licensing
(Amendment)**

601 KAR 13:100. Medical standards for operators of motor vehicles.

RELATES TO: KRS 186.411, 186.440, 186.444, 186.570

STATUTORY AUTHORITY: KRS 186.444, 186.570

NECESSITY, FUNCTION, AND CONFORMITY: KRS 186.570 requires the Transportation Cabinet to withhold driving privileges from an individual who has a mental or physical condition [disability] that makes it unsafe [for him] to drive upon the highways. KRS 186.411 requires that a person with a seizure condition be seizure-free for ninety (90) days prior to licensing. This administrative regulation establishes the standards to be used by the Transportation Cabinet and Medical Review Board in determining who is unsafe to operate a motor vehicle because of a mental or physical condition[disability].

Section 1. Definitions. (1) "Altered consciousness" means a state of awareness characterized by loss or distortion of the impressions made by the senses or the inability to respond to the impressions made by the senses.

(2) "Assessment" means an evaluation of a person's substance abuse performed by a certified chemical dependency counselor, a certified driving under the influence (DUI) assessor, or other mental health professional in a licensed treatment facility.

(3) "Best corrected" means the corrected distance visual acuity of an individual through the use of traditional prescription lenses or contacts.

(4) "Chemical" means alcohol,[a] drug, or[a] controlled substance as defined by[in] KRS Chapter 218A.

(5)[(4)] "Cognition" means the ability to think, perceive, and remember.

(6)[(5)] "Comorbid" means that more than one (1) condition is present at the same time.

(7)[(6)] "Corrective lens" means an ophthalmic lens, whether an eyeglass, contact lens, or single lens system, that corrects the refraction error or other optically correctable deficiency of the eye.

(8)[(7)] "Driving evaluation" means a test conducted to determine if a person adequately compensates for [his] medical, mental, or physical condition or functional impairment.

(9)[(8)] "Episode" means any incident or segment of time involving "altered consciousness" or "loss of bodily control."

(10)[(9)] "Field of vision" means the entire horizontal and

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vertical planes a person has for each eye without shifting the gaze.

(11)(40) "Functional ability" means the degree of cognitive, mental or emotional, sensorimotor, and sensory capability in performing activities of daily living, including safely performing the tasks of driving.

(12) "Licensed medical specialist" means anyone who is licensed in the Commonwealth of Kentucky to make a medical report, make medical recommendations, or identify risk factors or other conditions impacting an individual's physical or mental condition.

(13)(41) "Licensing action" means any action by the Transportation Cabinet involving the denial, cancellation, restriction, or issuance of a motor vehicle operator's license under KRS Chapter 186.

(14)(42) "Loss of bodily control" means involuntary movements of the body characterized by muscle spasms or muscle rigidity, or loss of muscle tone or muscle movement.

(15) "Loss of muscle tone" means the loss of nerve impulses in muscle as distinguished from poor conditioning.

(16)(43) "Medical condition" means any physical, mental, or emotional condition that[which] affects a person's health for which a person is receiving medical or substance abuse treatment, or for which medical or substance abuse treatment is usually prescribed.

(17)(44) "Mental or emotional function" means interaction and communication skills, adaptive behavior or coping capacity, and orientation.

(18) "Overall condition" means the presence or absence of comorbid conditions or disorders affecting a person's health and information considered by the Medical Review Board or department pursuant to Section 3 of this administrative regulation.

(19)(45) "Review board" means the Medical Review Board established pursuant to[under] KRS 186.444 and 186.570(1)(c).

(20)(46) "Sensory function" means vision, hearing, touch, smell, or vibration sense.

(21)(47) "Vision specialist" means a person licensed to practice optometry as defined by KRS Chapter 320, or a physician licensed pursuant to KRS Chapter 311.

Section 2. General Requirements. (1) If the Department of Vehicle Regulation learns that a person applying for, renewing, or holding a motor vehicle operator's license could[may] have a medical condition that might[which may] affect safe driving, the department may, pursuant to 601 KAR 13:090 and this administrative regulation, require the person to provide the department with medical information about the person's medical condition. The department shall review the medical information as established[using the standards specified] in this administrative regulation.

(2) A person holding a Kentucky operator's license or instruction permit shall report to the department medical conditions that adversely affect his or her driving skills.

Section 3. Information to be Considered in Licensing Actions. Pursuant to 601 KAR 13:090, the Medical Review Board, if making recommendations, and the department, if taking licensing action, may consider[the following information]:

- (1) Any medical condition affecting the person, including:
 - (a) History of illness;
 - (b) Severity of symptoms and prognosis;
 - (c) Complications or comorbid conditions, or both;
 - (d) Treatment and medications, including effects and side effects, and the person's knowledge and use of medications;
 - (e) Results of medical tests and reports of laboratory findings;
 - (f) Medical reports of licensed physicians and licensed medical and rehabilitation specialists[Physician's medical report];
 - (g) Recommendations of licensed physicians and licensed medical and rehabilitation specialists[Physician's Recommendations] with regard to functional impairment; and
 - (h) Identification[Physicians' identification] of risk factors as identified by licensed physicians and licensed medical and rehabilitation specialists[;]

- (2) Reports of driver condition or behavior;
- (3) The results of any driving evaluation of the person;
- (4) Substance abuse assessment reports from a licensed

treatment facility, certified chemical dependency counselor, or certified driving under the influence (DUI) assessor;

(5) Traffic accidents with a police report or citation that could[may] have been caused in whole or in part by a medical condition;[(6) Vision specialist's report;]

(6)(7) A person's failure to provide requested information to the department; or

(7)(8) A report from a licensed physician, including vision specialists, or other licensed medical and rehabilitation specialists, including rehabilitation specialists, advanced practice registered nurses, physician assistants, psychologists, physical therapists, occupational therapists, chiropractors, or social workers[rehabilitation specialist].

Section 4. Conditions Affecting Cardiovascular Function. (1) With respect to conditions affecting cardiovascular function, the Medical Review Board, if making recommendations, and the department, if taking licensing action, may consider disorders, including[the following]:

- (a) Cardiac dysfunction;
 - (b) Arrhythmias; and
 - (c) Other cardiac or circulatory disorder or dysfunction.
- (2) The department or the Medical Review Board may require a person to provide information on the person's cardiovascular functional abilities and disorders.
- (3) A motor vehicle operator's license shall not be issued to, renewed by, or held by a person who does not meet the applicable medical review standards for conditions affecting cardiovascular function of this subsection, and a person who applies for, renews, or holds a motor vehicle operator's license shall meet all of the [following] cardiovascular function criteria:
- (a) There shall not be current symptoms of coronary artery disease, such as unstable angina, dyspnea, or pain at rest, which interfere with safe driving;
 - (b) There shall not be a cause of cardiac syncope present, including ventricular tachycardia or fibrillation, which is not successfully controlled;
 - (c) There shall not be congestive heart failure that limits functional ability;
 - (d) There shall not be cardiac rhythm disturbances if [which are] not successfully controlled;
 - (e) There shall not be an automatic implantable cardioverter defibrillator, unless the device is assessed by an electrophysiologist as not interfering with safe driving;
 - (f) There shall not be medications interfering with safe driving; and
 - (g) There shall not be valvular heart disease or malfunction of prosthetic valves that interferes with safe driving.

Section 5. Conditions Affecting Cerebrovascular Function. (1) With respect to conditions affecting cerebrovascular function, the Medical Review Board, if making recommendations, and the department, if taking licensing action, may consider disorders, including[the following]:

- (a) Cerebrovascular accident; and
 - (b) Other cerebrovascular disorder or dysfunction.
- (2) The department or Medical Review Board may require information on a person's central nervous system functional abilities and disorders.
- (3) A motor vehicle operator's license shall not be issued to, renewed by, or held by a person who does not meet the applicable medical review standards for conditions affecting cerebrovascular functions of this subsection, and a person who applies for, renews, or holds a motor vehicle operator's license shall meet all of the [following] cerebrovascular function criteria:
- (a) There shall not be a sensori-motor deficit preventing safe driving;
 - (b) There shall not be impairment of reasoning or judgement preventing safe operation of a vehicle; and
 - (c) There shall not be medications interfering with the person's ability to operate a motor vehicle safely.

Section 6. Conditions Affecting Endocrine Function. (1) With respect to conditions affecting endocrine function, the Medical

Review Board, if making recommendations, and the department, if taking licensing action, may consider disorders, including the following]:

- (a) Diabetes mellitus; and
- (b) Other endocrine disorder or dysfunction.

(2) The department or Medical Review Board may require information on a person's endocrine functional abilities and disorders.

(3) A motor vehicle operator's license shall not be issued to, renewed by, or held by a person who does not meet the applicable medical review standards for conditions affecting endocrine functions of this subsection, and a person who applies for, renews, or holds a motor vehicle operator's license shall meet all of the following] endocrine function criteria:

- (a) There shall not be diabetic neuropathy, retinopathy, or other complication that[which] interferes with safe driving;
- (b) There shall not be frequent and functionally impaired hypoglycemic reactions; and
- (c) There shall not be evidence of use of alcohol or other drugs to an extent that interfere with the person's prescribed treatment program for the condition.

Section 7. Conditions Affecting Musculoskeletal Function. (1) With respect to conditions affecting musculoskeletal function, the Medical Review Board, if making recommendations, and the department, if taking licensing action, may consider disorders, including the following]:

- (a) Rheumatoid arthritis;
- (b) Paralysis; and
- (c) Other musculoskeletal disorder or dysfunction.

(2) The department or Medical Review Board may require information on a person's musculoskeletal functional abilities and disorders.

(3) A motor vehicle operator's license shall not be issued to, renewed by, or held by a person who does not meet the applicable medical review standards for conditions affecting musculoskeletal function of this subsection, and a person who applies for, renews, or holds a motor vehicle operator's license shall meet of the following] musculoskeletal function criteria:

- (a) Pain shall not interfere with the person's ability to safely operate a motor vehicle;
- (b) The person's operation of a vehicle in a driving evaluation demonstrates adequate compensation for any weakness or limitations in range of motion or mobility; and
- (c) There shall not be effects or side effects of medication interfering with safe driving.

Section 8. Conditions Affecting Neurological or Neuromuscular Function. (1) With respect to conditions affecting neurological or neuromuscular function, the Medical Review Board, [review board] if making recommendations, and the department, if taking licensing action, may consider disorders, including the following]:

- (a) Central nervous system diseases or disorders;
- (b) Demyelinating diseases;
- (c) Muscular diseases or disorders; and
- (d) Seizure disorders.

(2) The department or Medical Review Board may require information on neurological or neuromuscular functional abilities, instances of altered consciousness or loss of bodily control, or disorders.

(3) A motor vehicle operator's license shall not be issued to, renewed by, or held by a person who does not meet the medical review standards for conditions affecting neurological or neuromuscular function of this subsection, and a person who applies for, renews, or holds for motor vehicle operator's license shall meet all of the neurological and[following] neuromuscular function criteria:

- (a) There shall not have been a seizure episode as set forth in KRS 186.411;
- (b) The person adequately compensates for any paralysis or sensory deficit when operating a vehicle;
- (c) Fatigue, weakness, muscle spasm or tremor at rest does not impair safe driving;
- (d) There shall not be effects of or side effects of medication

that interferes with safe driving; and

- (e) There shall not be a decline in cognition to an extent that interferes with safe driving.

Section 9. Conditions Affecting Psychosocial, Mental, or Emotional Function. (1) With respect to conditions affecting psychosocial, mental, or emotional function, the Medical Review Board, [review board] if making recommendations, and the department, if taking licensing action, may consider disorders, including the following]:

- (a) Substance and alcohol abuse; and
- (b) Other mental or emotional disorder or dysfunction.

(2) The department or Medical Review Board may require information on mental or emotional functional abilities and disorders.

(3) A motor vehicle operator's license shall not be issued to, renewed by, or held by a person who does not meet the medical review standards for conditions affecting mental and emotional function of this subsection, and a person who applies for, renews, or holds any classification of operator's license shall meet all of the psychosocial, [following] mental, and emotional function criteria:

- (a) There shall not be dementia that is unresponsive to treatment or that interferes with safe driving;
- (b) There shall not be a behavior disorder with threatening or assaultive behavior that interferes with safe driving[at the time of application];
- (c) There shall not be a delusional system that[which] interferes with safe driving;
- (d) There shall not be a suicidal tendency;
- (e) There shall not be an impairment of judgment[judgement] that interferes with safe driving;
- (f) There shall not be an active psychosis that interferes with safe driving; and
- (g) There shall not be effects or side effects of medication that interferes with safe driving.

Section 10. Conditions Affecting Respiratory Function. (1) With respect to conditions affecting respiratory function, the Medical Review Board, [review board] if making recommendations, and the department, if taking licensing action, may consider disorders, including the following]:

- (a) Chronic obstructive pulmonary diseases; and
- (b) Any other respiratory disorder or dysfunction.

(2) The department or Medical Review Board may require information on respiratory functional abilities and disorders.

(3) A motor vehicle operator's license shall not be issued to, renewed by, or held by a person who does not meet the medical review standards for conditions affecting respiratory function of the subsection, and a person who applied for, renews, or holds a motor vehicle operator's license shall meet all of the following] respiratory function criteria:

- (a) The person does not require medication that interferes with safe driving; and
- (b) There shall not be dyspnea that interferes with safe driving.

Section 11. Conditions Affecting Vision and Sensory Function. (1) With respect to conditions affecting vision and sensory function, the Medical Review Board, [review board] if making recommendations, and the department, if taking licensing action, may consider conditions, including the following]:

- (a) Vision loss; and
- (b) Any other ocular or sensory disorder or dysfunction.

(2) The department or Medical Review Board may, pursuant to this administrative regulation and 601 KAR 13:090, require information on ocular and sensory functional abilities and disorders.

(3) A motor vehicle operator's license shall not be issued to, renewed by, or held by a person who does not meet the medical review standards for conditions affecting vision and sensory functions of this subsection, and a person who applies for, renews, or holds any classification of operator's license shall meet all of the following] criteria established in paragraphs (a) and (b) of this subsection for visual acuity and visual fields.[:]

- (a) Visual Acuity. Persons with visual acuity of 20/60, best

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corrected, or better and visual fields in satisfaction of subparagraph (b) of this subsection shall be eligible for an operator's license.

1. Persons with visual acuity 20/40 or better without corrective lenses shall not have a restriction mandating the use of corrective lenses added to that person's driving privilege.

2. Persons with visual acuity of 20/40 or better with corrective lenses shall have a restriction mandating the use of corrective lenses added to that person's driving privilege.

3. Persons with visual acuity of 20/41, best corrected, in at least one (1) eye with a single lens system, but no worse than 20/60, best corrected, in at least one (1) eye with a single lens system, shall have a restriction pursuant to Section 12 of this administrative regulation added to that person's driving privilege.

4. Persons with visual acuity of 20/61, best corrected, in at least one (1) eye with a single lens system shall not be eligible to test for an operator's license pursuant to KRS 186.577 and a motor vehicle operator's license shall not be issued to, renewed by, or held by a person with visual acuity of 20/61, best corrected. [Visual acuity of at least 20/60 or better in at least one (1) eye with single lens system; and]

(b) Visual Fields. Persons with a horizontal [Binocular horizontal] field of vision in the person's better eye of at least thirty-five (35) degrees to the left and right side of fixation and a [binocular] vertical field of vision in the person's better eye of at least twenty-five (25) degrees above and below fixation shall be eligible for an operator's license.

1. Visual fields tests required by the department shall be administered by way of a 120-point screening test on an automatic visual fields device.

2. Visual fields test results with over one-third of false positive, false negative, or fixation losses shall be considered unreliable and non-responsive to the department's visual fields test requirement.

(4) A motor vehicle operator's license shall not be issued to, renewed by, or held by a person that has a documented hemianopia.

Section 12. License Restrictions. (1) The department may restrict a person's operating privilege based on ~~any of the following~~:

(a) A recommendation of a licensed physician or vision specialist;

(b) The results of a driving examination or evaluation performed by the Kentucky State Police or a rehabilitation specialist or facility; or

(c) Recommendation of the Medical Review Board.

(2) License restrictions may require a person to:

(a) Wear corrective lenses;

(b) Use special equipment or specially equipped vehicles;

(c) Operate only during daylight hours;

(d) Not operate a vehicle in inclement weather causing decreased visibility;

(e) Restrict the driving area; [or]

(f) [(e)] Restrict the maximum speed limit; or

(g) Restrict the motor vehicle operating privilege in any other manner which the department deems necessary for safety purposes.

GREG THOMAS, Secretary

MATTHEW D. HENDERSON, Commissioner

P. KEVIN MOORE, Executive Director & General Counsel

APPROVED BY AGENCY: June 14, 2019

FILED WITH LRC: June 14, 2019 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 22, 2019, at 10:00 a.m. local time at the Transportation Cabinet, Transportation Cabinet Building, Hearing Room C121, 200 Mero Street, Frankfort, Kentucky 40622. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirement five (5) working days prior to the hearing. This request does not have to be in writing. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing

is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through July 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: P. Kevin Moore, Executive Director & General Counsel, Transportation Cabinet, Office of Legal Services, 200 Mero Street, Frankfort, Kentucky 40622, phone (502) 564-7650, fax (502) 564-5238, email Kevin.Moore@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

CONTACT PERSON: P. Kevin Moore

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the medical standards that must be achieved and maintained by individuals seeking to hold a driver's license.

(b) The necessity of this administrative regulation: This administrative regulation provides the medical standards that the cabinet and the medical review board will utilize in making the decision to withhold driving privileges from an individual on the basis of a medical or physical condition.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 186.570 requires the cabinet to withhold driving privileges from an individual with a mental or physical condition that would make it unsafe for that individual to operate a motor vehicle. KRS 186.411 and KRS 186.440 both require that the cabinet not provide a driver license to an individual who has not been free of seizures for ninety (90) days. This administrative regulation provides the medical standards that the cabinet and the medical review board will utilize in making the decision to withhold driving privileges from an individual on the basis of a medical or physical condition.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This amended administrative regulation updates the medical standards used by the medical review board in making recommendations to the commissioner about an individual's ability to operate a motor vehicle. This administrative regulation has not been updated since 1996.

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

(a) How the amendment will change this existing administrative regulation: updates information to be considered in licensing actions; provides more specific visual acuity and visual fields standards, including testing devices and a reliability standard for visual fields tests; enumerates additional available restrictions.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation is necessary to inform the public of the most current medical standards utilized by the medical review board and the Department of Vehicle Regulation when reviewing cases before the medical review board.

(c) How the amendment conforms to the content of the authorizing statutes: The establishment and implementation of the medical review board is required by KRS 186.411, 186.440, 186.444, and 186.570 in order to review cases referred to the department for license suspension as a result of a mental or physical disability. This amended administrative regulation informs the public about the updated medical standards that are used by the medical review board and the department.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will update the administrative regulation and inform individuals of the most current medical standards considered by the medical review board.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects individuals who may have a medical condition, either mental or physical. This administrative regulation affects licensed

physicians, individuals in the medical field, and persons working in rehabilitation services. This administrative regulation affects businesses doing evaluations of individuals with medical conditions that might impact driving and medical practices with patients who may have difficulty operating a vehicle. This administrative regulation impacts county clerks, police agencies, the Cabinet for Health and Family Services, and the Transportation Cabinet's Division of Driver Licensing.

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

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

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no costs or fees as a result of this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment will improve the safety of the traveling public and inform the public about medical standards.

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

(a) Initially: There are no costs associated with this amendment.

(b) On a continuing basis: There are no continuing costs associated with these amendments.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is necessary.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: Fees are not established by this administrative regulation.

(9) TIERING: Is tiering applied? Tiering is not applied. All individuals seeking to obtain and maintain a driver license are subject to the same scrutiny and regulations.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Division of Driver Licensing in the Kentucky Transportation Cabinet; the Cabinet for Health and Family Services; police agencies; county clerks.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 186.411, KRS 186.440, KRS 186.444, KRS 186.570.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This amendment will not affect 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? This administrative regulation is not expected to generate revenue.

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

(c) How much will it cost to administer this program for the first year? There will not be any costs.

(d) How much will it cost to administer this program for subsequent years? There will not be any costs.

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

Revenues (+/-):

Expenditure (+/-):
Other Explanation:

**TRANSPORTATION CABINET
Department of Highways
Division of Maintenance
(Amendment)**

603 KAR 5:150. Encroachment permits.

RELATES TO: KRS 176.050(1)(i), 177.047, 177.103, 177.106
STATUTORY AUTHORITY: KRS 176.050(1)(i), 177.047, 177.106

NECESSITY, FUNCTION, AND CONFORMITY: KRS 176.050(1)(i) requires the Department of Highways to promulgate administrative regulations for the care and maintenance of roads after they have been constructed. KRS 177.047 requires that any person who intends to lay conduit, pipes, poles or wires over or under a city street that is part of the state-maintained system of highways do so in accordance with administrative regulations of the Department of Highways. KRS 177.106 requires any person to obtain a permit for any encroachment to the right-of-way of any state highway. This administrative regulation provides the policies and procedures in maintenance of highways to allow encroachments onto a highway or right-of-way.

Section 1. Incorporation by Reference. (1) Kentucky Transportation Cabinet, Permits Manual, as revised and effective May 2, 2019 [~~"Kentucky Transportation Cabinet Permits Manual", Chapters PE-100 through PE-990 as revised and effective September 22, 1999, Revision No. 04]~~ is incorporated by reference.

(2) This material may be inspected, copied, or obtained subject to applicable copyright law Monday through Friday between 8 a.m. and 4:30 p.m. at:

(a) Kentucky Transportation Cabinet, Office of Human Resource Management, Organizational Management Branch[~~Office of Policy and Budget, Policy and Procedures Branch, Transportation Cabinet, State Office Building~~], Frankfort, Kentucky 40622;

(b) Kentucky Transportation Cabinet, Division of Maintenance, Permits Branch, 200 Mero Street, 3rd Floor East[~~Division of Traffic, State Office Building~~], Frankfort, Kentucky 40622; or

(c) Any of the twelve (12) highway district offices.

GREG THOMAS, Secretary
ANDY BARBER, P.E., State Highway Engineer
P. KEVIN MOORE, Office of Legal Services

APPROVED BY AGENCY: June 13, 2019

FILED WITH LRC: June 14, 2019 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 22, 2019 at 12:00 p.m. local time at the Transportation Cabinet, Transportation Cabinet Building, Hearing Room C121, 200 Mero Street, Frankfort, Kentucky 40622. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing, of their intent to attend. If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirement five working days prior to the hearing. This request does not have to be in writing. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through July 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: P. Kevin Moore, Executive Director, Transportation Cabinet, Office of Legal Services, 200 Mero Street,

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Frankfort, Kentucky 40622, phone (502) 564-7650, fax (502) 564-5238, email kevin.moore@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: P. Kevin Moore

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the guidelines and requirements of obtaining an encroachment permit onto the Department of Highways right-of-way.

(b) The necessity of this administrative regulation: This administrative regulation is required by KRS 176.050(1)(i).

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation conforms to KRS 176.050(1)(i) by providing the requirements for encroachment permits.

(d) How this administrative regulation currently assists or will assist in the effective administrative of the statute: This administrative regulation will establish the regulatory requirements of 176.050(1)(i).

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

(a) How the amendment will change this existing regulation: By providing updates to the Incorporation by Reference section that are currently outdated.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to provide updates to the Incorporation by Reference section that are currently outdated.

(c) How the amendment conforms to the content of the authorizing statutes: This regulation conforms to KRS 176.050(1)(i) by providing the requirements for encroachment permits.

(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 providing updates to the Incorporation by Reference section that are currently outdated.

(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 Transportation Cabinet, Department of Highways, Division of Maintenance, Permits Branch along with all individuals and businesses intending to apply for an encroachment permit.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Each of the regulated entities will have to comply with the updated Permits Manual.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no additional costs or fees as a result of this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The Department of Highways, individuals, and businesses will now have up-to-day information in the Incorporation by Reference Section.

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

(a) Initially: There are no additional costs associated with this amendment.

(b) On a continuing basis: There are no continuing costs associated with this amendment.

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

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are established, increased, or decreased by this

administrative regulation.

(9) TIERING: Is tiering applied? No, all encroachment permit applicants 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? KYTC Department of Highways, Division of Maintenance

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 176.050(1)(i), 177.047, 177.106

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There will be no effect on the expenditures and revenues.

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

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

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

(d) How much will it cost to administer this program for subsequent years? No change in costs are expected 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 (+/-): No revenues will be generated by this program.

Expenditures (+/-): No expenditures are expected by this program.

Other Explanation:

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Kentucky Board of Education
Department of Education
(Amendment)

701 KAR 5:090. Teacher disciplinary hearings.

RELATES TO: KRS 161.770, 161.790

STATUTORY AUTHORITY: KRS 156.070, 161.790(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.790(4) and KRS 161.770 requires the commissioner of education to appoint an impartial three (3) member tribunal to conduct an administrative hearing and make the final determination on charges concerning a local school district's proposal to discipline or place on involuntary leave a teacher if the teacher gives timely notice of his or her intent to answer the charges. This administrative regulation establishes administrative and hearing procedures with respect to the tribunal process and identifies the required training for tribunal members designated to serve as tribunal members on an ongoing basis.

Section 1. Notification of Discipline or Involuntary Leave. A local school district superintendent proposing to discipline a teacher pursuant to KRS 161.790 other than private reprimand, or place a teacher on involuntary leave pursuant to KRS 161.770[(except for a private reprimand) or place on involuntary leave a teacher] shall immediately, after notice to the employee, transmit a copy of the notice of the action to the commissioner of education, along with advice as to the date of the receipt of the notice by the employee.

Section 2. Hearing Officer Qualifications. (1) Upon notification

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from a teacher pursuant to KRS 161.790(3) of the teacher's intention to answer the charges against the teacher, the commissioner shall appoint a hearing officer in accordance with KRS 161.790(4) who meets the following qualifications:

(a) The hearing officer shall be an attorney licensed to practice law in the Commonwealth of Kentucky and in good standing with the Kentucky Bar Association;

(b) The hearing officer shall complete biennial training as approved by the Kentucky Department of Education related to the employment of teachers;

(c) The hearing officer shall complete biennial training as approved by the Kentucky Department of Education related to the professional code of ethics for Kentucky school certified personnel set forth in 16 KAR 1:020; and

(d) The hearing officer shall meet the training requirements set forth in 40 KAR 5:010.~~Continuances. (1)(a) If, after a requested hearing has been scheduled by the commissioner of education or his designee, a continuance is requested by the teacher, the teacher shall specifically and in writing waive the statutory hearing deadlines and any subsequent backpay award for the period of the requested continuance. A continuance initiated by the teacher shall not be granted without the appropriate waiver.~~

~~(b) If the continuance request was initiated by the school district, a waiver shall not be required. (2) A continuance requested by the teacher may be granted for good cause shown, including pending criminal charges making it inadvisable for the employee to testify at an administrative hearing or late entry of an attorney into the case on behalf of the employee.~~

~~(3) A continuance requested by the school district, and not agreed to by the employee, may be granted upon documentation of an emergency or other circumstance making it impossible or prejudicially impractical for the district to adequately present its case at the scheduled hearing. (4) A request for continuance made prior to the three (3) member tribunal convening shall be submitted in writing to the hearing officer.]~~

Section 3. Teacher and Administrator Tribunal Member Qualifications. (1) Beginning in 2019 and every four (4) years thereafter, the Kentucky Department of Education shall solicit applications to establish a pool of potential teacher or administrator tribunal members. Individuals who wish to be considered for the pool of potential teacher or administrator tribunal members shall apply using the Teacher and Administrator Tribunal Member Application. The Kentucky Department of Education shall select no more than twenty (20) potential teacher tribunal members for the pool using procedures developed by the Kentucky Department of Education for the receipt, review, and selection of applicants. The Kentucky Department of Education shall select no more than twenty (20) potential administrator tribunal members for the pool using procedures developed by the Kentucky Department of Education for the receipt, review, and selection of applicants.

(2) To be a member of the pool of potential teacher tribunal members designated to serve as a teacher tribunal member on an ongoing basis, a person shall:

(a) Hold a valid teaching certificate issued by the Education Professional Standards Board and be in good standing; or

(b) Be retired and have held a teaching certificate issued by the Education Professional Standards Board that was not revoked or surrendered as a result of revocation proceedings.

(3) To be a member of the pool of potential administrator tribunal members designated to serve as an administrator tribunal member on an ongoing basis, a person shall:

(a) Hold a valid teaching certificate for the performance of administrative duties issued by the Education Professional Standards Board and be in good standing; or

(b) Be retired and have held a teaching certificate for the performance of administrative duties issued by the Education Professional Standards Board that was not revoked or surrendered as a result of revocation proceedings.

(4) Individuals selected for the pool of potential teacher or administrator tribunal members designated to serve as a teacher or administrator tribunal member on an ongoing basis, a person shall complete training approved by the Kentucky Department of Education on the

following topics at least once every four (4) years:

(a) The hearing process;

(b) The role of the tribunal;

(c) The role of the hearing officer;

(d) How to determine facts;

(e) Fundamental fairness;

(f) The law on teacher disciplinary actions set forth at [KRS 161.790];

(g) The professional code of ethics for Kentucky school certified personnel set forth in 16 KAR 1:020; and

(h) The deliberative process.

(2) For attending training approved by the Kentucky Department of Education required to be a member of the pool of potential teacher or administrator tribunal members, a person shall receive a per diem of \$100 and reimbursement of travel expenses from the Department of Education.

Section 4. Expense Reimbursement. (1) The local school district shall pay all travel expenses of the hearing officer tribunal member in accordance with 200 KAR 2:006.

(2) No later than the convening of the hearing, the local school district shall advise the teacher and administrator tribunal members how to claim their per diem and travel expenses.

Section 5. Conduct of Hearing. (1) A hearing before the tribunal shall be conducted in accordance with KRS Chapter 13B.

(2) The tribunal shall be presented with the notification described in Section 1 which sets forth the charges for discipline or involuntary leave.

(3) The hearing officer shall instruct the tribunal regarding the burden of proof, including which party bears the burden of proof.

(4) If, for any reason and after testimony has commenced, a tribunal member becomes unavailable to complete the hearing of the evidence of both parties, an appropriate substitute tribunal member shall be appointed by the commissioner of education and provided by the school district with a written transcript of all prior proceedings at the hearing unless waived under subsection (2) of this section.

(2) A hearing may be concluded and a decision rendered by a two (2) member tribunal upon express agreement of both parties so long as one (1) of the two (2) tribunal members is a hearing officer member in accordance with Section 2 of this administrative regulation.

Section 6. Continuances. (1)(a) If, after a requested hearing has been scheduled by the commissioner of education or his designee, a continuance is requested by the teacher, the teacher shall specifically and in writing waive the statutory hearing deadlines and any subsequent backpay award for the period of the requested continuance. A continuance initiated by the teacher shall not be granted without the appropriate waiver.

(b) If the continuance request was initiated by the school district, a waiver shall not be required.

(2) A continuance requested by the teacher may be granted for good cause shown, including pending criminal charges making it inadvisable for the employee to testify at an administrative hearing or late entry of an attorney into the case on behalf of the employee.

(3) A continuance requested by the school district, and not agreed to by the employee, may be granted upon documentation of good cause making it impossible or prejudicially impractical for the district to adequately present its case at the scheduled hearing.

(4) A request for continuance made prior to the three (3) member tribunal convening shall be submitted in writing to the hearing officer.

Section 7. Incorporation by Reference. (1) The "Teacher and Administrator Tribunal Member Application", June 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 a.m. to 4:30 p.m.

This is to certify that the chief state school officer has reviewed

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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 of Education
HAL HEINER, Chairperson

APPROVED BY AGENCY: June 13, 2019

FILED WITH LRC: June 14, 2019 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 29, 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. The public hearing will be audio recorded. Pursuant to KRS 13A.270, a transcript of the public hearing will not be made unless a written request for a transcript is made and payment for the transcript is made by the requestor. 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 July 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 administrative regulation establishes procedures for the selection and training of teacher tribunal members, as well as procedures for teacher tribunal hearings, as required by KRS 161.790.

(b) The necessity of this administrative regulation: KRS 161.790 requires the Kentucky Board of Education to promulgate administrative regulations for the selection of teacher and administrator tribunal members, and to implement the due process provisions required by KRS 161.790.

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation sets forth the process for notifying the Kentucky Department of Education (KDE) of teacher disciplinary actions pursuant to KRS 161.790, the procedures for selection and training of hearing officers and tribunal members, and procedures for the conduct of tribunal hearings consistent with KRS 161.790 and KRS Chapter 13B.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides specific details for how a school district should notify KDE of teacher disciplinary action pursuant to KRS 161.790, the qualifications required of hearing officers and tribunal members consistent with KRS 161.790, the training required of hearing officers and tribunal members to participate in a teacher tribunal hearing, how hearing officers and tribunal members will be selected by KDE to participate in teacher tribunal hearings, details guiding the conduct of a teacher tribunal hearing, and how tribunal members are to be reimbursed for expenses.

(2) If 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 sets forth specific qualifications and training requirements for the hearing officer presiding over the tribunal hearing who, as a result of Senate Bill 8 of 2019 (SB 8), now serves as a voting tribunal member. The amendment also sets forth a process for regularly seeking applications of and selecting a limited pool teachers and school administrators to serve as tribunal members, including incorporation of the application by reference. The amendment requires training at regular intervals and adds

training on the professional code of ethics for Kentucky certified personnel as a training topic. The amendment requires that tribunal members be presented with a copy of the charges supporting disciplinary action and that they be instructed regarding the burden or proof. The amendment makes various technical edits to add clarity and conform with changes to KRS 161.790 as a result of SB 8.

(b) The necessity of the amendment to this administrative regulation: SB 8 amended KRS 161.790 to remove the lay person member of teacher tribunals and require that the tribunal chair be an attorney and hearing officer. The SB 8 amendments set forth qualifications for the attorney member of the tribunal, but also require the attorney member to possess any other qualifications determined necessary by the Kentucky Board of Education. Amendments to KRS 161.790 specifically require the Kentucky Board of Education to promulgate administrative regulations to implement due process provisions required by KRS 161.790. Amendment to this administrative regulation is necessary to comply and align with SB 8.

(c) How the amendment conforms to the content of the authorizing statute: The amendment sets forth details for carrying out the requirements of KRS 161.790. The regulation amendment sets forth specific qualifications and training requirements for the hearing officer presiding over the tribunal hearing who, as a result of SB 8, now serves as a voting tribunal member. The amendment also sets forth a process for regularly seeking applications of and selecting a limited pool teachers and school administrators to serve as tribunal members, including incorporation of the application by reference. The amendment requires training at regular intervals and adds training on the professional code of ethics for Kentucky certified personnel as a training topic. The amendment requires that tribunal members be presented with a copy of the charges supporting disciplinary action and that they be instructed regarding the burden or proof. The amendment makes various technical edits to add clarity and conform with changes to KRS 161.790 as a result of SB 8.

(d) How the amendment will assist in the effective administration of the statutes: This amendment provides details for carrying out the requirements of KRS 161.790 and aligns the regulation to SB 8. The amendment provides the specific qualifications and training requirements for tribunal members and sets forth due process requirements to assist in the effective administration of tribunal hearings.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Kentucky public school districts, public school teachers subject to disciplinary action in KRS 161.790, tribunal members, and 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: Most substantive changes are the result of SB 8, not amendment to this regulation. Tribunal members will have to comply with the application, qualification, and training requirements set forth in the regulation in order to be called to serve at teacher tribunal hearings. Tribunal members will be required to undergo training on the professional code of ethics for Kentucky certified personnel as a result of amendment to this regulation. Public school districts will have to comply with the due process requirements set forth in the regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Public school districts will be responsible for the payment of fees and applicable travel expenses of the tribunal members. However, these costs are anticipated to decrease slightly as a result of SB 8's removal of the lay person from the tribunal. KDE will be responsible for fees and applicable travel expenses for training teacher and administrator tribunal members. However, these costs are anticipated to decrease slightly as a result of establishing a maximum number of potential teacher and administrator tribunal members.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliance with the amendment to this regulation will ensure effective implementation of SB 8. Teachers subject to disciplinary action in KRS 161.790 will receive an administrative hearing and due process related to disciplinary action. Tribunal members will know and understand the qualifications as well as training requirements to serve as tribunal members. KDE will maintain and train a smaller pool of teacher and administrator tribunal members in order to reduce training costs.

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

(a) Initially: KDE currently utilizes staff time to administer the teacher tribunal process. There is no immediate cost to implement this amendment.

(b) On a continuing basis: KDE will experience a slight reduction in tribunal member training expenses as a result of limiting the pool of potential members. Fewer tribunal members will be paid fees and travel expenses for ongoing training.

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

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

(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? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all teachers, school districts, and potential hearing officers.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What 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 school districts.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 161.790

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

(a) How much 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? Public school districts should experience a slight decrease in costs as a result of this amendment. Historically teacher tribunals were made up of a teacher, administrator, and lay person. A hearing officer presided over the tribunal. Pursuant to SB 8, the lay person is removed from the tribunal so public school districts will experience a cost savings in no longer pay the fees and travel for a lay person to sit on the tribunal. KDE will experience a slight reduction in tribunal member training expenses as a result of limiting the pool of potential members. Fewer tribunal members will be paid fees and travel expenses for ongoing training.

(d) How much will it cost to administer this program for subsequent years? Public school districts should experience a slight decrease in costs as a result of this amendment. Historically teacher tribunals were made up of a teacher, administrator, and lay person. A hearing officer presided over the tribunal. Pursuant to SB 8, the lay person is removed from the tribunal so public school districts will experience a cost savings in no longer pay the fees

and travel for a lay person to sit on the tribunal. KDE will experience a slight reduction in tribunal member training expenses as a result of limiting the pool of potential members. Fewer tribunal members will be paid fees and travel expenses for ongoing training.

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 (+/-): Public school districts should experience a slight decrease in costs as a result of this amendment. Historically teacher tribunals were made up of a teacher, administrator, and lay person. A hearing officer presided over the tribunal. Pursuant to SB 8, the lay person is removed from the tribunal so public school districts will experience a cost savings in no longer pay the fees and travel for a lay person to sit on the tribunal. KDE will experience a slight reduction in tribunal member training expenses as a result of limiting the pool of potential members. Fewer tribunal members will be paid fees and travel expenses for ongoing training.

Other Explanation: N/A

EDUCATION AND WORKFORCE DEVELOPMENT CABINET Kentucky Board of Education Department of Education (Amendment)

702 KAR 3:130. Internal accounting.

RELATES TO: KRS Chapter 45A, 61.410, 66.480, 156.029, 156.076, 156.160, 156.200, 158.290, Chapter 160, 161.540, 161.560, 342.640, 424.260

STATUTORY AUTHORITY: KRS 156.070, 156.160

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.070(1) gives the Kentucky Board of Education the management and control of the common schools. KRS 156.200 requires the Kentucky Board of Education to regulate accounting procedures and reports of local school districts. This administrative regulation establishes uniform procedures for the accounting of school activity funds.

Section 1. Definition. "Activity funds" means all school funds including funds derived from fundraising activities sponsored under the auspices of the school and does not mean funds raised or received by organizations which do not come under the direct supervision of school authorities.

Section 2. District Responsibilities. (1) A district board of education shall have the responsibility for administration and control of all activity funds and comply with "Accounting Procedures for Kentucky School Activity Funds", which is also known as the "Redbook".

(2)(a)~~The August 2007 edition of the Redbook shall be used until June 30, 2013.~~

~~(b)] The March 2013 edition of the Redbook shall be used through July 31, 2019[beginning July 1, 2013].~~

(b) The August 2019 edition of the Redbook shall be used beginning on August 1, 2019.

Section 3. Audits. (1) Activity fund internal accounts shall be audited annually by a certified public accountant, and a report shall be made to the district board of education.

(2) Audit reports shall be reviewed and accepted by the local board of education, and appropriate action taken.

(3) Recommendations and exceptions listed in the audit shall be reviewed by staff of the Department of Education.

(4) A copy of the school audit report shall be on file in both the office of the principal and the office of the superintendent of the local school district. It shall be open for public inspection in both locations.

Section 4. Incorporation by Reference. (1) "Accounting Procedures for Kentucky School Activity Funds", August

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~~2019~~~~[March 2013]~~, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Education, Division of District Support, 300 Sower Boulevard, 4th Floor~~[15th Floor, Capital Plaza Tower, 500 Mero Street]~~, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.

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

WAYNE D. LEWIS, Ph.D., Commissioner
HAL HEINER, Chairperson

APPROVED BY AGENCY: June 13, 2019

FILED WITH LRC: June 14, 2019 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 29, 2019 at 10:00 am, in the State Board Room, Fifth Floor, 300 Sower Boulevard, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through July 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 administrative regulation amendment makes necessary updates to the Accounting Procedures for Kentucky School Activity Funds (aka "Redbook") which establishes a uniform accounting method for the receipt and expenditure of school activity fund monies. The Redbook was last updated in 2013.

(b) The necessity of this administrative regulation: Since the last amendment of this regulation in 2013, Kentucky Department of Education staff, school district finance officers and school district auditors have identified necessary changes to accounting and reporting processes, as well as best practices, that have been incorporated into the amendment.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 156.070 charges the Kentucky Board of Education with the management and control of all common schools, and requires the state board to promulgate administrative regulations for the efficient management and control of the schools. KRS 156.200 requires the Commissioner of Education to ensure that all school district financial and educational accounts are accurately and neatly kept. This regulation establishes uniform policies and procedures for the proper accounting of school activity funds.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 156.070 charges the Kentucky Board of Education with the management and control of all common schools, and requires the state board to promulgate administrative regulations for the efficient management and control of those schools. KRS 156.200 requires the Commissioner of Education to ensure that all school district financial and educational accounts are accurately and neatly kept. This administrative regulation sets forth uniform accounting procedures to ensure all school districts handle school activity

funds properly and in accordance with accounting standards.

(2) If 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 regulation amendment updates the Accounting Procedures for Kentucky School Activity Funds also known as the "Redbook" which districts use for the proper reporting of revenue and expenditures related to school activity funds.

(b) The necessity of the amendment to this administrative regulation: The Redbook has not been updated since 2013 and over time auditors and school districts have identified accounting and reporting issues and best practices that are included in the updated edition.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 156.070 charges the Kentucky Board of Education with the management and control of all common schools, and requires the state board to promulgate administrative regulations for the efficient management and control of those schools. KRS 156.200 requires the Commissioner of Education to ensure that all school district financial and educational accounts are accurately and neatly kept. This administrative regulation sets forth uniform accounting procedures to ensure all school districts handle school activity funds properly and in accordance with accounting standards.

(d) How the amendment will assist in the effective administration of the statutes: KRS 156.070 charges the Kentucky Board of Education with the management and control of all common schools, and requires the state board to promulgate administrative regulations for the efficient management and control of those schools. KRS 156.200 requires the Commissioner of Education to ensure that all school district financial and educational accounts are accurately and neatly kept. This administrative regulation sets forth uniform accounting procedures to ensure all school districts handle school activity funds properly and in accordance with accounting standards.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The amendment updates the Accounting Procedures for Kentucky School Activity Funds or the "Redbook" as it is commonly known, and will impact all 173 Kentucky school districts.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Training on accounting procedures is currently provided to local school districts by the Kentucky Department of Education. The department will update the existing training to include any new requirements or changes accordingly.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment is not expected to have a fiscal impact on school districts. Training on accounting procedures is currently provided to local school districts by the Kentucky Department of Education. The department will update the existing training to include any new requirements or changes accordingly.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment provides for a uniform set of accounting procedures for local school districts to report the receipt and expenditure of school activity funds. This ensures that all funds are accurately accounted for according to acceptable accounting standards. This regulation promotes good policies and procedures and protects school funds and school personnel.

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

(a) Initially: Any costs should be minimal and related to staff time in attending trainings. The Kentucky Department of Education provides training to local school district personnel on accounting procedures for school activity funds.

(b) On a continuing basis: Any costs should be minimal and related to staff time in attending trainings. The Kentucky

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Department of Education provides training to local school district personnel on accounting procedures for school activity funds.

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

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: There are no fees associated with the regulation.

(9) TIERING: Is tiering applied? Tiering is not applied. This regulation applies to all public school districts. There are no fees associated with this regulation amendment.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The regulation amendment applies to School Districts. It establishes uniform accounting procedures for the receipt and expenditure of student activity funds. The regulation will not fiscally impact the districts.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 156.070, 156.160, 156.200

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amendment will not generate any additional revenue. There is no fiscal impact expected from the amendment. Training on accounting procedures is currently provided to local school districts by the Kentucky Department of Education. The department will update the existing training to include any new requirements or changes accordingly.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This amendment will not generate any additional revenue. There is no fiscal impact expected from the amendment.

(c) How much will it cost to administer this program for the first year? N/A. This is not a program. The regulation amends to update the accounting procedures for school districts student activity funds. There should be no new costs associated with this regulation.

(d) How much will it cost to administer this program for subsequent years? N/A. This is not a program. The regulation amends to update the accounting procedures for school districts student activity funds. There should be no new costs associated with 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 (+/-): N/A

Other Explanation: The regulation amendment applies to School Districts. It establishes uniform accounting procedures for the receipt and expenditure of student activity funds. The regulation will not fiscally impact the districts.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET Kentucky Board of Education Kentucky Department of Education (Amendment)

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

RELATES TO: KRS 61.805 - 61.850, 156.070(2), 160.380,

160.445, 20 U.S.C. 1681

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

high school;

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

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

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

(15) As a condition precedent to high school membership, require each member high school and superintendent to annually submit a written certification of compliance with 20 U.S.C. Section 1681 (Title IX);

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

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

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

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

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

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

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

(b) Competitors wear a school-issued uniform;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. Heat index and heat illness programs;

2. Wrestling weight management programs;

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

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

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

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

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

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

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

(i) Five (5) days in helmets;

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

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

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

d. Beginning July 1, 2020, the first regular season interscholastic contest shall not be played before the Saturday preceding seven (7) of the National Federation of High Schools Standardized Procedure for Numbering Calendar Weeks;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(9) Require that any student who turns:

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

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

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

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

(a) A defined age limitation for participating students;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. Eligibility rules;

3. Duties of school officials;

4. Contests and contest limitations;

5. Requirements for officials and coaches; and

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

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

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

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

(1) Using the paper form; or

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

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

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

- (b) "KHSAA Bylaws", 6/2019[6/2018];
- (c) "KHSAA Due Process Procedure", 6/2017;
- (d) "KHSAA Board of Control and Officials Division Policies", 6/2019[6/2018];
- (e) KHSAA Form BA101- Baseball Pitching Limitation", 6/2016;
- (f) KHSAA Form GE01, "Application for Membership", 5/2017;
- (g) KHSAA Form GE04, "Athletic Participation Form, Parental and Student Consent and Release for High School Level (grades 9 - 12) Participation", 7/2019[4/2015];
- (h) KHSAA Form DP02, "Request for Statutory Waiver of Bylaw 2", 6/2018;
- (i) KHSAA Form DP06, "Application for Athletic Eligibility for Domestic Students", 6/2019[6/2018];
- (j) KHSAA Form DP07, "Application for Athletic Eligibility for Students having J-1 or F-1 Status", 7/2019[8/2017];
- (k) KHSAA Form DP08, "Application for Non U.S. Student Athletic Eligibility for Students Not having J-1/F-1 Status ", 7/2019[8/2017];
- (l) KHSAA Form DP16, "Request for Waiver of 20 Day Notice", 6/2018;
- (m) KHSAA Form DP17, "Add. Info for Appeal", 6/2018;
- (n) KHSAA Form DP18 "Waiver – 15 Day Exceptions", 6/2018;
- (o) "KHSAA Form GE14- Contract for Athletic Contests", 8/2017;
- (p) "KHSAA Form GE19-Title IX Procedures Verification", 5/2011;
- (q) KHSAA Form GE20, "Heat Index Measurement and Record", 4/2014;
- (r) KHSAA Form PPE/Physical Exam, "PPE- Physical Exam History/Physician Clearance Form (Grades 6 - 12)", 7/2019[4/2015];
- (s) KHSAA Form PPE/Supplemental, "PPE- Physical Exam History Supplemental Form for Athletes With Special Needs (Grades 6 - 12)", 7/2019[4/2015]; and
- (t) "KHSAA Form MS01- Athletic Participation Parental and Student Consent and Release for Middle School (grades 5-8) Participation", 4/2015.

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

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

WAYNE D. LEWIS JR., Ph.D., Commissioner of Education
 HAL HEINER, Chairperson

APPROVED BY AGENCY: June 13, 2019

FILED WITH LRC: June 14, 2019 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on July 29, 2019 at 10:00 a.m. in the State Board Room, 5th Floor, 300 Sower Blvd, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through July 31, 2019.

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

Contact Person: Deanna Durrett

(1) Provide a brief summary of:

(a) What this administrative regulation does: KRS 156.070 requires the Kentucky Board of Education (KBE) to manage and control the common schools, including interscholastic athletics in the schools, and authorizes the KBE to designate an agency to manage athletics. This regulation designates the Kentucky High School Athletic Association (KHSAA) as the agent to manage high school and middle school interscholastic athletics, and incorporates by reference the bylaws, procedures and rules governing interscholastic sports.

(b) The necessity of this administrative regulation: This regulation is necessary to designate the agency to provide the day-to-day management activities of interscholastic athletics in Kentucky; to set forth the financial, planning and review processes governing the agent; and to incorporate by reference the bylaws, procedures and rules of the agency.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation designates the agency to manage interscholastic athletics, as authorized by the authorizing statute, and outlines the conditions under which this authority is granted.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It designates the KHSAA as the agent to manage interscholastic athletics in the schools and districts at the high school and middle school levels, and publishes changes in bylaws, procedures and rules for affected schools and districts.

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

(a) How the amendment will change this existing administrative regulation: These amendments make changes to the documents incorporated by reference, including the bylaws to make the transfer rule sport specific (in terms of the period of ineligibility), add bullying as set forth in KRS 158.148 as an exception to the transfer rule, to allow schools the local decision capability on whether to allow practice or participation while a decision is under review, and specify the consequences of receiving improper benefits such as housing. These changes were adopted by the annual KHSAA Delegate Assembly.

(b) The necessity of the amendment to this administrative regulation: Pursuant to the KHSAA Constitution, which is incorporated by reference in this regulation, the members are required to have an annual meeting to discuss and recommend any needed changes to the Constitution and Bylaws. While they are not required to make changes to the Constitution and Bylaws, changes must be made through this process. This amendment incorporates changes approved at the annual meeting of the Delegate Assembly. This amendment also is necessary to designate the KHSAA as the agent to manage interscholastic athletics at the high school and middle school level.

(c) How the amendment conforms to the content of the authorizing statutes: The statute authorizes the KBE to designate an agency to manage interscholastic athletics in the common schools. The regulation designates the KHSAA as that agent at both the high school and middle school levels, and incorporates by reference the KHSAA Handbook, which consists of the KHSAA Constitution, Bylaws, Due Process Procedure, and Board of Control Policies to provide rules and guidance to the member schools and districts governing sporting events. The amendments in the Bylaws are made annually, according to the process outlined in the Constitution, and reflect input given by member schools and districts on changes that need to be made to provide a sounder structure of governance.

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 173 School Districts

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: There

will be little impact because of the nature of the changes to the regulation. There are requirements that continue to be placed on schools and coaching personnel, however the training required to meet these requirements will be provided at no costs to the schools or the coaching personnel.

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

- (a) Initially: Minimal
- (b) On a continuing basis: None

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: KHSAA is funded through membership dues, as well as from gate receipts and sponsorships related to the various state championships.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: None

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: None

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all school districts.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? School districts, the Department of Education, and the Kentucky High School Athletic Association.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 156.070 and 702 KAR 7:065.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There is no additional expense to the school districts or the department as a result of this administrative regulation.

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

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

(c) How much will it cost to administer this program for the first year? The costs associated to the KHSAA in administering this program for the first year are minimal.

(d) How much will it cost to administer this program for subsequent years? The costs associated to the KHSAA in administering this program in subsequent years are minimal.

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

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

**EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Apprenticeship Standards
(Amendment)**

787 KAR 3:010. Registration of apprenticeship programs.

RELATES TO: KRS Chapter 343

STATUTORY AUTHORITY: KRS 343.020, 151B.020(6).

NECESSITY, FUNCTION, AND CONFORMITY: KRS 151B.020(6) requires the secretary of the Education and Workforce Development Cabinet[343.020 authorizes the commissioner with the aid of the Apprenticeship and Training Council] to promulgate administrative regulations that are necessary to implement programs mandated by federal law, or to qualify for the receipt of federal funds, and that are necessary to cooperate with other state

and federal agencies for the proper administration of the cabinet and its programs. Executive Order 2018-586 transitioned the apprenticeship program from the Labor Cabinet to the Education and Workforce Development Cabinet[to carry out the provisions and purposes of KRS Chapter 343]. This administrative regulation establishes[~~labor~~] standards required by 29 C.F.R. parts 29 and 30 to safeguard the welfare of apprentices, promote apprenticeship opportunities, and to extend the application of those standards by prescribing policies and procedures concerning the registration of acceptable apprenticeship programs with the Office of Employer and Apprenticeship Services[Kentucky Department of Workplace Standards, Supervisor of Apprenticeship and Training]. These[~~labor~~] standards cover the registration, programmatic review, cancellation, and deregistration of apprenticeship programs and of apprenticeship agreements.

Section 1. Definitions. (1) "Apprentice" is defined by KRS 343.010(1).

(2) "Apprenticeship agreement" is defined by KRS 343.010(2).

(3) "Apprenticeship program" is defined by KRS 343.010(7).

(4) "Commissioner" means the Commissioner of the Department of Workforce Investment.

(5) "Council" means the Kentucky Apprenticeship Council[is defined by KRS 343.010(3)].

(5) "Council" is defined by KRS 343.010(4)].

(6) "Employer" is defined by KRS 343.010(10).

(7) "Joint apprenticeship committee" means a committee, composed of an equal number of representatives of employers and employees, which has been established by an employer or group of employers and a bona fide collective bargaining agent or agents to conduct, operate, or administer an apprenticeship program and enter into apprenticeship agreements with apprentices selected for employment under the particular program.

(8) "Journeyworker" means a worker who has attained a level of skill, abilities, and competencies recognized within an industry as necessary to master the skills and competencies required for the occupation. It also refers to a mentor, technician, specialist or other skilled worker who has documented sufficient skills and knowledge of an occupation, either through formal apprenticeship or through practical on-the-job experience and formal training.

(9) "Nonjoint apprenticeship program sponsor" means an apprenticeship program sponsor in which a bona fide collective bargaining agent does not participate, such as:

(a) An individual nonjoint sponsor, i.e., an apprenticeship program sponsored by one (1) employer without the participation of a union; and

(b) A group nonjoint sponsor, i.e., an apprenticeship program sponsored by two (2) or more employers without the participation of a union.

(10)[(9)] "Office of Apprenticeship" means the Office of Apprenticeship within the United States Department of Labor.

(11)[(40)] "Provisional registration" means the one (1) year initial provisional approval of newly registered programs that meet the required standards for program registration, after which program approval shall be:

- (a) Made permanent;
- (b) Continued as provisional; or
- (c) Rescinded following a review by the registration agency.

(12)[(44)] "Registration agency" means the Education and Workforce Development[Kentucky Labor] Cabinet, Department of Workforce Investment, and its office or division charged with determining whether a program may be registered with the Kentucky Apprenticeships Program.

(13)[Workplace Standards and its division charged with the responsibility and accountability for apprenticeship within the Commonwealth of Kentucky.

(12)] "Registration of an apprenticeship program" means the acceptance and recording of the program[by the supervisor], which confirms that the program meets the basic standards and requirements for approval as indicated by written evidence.

(14)[(43)] "Related instruction" is defined by KRS 343.010(11).

(15)[(44)] "Sponsor" is defined by KRS 343.010(9).

(16)[(45)] "State apprenticeship agency" means the Education and Workforce Development Cabinet, Department of Workforce

~~Investment and its office or~~ [Kentucky Department of Workplace Standards and its] division charged with the responsibility and accountability for apprenticeship within the Commonwealth of Kentucky.

~~(17)~~ [(46)] "Supervisor" is defined by KRS 343.010(5).

~~(18)~~ [(47)] "Technical assistance" means guidance provided by registration agency staff in the development, revision, amendment, or processing of a potential or current program sponsor's standards of apprenticeship ~~or~~ apprenticeship agreements, or advice or consultation with a program sponsor to further compliance with this administrative regulation or guidance from the Office of Apprenticeship to a state apprenticeship agency on how to remedy nonconformity with this administrative regulation.

~~(19)~~ [(48)] "Transfer" means a shift of apprenticeship registration from one (1) program to another or from one (1) employer within a program to another employer within that same program, if there is agreement between the apprentice and the affected joint apprenticeship committees or nonjoint apprenticeship program sponsors.

Section 2. (1) Only an apprenticeship program or agreement that meets the following criteria established in this subsection shall be eligible for state apprenticeship agency registration.

(a) The program or agreement [it] is in conformity with the requirements of this administrative regulation and the training is in an existing apprenticeable occupation, or is in an occupation under consideration by the Office of Apprenticeship as a new occupation, having the characteristics set forth in 29 C.F.R. 29.4.

(b) The program or agreement [it] is in conformity with the regulations on "Equal Employment Opportunity in Apprenticeship and Training" set forth in 29 C.F.R. Part 30, as amended, and Kentucky law on "Equal Employment Opportunity in Apprenticeship and Training" set forth in KRS Chapter 344.

(c) Except as provided under paragraph (d) of this subsection, apprentices shall be individually registered under a registered program. Individual registration may be accomplished:

1. By filing copies of each individual apprenticeship agreement with the registration agency; or

2. ~~[Subject to prior state apprenticeship agency approval,]~~ By filing a master copy of the agreement followed by a listing of the name, pursuant to KRS 343.050, of each individual when apprenticed.

(d) The names of ~~[persons in]~~probationary employees serving [employment] as apprentices under an apprenticeship program registered by the state apprenticeship agency, if not individually registered under the program, shall be submitted within forty-five (45) days of employment to the state apprenticeship agency for certification to establish the apprentice as eligible for probationary employment.

(e) The registration agency shall be notified within forty-five (45) days of persons who have successfully completed apprenticeship programs; and of transfers, suspensions, and cancellations of apprenticeship agreements and a statement of the reasons therefore.

(f) Applications for new programs that the registration agency determines meet the required standards for program registration shall be given provisional registration for a period of one (1) year. The registration agency shall review all new programs for quality and for conformity with the requirements of this administrative regulation at the end of the first year after registration. At that time:

1. A program that conforms with the requirements of this administrative regulation shall:

a. Be made permanent; or

b. Continue to be provisionally registered through the first full training cycle.

2. A program not in operation or in conformance with ~~[not conforming to]~~ the administrative regulations during the provisional registration shall be recommended for deregistration procedures.

(2) Approved apprenticeship programs shall be accorded registration, evidenced by a certificate of registration or other written indicia.

(3) Any modification or change to a registered program shall be promptly submitted to the registration office and, if approved, shall be recorded and acknowledged as an amendment to the program.

(4) The request for registration of an apprenticeship program, together with all documents and data required by this administrative regulation, shall be submitted in writing or electronic transmission to the supervisor of apprenticeship.

(5)(a) If a program is proposed for registration by an employer or employers' association, written acknowledgement of union agreement or "no objection" to the registration shall be required if the standards, collective bargaining agreement, or other instrument provides for participation by a union in any manner in the operation of substantive matters of the apprenticeship program.

(b) If union participation is not evidenced and practiced, the employer or employers' association shall simultaneously furnish a copy of the apprenticeship program and its application for registration to the union collective bargaining agent, if any, of the employees to be trained.

(c) The supervisor shall provide a reasonable time period of not less than forty-five (45) days for receipt of any union comments before final action on the approval.

(6) If the employees to be trained have no collective bargaining agent, an apprenticeship program may be proposed for registration by an employer or group of employers.

Section 3. The standards established in this section shall apply to an apprenticeship program. (1) The program shall be an organized, written plan embodying the terms and conditions of qualification, recruitment, selection, employment, training, and supervision of one (1) or more apprentices in an apprenticeable occupation and subscribed to by a sponsor who has undertaken to carry out the apprentice training program.

(2) The standards shall contain the equal opportunity pledge prescribed in the Kentucky State Plan for equal employment opportunity in apprenticeship and, if applicable, an affirmative action plan and a selection method in accordance with the Kentucky State Plan for equal employment opportunity in apprenticeship, and provisions concerning the following:

(a) The employment and training of the apprentice in a skilled occupation;

(b) A term of apprenticeship, which for an individual apprentice shall be measured either through the completion of the business or industry standard for on-the-job learning (at least 2,000 hours) (time-based approach), the attainment of competency (competency-based approach), or a blend of the time-based and competency-based approaches (hybrid approach).

1. The time-based approach measures skill acquisition through the individual apprentice's completion of at least 2,000 hours of on-the-job learning as described in a work process schedule.

2. The competency-based approach measures skill acquisition through the individual apprentice's successful demonstration of acquired skills and knowledge, throughout the apprenticeship program and as verified by the program sponsor. Programs utilizing this approach shall still require apprentices to complete a paid [an] on-the-job learning component of registered apprenticeship. The program standards shall address how on-the-job learning will be integrated into the program, describe competencies, and identify an appropriate means of testing and evaluation for the competencies.

3. The hybrid approach measures the individual apprentice's skill acquisition through a combination of specified minimum number of hours of on-the-job learning and the successful demonstration of competency as described in a work process schedule.

4. The determination of the appropriate approach for the program standards is made by the program sponsor, subject to approval by the registration agency of the determination as appropriate to the apprenticeable occupation for which the program standards are registered;

(c) An outline of the work processes in which the apprentice will receive supervised work experience and training on the job, and the allocation of the approximate time to be spent in each major process;

(d) Provision for organized related and supplemental instruction in technical subjects related to the occupation. A minimum of 144 hours for each year of apprenticeship shall be required. This instruction in technical subjects may be

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accomplished through teaching modalities~~[media]~~ such as classroom, occupational, or industry courses, electronic media, or other instruction approved by the registration agency, or a combination thereof. Every apprenticeship instructor shall:

1. Meet the state Department of Education's requirements for a vocational-technical instructor in the state of registration, or be a subject matter expert, which is an individual, such as a journeyworker, who is recognized within a business or~~[an]~~ industry as having expertise in a specific occupation; and

2. Demonstrate mastery~~[Have training]~~ in teaching techniques and adult learning styles prior to providing~~[, which may occur before or after the apprenticeship instructor has started to provide]~~ the related technical instruction;

(e) A progressively increasing schedule of wages to be paid the apprentice consistent with the skill acquired and whether the required school time shall be compensated. The entry wage shall not be less than forty (40) percent of the established journeyworker~~[journeyman]~~ rate or not less than the minimum wage prescribed by federal or state law, whichever is greater. On projects where the wage rate has been established by law, the apprentice's rate of pay shall be based upon the established journeyworker~~[journeyman]~~ rate;

(f) Periodic review and evaluation of the apprentice's progress in job performance and related instruction and maintenance of appropriate progress records;

(g) The ratio of apprentices shall be one apprentice to one journeyworker. In the event that an apprentice has completed 2,000 hours of on-the-job training, the apprentice may be permitted to work alone and a second apprentice may be added to the 1:1 ratio. An apprentice sponsor or an employer may request in writing to modify the ratio in a medium or low risk occupation, as those terms are defined by the United States Occupational Safety Health Administration. The Commissioner will review the request, and respond within ninety (90) days of receipt of the request. In evaluating any such request, the Commissioner may modify a ratio upon a determination that the new ratio:

1. Will not endanger the safety of apprentices or the journeyworker; and

2. Will not materially impair the quality of training. The decision to authorize the modification of the ratio in medium and low risk occupations rests solely within the discretion of the Commissioner. There is no right to appeal any denial of a request to modify the ratio.~~[to journeymen consistent with proper supervision, training, and continuity of employment, and applicable provisions in collective bargaining agreements, but in a ratio of not more than one (1) apprentice for the first journeyman, and one (1) apprentice for each additional three (3) journeymen; unless approval is granted by the supervisor in cooperation with the commissioner and Apprenticeship and Training Council];~~

(h) A probationary period of reasonable duration in relation to the full apprenticeship term, during which the apprenticeship agreement may be terminated by either party, with full credit for this period toward completion of apprenticeship. The probationary period shall not exceed twenty-five (25) percent of the term of the apprenticeship or one (1) year, whichever is shorter;

(i) Adequate and safe equipment and facilities for training and supervision, and safety training for apprentices on the job and in related instruction;

(j) Grant of advance standing or credit, up to fifty (50) percent, for previously acquired experience, training skills, or aptitude for all applicants equally, with commensurate wages for any accorded progression step;

(k) The transfer of an apprentice between apprenticeship programs and within an apprenticeship program shall be based on agreement between the apprentice and the affected joint apprenticeship committees or nonjoint apprenticeship program sponsors, and shall comply with the following requirements:

1. The transferring apprentice shall be provided a transcript of related instruction and on-the-job learning by the joint apprenticeship committee or nonjoint apprenticeship program sponsor;

2. Transfer shall be to the same occupation; and

3. A new apprenticeship agreement shall be executed when the transfer occurs between program sponsors;

(l) Assurance of qualified training personnel and adequate supervision on the job;

(m) The placement of an apprentice under an apprenticeship agreement as required by KRS Chapter 343 and 803 KAR Chapter 1. The agreement shall directly, or by reference, incorporate the standards of the program as part of the agreement;

(n) The required minimum qualifications for persons entering an apprenticeship program, with an eligible starting age to be not less than sixteen (16) years;

(o) Recognition for successful completion of apprenticeship evidenced by an appropriate certificate issued by the registration agency;

(p) Apprenticeship programs that utilize the competency-based or hybrid approach for progression through an apprenticeship and for which program sponsors choose to issue interim credentials shall clearly identify the interim credentials, demonstrate how these credentials link to the components of the apprenticeable occupation, and establish the process for assessing an individual apprentice's demonstration of competency associated with the particular interim credential. Further, interim credentials shall only be issued by program sponsors for recognized components of an apprenticeable occupation, thereby linking interim credentials specifically to the knowledge, skills, and abilities associated with those components of the apprenticeable occupation;

(q) Identification of the registration agency;

(r) Name and address of the appropriate authority under the program to receive, process, and make disposition of complaints;

(s) Recording and maintenance of all records concerning apprenticeship as may be required by the state apprenticeship agency or other applicable law; and

(t) Provision that all controversies or differences shall be resolved in accordance with KRS 343.050(8).

Section 4. Program Performance Standards. (1) Every registered apprenticeship program shall have at least one (1) registered apprentice, except for the following specified periods of time, which shall not exceed one (1) year:

(a) Between the date when a program is registered and the date of registration for its first apprentice; or

(b) Between the date that a program graduates an apprentice and the date of registration for the next apprentice in the program.

(2) Registration agencies shall evaluate performance of registered apprenticeship programs.

(a) The tools and factors to be used shall include quality assurance assessments, equal employment opportunity (EEO) compliance reviews, and completion rates.

(b) Any additional tools and factors used by the registration agency in evaluating program performance shall adhere to the goals and policies articulated in this administrative regulation.

(3) In order to evaluate completion rates, the registration agency shall review a program's completion rates in comparison to the national average for completion rates. Based on the review, the registration agency shall provide technical assistance to programs with completion rates lower than the national average.

(4) Cancellation of apprenticeship agreements during the probationary period shall not have an adverse impact on a sponsor's completion rate.

Section 5. The apprenticeship agreement shall contain explicitly:

(1) The information required by KRS 343.050;

(2) The signatures required by KRS 343.060;

(3) Name and address of the program sponsor and registration agency;

(4) A reference incorporation as part of the agreement standards of the apprenticeship program as it exists on the date of the agreement and as it may be amended during the period of the agreement; and

(5) A statement that the apprentice will be accorded equal opportunity in all phases of apprenticeship employment and training, without discrimination because of race, color, national origin, sex, or age.

Section 6. Deregistration of a program may be initiated upon

the voluntary action of the sponsor by request for cancellation of the registration, or upon a finding of good and sufficient reason by the supervisor instituting formal deregistration proceedings in accordance with the provisions of this section.

(1) Request by sponsor. The supervisor may cancel the registration of an apprenticeship program for good and sufficient reason by written acknowledgment of the request stating, but not limited to, the following matters:

(a) The registration is cancelled at sponsor's request, the reason for the cancellation, and effective date; and

(b) That, within fifteen (15) days of the date of the acknowledgment, the sponsor shall notify all apprentices:

1. Of the cancellation, the reason for the cancellation, and the effective date;

2. That the cancellation automatically deprives the apprentice of individual registration; and

3. That the deregistration of the program removes the apprentice from coverage for state and federal purposes; and

4. That all apprentices are referred to the registration agency for information about potential transfer to other registered apprenticeship programs.

(2) Deregistration by the registration agency upon reasonable cause. Formal deregistration. Deregistration proceedings may be undertaken if the apprenticeship program is not conducted, operated, and administered in accordance with the registered provisions or the requirements of this administrative regulation, except that deregistration proceedings for violation of equal opportunity requirements shall be processed in accordance with the provisions in the Kentucky State Plan for equal employment opportunity in apprenticeship.

(a) If it appears the program is not being operated in accordance with the registered standards or this administrative regulation, the supervisor shall so notify the program sponsor in writing. The notice shall be sent by certified mail, with return receipt requested. The notice shall state the violations and the remedy required, and that a determination of reasonable cause for deregistration will be made unless corrective action is effected within fifteen (15) days. Upon request by the sponsor for good cause, the fifteen (15) day term may be extended by the supervisor. During the period for correction, the sponsor shall be assisted in every reasonable way to achieve conformity. If the required correction is not effected within the allotted time, the supervisor shall send a notice to the sponsor, by certified mail, return receipt requested, stating the following:

1. The notice is sent pursuant to this section;

2. Certain deficiencies (stating them) were called to sponsor's attention and remedial measures requested, with dates of the occasions and letters; and that the sponsor has failed or refused to effect correction; and

3. Based upon the stated deficiencies and failure of remedy, a determination of reasonable cause has been made and the program may be deregistered unless, within fifteen (15) days of the receipt of this notice, the sponsor requests a hearing.

(b) If a request for a hearing is not made, the supervisor shall issue a determination with respect to deregistration of the program.

(c) If the sponsor has not requested a hearing, the supervisor shall file his determination with the commissioner. This determination shall contain all pertinent facts and circumstances concerning the nonconformity, including the findings and copies of all relevant documents and records.

(d) The supervisor's determination shall become final in accordance with KRS 343.070.

(e) If the sponsor requests a hearing, the commissioner shall convene a hearing after due notice to the parties and shall make a final decision on the basis of the record before him.

(f) Any party to the dispute aggrieved by the order or decision of the commissioner may appeal in accordance with KRS 343.070.

Section 7. The commissioner shall accord reciprocal approval for federal purposes to apprentices, apprenticeship programs, and standards that are registered in other states by the Office of Apprenticeship or a registration agency if reciprocity is requested by the apprenticeship program sponsor. Program sponsors seeking reciprocal approval shall meet the wage and hour

provisions and apprentice ratio standards of the reciprocal state.

DERRICK K. RAMSEY, Secretary

APPROVED BY AGENCY: June 14, 2019

FILED WITH LRC: June 14, 2019 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on 10:00 a.m. on July 22, 2019 at 275 E. Main Street, 2nd Floor, Frankfort, Kentucky 40621. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on July 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 below.

CONTACT PERSON: Lana Gordon, Commissioner, 275 E. Main Street, 2nd Floor, Frankfort, Kentucky 40621, email lane.gordon@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Lana Gordon

(1) Provide a brief summary of:

(a) What this administrative regulation does: Promulgates administrative regulations to carry out the provisions and purposes of KRS Chapter 343. This administrative regulation establishes standards required by 29 C.F.R. Parts 29 and 30 to safeguard the welfare of apprentices, promote apprenticeship opportunities, and to extend the application of those standards by prescribing policies and procedures concerning the registration of acceptable apprenticeship programs with the Office of Employer and Apprenticeship Services, Kentucky Registered Apprenticeship Program. These regulations cover the registration, programmatic review, cancellation, and deregistration of apprenticeship programs and of apprenticeship agreements.

(b) The necessity of this administrative regulation: The State Apprenticeship Agency must submit a State apprenticeship law, whether instituted through statute, Executive Order, regulation, or other means, that conforms to the requirements of 29 C.F.R. parts 29 and 30.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulations are being modified to comply with the Governor's Executive Order 2018-586 transitioning the apprenticeship program from the Labor Cabinet to the Education and Workforce Development Cabinet.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation assists in the effective administration of the apprenticeship program by setting forth the controlling administrative processes that enable compliance with the federal regulations found at 29 C.F.R. Parts 29 and 30. It sets forth the specifics on how the apprenticeship program is to be administered within the Education and Workforce Development Cabinet.

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

(a) How the amendment will change this existing administrative regulation: This amendment names the Commissioner of the Department of Workforce Investment as Chair of the Apprenticeship Council, and modifies the journeyworker to apprentice ratio in line with national standards, as well as safety standards following OSHA.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to align with the Executive Order and the ratio change is being made to allow greater flexibility by industry in implementing apprenticeship programs while being cognizant of safety requirements and quality training. The change will promote efforts to provide quality training

for workers and to increase Kentucky's qualified workforce.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the Executive Order by making changes that reflect the organizational shift from the Labor Cabinet to the Education and Workforce Development Cabinet. Moreover, the change to the ratio is consistent with the limits placed by the federal statute.

(d) How the amendment will assist in the effective administration of the statutes: As Registered Apprenticeship Coordinators must perform employer apprenticeship program reviews, the regulation ensures that the Office of Apprenticeship and Employer Services is adhering to objective, measurable processes set forth by the law and regulations. In the absence of these guiding documents, reviews assume a subjective tone and diminish impartiality.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are 280 businesses and nearly 4,000 apprentices participating in the program.

(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: Businesses must adhere to the journeyworker to apprentice ratios for safety and training purposes. Businesses and the Registered Apprenticeship Program Coordinators must assess ratios for compliance. If a business exceeds the ratios, they must be willing to either hire additional journeyworkers, or limit the number of apprentices working at a site until they conform to the ratio.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: The cost is difficult to assess due to the sheer volume of occupations, in excess of 1,300.

(c) As a result of compliance, what benefits will accrue to the entities: Continuity of the Registered Apprenticeship Programs as specified by the U.S. Department of Labor. After five years of investment in the program, research demonstrates that the return on investment is \$1.53 to every \$1.00 invested.

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

(a) Initially: There is no cost initially to implement this administrative regulation.

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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The program is funded both by general state funds and federal funding.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: These regulations have been in effect and these changes will only have a negligible increase in costs that should be able to be handled by the current administrative staff.

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

(9) TIERING: Is tiering applied? The amendment will be applied uniformly to all employers with apprenticeship programs and tiering is not applicable.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? None at this time.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. EO 2018-586; KRS 343.020 and Title 29 C.F.R..

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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? No revenue will be generated for the state for the first year.

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

(c) How much will it cost to administer this program for the first year? This program has been in effect and the regulation will not have any increase in costs.

(d) How much will it cost to administer this program for subsequent years? Any additional costs brought on by this amendment will be negligible and can be absorbed through current staffing levels.

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

Revenues (+/-): None.

Expenditures (+/-): None.

Other Explanation: NA

**PUBLIC PROTECTION CABINET
Department Of Insurance
(Amendment)**

806 KAR 13:120. Workers' compensation deductible policies.

RELATES TO: KRS 304.13-057, 304.13-167, 304.13-400-304.13-420

STATUTORY AUTHORITY: KRS 304.2-110, 304.13-410

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 authorizes the commissioner to make reasonable administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, KRS 304.1-010. KRS 304.13-410 requires the commissioner to promulgate administrative regulations concerning calculations for premium reductions for deductible workers' compensation insurance policies. This administrative regulation establishes the method of calculating premium discount and premium rates[reductions] for workers' compensation insurance policies with deductibles.

Section 1. Deductibles and Premium Rates. (1) Definition. "Commissioner" is defined in KRS 304.1-050(1).

Section 2. AH] Insurers authorized to write workers' compensation insurance in Kentucky[~~when establishing the premium for a workers' compensation insurance policy~~] with a deductible ranging from \$100 to \$10,000 shall use only the following deductibles: \$100, \$200, \$300, \$400, \$500, \$1,000, \$1,500, \$2,500, \$5,000, \$7,500, \$10,000.

(2) An insurer may offer a workers' compensation insurance policy with a deductible over \$10,000.

(3) An insurer offering a workers' compensation insurance policy with any deductible shall calculate and prepare workers' compensation premium and experience modification rates on a net experience basis after application of the deductible amount in accordance with KRS 304.13-410(3).

Section 2. Scope.[~~Section 3. Application of this Administrative Regulation.~~](1) General.

(a) This administrative regulation shall apply to all insurers and licensed advisory organizations introducing or revising workers' compensation insurance deductible discounts for policies[with deductibles of \$100 to \$10,000 or their application in Kentucky].

(b) A licensed advisory organization filing shall be self-

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contained and fully documented and shall not simply adopt the deductible plan or factors of another filing.

(c) An insurer may:

- 1. File a self-contained and fully documented deductible discount plan; or
- 2. Adopt the filed deductible plan and discounts of a licensed advisory organization or another insurer.

(2) Form of [the] deductible. The deductible discounts shall be determined by the multiplication of the deductible discount factors by the manual premiums. Separate deductible discounts for each deductible option shall be applicable for each hazard group as defined by the advisory organization designated by the commissioner pursuant to KRS 304.13-167.

(3) Experience and retrospective rating. Experience rating modifications shall be based on net experience [~~losses net of deductibles~~] and manual premiums less the deductible discount. The parameters of the experience rating plan shall also be adjusted to account for the deductible.

(4) Premium discount programs. For insurers that have a premium discount program based on the standard premium of a policy, the deductible discounts shall be applied prior to the application of premium discounts. The deductible discount shall be calculated by multiplying the discount factor by the manual premium. Premium discounts then are calculated based on the standard premium, after deductibles.

Section 3[4]. Deductible Discount Provisions. The deductible discount shall recognize the reduction in losses borne by the insurer as a result of the insured's selection of a deductible. The deductible discount shall be calculated based on a loss elimination ratio and shall include the following adjustments:

(1) The size of loss distribution including distribution including an analysis of historical data which shall determine a mathematical function or a discrete empirical distribution table;

(2) Recognition of factors which imply additional costs or savings associated with the deductible including:

(a) Credit risks that the insured will not repay the insurer for the deductible amount;

(b) Changes in insurer cash flow:

1. Deductibles paid by an insurer in accordance with KRS 304.13-400(3)(a) shall be considered a loan, the effects of which may be recognized in the filing; and

2. This factor shall be equal to the amount or proportion of dollars that are eliminated [~~eliminate~~] by the deductible times a reasonable interest rate to account for the loss in investment income

(c) Adverse selection and higher levels of risk.

1. Loss elimination ratios may be reduced for adverse selection by up to five (5) percent.

2. Filings which include greater reductions shall be clearly supported by actuarial evidence of higher loss ratios by deductible and class to clearly show that the deductible discounts are consistently high across classes and time.

3. For the initial filing, data from other states with deductibles may be used to support the selection of this factor; and

(3) Recognition that many insurer operating expenses are not reduced by the introduction of deductibles including:

(a) Loss adjustment expenses including allocated and unallocated expenses;

(b) Overhead expenses; and

(c) General expenses including all expenses incurred other than loss adjustment expense, commissions, other acquisition expenses, premium taxes, licenses, and fees.

Section 4[5]. Effect on Rate Making. (1) Data. The designated advisory organization's statistical plan shall include a field indicating the deductible on the policy. Financial data calls shall segregate data by deductible.

(2) Gross versus net data. Adjustments to net data shall be made in the rate-making process to account for the presence of deductibles. Losses shall be loaded by the loss elimination ratio, adjusted for anti-selection to a gross basis prior to the rate-making process. The loss elimination ratio and antiselection factor shall be the same as in the current approved filing.

(3) Methodology. Rate-making methods shall be modified to account for the presence of deductibles. An adjustment shall be made in classification rate making for differences in the distribution of exposures by deductible among classes, and [-] in the trending procedure for the presence of a shift in the distribution by deductible.

NANCY G. ATKINS, Commissioner

K. GAIL RUSSELL, Secretary

APPROVED BY AGENCY: June 14, 2019

FILED WITH LRC: June 14, 2019 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on 9:00 a.m. on July 24, 2019 at 215 W. Main Street, Frankfort, Kentucky 40602. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on July 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 below.

CONTACT PERSON: Patrick O'Connor II, Deputy Commissioner, Policy, 215 W. Main Street, Frankfort, Kentucky 40602, phone 502-564-6026, fax 502-564-1453, 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: The administrative regulation establishes the method for determining premium rates and premium discounts where an insurer or advisory organization issues a workers' compensation insurance policy with a deductible.

(b) The necessity of this administrative regulation: The administrative regulation is necessary to clarify that insurers may offer both large and small workers' compensation deductible policies and the application of "net experience" requirements included within KRS 304.13-410 when calculating the premium rates and discounts for workers' compensation insurance policies with deductibles.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation stipulates only the net experience of an employer policyholder shall be used by the insurer or advisory organization in the calculation and preparation of workers' compensation rates. This conforms to the mandate of KRS 304.13-410 to use net experience to calculate premium rates for a workers' compensation insurance policy with any size deductible.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation clarifies the application of the statutory requirements and establishes one standard to be used for all workers' compensation insurance policies with deductibles, regardless of the size of the deductible.

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

(a) How the amendment will change this existing administrative regulation: The amendment clarifies the application of the existing administrative regulation. First, it confirms that insurers may offer both small and large deductibles. Large deductibles in Kentucky, for workers' compensation insurance policies, are generally considered over \$10,000. Secondly, it establishes one standard for calculation of premium rates where an employer has selected and paid a deductible. KRS 304.13-410, although passed by the legislature in conjunction with KRS 304.13-400 mandating insurers offer small deductible policies, mandates only the use of net

experience where an employer has selected a policy with a deductible. KRS 304.13-410 does not differentiate between a small and large deductible policy. The amendment clarifies this application and will increase efficient rate making procedures through the elimination of multiple standards.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to rectify the application of multiple standards in the calculation of premium rates and discounts including the use of net experience or gross experience varying by the size of the deductible.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment adopts the language used in KRS 304.13-410 to clarify the application of the administrative regulation and the calculation of the premium rates.

(d) How the amendment will assist in the effective administration of the statutes: The amendment establishes one standard to be used, net experience, in the calculation of premium rates for workers' compensation insurance policies with a deductible.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The administrative regulation will impact insurers issuing workers' compensation insurance policies with deductibles in Kentucky, and the employers throughout the Commonwealth that select a large deductible workers' compensation insurance policy.

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

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: The insurers and advisory organizations offering small and large deductible workers' compensation insurance policies in Kentucky will be required to review their filings and ensure net experience is used to calculate premium rates for all workers' compensation insurance policies with a deductible.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: The cost of compliance with the amendment is unknown, but any cost will only be expended to make initial changes.

(c) As a result of compliance, what benefits will accrue to the entities: The clarification provided by the amendment allows regulated entities to use one standard to calculate premium rates across all potential deductibles. The use of net experience allows those employers with large deductibles to obtain credit for amounts they have paid directly for claims and potentially receive premium relief for the selection of a deductible.

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

(a) Initially: The regulated entities will initially be required to adjust their systems to account for the clarification regarding premium rate calculations. The adjustment will permit an easier experience reporting and premium calculation process for the insurers, and eliminate the potential application of multiple rules and standards.

(b) On a continuing basis: The regulated entities and employers will share in the benefit of the efficient experience reporting and premium calculation process.

(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 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 administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering is not used because the administrative regulation applies to all insurers and advisory organizations issuing workers' compensation insurance policies.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Insurance will be impacted by the administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.13-410 requires the Department of Insurance to promulgate 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 administrative regulation will not generate any revenue for state or local governments.

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

(c) How much will it cost to administer this program for the first year? The Department may receive additional filings to comply with the clarification provided in the amendment to the administrative regulation. However, existing Department personnel are able to review the minimal amount of filings expected in the normal course of business.

(d) How much will it cost to administer this program for subsequent years? The administrative regulation will not require action or changes in subsequent years, so no cost is anticipated in the future.

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

Revenues (+/-): Not applicable.

Expenditures (+/-): Not applicable.

Other Explanation: Not applicable.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Public Health Protection and Safety
(Amendment)

902 KAR 45:090. Home-based processors and farmers market home-based microprocessors.

RELATES TO: KRS 217.005-217.215, 217.290, 217.992, 217B.555, 217B.990[~~217B.500—217B.900~~], 21 C.F.R. 113.83, 114.10, 114.83, 21 U.S.C 343(w)

STATUTORY AUTHORITY: KRS 194A.050, 217.125(1), 217.137, 217.138

NECESSITY, FUNCTION, AND CONFORMITY: KRS 217.125, 217.137, and 217.138 authorize the Secretary of the Cabinet for Health and Family Services to promulgate administrative regulations for the efficient administration and enforcement of home-based processors and home-based microprocessors. This administrative regulation establishes a uniform code for the manufacture and marketing of limited-based Kentucky grown home microprocessed food products at farmers markets, certified roadside stands, or from the microprocessor's farm and for the manufacture and marketing of limited home-based processor food products from the home, at a market, roadside stand, community event, or online.

Section 1. Definitions. (1) "Cabinet" is defined by KRS 217.015(3).

(2) "Certified roadside stand" means a physical location listed

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with the Kentucky Farm Bureau for the direct-to-consumer marketing of limited Kentucky grown and produced food products.

(3) "Easily cleanable" means that surfaces are readily accessible and made of a material and finish and so fabricated that residue can be effectively removed by normal cleaning methods.

(4) "Equipment" means articles used in the preparation and processing of food.

(5) "Farmer" is defined by KRS 217.015(59).

(6) "Farmers market" or "farmers market temporary food service establishment" is defined by KRS 217.015(60).

(7) "Food contact surfaces" means those surfaces with which food can come in contact, and those surfaces that drain onto surfaces that can come in contact with food.

(8) "Permitted kitchen" means a food service establishment or food processing firm that holds a valid permit to process food, pursuant to the Kentucky Food, Drug and Cosmetic Act, KRS 217.005 to 217.215, and issued by the Cabinet for Health and Family Services.

(9) "Potentially hazardous food" means a food that is natural or synthetic and that requires temperature control because it is in a form capable of supporting the rapid and progressive growth of infectious or toxigenic microorganisms, the growth and toxin production of *Clostridium botulinum*, or in raw shell eggs, the growth of *Salmonella Enteritidis*. "Potentially hazardous food" includes:

(a) An animal food (a food of animal origin) that is raw or heat-treated;

(b) A food of plant origin that is heat-treated or consists of raw seed sprouts;

(c) Cut melons; and

(d) Garlic-in-oil mixtures that are not modified in a way that makes the product nonpotentially hazardous.

(10) "Primary ingredients" means an agricultural or horticultural product that:

(a) Has been grown, harvested, and processed by the farmer as a predominant ingredient of a food product with the exception of "flour", as defined by KRS 217.015(17), for use in:

1. "Bread" as defined by KRS 217.015(2); or

2. Other items listed in KRS 217.015(56); and

(b) Does not include oil, vinegar, sugar, and other seasonings or spices used in the production of home processed or microprocessed foods.

(11) "Processing authority" means:

(a) The Food Science Professionals of the University of Kentucky, Department of Agriculture, who review and approve established scheduled processes, for adequate process times and pressures for the size of jar, style of pack, and kind of food being canned, by home-based microprocessors; or

(b) A qualified entity in accordance with 21 C.F.R. 113.83 and 114.83.

(12) "Single-service article" means tableware, carry-out utensils, and other items such as bags, containers, placemats, stirrers, straws, toothpicks, and wrappers that are designed and constructed for one (1) time or one (1) person use after which they are intended for discard.

(13) "Single-use article" means utensils and bulk food containers designed and constructed to be used once and discarded such as wax paper, butcher paper, plastic wrap, formed aluminum food containers, jars, plastic tubs or buckets, bread wrappers, pickle barrels, ketchup bottles, and number ten (10) cans that do not meet the materials, durability, strength, and clean ability specifications for multiuse utensils.

(14) "Utensil" means any food-contact implement used in the storage, preparation, transportation, dispensing, or sale of food.

(15) "Ware-washing" means the cleaning and sanitizing of food-contact surfaces of equipment and utensils such as kitchenware.

Section 2. Limitations on Certain Home-based Processed and Home-based Microprocessed Food Products. (1) A home-based [foed] processor may[shall] produce:

(a)[only those] Foods [as] listed in KRS 217.015(56);

(b) Dried or freeze dried whole fruits or vegetables;

(c) Candy that shall be:

1. Produced without added alcohol; and

2. Made with no bare-hand contact;

(d) Maple syrup;

(e) Pecan pies;

(f) Granola that may be made with dried grains;

(g) Trail or snack mix that may be made with dried fruit, nuts, or seeds; and

(h) Popcorn that may be plain or have added seasonings.

(2) A home-based microprocessor shall produce [only those] foods as authorized by KRS 217.015(57).

(3) The following foods shall not be processed or offered for sale by a home-based processor or home-based microprocessor:

(a) Crème filled pies;

(b) Custard;

(c) Custard pies;

(d) Pies with meringue topping;

(e) Cheesecake;

(f) Cream, custard, or meringue pastries;

(g) Raw seed sprouts;

(h) Garlic-in-oil products; and

(i) Pureed baby foods.

(4) Vacuum packaging of food in a container other than a mason-type jar shall be prohibited.

(5) A jam or jelly processed in less than ten (10) minutes shall be filled into a sterile empty jar. Sterilization shall be accomplished by submerging the jar in boiling water for:

(a) At least ten (10) minutes at an altitude of less than 1,000 feet above sea level; and

(b) One (1) additional minute for each additional 1,000 feet elevation above sea level.

(6) If a boiling-water canner is utilized in the production of food by a home-based processor, the canner shall be deep enough so that at least one (1) inch of briskly boiling water will be over the tops of jars during processing.

(7) If an electric range is used for heating, the boiling-water canner shall have a flat bottom and shall be no more than four (4) inches wider than the element on which it is heated.

Section 3. Standards for Home-based Processing. (1) A home-based processor shall maintain basic hygiene, cleanliness, and sanitation while producing home-based processor products and shall comply with the standards established in paragraphs (a) through (f) of this subsection during production, packaging, and handling of products for sale. The home-based processor shall:

(a) Regularly wash hands with soap and water;

(b) Keep kitchen equipment and utensils used for home-based processing clean and maintained in a good state of repair;

(c) Wash, rinse, and sanitize all food contact surfaces, equipment, and utensils used for food preparation before each use;

(d) Keep children under age twelve (12) and pets or other animals out of the kitchen during home-based processing related activities;

(e) Cease performing any domestic activities in the kitchen, such as family meal preparation, dishwashing, or washing and drying laundry; and

(f) Not produce, package, or handle any home-processed products while infected with a contagious disease or illness.

(2) A home-based processor doing business in the state shall be a resident of Kentucky.

(3) A home-based processor may advertise and accept orders and payments in person, electronically, or via the internet or phone.

(4) A home-based processor shall provide all home-based processed foods direct to the consumer through pick-up or delivery, and at flea markets, farmers markets, festivals, county fairs, craft fairs, and non-profit charity events, or a roadside stand.

(5) Home-based processed food products shall:

(a) Be labeled as required by KRS 217.136(3); and

(b) Contain allergen information as specified by 21 U.S.C. 343(w).

(6) A home-based processor shall not be required to have grown a primary ingredient for each of their products produced.

(7) Beginning January 1, 2020, a home-based processor shall register with the Department for Public Health, Food Safety

Branch. A home-based processor shall submit:

(a) A DFS-250 Application for Home-based Processor, available from the Kentucky Food Safety Branch or at University of Kentucky Extension Service Office; and

(b) A fifty (50) dollar registration fee.

(8) The home-based processor registration shall be valid for one (1) year. A home-based processor registration shall expire March 31 of each year and is renewable upon submission of a DFS-250 and accompanied by an annual fee of fifty (50) dollars.

(9) Inspection of a home-based processor facility shall be made upon complaint, utilizing ~~the~~[Form] DFS-252, Home-based Processor/Microprocessor Inspection Report.

Section 4. Home-based Microprocessor Certification. (1) A Kentucky farmer desiring to grow, harvest, process, and market Kentucky grown microprocessed food products and participate in the training program shall submit a DFS-251, Application for Home-based Microprocessor, which is available from the Department for Public Health, [Kentucky] Food Safety Branch or at University of Kentucky Extension Service Office.

(2) The application for certification shall be submitted to the cabinet and include the following information and attachments:

(a) Name and address, including:

1. The physical address and acreage of the farmland on which the primary food product ingredients are to be grown; and

2. The name and address of the property owner if not owned by the farmer;

(b) The name and address of the primary residence occupied by the farmer;

(c) Type of water source. Sufficient potable water for the needs of the facility shall be provided from a source constructed, maintained, and operated pursuant to applicable requirements established in 401 KAR Chapter 8;

(d) Type of sewage disposal. Sewage, including liquid waste, shall be disposed of by a public sewage system, or if a public sewer system is not available, sewage disposal shall be made into a private sewage disposal system designed, constructed, and operated in accordance with the requirements of 902 KAR Chapter 10 and 401 KAR Chapter 5;

(e) A listing of the food products to be processed and marketed by the farmer;

(f) Verification of attendance and successful completion of the Food Processing School including:

1. Verification of attendance and successful completion of the Food Processing School provided by the University of Kentucky Extension Office in compliance with KRS 217.015(58)(a) by the farmer for the manufacture of the microprocessed food products; or

2. Verification of attendance and successful completion of a food processing school approved pursuant to 21 C.F.R. 114.10; and

(g) Documentation from the processing authority for an established scheduled process for each food item that is to be processed by the home-based microprocessor.

1. Any change in the recipe shall constitute a recipe deviation, and a new review and approval shall be required from the processing authority prior to processing.

2. Each additional product shall have a separate written established scheduled process and shall be submitted to the processing authority for review prior to processing.

3. All established scheduled processes shall be maintained and made available upon request by the cabinet.

(3)(a) Prior to marketing home-based products, the application for home-based microprocessor, along with the required water source approval, shall be submitted to the cabinet.

(b) The cabinet shall notify the applicant if the application is approved or denied.

(c) If the application is approved, the home-based microprocessor may begin marketing home-based products.

(d) If the application is denied:

1. The cabinet shall notify the applicant in writing of the reasons for the denial; and

2. The home-based microprocessor may appeal in accordance with Section 9(5) of this administrative regulation.

(4) Product labels for home-based microprocessed foods shall

be labeled in accordance with KRS 217.005 to 217.215 and 21 U.S.C. 343(w). Draft copies of all home-based microprocessed food product labels shall be submitted for review by the cabinet prior to labeling and marketing.

(5) The certification requirements established in this subsection shall apply to a home-based microprocessor.

(a) Each home-based microprocessor certification shall be issued only for the premises and person named in the application and shall be nontransferable.

(b) The certification shall be posted in a conspicuous place in the processing establishment and a copy shall be posted at the point of sale.

(c) Home-based microprocessed food products shall only be marketed by the certificate holder that processed the food product.

(6) Each home-based microprocessor certification shall be valid for one (1) year, unless previously suspended or revoked. A home-based microprocessor certification shall expire March 31 of each year and shall be renewable annually upon submittal of an application accompanied by an annual fee of fifty (50) dollars.

(7) Attendance at a food processing school as required by subsection (2)(f) of this section shall be required every three (3) years or upon any change or addition of food products to be processed.

Section 5. Production Standards for Home-based Microprocessors. (1) At all times, including while being stored, prepared, offered, dispensed, or transported, food ingredients and processed products shall be protected from:

(a) Cross-contamination; and

(b) Potential contamination by:

1. Insects;

2. Insecticides;

3. Rodents;

4. Rodenticides;

5. Unclean equipment or utensils;

6. Unnecessary hand contact;

7. Draining;

8. Overhead leakage or condensation;

9. Dust;

10. Coughs;

11. Sneezes; or

12. Other agents of public health significance.

(2) Pets and other animals shall not be allowed in the kitchen and shall be kept out of food preparation areas during microprocessing related activities.

(3) Children under age twelve (12) shall not be allowed in the kitchen area during microprocessing related activities.

(4) Smoking or use of any form of tobacco shall not be allowed in the kitchen area during microprocessing related activities.

(5) Laundry facilities may be present in the residential kitchen, but shall not be used during microprocessing related activities.

(6) Home-based microprocessors shall restrict the use of the food preparation area during any processing activity. Cooking facilities, in the residential kitchen, shall not be available for personal use during home-based microprocessing activities.

(7) Vehicles used in transporting home-based microprocessed food products shall be maintained in a safe and sanitary manner in accordance with KRS 217.290. Vehicle compartments used to transport animals shall not be used for transporting home-based microprocessed foods.

(8) Products made by a home-based microprocessor shall not be used or offered for consumption in a retail food establishment or through interstate commerce.

(9) Food Supplies.

(a) The primary ingredients used in home-based microprocessed products shall have been grown by the microprocessor.

(b) All other ingredients in the products shall be in sound condition, safe for human consumption, obtained from a state or federal permitted food manufacturer, and stored and protected separate and apart from personal use food ingredients.

(c) Prior to processing, the temperature of potentially hazardous foods shall be forty-one (41) degrees Fahrenheit or below, or 135 degrees Fahrenheit or above, except during

necessary times of preparation.

(d) ~~Only food-grade lime shall be used for soaking foods prior to pickling.~~

(e) Jar seals for microprocessed foods shall be inspected within twelve (12) to twenty-four (24) hours after cooling. A container inspected and found to not be properly sealed shall be discarded. Reprocessing of an unsealed jar shall be prohibited.

(f) ~~(f)~~ For each microprocessed food item, the headspace above the food in a jar and below its lid shall be in compliance with the established scheduled process for that food.

(g) ~~(g)~~ Hermetically-sealed packages shall be handled so as to maintain product and container integrity.

(h) ~~(h)~~ A product processed by a home-based microprocessor shall be packaged in food grade material.

(10)(a) Food shall be prepared:

1. With a minimum of bare hand contact;
2. On a food-contact surface; and
3. With clean utensils that have been sanitized.

(b) Raw fruits and raw vegetables that will be cooked, cut, or combined with other ingredients or that will be otherwise processed into food products by the home-based microprocessor shall first be thoroughly cleaned with potable water.

(11) Equipment and utensils. (a) Equipment.

1. Equipment shall be deemed adequate by the processing authority for the food being processed. Use of boiling water canners shall be prohibited for processing of low-acid canned foods.

2. Open-kettle canning and the processing of freshly-filled jars in a conventional oven, microwave oven, or dishwasher shall be prohibited.

3. All low-acid food shall be sterilized at temperatures of 240 to 250 degrees Fahrenheit, in pressure canners operated at ten (10) to fifteen (15) PSIG as measured by a dial gauge, or weighted gauge if deemed appropriate by the processing authority. The processing authority shall ensure that each weighted-gauge pressure canner utilized by a microprocessor is operated at the correct pressure for the corresponding altitude.

4. A pressure canner shall not have been manufactured prior to year 2000, and the manufacturer shall currently be in business with the ability to provide canner parts and calibration of temperature dial gauges.

5. A pressure canner utilized in the microprocessing of foods shall, at minimum;

a. ~~(a)~~ Be of a sixteen (16) quart capacity; and

b. ~~(b)~~ ~~(which shall)~~ Contain at least~~(no more than)~~ seven (7) quart jars during processing.

6. Use of pressure saucepans with less than sixteen (16) quart capacities shall be prohibited.

7. ~~(7)~~ Each temperature dial gauge shall be annually verified for accuracy by the manufacturer of the canner or other qualified laboratory. Verification records shall be maintained by the home-based microprocessor and shall be made available to the cabinet upon request.

8. ~~(8)~~ A timing device shall be available and used to verify appropriate processing time as designated in the established scheduled process.

9. ~~(9)~~ Only regular and wide-mouth mason-type, threaded, home-canning jars with self-sealing, two (2) piece canning lids with screw bands shall be used for microprocessed foods. Mayonnaise-type jars, jars with wire bails and glass caps, and one (1) piece zinc porcelain-lined caps shall be prohibited.

(b) Equipment and utensils shall be:

1. Constructed and repaired with safe materials, including finishing materials;
2. Corrosion resistant and nonabsorbent;
3. Maintained in good repair; and
4. Smooth, easily cleanable, and durable under conditions of normal use.

(c) Single-service articles shall be made from clean, sanitary, and safe materials.

(d) Equipment, utensils, and single-service articles shall not impart odors, color, taste, or contaminants to food.

(e) Single-service and single-use articles shall not be reused.

(f) Safe plastic or rubber-like materials that are resistant, under

normal conditions of use, to scratching, scoring, decomposition, crazing, chipping, or distortion, and are of sufficient weight and thickness to permit cleaning and sanitizing by normal ware-washing methods shall be permitted for repeated use.

Section 6. Sanitation Requirements for Home-based Microprocessors. (1) A farmer or processing assistant shall not process food in a home-based microprocessing facility while there is a likelihood of contaminating food or a food-contact surface, or transmitting a disease to another person, if the individual is:

(a) Infected with a communicable disease that can be passed by food;

(b) A carrier of an organism that causes a communicable disease;

(c) Affected with a boil, infected wound, or acute respiratory infection; or

(d) Has a symptom caused by illness, infection, or other source that is associated with an acute gastrointestinal illness such as diarrhea, fever, vomiting, jaundice, or sore throat with fever.

(2)(a) Each person engaged in a food preparation and ware-washing operation of a home-based microprocessing facility shall wash his or her hands and exposed portions of arms thoroughly, with soap or detergent and warm water:

1. Before starting work;
2. After smoking;
3. After eating;
4. After handling nonwashed fruits and vegetables;
5. After using the toilet; and
6. As often as is necessary during work to keep hands and forearms clean.

(b) A hand-washing facility with hot and cold potable water shall comply with the requirements of 815 KAR 7:125, and shall be conveniently located.

(c) A supply of hand-cleaning soap or detergent shall be available at each hand-washing facility.

(d) A supply of sanitary towels or a hand-drying device providing heated air shall be conveniently located near each hand-washing facility.

(e) An easily-cleanable waste receptacle shall be conveniently located near the hand-washing facility.

(f) A soap dispenser and disposable towels for use in hand-washing shall be provided at the kitchen sink. This sink shall not be used for hand-washing after toilet use.

(g) Hand-washing facilities, soap, detergent dispensers, hand-drying devices, and all related facilities shall be kept clean and in good repair.

(3) Each worker of a home-based microprocessing facility shall keep his or her fingernails trimmed and clean.

(4) Each worker of a home-based microprocessing facility shall wear clean outer clothing.

(5) Each worker in the food preparation area of a home-based microprocessing facility shall wear a hairnet, hat, scarf, or similar hair covering that effectively restrains head and facial hair.

(6) Each worker of a home-based microprocessing facility shall maintain a high degree of personal cleanliness and shall conform to good hygienic practices during working periods.

(7) Each worker of a home-based microprocessing facility shall consume food or use tobacco only in designated areas. A designated area shall not be located in a food preparation area or in an area where the worker's activity could result in contamination of food, water, equipment, or utensils.

(8) Cleaning and sanitizing of equipment and utensils.

(a) Food utensils and equipment shall be stored in a manner to avoid contamination.

(b) Food-contact surfaces and sinks shall be smooth and easily cleanable.

(c) Food-contact equipment, surfaces, and utensils shall be cleaned and sanitized prior to microprocessing related activities and after each use.

(d) Sinks, basins, or other receptacles used for cleaning of equipment and utensils shall be cleaned and sanitized before use.

(e) Equipment and utensils shall be prerinsed or prescraped and, if necessary, presoaked to remove food particles and soil.

(f) Manual cleaning and sanitizing shall be conducted as

established in subparagraphs 1. through 5. of this paragraph.

1. For manual cleaning and sanitizing of cooking equipment, and utensils, three (3) compartments shall be provided and used. A two (2) compartment sink, with an additional portable tub may be used.

2. Each of the following five (5) steps of the ware-washing process shall be completed:

- a. Prerinsing or scraping;
- b. Washing with hot detergent solution;
- c. Rinsing to remove abrasives and cleaning chemicals;
- d. Sanitizing, using a method approved by the applicable provisions of 902 KAR 45:005, Section 2, the Kentucky Food Code; and
- e. Air-drying and draining.

3. Washing, rinsing, and sanitizing solutions shall be maintained in a clean condition.

4. The washing solution shall be maintained at a minimum temperature of at least ninety-five (95) degrees Fahrenheit.

5. Chemical sanitizer shall not have a concentration higher than the maximum permitted by law. A test kit or other device shall be provided to measure the parts per million concentration of the solution.

(g) Mechanical cleaning and sanitizing shall be conducted as established in this subsection. A domestic or home-style dishwasher may be used if the performance criteria established in this subsection are met.

1. The dishwasher shall effectively remove physical solids from all surfaces of dishes.

2. The dishwasher shall sanitize dishes by the application of sufficient accumulative heat.

3. The operator shall provide and use daily a maximum registering thermometer or a heat thermal label to determine that the dishwasher's internal temperature is at least 150 degrees Fahrenheit after the final rinse and drying cycle.

4. The dishwasher shall be installed and operated according to manufacturer's instructions for the highest level possible while sanitizing the kitchen facility's utensils and tableware. A copy of the manufacturer's instructions shall be available on the premises.

(h) There shall be sufficient area or facilities, such as portable dish tubs and drain boards, for the proper handling of:

1. Soiled utensils prior to washing; and
2. Cleaned utensils after sanitizing.

(i) Manually-cleaned equipment, utensils, and tableware shall be air-dried.

(9) Toilet facilities.

(a) Toilet facilities shall be:

1. Installed pursuant to requirements of 815 KAR 7:125;
2. Conveniently located; and
3. Accessible to workers at all times.

(b) A toilet facility, including toilet fixtures and a related vestibule, shall be kept clean and in good repair. A supply of toilet tissue shall be provided at each toilet at all times. Easily cleanable receptacles shall be provided for waste materials.

(10) The floors, walls, ceilings, and attached equipment in food preparation and storage areas and in workers bathrooms of a home-based microprocessor facility shall be fabricated from easily cleanable material, maintained in good repair, and kept clean.

(11) Artificial lighting shall be provided sufficient to facilitate sanitary food handling and cleaning of facilities.

(12) The use and storage of pesticides and rodenticides.

(a) A person shall not apply insecticides or rodenticides except:

1. In accordance with requirements of KRS 217B.500 to 217B.990 and 302 KAR Chapter 29;
2. In accordance with the manufacturer's labeling; and
3. In such a way that food, food-contact surfaces, and the supply of potable water shall not be contaminated.

(b) Open pesticide or rodenticide bait boxes shall not be used.

(c) Pesticides, rodenticides, and other toxic materials shall be stored apart from food, equipment, and utensils. Every container of toxic material shall be clearly labeled for easy identification.

(d) Pesticides and rodenticides shall be stored separated from other toxic and chemical compounds at all times.

(13) Garbage and refuse shall be disposed of often enough and in a manner to prevent the development of objectionable odors

and the attraction of pests. If garbage or refuse is burned on the premises, it shall be done by controlled incineration that prevents the escape of particulate matter pursuant to 401 KAR Chapter 63.

Section 7. Microprocessors Utilizing Permitted Kitchens. (1) A microprocessor may elect to process food products utilizing a kitchen that currently holds a valid permit to operate issued by the cabinet.

(2) A microprocessor utilizing a permitted kitchen shall comply with Sections 2, 4, 5, and 6 of this administrative regulation.

(a) A microprocessor utilizing a permitted kitchen shall provide a copy of a signed, written agreement between the facility owner and the farmer that authorizes the use of the permitted kitchen for microprocessing and the name, address, and permit number of the facility.

(b) Microprocessed food products shall not be made during periods of time while the permitted facility is in operation.

(c) Microprocessed food products shall be stored at the farmer's primary residence and shall be maintained separate and apart from the personal use food supplies.

(d) Microprocessed food products made in a permitted kitchen shall only be sold at farmers markets, certified roadside stands, or from the microprocessor's farm.

Section 8. Inspections, Notices, Records. (1) Inspections. At least once every four (4) years, the cabinet shall inspect each home-based microprocessor and shall make as many additional inspections and reinspections as are necessary for the enforcement of this administrative regulation.

(2) Inspection records. The cabinet representative inspecting a home-based microprocessor shall record the findings on ~~the~~ DFS 252, Home-based Processor/Microprocessor Inspection Report, and shall provide a copy of the inspection report to the certificate holder or his representative in charge.

(3) Issuances of notices. If an inspection reveals a violation of this administrative regulation, the cabinet shall notify the certificate holder or the certificate holder's representative in charge. In the notification, the cabinet shall establish:

- (a) The specific violations found; and
- (b) A specific and reasonable period of time for the correction of the violations found pursuant to this paragraph. The report of inspection shall state:

1. Failure to comply with a notice from the cabinet or local health department, or with a time limit for correction of a violation, shall result in regulatory action up to and including suspension of the certificate, as provided in KRS 217.126;

2. An opportunity for appeal from an adverse notice or inspection finding shall be provided if a written request is filed with the cabinet within ten (10) days following service of notice, in accordance with 902 KAR 1:400; and

3. Failure to comply with a notice issued in accordance with the provisions of this administrative regulation may result in suspension of the certificate.

(4) Service of notice. A notice provided for under this section shall be properly served if a copy of the DFS-252 inspection report form or other notice has been delivered personally to the certificate holder or person in charge, or the notice has been sent by registered or certified mail, return receipt requested, to the last known address of the certificate holder. A copy of the notice shall be filed with the cabinet.

(5) The cabinet shall maintain a record of all certified home-based microprocessors and shall provide this information to the University of Kentucky Cooperative Extension Service Office and local health departments.

Section 9. Certificate Suspension, Revocation, or Denial. (1) A home-based microprocessor certificate shall be suspended immediately, upon notice to the certificate holder, if:

- (a) The cabinet has reason to believe that an imminent public health hazard exists; or
- (b) The certificate holder has interfered with the cabinet in the performance of its duties.

(2) Except as provided in subsection (1) of this section, the cabinet shall allow a certificate holder a reasonable opportunity to

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correct a violation. The cabinet shall notify, in writing, a certificate holder or operator who fails to comply with a written notice issued under the provisions of this administrative regulation that the certificate shall be suspended at the end of ten (10) days following service of the notice, unless a written request is filed in accordance with 902 KAR 1:400.

(3) Reinstatement of suspended certificate. A person whose certificate has been suspended may make application for a reinspection in accordance with 902 KAR 1:400.

(4) Revocation of certificate. For serious or repeated violations of the requirements of this administrative regulation, or for interference with the cabinet in the performance of its duties, a certificate may be permanently revoked. Before a permanent revocation action is taken, the cabinet shall notify the certificate holder in writing, stating the reasons the certificate is subject to revocation and advising that the certificate shall be permanently revoked at the end of ten (10) days following service of the notice, unless a request for an appeal is filed in accordance with 902 KAR 1:400. A certificate may be suspended for cause pending revocation.

(5) Denial. Any applicant denied the issuance of a certificate by the cabinet within ten (10) days of service of the notice may appeal the certificate denial in accordance with 902 KAR 1:400.

Section 10. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "DFS-250, Application for Home-based Processor", 03/19;

(b) "DFS-251, Application for Home-based Microprocessor", 05/18; and

(c) [(b)] "DFS-252, Home-based Processor/Microprocessor Inspection Report", 05/18.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Cabinet for Health and Family Services, 275 East Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

JEFFREY D. HOWARD, JR., M.D., Commissioner

ADAM M. MEIER, Secretary

APPROVED BY AGENCY: June 12, 2019

FILED WITH LRC: June 14, 2019 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on July 22, 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 July 15, 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 July 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; CHFRegs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Julie Brooks or Chase Coffey

(1) Provide a brief summary of:

(a) What this administrative regulation does: This emergency administrative regulation establishes the requirements for all home-based processed foods, and distinguishes between a home-based processor and a home-based microprocessor.

(b) The necessity of this administrative regulation: House bill 468, enacted during the 2019 legislative session, modified the

definitions of a home-based processor and home-based microprocessor listed in KRS 217.015; and modified KRS 217.136 and KRS 217.137 to authorize the cabinet to further delineate which food products could be produced by a home-based processor and home-based microprocessor through the promulgation of administrative regulations. KRS 217.136 was modified to require a home-based processor to register with the department effective January 1, 2020.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This emergency administrative regulation delineates which foods may be produced by a home-based processor and home-based microprocessor, and adds the registration process for a home-based processor.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This emergency administrative regulation will allow home-based processor and home-based microprocessors who are currently producing foods such as dried herbs and spices, nuts and grains to continue to do so.

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

(a) How the amendment will change this existing administrative regulation: This amendment further delineates the types of foods that can be produced by a home-based processor and a home-based microprocessor; and adds a registration process for a home-based processor.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to address the changes in KRS 217.015, KRS 217.136, and KRS 217.137 as a result of the passage of House Bill 468.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 217.015 adds additional food items that can be produced by a home-based processor and a home-based microprocessor. KRS 217.136 authorizes the cabinet to promulgate administrative regulations to further delineate which food products can be produced by a home-based processor and adds a registration process for a home-based processor. KRS 217.137 authorizes the cabinet to promulgate administrative regulations to further delineate which food products can be produced by a home-based microprocessor.

(d) How the amendment will assist in the effective administration of the statutes: This emergency amendment will help to ensure home-based processors and home-based microprocessors who are established to offer dried herbs and spices, nuts, and grains are able to do so during the current farmers' market season. This amendment also requires a home-based processor to register with the Food Safety Branch. While a routine inspection is not required, the registration process will assist in a complaint investigation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are 140 microprocessors currently operating under this administrative regulation. Because the registration of home-based processors was previously removed from this administrative regulation the Food Safety Branch does not know exactly how many home-based processors will be affected by this administrative regulation. Previously there were 776 home-based processors registered with the branch.

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

(a) List the actions that each of the regulated entities identified in questions (3) will have to take to comply with this administrative regulation or amendment: Home-based processors and home-based microprocessors will need to be aware of the expanded food products available for home processing. Home-based processors will need to be aware of the registration process that becomes effective January 1, 2020.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the identities identified in question (3): Beginning January 1, 2020, home-based processors will pay a \$50 registration fee.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Home-based processors and home-

based microprocessors will be able to offer an expanded variety of home produced food products.

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

(a) Initially: The current cost to administer all programs under the Food Safety Branch within the Division of Public Health Protection and Safety is \$5,524,622. There is no anticipated increase in cost as a result of this amendment.

(b) On a continuing basis: There is no anticipated increase in cost as a result of this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency funds and revenue generated by the registration process for home-based processors and microprocessors.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. Home-based processors and home-based microprocessors will be assessed a fifty (50) dollar registration fee.

(9) TIERING: Is tiering applied? Yes, tiering has been applied as there are separate requirements for home-based processors and microprocessors. All home-based processors will be required to comply with KRS 217.136 and the applicable provisions of this administrative regulation. Home-based microprocessors will be required to comply with KRS 217.137 and the provisions of this administrative regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This program is administered by the Food Safety Branch within the Department for Public Health, with inspection of the home-based microprocessors conducted by state Food Manufacturing Section Inspectors. Local health departments may refer any complaints received to the Food Safety Branch. The only other entity that may be impacted will be the Division of Water to approve the water source for microprocessors without a municipal water supply.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 217.136, 217.137.

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

(a) How much 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 776 previously registered home-based processors should generate an estimated \$38,800 in the first year of registration beginning January 1, 2020. The 140 home-based microprocessors will generate an estimated \$7,000 in certification fees. (b) How 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 combined registration fees for home-based processors and home-based microprocessors will generate an estimated \$45,800 in subsequent years.

(c) How much will it cost to administer this program for the first year? The current cost to administer all programs under the Food Safety Branch within the Division of Public Health Protection and Safety is \$5,524,622. There is no anticipated increase in costs to administer the home-based processor and home-based microprocessor registration program this first year.

(d) How much will it cost to administer this program for subsequent years? There is no anticipated increase in costs to administer the home-based processor and home-based microprocessor registration 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:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 21 C.F.R. 113.83, 114.10, 114.83 and 21 U.S.C. 343(w)

2. State compliance standards. KRS 217.138 establishes the home-based microprocessor certification program. KRS 217.135 authorizes the secretary to establish a standard of identity of any food or class of food promulgated under authority of the federal act.

3. Minimum or uniform standards contained in the federal mandate. Individuals seeking certification as a microprocessor are required to complete the training program pursuant to 21 C.F.R. 113.83, 114.10 and 114.83 offered by the University of Kentucky Cooperative Extension Service as the processing authority. The Federal, Food, Drug, and Cosmetic Act (21 U.S.C. 343(w)) requires foods be labeled with the common or usual name of a major food allergen.

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.

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

CABINET FOR HEALTH AND FAMILY SERVICES

Office of Inspector General
Division of Audits and Investigations
(Amendment)

902 KAR 55:070. [~~Storage of controlled substances in an~~ Emergency medication kits[~~kit~~] in [~~certain~~] long-term care facilities.

RELATES TO: KRS 13B.050, 13B.080, 13B.090, 13B.110, 13B.120, 218A.010(39), [218A.180,] 218A.200(6), 315.335

STATUTORY AUTHORITY: KRS 194A.050(1)[494.050], 218A.250

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Secretary of the Cabinet for Health and Family Service to promulgate administrative regulations necessary to implement programs mandated by federal law, or to qualify for the receipt of federal funds and cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 218A.250 requires[directs] the Cabinet for Health and Family Services to promulgate [adopt rules and] administrative regulations for carrying out the provisions of KRS Chapter 218A[relating to controlled substances]. This administrative regulation establishes requirements related to the placement of[authorizes the storage in an] emergency medication kits with controlled substances[~~kit~~] in [~~certain~~] long-term care facilities[~~of limited quantities of controlled substances to be administered if prescribed by an authorized practitioner~~].

Section 1. Definitions. (1) "Emergency medication kit" or "EMK" is defined by 201KAR 2:370, Section 1(3).

(2) "Practitioner" is defined by KRS 218A.010(39).

Section 2. Storage of Controlled Substances in an EMK[~~Emergency Medication Kit~~]. (1) A pharmacy provider may place one (1) EMK that contains controlled substances in:

(a) A [~~store controlled substances in an emergency medication kit in a~~] residential hospice facility licensed in accordance with 902 KAR 20:380;

(b) A [-] nursing home licensed in accordance with 902 KAR 20:048;

(c) A [-] nursing facility licensed in accordance with 902 KAR

20:300:

~~(d) An [– skilled nursing facility,] intermediate care facility licensed in accordance with 902 KAR 20:051;~~

~~(e) A personal care home pursuant to 201 KAR 2:370, Section 2(4)(i);[–] or~~

~~(f) An intermediate care facility for individuals with intellectual disabilities licensed in accordance with 902 KAR 20:086.~~

~~(2) A long-term care facility with an EMK shall:~~

~~(a) Implement and maintain on-site a copy of [the mentally retarded if the following conditions are met: (1)] written policies and procedures developed in consultation with the pharmacy provider, including responsibilities specific to the facility and the pharmacy as it relates to procuring, using, storing, securing, and replacing controlled substances in the kit;~~

~~(b) Maintain a complete and accurate record of all controlled substances to be kept in the EMK, including the disposition of the controlled substances; and~~

~~(c) Ensure that the EMK is stored in a limited access area such as a securely locked:~~

- ~~1. Substantially constructed cabinet; or~~
- ~~2. Room with restricted access.~~

~~(3) [of the facility regarding the procurement, use, storage, security, replacement, and recordkeeping of controlled substances in the kit shall be filed with the facility and with the provider pharmacy; (2)] Controlled substances in the EMK [kit] shall be the property of the [provider] pharmacy provider.~~

~~(4) The pharmacy provider shall:~~

~~(a) Implement and maintain a copy of the written policies and procedures required by subsection (2)(a) of this section;~~

~~(b) Maintain a complete and accurate record of all controlled substances to be kept in the EMK, including the disposition of the controlled substances;~~

~~(c) Be [– which is] responsible for the [their proper] labeling, storage, security, and accountability of all controlled substances in the EMK;~~

~~(d) Document completion of a physical inventory of the controlled substances no less than one (1) time per month; and~~

~~(e) Report theft or loss of controlled substances from the EMK pursuant to:~~

- ~~1. KRS 218A.200(6);~~
- ~~2. KRS 315.335; and~~
- ~~3. 201 KAR 2:205, Section 2(3)(g).~~

~~(5) [– (3)] Controlled substances stored in the EMK [kit] shall be selected [jointly] by the facility's:~~

- ~~(a) Medical director or other physician;~~
- ~~(b) [–] Consultant pharmacist; [–] and~~
- ~~(c) [The] Director of nursing.~~

~~(6) [– (4)] Controlled substances in the EMK [kit] shall not exceed six (6) individual doses each of ten (10) [six (6)] different controlled substances, plus two (2) multi-dose packages in the smallest unit that is commercially available.~~

~~(7) A [– (5)] controlled substance from [substances in] the EMK [kit] shall be administered only upon the prescription [the] order of an authorized practitioner who determines that the resident [patient] has an immediate medical need.~~

~~(8) [– (6)] Access to a [the] controlled substance [substances] in the EMK [kit] shall be limited to a:~~

- ~~(a) Practitioner;~~
- ~~(b) [physician, pharmacist,] Registered nurse; [–] or~~
- ~~(c) Other person authorized by law in this state to access and administer the prescribed medication.~~

~~(9) If an EMK is opened for any reason, [– (7)] the facility shall notify the pharmacy provider [pharmacy shall be notified by the facility] within twenty-four (24) hours after the kit has been opened for the pharmacy to restock and reseal the kit promptly, if necessary. [– (8)] The prescribing practitioner shall issue a written prescription for the controlled substances to the provider pharmacy within seventy-two (72) hours after administration of a controlled substance from the kit;~~

~~(9) The facility shall maintain a record of the administration of controlled substances from the kit in accordance with applicable state and federal laws;~~

~~(10) The provider pharmacy shall document documents a physical inventory of the controlled substances in the kit at least~~

monthly; and

~~(14) The loss of any controlled substance from the kit shall be reported to the Cabinet for Health and Family Services in accordance with KRS 218A.200(6) and to the Federal Drug Enforcement Administration in accordance with 21 C.F.R. 1301.74(c-)]~~

Section 3. Adverse Action. (1)[2-] The Cabinet for Health and Family Services shall [may] deny, suspend, or revoke the privilege of supplying or possessing an EMK if the cabinet finds substantial noncompliance with [storing controlled substances in an emergency medication kit if any provision in] Section 2[1] of this administrative regulation [is violated].

~~(2) The pharmacy provider or facility may file an appeal with the cabinet within (10) calendar days of the cabinet's notice of denial, suspension, or revocation.~~

~~(3) If the pharmacy provider or facility requests an administrative hearing, the cabinet shall:~~

~~(a) Appoint a hearing officer; and~~

~~(b) Proceed pursuant to KRS 13B.050 [All administrative hearings shall be conducted in accordance with 902 KAR 1:400].~~

~~(4) The administrative hearing shall be conducted by a hearing officer appointed by the secretary and held in accordance with KRS 13B.080, 13B.090, and 13B.110.~~

~~(5) The secretary shall issue a final order in accordance with KRS 13B.120.~~

STEVEN D. DAVIS, Inspector General
ADAM M. MEIER, Secretary

APPROVED BY AGENCY: May 21, 2019

FILED WITH LRC: June 13, 2019 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on July 22, 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 July 15, 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 July 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 and Chase Coffey

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements related to the placement of emergency medication kits with controlled substances in long-term care facilities.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 218A.250, which requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary for carrying out the provisions of KRS Chapter 218A. Additionally, the Drug Enforcement Administration (DEA) issued a policy statement that provides individual state licensing and regulatory agencies with general guidelines for establishing specific rules concerning controlled substances used in emergency kits in long-term care facilities, see Pharmacist's Manual – Appendix H, *Guidelines for*

Emergency Kits in Long Term Care Facilities: https://www.deaiversion.usdoj.gov/pubs/manuals/pharm2/appendix/appdx_h.htm. Appendix H states that "a pharmacy may place an emergency kit with controlled substances in a non-DEA registered Long Term Care Facility (LTCF), if the appropriate state agency or regulatory authority specifically approves the placement and promulgates procedures that delineate" the source from which a facility may obtain controlled substances for an emergency kit, security safeguards, and other requirements for the proper use and storage of an emergency kit.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 218A.250 and Pharmacist's Manual – Appendix H by establishing requirements related to the placement of emergency medication kits with controlled substances in long-term care facilities.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing requirements related to the placement of emergency medication kits with controlled substances in long-term care facilities.

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

(a) How the amendment will change this existing administrative regulation: This amendment changes the existing administrative regulation as follows:

Replaces the previous title with a new title, "Emergency medication kits in long-term care facilities;

Defines the terms "emergency medication kit (EMK)" and "practitioner";

Clarifies that no more than one (1) EMK may be placed in an LTCF, including a personal care home that meets the requirements of 201 KAR 2:370, Section 2(4)(i);

Clarifies that both the LTCF and pharmacy provider shall maintain a complete and accurate record of all controlled substances to be kept in the EMK, including the disposition of the controlled substances as required by the DEA Pharmacist's Manual – H, A.3.;

Increases the number of controlled substances that may be stored in an EMK from six (6) individual doses each of six (6) different controlled substances to six (6) individual doses each of ten (10) different controlled substances, and also allows for the storage of two (2) multi-dose packages in the smallest unit that is commercially available;

Updates the cross-references to state laws and administrative regulations that require a pharmacy provider to report theft of loss of a controlled substance from the EMK;

Requires the cabinet to deny, suspend, or revoke the privilege of supplying or possessing an EMK if the cabinet finds substantial noncompliance with the requirements of this administrative regulation; and

Makes technical changes for compliance with KRS Chapter 13A to improve clarity and flow.

(b) The necessity of the amendment to this administrative regulation: This amendment has been filed upon consideration of a request from the Kentucky Association of Health Care Facilities to modify the limit on the quantity of controlled substances currently allowed to be stored in an EMK. Therefore, the cabinet has agreed to increase the number of controlled substances that may be stored in an EMK from six (6) individual doses each of six (6) different controlled substances to six (6) individual doses each of ten (10) different controlled substances, and allow for the storage of two (2) multi-dose packages in the smallest unit that is commercially available for a total of twelve (12) different controlled substances in the EMK. Although states' rules and regulations on this issue vary, including some states without a defined limit on the number of controlled substances or doses placed in an EMK, the Cabinet's proposal maintains a defined limit to help reduce the potential for diversion, yet provides for a reasonable increase in the limit to address issues related to emergency access to controlled substances needed for immediate administration.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of

KRS 218A.250 and the DEA Pharmacist's Manual – Appendix H by establishing requirements related to the placement of emergency medication kits with controlled substances in long-term care facilities.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the statutes by establishing requirements related to the placement of emergency medication kits with controlled substances in long-term care facilities.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation impacts pharmacy providers that place an EMK in a long-term care facility as well as facilities that administer controlled substances from an EMK.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: To comply with this amendment, a long-term care facility with an EMK shall implement and maintain on-site written policies and procedures developed in consultation with the pharmacy provider, including responsibilities specific to procuring, using, storing, securing, and replacing controlled substance in the kit; maintain a complete and accurate record of all controlled substances to be kept in the EMK; and ensure that the EMK is stored in a limited access area. The pharmacy provider shall be responsible for maintaining policies and procedures developed in consultation with the long-term care facility; maintain a complete and accurate record of all controlled substances to be kept in the EMK; assume responsibility for the labeling, storage, security, and accountability of all controlled substances in the EMK; document completion of a physical inventory of the controlled substances no less than one (1) time per month; and report theft or loss of controlled substances from the EMK in accordance with applicable state laws and administrative regulations. In addition, controlled substances stored in the EMK shall be selected by the facility's medical director or physician, consultant pharmacist, and director of nursing. Controlled substances stored in the EMK shall not exceed the limit established by Section 2(6) of this administrative regulation. Further, this administrative regulation establishes requirements related to administration of controlled substances from the EMK, access to medications in the EMK, and notification to the pharmacy provider if an EMK is opened for any reason.

(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 will be incurred to comply with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment increases the number of controlled substances that may be stored in an EMK from six (6) individual doses each of six (6) different controlled substances to six (6) individual doses each of ten (10) different controlled substances, and also allows for the storage of two (2) multi-dose packages in the smallest unit that is commercially available for a total of twelve (12) different controlled substances in the EMK. This change will allow for urgent doses of needed medications to be administered immediately to residents who are in need.

(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 are 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

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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 pharmacy providers and long-term care facilities 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, and pharmacy providers that place an EMK in a long-term care facility as well as facilities that administer controlled substances from an EMK.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050, 218A.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 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:

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

907 KAR 3:170. Telehealth service[consultation] coverage and reimbursement.

RELATES TO: KRS 194A.060, 194A.125, 205.510(15), 205.559, 205.560, 422.317, 434.840-434.860, 42 C.F.R. 415.174, 415.184, 431.300-431.307, 440.50

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.559(2), (7), 205.560

NECESSITY, FUNCTION, AND CONFORMITY: In accordance with KRS 194A.030(2), 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. KRS 205.559 establishes the requirements regarding Medicaid reimbursement of telehealth providers and KRS 205.559(2) and (7) require the cabinet to promulgate an administrative regulation relating to telehealth services[consultations] and reimbursement. This administrative regulation establishes the Department for Medicaid Services' coverage and reimbursement policies relating to telehealth

services[consultations] in accordance with KRS 205.559.

Section 1. Definitions. (1) ["Advanced practice registered nurse" or "APRN" is defined by KRS 314.011(7).

(2) "Certified nutritionist" is defined by KRS 310.005(12).

(3) "Chiropractor" is defined by KRS 312.015(3).

(4) "Community mental health center" or "CMHC" means a facility that provides a comprehensive range of mental health services to Medicaid recipients of a designated area in accordance with KRS 210.370 to 210.485.

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

(2) [(6) "Diabetes self-management training consultation" means the ongoing process of facilitating the knowledge, skill, and ability necessary for diabetes self-care.

(7) "Direct physician contact" means that the billing physician is physically present with and evaluates, examines, treats, or diagnoses the recipient.

(8) "Encounter" means one (1) visit by a recipient to a telehealth spoke site where the recipient receives a telehealth consultation in real time, during the visit, from a telehealth provider or telehealth practitioner at a telehealth hub site.

(9) "Face-to-face" means [except as established in Section 4(4)(g) of this administrative regulation]:

- (a) In person; and
(b) Not via telehealth.

(3) [(40) "Federal financial participation" is defined by [ia] 42 C.F.R. 400.203.

(4) [(11) "GT modifier" means a modifier that identifies a telehealth consultation which is approved by the healthcare common procedure coding system (HCPCS).

(12) "Health care provider" means a Medicaid provider who is:

(a) Currently enrolled as a Medicaid provider in accordance with 907 KAR 1:672; and

(b) Currently participating as a Medicaid provider in accordance with 907 KAR 1:674.

(13) "Hub site" means a telehealth site:

(a) Where the telehealth provider or telehealth practitioner performs telehealth; and

(b) That is considered the place of service.

(14) "Legally-authorized representative" means a Medicaid recipient's parent or guardian if a recipient is a minor child, or a person with power of attorney for a recipient.

(15) "Licensed clinical social worker" means an individual meeting the licensure requirements established in KRS 335.100.

(16) "Licensed dietitian" is defined by KRS 310.005(11).

(17) "Licensed marriage and family therapist" is defined by KRS 335.300(2).

(18) "Licensed professional clinical counselor" is defined by KRS 335.500(3).

(19) "Medical necessity" or "medically necessary" means a covered benefit is determined to be needed in accordance with 907 KAR 3:130 or pursuant to the process established by KRS 304.38-240.

(5) "Place of service" means anywhere the patient is located at the time a telehealth service is provided, and includes telehealth services provided to a patient located at the patient's home or office, or a clinic, school, or workplace.

(6) "Telehealth" is defined by KRS 205.510(15).

(7) "Telehealth care provider" means a Medicaid provider who is:

(a) Currently enrolled as a Medicaid provider in accordance with 907 KAR 1:672;

(b) Currently participating as a Medicaid provider in accordance with 907 KAR 1:671;

(c) Operating within the scope of the provider's professional licensure; and

(d) Operating within the provider's scope of practice.

(8) "Telehealth service" means any service that is provided by telehealth and is one (1) of the following:

(a) Event;

(b) Encounter;

(c) Consultation, including a telehealth consultation as defined by KRS 205.510(16);

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(d) Visit;

(e) Store and forward transfer, for radiology services only;

(f) Remote patient monitoring;

(g) Referral; or

(h) Treatment. [(20) "National Provider Identifier" or "NPI" means a standard-unique health identifier for health care providers which:

(a) Is required by 42 C.F.R. 455.440; and

(b) Meets the requirements of 45 C.F.R. 162.406.

(21) "Occupational therapist" is defined by KRS 319A.010(3).

(22) "Optometrist" means an individual licensed to engage in the practice of optometry in accordance with KRS 320.210(2).

(23) "Physical therapist" is defined by KRS 327.010(2).

(24) "Physician" is defined by KRS 311.550(12).

(25) "Physician assistant" is defined by KRS 311.840(3).

(26) "Psychologist" is defined by KRS 319.010(9).

(27) "Registered nurse" is defined by KRS 314.011(5).

(28) "Speech-language pathologist" is defined by KRS 334A.020(3).

(29) "Spoke site" means a telehealth site where the recipient receiving the telehealth consultation is located.

(30) "Telehealth consultation" is defined by KRS 205.510(15).

(31) "Telehealth practitioner" means an individual who is:

(a) Authorized to perform a telehealth consultation in accordance with this administrative regulation;

(b) Employed by or is an agent of a telehealth provider; and

(c) Not the individual or entity who:

1. Bills the department for a telehealth consultation; or

2. Is reimbursed by the department for a telehealth consultation.

(32) "Telehealth provider" means a health care provider who:

(a) Performs a telehealth consultation at a hub site; or

(b) Is the employer of or entity that contracts with a telehealth practitioner who performs a telehealth consultation:

1. At a hub site; and

2. That is billed under the telehealth provider's national provider identifier.

(33) "Telehealth site" means a hub site or spoke site that has been approved as part of a telehealth network established in accordance with KRS 194A.125.

(34) "Telepresenter" means an individual operating telehealth equipment at a spoke site to enable a recipient to receive a telehealth consultation.

(35) "Transmission cost" means the cost of the telephone line and related costs incurred during the time of the transmission of a telehealth consultation.

(36) "Two (2) way interactive video" means a type of advanced telecommunications technology that permits a real time telehealth consultation to take place between a recipient and a telepresenter at the spoke site and a telehealth provider or telehealth practitioner at the hub site.]

Section 2. General Policies. (1)(a) Except as provided in paragraph (b) of this subsection, the coverage policies established in this administrative regulation shall apply to:

1. Medicaid services for individuals not enrolled in a managed care organization; and

2. A managed care organization's coverage of Medicaid services for individuals enrolled in the managed care organization for the purpose of receiving Medicaid or Kentucky Children's Health Insurance Program services.

(b) A managed care organization shall [not be required to] reimburse the same amount for a telehealth service[consultation] as the department reimburses unless a different payment rate is negotiated in accordance with Section 3(1)(a)2. of this administrative regulation[, but may reimburse the same as the department reimburses if the managed care organization chooses to do so].

(2) A telehealth service[consultation] shall not be reimbursed by the department if:

(a) It is not medically necessary;

(b) The equivalent service is not covered by the department if provided in a face-to-face setting; or

(c) [It requires a face-to-face contact with a recipient in

accordance with 42 C.F.R. 447.374;

(d) The telehealth care provider of the telehealth service[consultation] is:

1. Not currently enrolled in the Medicaid program pursuant to 907 KAR 1:672;

2. Not currently participating in the Medicaid program pursuant to 907 KAR 1:671;

3. Not in good standing with the Medicaid program;

4. Currently listed on the Kentucky DMS Provider Terminated and Excluded Provider List [of Excluded Providers], which is available at <https://chfs.ky.gov/agencies/dms/dpi/pe/Pages/terminated.aspx> [http://chfs.ky.gov/dms/provEnr]; or

5. Currently listed on the United States Department of Health and Human Services, Office of Inspector General List of Excluded Individuals and Entities, which is available at <https://oig.hhs.gov/exclusions/>[-or

(e) It is provided by a telehealth practitioner or telehealth provider not recognized or authorized by the department to provide the telehealth consultation or equivalent service in a face-to-face setting].

(3)(a) [A telehealth provider shall:

1. Be an approved member of the Kentucky Telehealth Network; and

2. Comply with the standards and protocols established by the Kentucky Telehealth Board.

(b) To become an approved member of the Kentucky Telehealth Network, a provider shall:

1. Send a written request to the Kentucky Telehealth Board requesting membership in the Kentucky Telehealth Network; and

2. Be approved by the Kentucky Telehealth Board as a member of the Kentucky Telehealth Network.

(4)(a) A telehealth consultation referenced in Section 3 or 4 of this administrative regulation shall be provided to the same extent and with the same coverage policies and restrictions that apply, except as established in Section 4(4)(g) and 4(5) of this administrative regulation to the equivalent service if provided in a face-to-face setting.

(b) If a telehealth coverage policy or restriction is not stated in this administrative regulation but is stated in another administrative regulation within Title 907 of the Kentucky Administrative Regulations, the coverage policy or restriction stated elsewhere within Title 907 of the Kentucky Administrative Regulations shall apply.

(5)(a) A telehealth service[consultation] shall be subject to utilization review for:

1. Medical necessity;

2. Compliance with this administrative regulation; and

3. Compliance with applicable state and federal law.

(b) The department shall not reimburse for a telehealth service if the department determines that a telehealth service[consultation] is not:

1. [Not] Medically necessary;[-is not]

2. Compliant with this administrative regulation;

3. Applicable to this administrative regulation;[-] or [is not]

4. Compliant with applicable state or federal law;[-the department shall not reimburse for the telehealth consultation].

(c) The department shall recoup the reimbursement for a previously reimbursed telehealth service if the department determines that a telehealth service[consultation] that it has already reimbursed for was not:

1. Medically necessary;[-was not]

2. Compliant with this administrative regulation;

3. Applicable to this administrative regulation;[-] or [was not]

4. Compliant with applicable state or federal law;[-the department shall recoup the reimbursement for the telehealth consultation from the provider].

(4) A telehealth service shall have the same referral requirements as a face-to-face service.

(5) Within forty-eight (48) hours of the telehealth service, a provider shall document within the patient's medical record that a service was provided via telehealth, and follow all documentation requirements established by Section 4 of this administrative regulation. [(6) A telehealth consultation shall require:

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- (a) The use of two (2) way interactive video;
- (b) A referral by a health care provider; and
- (c) A referral by a recipient's lock-in provider if the recipient is locked in pursuant to:
 1. 42 C.F.R. 431.54; and
 2. 907 KAR 1:677.]

Section 3. Telehealth Reimbursement. (1)(a)1. The department shall reimburse an eligible telehealth care provider for a telehealth service in an amount that is at least 100 percent of the amount paid for a comparable in-person service.

2. A managed care organization and provider may establish a different rate for telehealth reimbursement via contract as allowed pursuant to KRS 205.5591(5).

(b) A telehealth service reimbursed pursuant to this section shall be subject to cost-sharing pursuant to 907 KAR 1:604.

(2) A provider shall appropriately denote telehealth services by place of service, modifiers, or other means as designated by the department or as required in a managed care organization's contract with the provider or member. [Consultation Coverage in a Setting That is Not a Community Mental Health Center. (1) The policies in this section shall apply to a telehealth consultation provided in a setting that is not a community mental health center.

(2) The following telehealth consultations shall be covered by the department as follows:

(a) A physical health evaluation or management consultation provided by:

1. A physician including a physician:
 - a. With an individual physician practice;
 - b. Who belongs to a group physician practice; or
 - c. Who is employed by a federally-qualified health center, federally-qualified health center look-alike, rural health clinic, or primary care center;
2. An advanced practice registered nurse including an advanced practice registered nurse:
 - a. With an individual advanced practice registered nurse practice;
 - b. Who belongs to a group advanced practice registered nurse practice; or
 - c. Who is employed by a physician, federally-qualified health center, federally-qualified health center look-alike, rural health clinic, or primary care center;
3. An optometrist; or
4. A chiropractor;

(b) A mental health evaluation or management service provided by:

1. A psychiatrist;
2. A physician in accordance with the limit established in 907 KAR 3:005;
3. An APRN in accordance with the limit established in 907 KAR 1:102;
4. A psychologist:
 - a. With a license in accordance with KRS 319.010(6);
 - b. With a doctorate degree in psychology;
 - c. Who is directly employed by a psychiatrist; and
 - d. If:
 - (i) The psychiatrist by whom the psychologist is directly employed also interacts with the recipient during the encounter; and
 - (ii) The telehealth consultation is billed under the NPI of the psychiatrist by whom the psychologist is directly employed;

(c) A licensed professional clinical counselor:

1. Who is directly employed by a psychiatrist; and
2. If:
 - (i) The psychiatrist by whom the licensed professional clinical counselor is directly employed also interacts with the recipient during the encounter; and
 - (ii) The telehealth consultation is billed under the NPI of the psychiatrist by whom the licensed professional clinical counselor is directly employed;

(d) Pharmacologic management provided by:

1. A physician in accordance with the limit established in 907 KAR 3:005;
2. An APRN in accordance with the limit established in 907 KAR 1:102; or
3. A psychiatrist;

(e) A psychiatric, psychological, or mental health diagnostic interview examination provided by:

1. A psychiatrist;
2. A physician in accordance with the limit established in 907 KAR 3:005;
3. An APRN in accordance with the limit established in 907 KAR 1:102;
4. A psychologist:
 - a. With a license in accordance with KRS 319.010(6);
 - b. With a doctorate degree in psychology;
 - c. Who is directly employed by a psychiatrist; and

is directly employed also interacts with the recipient during the encounter; and

(iii) The telehealth consultation is billed under the NPI of the psychiatrist by whom the licensed clinical social worker is directly employed; or

7. A licensed marriage and family therapist:

- a. Who is directly employed by a psychiatrist; and
- b. If:
 - (i) The psychiatrist by whom the licensed marriage and family therapist is directly employed also interacts with the recipient during the encounter; and
 - (ii) The telehealth consultation is billed under the NPI of the psychiatrist by whom the licensed marriage and family therapist is directly employed;

(c) Individual or group psychotherapy provided by:

1. A psychiatrist;
2. A physician in accordance with the limit established in 907 KAR 3:005;
3. An APRN in accordance with the limit established in 907 KAR 1:102;
4. A psychologist:
 - a. With a license in accordance with KRS 319.010(6);
 - b. With a doctorate degree in psychology;
 - c. Who is directly employed by a psychiatrist; and
 - d. If:
 - (i) The psychiatrist by whom the psychologist is directly employed also interacts with the recipient or recipients during the encounter; and
 - (ii) The telehealth consultation is billed under the NPI of the psychiatrist by whom the psychologist is directly employed;

5. A licensed professional clinical counselor:

- a. Who is directly employed by a psychiatrist; and
- b. If:
 - (i) The psychiatrist by whom the licensed professional clinical counselor is directly employed also interacts with the recipient or recipients during the encounter; and
 - (ii) The telehealth consultation is billed under the NPI of the psychiatrist by whom the licensed professional clinical counselor is directly employed;

6. A licensed clinical social worker:

- a. Who is directly employed by a psychiatrist; and
- b. If:
 - (i) The psychiatrist by whom the licensed clinical social worker is directly employed also interacts with the recipient or recipients during the encounter; and
 - (ii) The telehealth consultation is billed under the NPI of the psychiatrist by whom the licensed clinical social worker is directly employed; or

7. A licensed marriage and family therapist:

- a. Who is directly employed by a psychiatrist; and
- b. If:
 - (i) The psychiatrist by whom the licensed marriage and family therapist is directly employed also interacts with the recipient or recipients during the encounter; and
 - (ii) The telehealth consultation is billed under the NPI of the psychiatrist by whom the licensed marriage and family therapist is directly employed;

(d) Pharmacologic management provided by:

1. A physician in accordance with the limit established in 907 KAR 3:005;
2. An APRN in accordance with the limit established in 907 KAR 1:102; or
3. A psychiatrist;

(e) A psychiatric, psychological, or mental health diagnostic interview examination provided by:

1. A psychiatrist;
2. A physician in accordance with the limit established in 907 KAR 3:005;
3. An APRN in accordance with the limit established in 907 KAR 1:102;
4. A psychologist:
 - a. With a license in accordance with KRS 319.010(6);
 - b. With a doctorate degree in psychology;
 - c. Who is directly employed by a psychiatrist; and

5. Who is directly employed by a psychiatrist; and

6. If:

- (i) The psychiatrist by whom the licensed marriage and family therapist is directly employed also interacts with the recipient or recipients during the encounter; and
- (ii) The telehealth consultation is billed under the NPI of the psychiatrist by whom the licensed marriage and family therapist is directly employed;

(d) Pharmacologic management provided by:

1. A physician in accordance with the limit established in 907 KAR 3:005;
2. An APRN in accordance with the limit established in 907 KAR 1:102; or
3. A psychiatrist;

(e) A psychiatric, psychological, or mental health diagnostic interview examination provided by:

1. A psychiatrist;
2. A physician in accordance with the limit established in 907 KAR 3:005;
3. An APRN in accordance with the limit established in 907 KAR 1:102;
4. A psychologist:
 - a. With a license in accordance with KRS 319.010(6);
 - b. With a doctorate degree in psychology;
 - c. Who is directly employed by a psychiatrist; and

- d. If:
 - (i) The psychiatrist by whom the psychologist is directly employed also interacts with the recipient during the encounter; and
 - (ii) The telehealth consultation is billed under the NPI of the psychiatrist by whom the psychologist is directly employed;
- 5. A licensed professional clinical counselor:
 - a. Who is directly employed by a psychiatrist; and
 - b. If:
 - (i) The psychiatrist by whom the licensed professional clinical counselor is directly employed also interacts with the recipient during the encounter; and
 - (ii) The telehealth consultation is billed under the NPI of the psychiatrist by whom the licensed professional clinical counselor is directly employed;
- 6. A licensed clinical social worker:
 - a. Who is directly employed by a psychiatrist; and
 - b. If:
 - (i) The psychiatrist by whom the licensed clinical social worker is directly employed also interacts with the recipient during the encounter; and
 - (ii) The telehealth consultation is billed under the NPI of the psychiatrist by whom the licensed clinical social worker is directly employed; or
- 7. A licensed marriage and family therapist:
 - a. Who is directly employed by a psychiatrist; and
 - b. If:
 - (i) The psychiatrist by whom the licensed marriage and family therapist is directly employed also interacts with the recipient during the encounter; and
 - (ii) The telehealth consultation is billed under the NPI of the psychiatrist by whom the licensed marriage and family therapist is directly employed;
 - (f) Individual medical nutrition therapy consultation services provided by a:
 - 1. Licensed dietitian:
 - a. Who is directly employed by a physician, federally qualified health care center, rural health clinic, primary care center, a hospital's outpatient department, or the Department for Public Health; and
 - b. If the telehealth consultation is billed under the:
 - (i) NPI of the physician, federally qualified health care center, rural health clinic, hospital's outpatient department, or primary care center by whom the licensed dietitian is directly employed; or
 - (ii) Department for Public Health if the licensed dietitian works for the Department for Public Health; or
 - 2. Certified nutritionist:
 - a. Who is directly employed by a physician, federally qualified health care center, rural health clinic, primary care center, a hospital's outpatient department, or the Department for Public Health; and
 - b. If the telehealth consultation is billed under the:
 - (i) NPI of the physician, federally qualified health care center, rural health clinic, hospital's outpatient department, or primary care center by whom the certified nutritionist is directly employed; or
 - (ii) Department for Public Health if the certified nutritionist works for the Department for Public Health;
 - (g) Individual diabetes self-management training consultation if:
 - 1. Ordered by a:
 - a. Physician;
 - b. APRN directly employed by a physician; or
 - c. Physician assistant directly employed by a physician;
 - 2. Provided by a:
 - a. Physician;
 - b. APRN directly employed by a physician;
 - c. Physician assistant directly employed by a physician;
 - d. Registered nurse directly employed by a physician; or
 - e. Licensed dietitian directly employed by a physician, federally qualified health care center, rural health clinic, primary care center, a hospital's outpatient department, or the Department for Public Health; and
 - 3. The telehealth consultation is billed under the:
 - a. NPI of the physician, federally qualified health care center,

- rural health clinic, hospital's outpatient department, or primary care center by whom the provider is directly employed; or
- b. Department for Public Health if the provider works for the Department for Public Health;
- (h) An occupational therapy evaluation or treatment provided by an occupational therapist who is directly employed by a physician:
 - 1. If direct physician contact occurs during the evaluation;
 - 2. If the telehealth consultation is billed under the physician's NPI; and
 - 3. In accordance with the limits established in 907 KAR 3:005;
- (i) An occupational therapy evaluation or treatment provided by an occupational therapist who is directly employed by or is an agent of a nursing facility:
 - 1. If the telehealth consultation is billed under the nursing facility's NPI; and
 - 2. In accordance with the limits established in 907 KAR 1:065;
- (j) An occupational therapy evaluation or treatment provided by an occupational therapist who is directly employed by or is an agent of a home health agency:
 - 1. If the telehealth consultation is billed under the home health agency's NPI; and
 - 2. In accordance with the limits established in 907 KAR 1:030;
- (k) A physical therapy evaluation or treatment provided by a physical therapist who is directly employed by a physician:
 - 1. If direct physician contact occurs during the evaluation;
 - 2. If the telehealth consultation is billed under the physician's NPI; and
 - 3. In accordance with the limits established in 907 KAR 3:005;
- (l) A physical therapy evaluation or treatment provided by a physical therapist who is directly employed by or is an agent of a hospital's outpatient department:
 - 1. If the telehealth consultation is billed under the hospital's outpatient department's NPI; and
 - 2. In accordance with the limits established in 907 KAR 10:014;
- (m) A physical therapy evaluation or treatment provided by a physical therapist who is directly employed by or is an agent of a home health agency:
 - 1. If the telehealth consultation is billed under the home health agency's NPI; and
 - 2. In accordance with the limits established in 907 KAR 1:030;
- (n) A physical therapy evaluation or treatment provided by a physical therapist who is directly employed by or is an agent of a nursing facility:
 - 1. If the telehealth consultation is billed under the nursing facility's NPI; and
 - 2. In accordance with the limits established in 907 KAR 1:065;
- (o) A speech therapy evaluation or treatment provided by a speech-language pathologist who is directly employed by a physician:
 - 1. If direct physician contact occurs during the evaluation or treatment;
 - 2. If the telehealth consultation is billed under the physician's NPI; and
 - 3. In accordance with the limits established in 907 KAR 3:005;
- (p) A speech therapy evaluation or treatment provided by a speech-language pathologist who is directly employed by or is an agent of a hospital's outpatient department:
 - 1. If the telehealth consultation is billed under the hospital's outpatient department's NPI; and
 - 2. In accordance with the limits established in 907 KAR 10:014;
- (q) A speech therapy evaluation or treatment provided by a speech-language pathologist who is directly employed by or is an agent of a home health agency:
 - 1. If the telehealth consultation is billed under the home health agency's NPI; and
 - 2. In accordance with the limits established in 907 KAR 1:030;
- (r) A speech therapy evaluation or treatment provided by a speech-language pathologist who is directly employed by or is an agent of a nursing facility:
 - 1. If the telehealth consultation is billed under the nursing facility's NPI; and
 - 2. In accordance with the limits established in 907 KAR 1:065;
- (s) A neurobehavioral status examination provided by:

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1. A psychiatrist;
2. A physician in accordance with the limit established in 907 KAR 3:005; or
3. A psychologist:
 - a. With a license in accordance with KRS 319.010(6);
 - b. With a doctorate degree in psychology; and
 - c. Who is directly employed by a physician or a psychiatrist:
 - (i) In accordance with the limits established in 907 KAR 3:005;
 - (ii) If the physician or psychiatrist by whom the psychologist is directly employed also interacts with the recipient during the encounter; and
 - (iii) If the telehealth consultation is billed under the NPI of the physician or psychiatrist by whom the psychologist is directly employed; or
 - (t) End-stage renal disease monitoring, assessment, or counseling consultations for a home dialysis recipient provided by:
 1. A physician directly employed by a hospital's outpatient department if the telehealth consultation is billed under the hospital's outpatient department's NPI; or
 2. An APRN directly employed by a hospital's outpatient department if the telehealth consultation is billed under the hospital's outpatient department's NPI.

Section 4. Telehealth Consultation Coverage in a Community Mental Health Center. (1) The policies in this section shall apply to a telehealth consultation provided via a community mental health center.

- (2) The limits, restrictions, exclusions, or policies:
 - (a) Which apply to a service provided face-to-face in a community mental health center shall apply to a telehealth consultation or service provided via telehealth via a community mental health center; and
 - (b) Established in 907 KAR 1:044 shall apply to a telehealth consultation or service provided via:
 1. Telehealth; and
 2. A community mental health center.
- (3) The department shall not reimburse for a telehealth consultation provided via a community mental health center if:
 - (a) The consultation is not billed under the community mental health center's national provider identifier; or
 - (b) The person who delivers the telehealth consultation is not:
 1. Directly employed by the community mental health center; or
 2. An agent of the community mental health center.
- (4) The following telehealth consultations provided via a community mental health center shall be covered by the department as follows:
 - (a) A psychiatric diagnostic interview examination provided:
 1. In accordance with 907 KAR 1:044; and
 2. By:
 - a. A psychiatrist; or
 - b. An APRN who:
 - (i) Is certified in the practice of psychiatric mental health nursing; and
 - (ii) Meets the requirements established in 201 KAR 20:057;
 - (b) A psychological diagnostic interview examination provided:
 1. In accordance with 907 KAR 1:044; and
 2. By:
 - a. A psychiatrist; or
 - b. A psychologist with a license in accordance with KRS 319.010(6);
 - (c) Pharmacologic management provided:
 1. In accordance with 907 KAR 1:044; and
 2. By:
 - a. A physician;
 - b. A psychiatrist; or
 - c. An APRN who:
 - (i) Is certified in the practice of psychiatric mental health nursing; and
 - (ii) Meets the requirements established in 201 KAR 20:057;
 - (d) Group psychotherapy provided:
 1. In accordance with 907 KAR 1:044; and
 2. By:
 - a. A psychiatrist;
 - b. A psychologist with a license in accordance with KRS

- 319.010(6);
 - c. A licensed professional clinical counselor;
 - d. A licensed marriage and family therapist;
 - e. A licensed clinical social worker;
 - f. A psychiatric registered nurse; or
 - g. An APRN who:
 - (i) Is certified in the practice of psychiatric mental health nursing; and
 - (ii) Meets the requirements established in 201 KAR 20:057;
 - (e) Mental health evaluation or management emergency services provided:
 1. In accordance with 907 KAR 1:044; and
 2. By:
 - a. A psychiatrist;
 - b. A psychologist with a license in accordance with KRS 319.010(6);
 - (g) Individual psychotherapy provided:
 1. In accordance with 907 KAR 1:044 except that "face-to-face" shall include two (2) way interactive video for the purposes of individual psychotherapy provided via a community mental health center; and
 2. By:
 - a. A psychiatrist;
 - b. A psychologist with a license in accordance with KRS 319.010(6);
 - (i) Is certified in the practice of psychiatric mental health nursing; and
 - (ii) Meets the requirements established in 201 KAR 20:057;
 - (f) A mental health assessment provided:
 1. In accordance with 907 KAR 1:044; and
 2. By a psychologist with a license in accordance with KRS 319.010(6); or
 - (g) Individual psychotherapy provided:
 1. In accordance with 907 KAR 1:044 except that "face-to-face" shall include two (2) way interactive video for the purposes of individual psychotherapy provided via a community mental health center; and
 2. By:
 - a. A psychiatrist;
 - b. A psychologist with a license in accordance with KRS 319.010(6);
 - (i) Is certified in the practice of psychiatric mental health nursing; and
 - (ii) Meets the requirements established in 201 KAR 20:057.
- (5) If a provision established in 907 KAR 1:044 or the material incorporated by reference into 907 KAR 1:044 is in contrast with subsection (4)(g)1. of this section, the policy established in subsection (4)(g)1. of this section shall supersede the contrary statement.

Section 5. Reimbursement. (1)(a) The department shall reimburse a telehealth provider who is eligible for reimbursement from the department for a telehealth consultation an amount equal to the amount paid for a comparable in-person service in accordance with:

1. 907 KAR 3:010 if the service was provided:
 - a. By a physician; and
 - b. Not in the circumstances described in subparagraphs 3., 4., 5., or 6. of this paragraph;
2. 907 KAR 1:104 if the service was provided:
 - a. By an advanced practice registered nurse; and
 - b. Not in the circumstances described in subparagraphs 3., 4., 5., or 6. of this paragraph;
3. 907 KAR 1:055 if the service was provided and billed through a federally-qualified health center, federally-qualified health-center-look-alike, rural health clinic, or primary care center;
4. 907 KAR 10:015 if the service was provided and billed through a hospital-outpatient department;
5. 907 KAR 1:031 if the service was provided and billed through a home health agency; or
6. 907 KAR 1:065 if the service was provided and billed through a nursing facility.

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(b)1. Reimbursement for a telehealth consultation provided by a practitioner who is employed by a provider or is an agent of a provider shall be a matter between the provider and the practitioner.

2. The department shall not be liable for reimbursing a practitioner who is employed by a provider or is an agent of a provider.

(c) A managed care organization shall not be required to reimburse the same amount for a telehealth consultation as the department reimburses, but may reimburse the same amount as the department reimburses if the managed care organization chooses to do so.

(2) A telehealth provider shall bill for a telehealth consultation using the appropriate two (2)-letter "GT" modifier.

(3) The department shall not require the presence of a health care provider requesting a telehealth consultation at the time of the telehealth consultation unless it is requested by a telehealth provider or telehealth practitioner at the hub site.

(4) The department shall not reimburse for transmission costs.

Section 6. Confidentiality and Data Integrity. (1) A telehealth consultation shall be performed on a secure telecommunications line or utilize a method of encryption adequate to protect the confidentiality and integrity of the telehealth consultation information.

(2) Both a hub site and a spoke site shall use authentication and identification to ensure the confidentiality of a telehealth consultation.

(3) A telehealth provider or telehealth practitioner of a telehealth consultation shall implement confidentiality protocols that include:

(a) Identifying personnel who have access to a telehealth transmission;

(b) Usage of unique passwords or identifiers for each employee or person with access to a telehealth transmission; and

(c) Preventing unauthorized access to a telehealth transmission.

(4) A telehealth provider's or telehealth practitioner's protocols and guidelines shall be available for inspection by the department upon request.

Section 7. Informed Consent. (1) Before providing a telehealth consultation to a recipient, a telehealth provider or telehealth practitioner shall document written informed consent from the recipient and shall ensure that the following written information is provided to the recipient in a format and manner that the recipient is able to understand:

(a) The recipient shall have the option to refuse the telehealth consultation at any time without affecting the right to future care or treatment and without risking the loss or withdrawal of a Medicaid benefit to which the recipient is entitled;

(b) The recipient shall be informed of alternatives to the telehealth consultation that are available to the recipient;

(c) The recipient shall have access to medical information resulting from the telehealth consultation as provided by law;

(d) The dissemination, storage, or retention of an identifiable recipient image or other information from the telehealth consultation shall comply with 42 U.S.C. 1301 et seq., 45 C.F.R. Parts 160, 162, 164, KRS 205.566, 216.2927, and any other federal law or regulation or state law establishing individual health care data confidentiality policies;

(e) The recipient shall have the right to be informed of the parties who will be present at the spoke site and the hub site during the telehealth consultation and shall have the right to exclude anyone from either site; and

(f) The recipient shall have the right to object to the video taping of a telehealth consultation.

(2) A copy of the signed informed consent shall be retained in the recipient's medical record and provided to the recipient or the recipient's legally authorized representative upon request.

(3) The requirement to obtain informed consent before providing a telehealth consultation shall not apply to an emergency situation if the recipient is unable to provide informed consent and the recipient's legally authorized representative is unavailable.]

Section 4.[8.] Medical Records. (1) [A request for a telehealth consultation from a health care provider and the medical necessity for the telehealth consultation shall be documented in the recipient's medical record.

(2) A health care provider shall keep a complete medical record of a telehealth consultation provided to a recipient and follow applicable state and federal statutes and regulations for medical recordkeeping and confidentiality in accordance with KRS 194A.060, 422.317, 434.840, 434.860, 42 C.F.R. 431.300 to 431.307, and 45 C.F.R. 164.530(j).

(3)(a) A medical record of a telehealth service[consultation] shall be maintained in compliance with 907 KAR 1:672 and 45 C.F.R. 164.530(j).

(2)[(b)] A health care provider shall have the capability of generating a hard copy of a medical record of a telehealth service[consultation]. [(4) Documentation of a telehealth consultation by the referring health care provider shall be included in the recipient's medical record and shall include:

(a) The diagnosis and treatment plan resulting from the telehealth consultation and a progress note by the referring health care provider if present at the spoke site during the telehealth consultation;

(b) The location of the hub site and spoke site;

(c) A copy of the document signed by the recipient indicating the recipient's informed consent to the telehealth consultation;

(d) Documentation supporting the medical necessity of the telehealth consultation; and

(e) The referral order and complete information from the referring health care provider who requested the telehealth consultation for the recipient.

(5)(a) A telehealth provider's or telehealth practitioner's diagnosis and recommendations resulting from a telehealth consultation shall be documented in the recipient's medical record at the office of the health care provider who requested the telehealth consultation.

(b) Except as established in paragraph (c) of this subsection, a telehealth provider or telehealth practitioner shall send a written report regarding a telehealth consultation within thirty (30) days of the consultation to the referring health care provider.

(c) If a community mental health center was the referring health care provider and the provider of the telehealth consultation for a recipient, the requirement in paragraph (b) of this subsection shall not apply.]

Section 5[9]. Federal Financial Participation. A policy established in this administrative regulation shall be null and void if the Centers for Medicare and Medicaid Services:

- (1) Denies federal financial participation for the policy; or
- (2) Disapproves the policy.

Section 6[10]. Appeal Rights. (1) An appeal of a department determination regarding a Medicaid beneficiary shall be in accordance with 907 KAR 1:563.

(2) An appeal of a department determination regarding Medicaid eligibility of an individual shall be in accordance with 907 KAR 1:560.

(3) A provider may appeal a department-written determination as to the application of this administrative regulation in accordance with 907 KAR 1:671.

(4) An appeal of a managed care organization's determination regarding a Medicaid beneficiary shall be in accordance with 907 KAR 17:010.

CAROL H. STECKEL, Commissioner
ADAM M. MEIER, Secretary

APPROVED BY AGENCY: June 11, 2019

FILED WITH LRC: June 14, 2019 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on July 22, 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 July 15, 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 July 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; CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Jonathan Scott and Chase Coffey

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes Department for Medicaid Services (DMS) policies relating to telehealth. The coverage policies in this administrative regulation apply to a managed care organization's (MCO's) coverage of Medicaid services for individuals enrolled in the MCO for the purpose of receiving Medicaid or Kentucky Children's Health Insurance Program services. An MCO is only required to reimburse according to this administrative regulation depending on the rates negotiated with providers.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish DMS policies relating to telehealth in accordance with KRS 194A.125 and KRS 205.559.

(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 DMS telehealth policies.

(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 DMS telehealth policies.

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

(a) How the amendment will change this existing administrative regulation: The amendments to this administrative regulation provide new definitions for "telehealth", "telehealth service", "place of service", and "telehealth care provider". A new section relates to telehealth reimbursement. The administrative regulation is amended to allow for telehealth reimbursement of at least 100% of the amount paid for a comparable in-person service. The administrative regulation also requires cost-sharing for a telehealth service. Providers are required to appropriately denote telehealth services, and to document them in the patient's medical record. The administrative regulation also clarifies that referral requirements are the same as for face-to-face (non-telehealth) services. In addition, many of the previous provisions are being deleted. Lastly, changes to comply with the drafting and formatting requirements of KRS Chapter 13A have also been made.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to ensure that policies stated in the administrative regulation are consistent with policies approved by CMS for federal funding. In addition, these amendments incorporate changes made by 2018's SB 112.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by complying with KRS 205.559 and conforming the administrative regulation's policies to those approved by CMS, ensuring federal funding for the policies. In addition, these amendments incorporate changes made by 2018's SB 112.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the authorizing statutes by conforming the administrative regulation's policies to those approved by CMS, ensuring federal funding for the policies. In addition, these amendments incorporate changes made by 2018's SB 112.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: The Department for Medicaid Services, MCOs, any enrolled and credentialed provider who could provide appropriate telehealth services, and Medicaid members who may access telehealth services. The number of providers who will provide telehealth services and the number of Medicaid members who will access telehealth services is not known and cannot be predicted.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: To be reimbursed for a telehealth service, a provider will have to comply with the policies and requirements established in this administrative regulation. Participation is optional, not mandatory.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). No cost is imposed on the entities regulated by the administrative regulation as participation is optional.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Those who opt to perform telehealth services in compliance with this administrative regulation will be reimbursed for services rendered.

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

(a) Initially: The department anticipates that it will incur no additional expenses in the implementation of these amendments in the first year of operation.

(b) On a continuing basis: The department anticipates that it will incur no additional expenses in implementing these amendments on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under the Social Security Act, Title XIX and matching funds of general fund appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Neither an increase in fees nor 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 neither establishes nor increases any fees.

(9) Tiering: Is tiering applied? Tiering was not applied as telehealth service standards are applied equally to all affected individuals.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Medicaid Services (DMS) will be impacted by the amendment.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This amendment is authorized by KRS 194A.010, 194A.030(2), 194A.125, 205.520(3), 205.559

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school

districts) for the first full year the administrative regulation is to be in effect.

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

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

(c) How much will it cost to administer this program for the first year? The department anticipates no additional costs in administering these amendments in the first year.

(d) How much will it cost to administer this program for subsequent years? The department anticipates no additional costs in administering these amendments 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:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 C.F.R. 431.300-431.307, 440.50.

2. State compliance standards. KRS 205.559, 205.5591 and 205.560 require DMS to expand telehealth services and policies to ensure proper use and security and promote access to health care.

3. Minimum or uniform standards contained in the federal mandate. The federal requirements in 42 C.F.R. 431-300-431.307 establish requirements relating to the safeguarding of electronic health information. 42 C.F.R. 440.50 allow for the provision of telehealth by providers within the Medicaid program.

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

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

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NEW ADMINISTRATIVE REGULATIONS

DEPARTMENT OF STATE
Registry of Election Finance
(Repealer)

32 KAR 1:061. Repeal of 32 KAR 1:060.

RELATES TO: KRS 121.015(4), 121.180(6)
STATUTORY AUTHORITY: KRS 121.120(1)(g), (4)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 121.120(1)(g) grants the Registry the power to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 121. This administrative regulation specifies the form to be used for reporting contributions by a contributing organization and incorporates this form by reference. KRS 121.120(4) requires the Registry to promulgate administrative regulations and prescribe forms for the making of reports under KRS Chapter 121. The Registry must repeal 32 KAR 1:060 in order to affect the merger of the permanent committee and contributing organization reports into one form and thereby reduce the number of forms required for submission.

Section 1. 32 KAR 1:060, Report of contributions by a contributing organization, is hereby repealed.

CRAIG C. DILGER, Chairman

APPROVED BY AGENCY: June 6, 2019

FILED WITH LRC: June 7, 2019 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 25, 2019, at 10:00 a.m., at the Kentucky Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. 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 July 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: Emily Dennis, General Counsel, Kentucky Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky 40601, phone (502) 573-2226, fax (502) 573-5622, email Emily.Dennis@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Emily Dennis

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation will repeal 32 KAR 1:060 and its associated form, Report of Contributions by a Contributing Organization.

(b) The necessity of this administrative regulation: This regulation is necessary to remove a duplicative filing requirement for contributing organizations. Under KRS 121.180(6), contributing organizations are required to make a full report to the registry, on a form provided or using a format approved by the registry, on a quarterly basis. In addition, contributions made by a contributing organization in excess of one hundred dollars (\$100) shall be reported to the registry pursuant to KRS 121.015(4). Because all contributions made by a contributing organization are reported on the quarterly report required by KRS 121.180(6), a separate report of contributions exceeding one hundred dollars (\$100) is unnecessary.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation specifically conforms to the requirements of KRS 121.120(1)(g), as it repeals a form that is no longer necessary to carry out the

provisions of KRS Chapter 121. The reporting obligation created under KRS 121.015(4) and KRS 121.180(6) are met by a separate form found at 32 KAR 1:030, Section 2 (e), "Permanent Committee (PAC)/ Contributing Organization Election Finance Statement".

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will repeal 32 KAR 1:060 and thereby eliminate a duplicative filing requirement for contributing organizations.

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

(a) How the amendment will change this existing administrative regulation: 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: All contributing organizations will be affected by this administrative regulation. To the extent the public, media, and specific interest groups may depend on the Registry's disclosure function, they will also be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: A contributing organization will no longer have to file the form, "Report of Contributions by a Contributing Organization", when the organization makes a contribution in excess of one hundred dollars (\$100).

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No cost is anticipated.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Contributing organizations are required by law to report campaign finance data on a quarterly basis. The form eliminated by this repeal is duplicative and unnecessary in light of the quarterly reporting requirement.

(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 as this regulation repeals a requirement.

(7) Provide an assessment of whether an 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 contributing organizations 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? Commonwealth of Kentucky - General Government - Registry of Election Finance

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 121.015(4), KRS 121.120(1)(g) and (4), KRS 121.180(6)

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

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

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

(c) How much will it cost to administer this program for the first year? No costs are associated with the repeal of this regulation.

(d) How much will it cost to administer this program for subsequent years? No costs are associated with the repeal of this regulation.

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

Revenues (+/-): None.

Expenditures (+/-): None.

Other Explanation: N/A

**FINANCE AND ADMINISTRATION CABINET
Department of Revenue
(Repealer)**

103 KAR 5:151. Repeal of 103 KAR 5:150.

RELATES TO: KRS 132.370

STATUTORY AUTHORITY: KRS 61.810, 131.030, 131.130, 132.370

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations necessary for the administration and enforcement of all tax laws in Kentucky. KRS 132.370 provides that a property valuation administrator may be removed from office by order of the Commissioner of the Department of Revenue for willful disobedience of any just or legal order of the department, or for misfeasance or malfeasance in office or willful neglect in the discharge of his official duties. 103 KAR 5:150, which was promulgated in 1993, implements KRS 132.370 and establishes the time limits and procedures to be followed by all parties in pre-removal conferences and post-removal hearings. KRS 132.370 was amended in 1996 to adopt the administrative hearing procedures set forth by KRS Chapter 13B (enacted in 1994) and now provides sufficient detail regarding the time limits and procedures to be followed. Therefore, this administrative regulation is no longer needed and will not be updated in the future.

Section 1. 103 KAR 5:150, Procedures for the removal of a property valuation administrator from office, is hereby repealed.

DANIEL BORK, Commissioner

APPROVED BY AGENCY: June 6, 2019

FILED WITH LRC: June 7, 2019 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 25, 2019 at 10:00 a.m. in Room 9B, State Office Building, 501 High Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted

through July 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: Lisa Swiger, Tax Policy Research Consultant II, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky 40601, phone (502) 564-9526, fax (502) 564-3875, email Lisa.Swiger@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lisa Swiger

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals 103 KAR 5:150. The language contained in this administrative regulation is outdated and sufficient guidance is now contained in KRS 132.370. (See the NECESSITY, FUNCTION & CONFORMITY statement.)

(b) The necessity of this administrative regulation: KRS 13A requires that all regulations made inactive or ineffective by statute revision, or that the promulgating agency will no longer be updating in the future, to be repealed.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation seeks to repeal a regulation that is no longer needed, and would eventually become deficient and in violation of KRS 13A if not repealed.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will insure that the Department of Revenue is in compliance with KRS 13A.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: None.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: None.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): None.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): None.

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

(a) Initially: None.

(b) On a continuing basis: None.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: None.

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

(8) State whether this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees are directly or indirectly increased in this repeal.

(9) TIERING: Is tiering applied? Tiering is not applied. The repeal of this administrative regulation will require all taxpayers previously impacted by its provisions to now reference the authorizing statute(s) for guidance.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Only the Finance and Administration Cabinet, Department of Revenue will be impacted.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS Chapter 13A and 131.130.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There will be no effect on expenditures and revenues for government agencies because of repealing this administrative regulation.

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

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

(c) How much will it cost to administer this program for the first year? None.

(d) How much will it cost to administer this program for subsequent years? None.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**FINANCE AND ADMINISTRATION CABINET
Department of Revenue
(Repealer)**

103 KAR 7:031. Repeal of 103 KAR 7:030.

RELATES TO: KRS 132.285, 132.530

STATUTORY AUTHORITY: KRS 13A, 131.130

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations necessary for the administration and enforcement of all tax laws in Kentucky. KRS 132.530 directs how a property valuation administrator must prepare his or her assessment roll when a city within the county adopts the county's property assessment for city tax levy purposes. 103 KAR 7:030 purports to set guidelines for the preparation of the assessment rolls utilized by cities which adopt the county assessment. However, KRS 132.530 already prescribes the same or similar procedure for the matter regulated in sufficient detail. Therefore, this administrative regulation is violative of KRS 13A.120(2)(e) and is not needed. The administrative regulation will not be updated in the future.

Section 1. 103 KAR 7:030, City adoption of county assessment, is hereby repealed.

DANIEL BORK, Commissioner

APPROVED BY AGENCY: June 6, 2019

FILED WITH LRC: June 7, 2019 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 25, 2019 at 10:00 a.m. in Room 9B, State Office Building, 501 High Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public.

Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through July 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: Lisa Swiger, Tax Policy Research Consultant II, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky 40601, (502) 564-9526 (telephone), (502) 564-3875(fax), Lisa.Swiger@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lisa Swiger

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals 103 KAR 7:030. The language contained in this administrative regulation is outdated and sufficient guidance is now contained in KRS 132.530. (See the NECESSITY, FUNCTION & CONFORMITY statement.)

(b) The necessity of this administrative regulation: KRS 13A requires that all regulations made inactive or ineffective by statute revision, or that the promulgating agency will no longer be updating in the future, to be repealed.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation seeks to repeal a regulation that is no longer needed, and would eventually become deficient and in violation of KRS 13A if not repealed.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will insure that the Department of Revenue is in compliance with KRS 13A.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: None.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: None.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): None.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): None.

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

(a) Initially: None.

(b) On a continuing basis: None.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: None.

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

(8) State whether this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees are directly

or indirectly increased in this repeal.

(9) TIERING: Is tiering applied? Tiering is not applied. The repeal of this administrative regulation will require all taxpayers previously impacted by its provisions to now reference the authorizing statute(s) for guidance.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Only the Finance and Administration Cabinet, Department of Revenue will be impacted.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS Chapter 13A and 131.130.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There will be no effect on expenditures and revenues for government agencies because of repealing this administrative regulation.

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

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

(c) How much will it cost to administer this program for the first year? None.

(d) How much will it cost to administer this program for subsequent years? None.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
(Repealer)

103 KAR 8:011. Repeal of 103 KAR 8:010.

RELATES TO: KRS 136.181, 136.182

STATUTORY AUTHORITY: KRS 13A, 131.130

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations necessary for the administration and enforcement of all tax laws in Kentucky. 103 KAR 8:010 provides guidance to nonresident owners and operators of commercial watercraft whose routes are partially within and partially outside Kentucky how to report mileage for purposes of allocating mileage operated in Kentucky to total mileage. KRS 136.1802 provides sufficient guidance regarding the mileage reporting requirements. Therefore, this administrative regulation is no longer needed and will not be updated in the future.

Section 1. 103 KAR 8:010, Nonresident watercraft allocation, is hereby repealed.

DANIEL BORK, Commissioner

APPROVED BY AGENCY: June 6, 2019

FILED WITH LRC: June 7, 2019 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 25, 2019 at 10:00 a.m. in Room 9B, State Office Building, 501 High Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five

(5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through July 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: Lisa Swiger, Tax Policy Research Consultant II, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky 40601, (502) 564-9526 (telephone), (502) 564-3875(fax), Lisa.Swiger@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lisa Swiger

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals 103 KAR 8:010. The language contained in this administrative regulation is outdated and sufficient guidance is now contained in KRS 136.1802. (See the NECESSITY, FUNCTION & CONFORMITY statement.)

(b) The necessity of this administrative regulation: KRS 13A requires that all regulations made inactive or ineffective by statute revision, or that the promulgating agency will no longer be updating in the future, to be repealed.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation seeks to repeal a regulation that is no longer needed, and would eventually become deficient and in violation of KRS 13A if not repealed.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will insure that the Department of Revenue is in compliance with KRS 13A.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: None.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: None.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): None.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): None.

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

(a) Initially: None.

(b) On a continuing basis: None.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: None.

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

repeal.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No.

(9) TIERING: Is tiering applied? Tiering is not applied. The repeal of this administrative regulation will require all taxpayers previously impacted by its provisions to now reference the authorizing statutes for guidance.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Only the Finance and Administration Cabinet, Department of Revenue will be impacted.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS Chapter 13A and 131.130.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There will be no effect on expenditures and revenues for government agencies because of repealing this administrative regulation.

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

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

(c) How much will it cost to administer this program for the first year? None.

(d) How much will it cost to administer this program for subsequent years? None.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FINANCE AND ADMINISTRATION CABINET

Department of Revenue

(Repealer)

103 KAR 8:141. Repeal of 103 KAR 8:140 and 103 KAR 8:150.

RELATES TO: KRS 132.020, 132.200

STATUTORY AUTHORITY: KRS 131.130

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations necessary for the administration and enforcement of all tax laws in Kentucky. KRS 132.020(1)(i) establishes the ad valorem tax rate based on the value of all machinery actually engaged in manufacturing. KRS 132.200(4) provides that machinery actually engaged in manufacturing shall be subject to taxation for state purposes only. 103 KAR 8:140 and 103 KAR 8:150 explain the property tax classification found in KRS 132.020(1) and 132.200(4) for "machinery actually engaged in manufacturing" as it pertains to the crushed stone, sand, gravel, and hot mix asphalt industries. The guidance provided in these administrative regulations will now be provided in 103 KAR 8:130. Therefore, these administrative regulations are no longer needed and will not be updated in the future.

Section 1. The following administrative regulations are hereby repealed:

(1) 103 KAR 8:140, Ad valorem taxation of machinery actually

used in the manufacturing of crushed stone, sand and gravel; and

(2) 103 KAR 8:150, Ad valorem taxation of machinery actually used in the manufacturing of hot mix asphalt.

DANIEL BORK, Commissioner

APPROVED BY AGENCY: June 6, 2019

FILED WITH LRC: June 7, 2019 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 25, 2019 at 10:00 a.m. in Room 9B, State Office Building, 501 High Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through July 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: Lisa Swiger, Tax Policy Research Consultant II, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky 40601, (502) 564-9526 (telephone), (502) 564-3875(fax), Lisa.Swiger@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lisa Swiger

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals 103 KAR 8:140 and 103 KAR 8:150. The language from these administrative regulations is being consolidated into 103 KAR 8:130, which contains almost identical language regarding the ad valorem taxation of machinery engaged in the manufacturing of coal. Combining the language from these three administrative regulations will provide guidance in one location on the taxation of machinery engaged in manufacturing for ad valorem purposes in Kentucky. (See the NECESSITY, FUNCTION & CONFORMITY statement.)

(b) The necessity of this administrative regulation: KRS 13A requires that all regulations made inactive or ineffective by statute revision, or that the promulgating agency will no longer be updating in the future, to be repealed.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation seeks to repeal a regulation that is no longer needed, and would eventually become deficient and in violation of KRS 13A if not repealed.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will insure that the Department of Revenue is in compliance with KRS 13A.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: None.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative

regulation or amendment: None.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): None.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): None.

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

(a) Initially: None.

(b) On a continuing basis: None.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: None.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No.

(9) TIERING: Is tiering applied? Tiering is not applied. The repeal of these administrative regulations will require all taxpayers previously impacted by its provisions to now reference 103 KAR 8:130 for needed guidance.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Only the Finance and Administration Cabinet, Department of Revenue will be impacted.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS Chapter 13A and 131.130.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There will be no effect on expenditures and revenues for government agencies because of repealing these administrative regulations.

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

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

(c) How much will it cost to administer this program for the first year? None.

(d) How much will it cost to administer this program for subsequent years? None.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
(New Administrative Regulation)

103 KAR 16:400. Combined Unitary Kentucky corporation income tax return.

RELATES TO: KRS 141.120, 141.121, 141.202

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

NECESSITY, FUNCTION, AND CONFORMITY: KRS 141.202 sets forth the general rules for combined unitary reporting in

Kentucky. KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations necessary to administer and enforce Kentucky's tax laws. KRS 141.050(4) requires the Department of Revenue to promulgate administrative regulations and rules necessary for the proper administration of KRS Chapter 141. This administrative regulation establishes terms and procedures required for the implementation of combined unitary reporting in KRS 141.202.

Section 1. Definitions. (1) "Combined group" is defined by KRS 141.202 (2)(a).

(2) "Corporation" is defined by KRS 141.202(2)(b).

(3) "Designated Filer" means the taxpayer member of the combined group annually designated per KRS 141.202(9) to file the return.

(4) "Doing business in this state" is defined by KRS 141.010(7).

(5) "Person" is defined by KRS 141.010 (23).

(6) "Taxpayer" is defined by KRS 141.202 (2)(e).

(7) "Unitary Business" is defined by KRS 141.202(2)(f).

(8) "Waters-edge basis" means the corporations required to be included in the combined group pursuant to KRS 141.202(8).

Section 2. Fifty (50) Percent Ownership Test. (1) Separate corporations can be part of a combined group only if they meet the fifty (50) percent ownership test in KRS 141.202(2)(a).

(a) The fifty (50) percent test is satisfied in the following circumstances:

1. A parent corporation and one (1) or more corporations or chains of corporations which are connected through voting stock ownership with the parent, whether such ownership is direct or indirect, but only if:

a. The parent owns more than fifty (50) percent of the outstanding voting stock of at least one (1) corporation, and, if applicable,

b. More than fifty (50) percent of the outstanding voting stock of each of the corporations, other than the parent, is owned by the parent, one (1) or more corporations owned by the parent as described in subparagraph (a) above, or one (1) or more corporations that satisfy the conditions of this subparagraph.

2. Any two (2) or more corporations, if over fifty (50) percent of the outstanding voting stock of each of the corporations is owned, or indirectly owned, by the same person.

3. Any two (2) or more corporations, over fifty (50) percent of whose voting stock is cumulatively owned (without regard to the indirect ownership rules described below in paragraph (b)1. by, or for the benefit of, members of the same family. Members of the same family are limited to an individual, his or her spouse, parents, brothers or sisters, grandparents, children and grandchildren, and their respective spouses.

(b) Except as otherwise provided, voting stock is "owned" when title to the stock is directly held or if the voting stock is indirectly owned. The stock attribution rules of Section 318(a) of the Internal Revenue Code, 26 U.S.C. 318, shall be used to determine if the voting stock is indirectly owned except when a person has an option to acquire stock or other ownership interests in an entity, the stock or ownership interests are not considered owned by the person unless the department determines it to be necessary to prevent tax avoidance.

(c) In determining ownership, effective control over election of the board of directors shall be considered. For example, a group of shareholders acting in concert who collectively own over fifty (50) percent of the voting stock of each of two (2) or more corporations shall be considered to be common owners of more than fifty (50) percent of the voting stock of each of those corporations. "Voting stock" refers only to those shares of voting stock having the power to elect the corporation's board of directors. If the power otherwise held in corporate stock to vote the membership of the board is transferred to another, other than a transfer of proxy only, the holder of that power shall be considered to be the owner of that stock to the exclusion of the transferor of such power.

(d) In addition to the tests in paragraph (a), the department may consider any other circumstance that tends to demonstrate that the fifty (50) percent direct or indirect common ownership test

was met, or was not met.

(e) Membership in a combined group shall be treated as terminated in any year, or fraction thereof, in which the conditions of paragraph (a) are not met, except as follows:

1. When stock of a corporation is sold, exchanged, or otherwise disposed of, the membership of a corporation in a combined group shall not be terminated if the requirements of paragraph (a) are again met immediately after the sale, exchange, or disposition.

2. The department may treat the combined group as remaining in place if the conditions of paragraph (a) are again met within a period not to exceed two (2) years.

Section 3. Unitary Business Principle. (1) The concept of a Unitary Business.

(a) The flow of value to an entity located in this state that comes from being part of a unitary business conducted both within and without this state is what provides the constitutional due process "definite link and minimum connection" necessary for this state to apportion apportionable income of the unitary business, even if that income arises in part from activities conducted outside the state.

(b) This sharing or exchange of value may also be described as requiring that the operation of one part of the business be dependent upon, or contribute to, the operation of another part of the business. Phrased in the disjunctive, the foregoing means that if the activities of one business either contributes to the activities of another business or are dependent upon the activities of another business, those businesses are part of a unitary business.

(2) Constitutional requirement for a Unitary Business.

(a) The sharing or exchange of value described in KRS 141.202(2)(f) and subsection 1 that defines the scope of a unitary business requires more than the mere flow of funds arising out of a passive investment or from the financial strength contributed by a distinct business undertaking that has no operational relationship to the unitary business.

(b) In this state, the unitary business principle shall be applied to the full extent allowed by the U.S. Constitution. The unitary business principle shall not be applied to result in the combination of business activities or entities under circumstances where, if it were adverse to the taxpayer, the combination of such activities or entities would not be allowed by the U.S. Constitution.

(3) Separate trades or businesses conducted within a single entity. A single entity may have more than one (1) unitary business. In such cases, it is necessary to determine the apportionable income attributable to each separate unitary business as well as its non-apportionable income, which is specifically allocated. The apportionable income of each unitary business is then apportioned by a formula that takes into consideration the in-state and the out-of-state factors that relate to the respective unitary business whose income is being apportioned.

(4) Unitary Business unaffected by formal business organization. A unitary business may exist within a single entity or among a group of entities meeting the fifty (50) percent ownership test in KRS 141.202(2)(a) and in Section 2 of this administrative regulation.

Section 4. Determination of a Unitary Business. (1) A unitary business is characterized by significant flows of value evidenced by factors such as functional integration, centralization of management, and economies of scale. These factors provide evidence of whether the business activities operate as an integrated whole or exhibit substantial mutual interdependence. Facts suggesting the presence of the factors mentioned above should be analyzed in combination for their cumulative effect and not in isolation. A particular business operation may be suggestive of one (1) or more of the factors mentioned above.

(2) Description and illustration of functional integration, centralization of management and economies of scale.

(a) Functional integration: Functional integration refers to transfers between, or pooling among, business activities that significantly affect the operation of the business activities. Functional integration includes, but is not limited to, transfers or

pooling with respect to the unitary business's products or services, technical information, marketing information, distribution systems, purchasing, and intangibles such as patents, trademarks, service marks, copyrights, trade secrets, know-how, formulas, and processes. There is no specific type of functional integration that must be present. The following is a list of examples of business operations that can support the finding of functional integration. The order of the list does not establish a hierarchy of importance.

1. Sales, exchanges, or transfers (collectively "sales") of products, services, or intangibles between business activities provide evidence of functional integration. The significance of the intercompany sales to the finding of functional integration shall be affected by the character of what is sold or the percentage of total sales or purchases represented by the intercompany sales. For example, sales among entities that are part of a vertically integrated unitary business are indicative of functional integration. Functional integration is not negated by the use of a readily determinable market price to effect the intercompany sales, because such sales can represent an assured market for the seller or an assured source of supply for the purchaser.

2. Common Marketing. The sharing of common marketing features among entities is an indication of functional integration when such marketing results in significant mutual advantage. Common marketing exists when a substantial portion of the entities' products, services, or intangibles are distributed or sold to a common customer, when the entities use a common trade name or other common identification, or when the entities seek to identify themselves to their customers as a member of the same enterprise. The use of a common advertising agency or a commonly owned or controlled in-house advertising office does not by itself establish common marketing that is suggestive of functional integration. Such activity, however, is relevant to determining the existence of economies of scale or centralization of management.

3. Transfer or Pooling of Technical Information or Intellectual Property. Transfers or pooling of technical information or intellectual property, such as patents, copyrights, trademarks and service marks, trade secrets, processes or formulas, know-how, research, or development, provide evidence of functional integration when the matter transferred is significant to the businesses' operations.

4. Common Distribution System. Use of a common distribution system by the entities, under which inventory control and accounting, storage, trafficking, or transportation are controlled through a common network provides evidence of functional integration.

5. Common Purchasing. Common purchasing of substantial quantities of products, services, or intangibles from the same source by the entities, particularly where the purchasing results in significant cost savings or where the products, services or intangibles are not readily available from other sources and are significant to each entity's operations or sales, provides evidence of functional integration.

6. Common or Intercompany Financing. Significant common or intercompany financing, including the guarantee by, or the pledging of the credit of, one (1) or more entities for the benefit of another entity or entities provides evidence of functional integration, if the financing activity serves an operational purpose of both borrower and lender. Lending which serves an investment purpose of the lender does not necessarily provide evidence of functional integration.

(b) Centralization of Management. Centralization of management exists when directors, officers, or other management employees jointly participate in the management decisions that affect the respective business activities and that may also operate to the benefit of the entire economic enterprise. Centralization of management can exist whether the centralization is effected from a parent entity to a subsidiary entity, from a subsidiary entity to a parent entity, from one (1) subsidiary entity to another, from one (1) division within a single entity to another division within an entity, or from any combination of the foregoing. Centralization of management may exist even when day-to-day management responsibility and accountability has been decentralized, so long as the management has an ongoing operational role with respect

to the business activities. An operational role can be effected through mandates, consensus building, or an overall operational strategy of the business, or any other mechanism that establishes joint management.

1. Facts Providing Evidence of Centralization of Management. Evidence of centralization of management is provided when common officers participate in the decisions relating to the business operations of the different segments. Centralization of management may exist when management shares or applies knowledge and expertise among the parts of the business. Existence of common officers and directors, while relevant to a showing of centralization of management, does not alone provide evidence of centralization of management. Common officers are more likely to provide evidence of centralization of management than are common directors.

2. Stewardship Distinguished. Centralized efforts to fulfill stewardship oversight are not evidence of centralization of management. Stewardship oversight consists of those activities that any owner would take to review the performance of or safeguard an investment. Stewardship oversight is distinguished from those activities that an owner may take to enhance value by integrating one (1) or more significant operating aspects of one business activity with the other business activities of the owner. For example, implementing reporting requirements or mere approval of capital expenditures may evidence only stewardship oversight.

(c) Economies of Scale. Economies of scale refer to a relation among and between business activities resulting in a significant decrease in the average per unit cost of operational or administrative functions due to the increase in operational size. Economies of scale may exist from the inherent cost savings that arise from the presence of functional integration or centralization of management. The following are examples of business operations that can support the finding of economies of scale. The order of the list does not establish a hierarchy of importance.

1. Centralized Purchasing. Centralized purchasing designed to achieve savings due to the volume of purchases, the timing of purchases, or the interchangeability of purchased items among the parts of the business engaging in the purchasing provides evidence of economies of scale.

2. Centralized Administrative Functions. The performance of traditional corporate administrative functions in common, such as legal services, payroll services, pension and other employee benefit administration, among the parts of the business may result in some degree of economies of scale. An entity that secures savings in the performance of corporate administrative services due to its affiliation with other entities that it would not otherwise reasonably be able to secure on its own because of its size, financial resources, or available market, provides evidence of economies of scale.

Section 5. Indicators of a Unitary Business. (1) same type of business. Business activities that are in the same general line of business generally constitute a single unitary business, as, for example, a multistate grocery chain.

(2) Steps in a vertical process. Business activities that are part of different steps in a vertically structured business almost always constitute a single unitary business. For example, a business engaged in the exploration, development, extraction, and processing of a natural resource and the subsequent sale of a product based upon the extracted natural resource, is engaged in a single unitary business, regardless of the fact that the various steps in the process are operated substantially independently of each other with only general supervision from the business's executive offices.

(3) Strong centralized management. Business activities which might otherwise be considered as part of more than one (1) unitary business may constitute one (1) unitary business when there is a strong central management, coupled with the existence of centralized departments for such functions as financing, advertising, research, or purchasing. Strong centralized management exists when a central manager or group of managers makes substantially all of the operational decisions of the business. For example, some businesses conducting diverse lines of business may properly be considered as engaged in only one (1)

unitary business when the central executive officers are actively involved in the operations of the various business activities and there are centralized offices which perform for the business activities the normal matters which a truly independent business would perform for itself, such as personnel, purchasing, advertising, or financing.

Section 6. Taxable Year of the Combined Group. (1) The combined group's taxable year is determined as follows:

(a) If two (2) or more members of a group file a federal consolidated return, the combined group's taxable year is the taxable year of the federal consolidated group; or

(b) In all other cases, the taxable year is the taxable year of the designated filer.

Section 7. Members with Different Accounting Periods. (1) If the taxable year of a member differs from the taxable year of the combined group, the designated filer shall elect to determine the portion of that member's income to be included in one (1) of the following ways:

(a) A separate income statement prepared from the books and records for the months included in the combined group's taxable year; or

(b) Including all of the income for the year that ends during the combined group's taxable year.

(2) The same method shall be used for each member with a different accounting period. Once an election is made under this section by attaching a statement to the return, it is the only method that may be used with respect to members of the combined group except upon prior approval by the department.

Section 8. Designated Filer. (1) Responsibilities of designated filer.

(a) Access to records. In addition to the information required to be included in the combined group return, upon request of the department, the designated filer shall provide access to:

1. The tax and financial records of members of the combined group that are part of the combined group but do not have Kentucky nexus, and

2. Non-financial records of the combined group.

(b) Filing. The designated filer shall file a combined group return on behalf of the combined group together with all returns and schedules required by the Department.

(c) Payment. The designated filer shall timely remit to the department the Kentucky corporate income and limited liability entity tax imposed on the combined Kentucky net income and receipts of the combined group.

(d) Notices. Notices mailed to the designated filer shall be deemed to have been mailed to each of the members in the combined group.

DANIEL BORK, Commissioner

APPROVED BY AGENCY: June 6, 2019

FILED WITH LRC: June 7, 2019 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 25, 2019 at 10:00 a.m. in Room 9B, State Office Building, 501 High Street, Frankfort Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through July 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: Todd Renner, Executive Director, Office of Tax Policy and Regulation, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky 40601, (502) 782-6081

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(telephone), (502) 564-3875 (fax), 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: This administrative regulation provides guidance on the filing of a combined unitary Kentucky corporation income tax return under the provisions of KRS 141.202, as enacted by 2018 HB 487 and amended by 2019 HB 458.

(b) The necessity of this administrative regulation: This regulation provides guidance on how to file a combined unitary Kentucky corporation income tax return.

(c) How this administrative regulation conforms to the content of the authorizing statutes: It provides guidance on how to file a combined unitary Kentucky corporation income tax return for taxable years beginning on or after January 1, 2019.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will provide guidance to insure that corporations required to file a combined unitary Kentucky corporation income tax return under KRS 141.202 will do so accurately.

(2) If 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: 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: Corporations required to file a combined unitary Kentucky corporation income tax return under KRS 141.202 for taxable years beginning on or after January 1, 2019 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: Corporations that are members of a combined group will have to file a combined unitary Kentucky corporation income tax return under the provisions of KRS 141.202 and this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost to impacted taxpayers is unknown because combined unitary Kentucky corporation income tax reporting is a new filing requirement for returns due for taxable years beginning on or after January 1, 2019.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Complying with this administrative regulation will help insure that an accurate income tax return is filed by the corporate entities identified in question (3).

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

(a) Initially: A cost increase for the Department of Revenue will occur. The increase is indeterminable since the department cannot predict how many taxpayers will be required to file a combined unitary Kentucky corporation income tax return under the new law.

(b) On a continuing basis: Indeterminable.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The cost to implement will be paid for out of the department's existing budget.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees are established or increased by this administrative regulation.

(9) TIERING: Is tiering applied? Tiering was not applied because all corporation income taxpayers required to file a combined unitary Kentucky corporation income tax return will be able to do so 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 Department of Revenue.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 131.130 and 141.050.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There will be minimal effect on the Department of Revenue. The Office of the State Budget Director will be impacted slightly in their revenue estimation duties since combined unitary Kentucky corporation income tax returns are a new type of return for 2019 forward. There is no local government impact.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Unknown.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Unknown.

(c) How much will it cost to administer this program for the first year? Minimal costs to administer for the first year. The exact amount is indeterminable since the Department of Revenue cannot predict how many taxpayers will elect to file a combined unitary Kentucky corporation income tax return.

(d) How much will it cost to administer this program for subsequent years? The exact amount is indeterminable since the Department of Revenue cannot predict how many taxpayers will elect to file a combined unitary Kentucky corporation income tax returns in subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
(Repealer)

103 KAR 30:261. Repeal of 103 KAR 30:260.

RELATES TO: KRS 139.200, 139.260, 139.270, 139.310, 139.330, 139.480, 139.540, 139.550, 224.01-300(01), 224.1-310

STATUTORY AUTHORITY: KRS 131.130(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations necessary for the administration and enforcement of all tax laws in Kentucky. KRS 139.480(12) provided that property which has been certified as a pollution control facility as defined in KRS 224.1-300 were exempt from the sales and use tax. 103 KAR 30:260 established the administrative process for receiving and using the pollution control exemption certificate related to KRS 139.480(12). Effective July 1, 2018 and pursuant to 2018 HB 487, KRS 139.480 was amended to delete the sales and use tax exemption for pollution control facilities located in KRS 139.480(12). Therefore, 103 KAR 30:260 is no longer needed and will not be updated in the future.

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Section 1. 103 KAR 30:260, Pollution control facilities exemption, is hereby repealed.

DANIEL BORK, Commissioner

APPROVED BY AGENCY: June 6, 2019

FILED WITH LRC: June 7, 2019 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 25, 2019 at 10:00 a.m. in Room 9B, State Office Building, 501 High Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through July 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: Lisa Swiger, Tax Policy Research Consultant II, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky 40601, (502) 564-9526 (telephone), (502) 564-3875 (fax), Lisa.Swiger@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lisa Swiger

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals 103 KAR 30:260. Effective July 1, 2018 and pursuant to 2018 HB 487, KRS 139.480 was amended to delete the sales and use tax exemption for pollution control facilities located in KRS 139.480(12). Therefore, 103 KAR 30:260 is no longer valid. (See the NECESSITY, FUNCTION & CONFORMITY statement.)

(b) The necessity of this administrative regulation: KRS 13A requires that all regulations made inactive or ineffective by statute revision, or that the promulgating agency will no longer be updating in the future, to be repealed.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation seeks to repeal a regulation that is no longer needed, and would eventually become deficient and in violation of KRS 13A if not repealed.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will insure that the Department of Revenue is in compliance with KRS 13A.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: None.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: None.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): None.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): None.

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

(a) Initially: None.

(b) On a continuing basis: None.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: None.

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

(8) State whether this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees are directly or indirectly increased in this repeal.

(9) TIERING: Is tiering applied? Tiering is not applied as this administrative regulation is repealing 103 KAR 30:260.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Only the Finance and Administration Cabinet, Department of Revenue will be impacted by this repeal.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS Chapter 13A and 131.130.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There will be no effect on expenditures and revenues for government agencies because of repealing this administrative regulation.

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

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

(c) How much will it cost to administer this program for the first year? None.

(d) How much will it cost to administer this program for subsequent years? None.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**PUBLIC PROTECTION CABINET
Kentucky Real Estate Authority
Kentucky Real Estate Commission
(Repealer)**

201 KAR 11:461. Repeal of 201 KAR 11:420.

RELATES TO: KRS 324.282

STATUTORY AUTHORITY: KRS 324.282, 324.281(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 324.281(5) and KRS 324.282 authorize the Real Estate Commission, with the approval of the executive director of the Kentucky Real Estate Authority, to promulgate administrative regulations necessary to carry out and enforce the provisions of KRS Chapter 324. This administrative regulation repeals 201 KAR 11:420 because the necessary substantive provisions of that administrative regulation has been incorporated into the proposed

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amendment to 201 KAR 11:105 to address all advertising requirements in one administrative regulation concerning modern advertising practices for improved efficiency and ease of use.

Section 1. 201 KAR 11:420, Standards for Internet Advertising, is hereby repealed.

LOIS ANN DISPONETT, Chair
H.E. CORDER II, Executive Director
K. GAIL RUSSELL, Secretary

APPROVED: June 12, 2019

FILED WITH LRC: June 13, 2019 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 23, 2019 at 10:00 a.m. Eastern Time at the Kentucky Real Estate Commission, 656 Chamberlain Ave., Suite B, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this Department in writing by five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on July 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: Heather L. Becker, General Counsel, Kentucky Real Estate Authority, 656 Chamberlin Ave., Suite B, Frankfort, Kentucky 40601, phone (502) 564-7760, fax (502) 564-1538 email Heather.Becker@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Heather L. Becker

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals 201 KAR 11:420 because the necessary substantive provisions of that administrative regulation have been incorporated into the proposed amendment to 201 KAR 11:105 to address all advertising requirements in one administrative regulation for improved efficiency and ease of use.

(b) The necessity of this administrative regulation: This administrative regulation repealer is necessary to modernize and simplify the Real Estate Commission's regulatory scheme by reviewing and consolidating administrative regulations concerning the same subject matter.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 324.281(5) and KRS 324.282 authorize the Real Estate Commission, with the approval of the executive director of the Kentucky Real Estate Authority, to promulgate administrative regulations necessary to carry out and enforce the provisions of KRS Chapter 324. Repeal of the administrative regulations proposed in this repealer will modernize and simplify the Real Estate Commission's regulatory scheme by reviewing and consolidating administrative regulations concerning the same subject matter.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This repealer will greatly simplify the administration of the Real Estate Commission and compliance for all licensees.

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

(a) How the amendment will change this existing administrative regulation: This is a repealer.

(b) The necessity of the amendment to this administrative regulation: This is a repealer.

(c) How the amendment conforms to the content of the authorizing statutes: This is a repealer.

(d) How the amendment will assist in the effective administration of the statutes: This is a repealer.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation repealer will affect all of the Real Estate Commission's current licensees, as well as prospective license applicants. The Commission currently licenses approximately 23,000 licensees. Additionally, this administrative regulation repealer will affect all of the Real Estate Commission's current preclicensing, post licensing, and continuing education providers. Lastly, this administrative regulation repealer will affect the general public to the extent they interact with licensed real estate professionals.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Licensees and education providers will have to become familiar with the revised regulatory scheme. The general public will not have to take any action to comply with the proposed repeal.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no costs associated with the repeal of this administrative regulation. Financial impact relative to the new administrative regulations governing advertising are reviewed in the contemporaneously filed proposed administrative regulation governing advertising.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of this administrative regulation repealer, compliance will be easier because the simplified regulatory scheme.

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

(a) Initially: There will be no initial cost to implement this administrative regulation repealer.

(b) On a continuing basis: There will be no continuing costs associated with implementing this administrative regulation repealer.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is necessary to implement and enforce this administrative regulation repealer.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increased any fees: This administrative regulation repealer does not establish any fees, and it does not directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? No, tiering is not applied because this administrative regulation repealer applies equally to all regulated entities.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments or school districts) will be impacted by this administrative regulation? The Kentucky Real Estate Commission will be impacted by this administrative regulation. Also, local real estate boards may 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 324.282.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

This administrative regulation repealer will not generate revenue for state or local government in the first year.

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

(c) How much will it cost to administer this program for the first year? There is no cost associated with administering this administrative regulation for the first year.

(d) How much will it cost to administer this program for subsequent years? There is no cost associated with administering this administrative regulation for subsequent years.

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

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: This administrative regulation repealer is not expected to have a fiscal impact.

BOARDS AND COMMISSIONS
Board of Embalmers and Funeral Directors
(New Administrative Regulation)

201 KAR 15:125. Surface transportation permit.

RELATES TO: KRS 316.165

STATUTORY AUTHORITY: KRS 316.165, 316.210

NECESSITY, FUNCTION, AND CONFORMITY: KRS 316.210 requires the Board of Embalmers and Funeral Directors to promulgate administrative regulations to carry out and enforce the provisions of KRS Chapter 316. KRS 316.165(3) requires the board to issue a permit to an applicant for the sole and limited purpose of being allowed to provide surface transportation of dead human remains. This administrative regulation establishes the criteria for issuance of such permits.

Section 1. Application. (1) Any person seeking a permit to provide surface transportation for dead human remains shall be of the age of eighteen (18) prior to submitting an application.

(2) All persons applying for a permit to provide surface transportation and removal services for dead human remains shall submit:

(a) A completed and signed application form, "Application for Permit to Transport Dead Human Remains", 2019;

(b) A fee in the amount of \$150;

(c) Evidence of training and compliance with the standards of the Occupational Safety and Health Administration for universal precautions and blood-borne pathogens, 29 Code of Federal Regulations (C.F.R.) 1910.1030;

(d) Two (2) passport-sized photographs of the applicant;

(e) An official copy of a criminal justice information system (CJIS) report obtained from the Federal Bureau of Investigation no more than ninety (90) days prior to the application; and

(f) Evidence of possession and control, or ownership of an appropriate vehicle and necessary supplies for surface transportation of dead human remains.

(3)(a) An appropriate vehicle shall have enclosed cargo space of sufficient size to transport a dead human body securely and without exposure to weather.

(b) Necessary supplies shall include:

1. Mortuary/ambulance cot;

2. Collapsible or flexible stretcher;

3. Sheets and cot cover;

4. Pillow or head block;

5. Rubber or plastic sheeting;

6. Towels;

7. Zippered mortuary body bag or disaster pouch;

8. Straps;

9. Protective clothing; and

10. Sanitary accessories.

Section 2. Examination. (1) Any person seeking a surface transportation permit shall be required to pass an examination on Kentucky laws and transport procedures. The examination fee shall be seventy-five (75) dollars and may be paid at the time of application or at the time of examination.

(2) The examination shall be administered by the board concurrently with other monthly examinations.

(3) The board shall offer a training course related to the subject matter of the examination.

Section 3. Scope of Permit. (1) Permit holders shall only engage in surface transportation of dead human remains requested by an authorized person from the establishment by which the permit holder is employed. Surface transportation shall be limited to obtaining the dead human remains from the location from which the transportation services were requested, and transport to the establishment by which the permit holder is employed.

(2) Permit holders shall present a photo identification to the person or establishment requesting transport, to establish that the permit holder is employed by the establishment to which transport is being requested.

(3) Permit holders shall not engage in any services of funeral directing or embalming or distribute any documents or materials related to such services.

(4) Permit holders may only be employed by one (1) establishment at one (1) time.

(5) Permit holders shall not be required to use a casket for transportation of dead human remains, but shall be required to use a container as may be required by the above referenced OSHA guidelines.

(6) No individual who obtains or holds a permit from this board to transport dead human bodies may use transport removals performed under that permit to accumulate the number of removals required to complete an apprenticeship. All apprenticeship removals shall be performed within the requirements of the apprenticeship and under supervision, to the extent set forth in these administrative regulations. Hours accumulated in performing removals under a Transport Permit will not be counted toward the apprentice's weekly work hours requirement.

Section 3. Incorporation by Reference. (1) "Application for Permit to Transport Dead Human Remains", 2019, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Board of Embalmers and Funeral Home Directors, 9114 Leesgate Rd., Suite 4, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. to 4:30 p.m.

HAROLD E. CORDER, Board Chair

APPROVED BY AGENCY: June 13, 2019

FILED WITH LRC: June 14, 2019 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on 11:00 a.m. on June 28, 2019 at 911 Leewood Drive, Frankfort, Ky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on June 30, 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 below.

CONTACT PERSON: David C. Trimble, General Counsel, 911 Leewood Drive, Frankfort, Kentucky 40601, phone 502-782-8823, fax 502-564-3969, email davidc.trimble@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: David C. Trimble

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation is for implementation of a new statute that creates a permit for surface transportation of dead human bodies.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement a new statute and develop an application process for the newly created permits for surface transportation of dead human bodies.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation implements a new statute that creates a permit for surface transportation of dead human bodies. The statute provides for the Board to create a regulation for application and issuance of permits.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation is for implementation of a new statute that creates a permit for surface transportation of dead human bodies. The statute provides for the Board to create a regulation for application and issuance of permits.

(2) If 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: Funeral establishments, and individuals seeking these permits. Kentucky licenses over 500 funeral establishments.

(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: Any individual seeking a permit will have to obtain required training and apply for the permit.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: \$150 application fee, and \$75 testing fee.

(c) As a result of compliance, what benefits will accrue to the entities: This will expand the number of persons licensed to provide surface transportation of dead human bodies. Prior to this statute, only licensed embalmers and licensed funeral directors could provide such transportation.

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

(a) Initially: This will expand the number of persons licensed to provide surface transportation of dead human bodies. Prior to this statute, only licensed embalmers and licensed funeral directors could provide such transportation.

(b) On a continuing basis: This will expand the number of persons licensed to provide surface transportation of dead human bodies. Prior to this statute, only licensed embalmers and licensed funeral directors could provide such transportation.

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

(8) State whether or not this administrative regulation

established any fees or directly or indirectly increased any fees: The regulation establishes permit fees and testing fees.

(9) TIERING: Is tiering applied? No tiering is applied because similarly situated applicants will be treated similarly.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What 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 the Kentucky Board of Embalmers and Funeral Directors; it will also make surface transportation of dead human bodies easier for local Coroners and other entities who may need transport services, such as EMT's and other first responders.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. New statute passed by 2019 General Assembly, HB 435.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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? Because this administrative regulation is creating a new license, it is unclear how much revenue will be generated for the board.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Because this administrative regulation is creating a new license, it is unclear how much revenue will be generated for the board.

(c) How much will it cost to administer this program for the first year? The board anticipates minimal costs to administer this program for the first year, which will be dependent upon the number of applicants for licensure.

(d) How much will it cost to administer this program for subsequent years? The board anticipates minimal costs to administer this program for subsequent years; the primary costs will be the administration of examinations and maintaining accurate lists of licensees.

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

Revenues (+/-): Increase.

Expenditures (+/-): Slight increase.

Other Explanation: The minimal costs of administering this program should be more than offset by permit fees received as a new revenue stream. The amount of permit fee income will depend on the number of applications received.

**PUBLIC PROTECTION CABINET
Kentucky Real Estate Authority
Kentucky Real Estate Appraisers Board
(Repealer)**

201 KAR 30:021. Repeal of 201 KAR 30:020, 30:030, 30:050, 30:060, 30:120, 30:125; 30:150, 30:160, 30:170, 30:180, 30:200, 30:310, 30:315, 30:360, 30:375, 30:380.

RELATES TO: KRS 324A.015

STATUTORY AUTHORITY: KRS 324A.015, 324A.020

NECESSITY, FUNCTION, AND CONFORMITY: KRS 324A.015 authorizes the Kentucky Real Estate Appraisers Board to promulgate administrative regulations necessary to effectuate the provisions of KRS 324A.010 to 324A.090. KRS 324A.020 authorizes the board to promulgate administrative regulations with the approval of the executive director of the Kentucky Real Estate Authority. This administrative regulation repeals 201 KAR 30:020,

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30:030, 30:050, 30:060, 30:120, 30:125, 30:150, 30:160, 30:170, 30:180, 30:200, 30:310, 30:315, 30:360, 30:375, and 30:380.

Section 1. The following administrative regulations are hereby repealed:

- (1) 201 KAR 30:020. Licensed Nonfederal Real Property Appraiser;
- (2) 201 KAR 30:030. Types of Appraisers Required in Federally Related Transactions; Certification and Licensure;
- (3) 201 KAR 30:050. Examination and Experience Requirement;
- (4) 201 KAR 30:060. Fees Administrative Regulation;
- (5) 201 KAR 30:120. Temporary appraisal licenses and certificates;
- (6) 201 KAR 30:125. Continuing education for appraisers;
- (7) 201 KAR 30:150. Education provider approval;
- (8) 201 KAR 30:160. Standards for instructors;
- (9) 201 KAR 30:170. Evaluation of instructors;
- (10) 201 KAR 30:180. Distance education standards;
- (11) 201 KAR 30:200. Reciprocity requirements for applicants licensed or certified in another state;
- (12) 201 KAR 30:310. Fees for Registration of Appraisal Management Companies
- (13) 201 KAR 30:315. Renewal and reinstatement;
- (14) 201 KAR 30:360. Operation of an appraisal management company;
- (15) 201 KAR 30:375. Appraisal procedures for appraisal management companies; and
- (16) 201 KAR 30:380. Individual appraiser license renewal and fee.

JOHN G. KENKEL, JR., Chair
H.E. CORDER II, Executive Director
K. GAIL RUSSELL, Secretary

APPROVED BY AGENCY: June 12, 2019

FILED WITH LRC: June 13, 2019 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 26, 2019, at 10:30 a.m. at the Kentucky Real Estate Appraisers Board, 321 N. Madison Ave., Richmond, Kentucky 40475. Individuals interested in being heard at this hearing shall notify this agency in writing no later than five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through July 31, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person.

CONTACT PERSON: Heather Becker, General Counsel, Kentucky Real Estate Authority, 656 Chamberlin Ave. Suite B, Frankfort, Kentucky 40601; phone (502) 782-0562; fax (502) 564-1538; Heather.Becker@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Heather Becker

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals several administrative regulations within 201 KAR Chapter 30. Specifically, this administrative regulation repeals 201 KAR 30:020, 30:030, 30:050, 30:060, 30:120, 30:125, 30:150, 30:160, 30:170, 30:180, 30:200, 30:310, 30:315, 30:360, 30:375, 30:380. The topics covered by these administrative regulations are more efficiently covered in one subject matter regulation being contemporaneously filed with this regulation repealer.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to reduce duplication and

simplify the regulatory regime governing real estate appraisers in the Commonwealth.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 324A.015 authorizes the Real Estate Appraisers Board to promulgate administrative regulations necessary to effectuate the provisions of KRS 324A.010 to 324A.090. KRS 324A.020 authorizes the board to promulgate administrative regulations with the approval of the executive director of the Kentucky Real Estate Authority.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The Real Estate Appraisers Board is charged with the responsibility of certifying, licensing, and regulating real estate appraisers. This administrative regulation repeals administrative regulations that are duplicative of statutes, more efficiently addressed as part of other administrative regulations, or are otherwise unnecessary for regulation of real estate appraisers 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: This administrative regulation is a repealer.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation is a repealer.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation is a repealer.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation is a repealer.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky Real Estate Appraisers Board is affected by this administrative regulation. Approximately 1,500 licensees, 120 Appraisal Management Companies, persons seeking reciprocity from other states, and persons seeking temporary licensure within the Commonwealth will be affected by this administrative regulation.

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

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

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation will simplify the regulatory scheme for all entities identified in question (3), making compliance significantly easier and less time-consuming.

(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 cost to implement this administrative regulation on a continuing basis.

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

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

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

(9) TIERING: Is tiering applied? No. Tiering is not applied because this administrative regulation repeals the subject administrative regulations.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Real Estate Appraisers Board 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 324A.015 authorizes the Real Estate Appraisers Board to promulgate administrative regulations necessary to effectuate the provisions of KRS 324A.010 to 324A.090. KRS 324A.020 authorizes the board to promulgate administrative regulations with the approval of the executive director of the Kentucky Real Estate Authority.

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

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

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

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

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

Revenues (+/-): No impact.
Expenditures (+/-): No impact.
Other Explanation: None.

**PUBLIC PROTECTION CABINET
Department of Alcoholic Beverage Control
(New Administrative Regulation)**

804 KAR 10:040. Cities with quotas for quota retail package licenses in excess of statutory default quotas.

RELATES TO: KRS 241.067, KRS 241.069, KRS 242.021
STATUTORY AUTHORITY: KRS 241.060, KRS 241.067

NECESSITY, FUNCTION, AND CONFORMITY: KRS 241.060(1) authorizes the board to promulgate administrative regulations regarding matters over which the board has jurisdiction. KRS 241.067(1) requires the department to promulgate a regulation containing a list of specific city quotas for quota retail package licenses in excess of the statutory general population ratio based quotas. KRS 241.069 and KRS 242.021 establish procedures whereby wet cities located in dry counties may request and receive from the board a higher specific quota number than the general population ratio based quotas. This administrative regulation lists the specific number of excess quota retail package licenses available in wet cities located in dry counties.

Section 1. Listing of Specific City Quotas. The following wet cities shall have the following specific quotas for quota retail package licenses:

(1) Pikeville shall have a quota of thirteen (13) quota retail package licenses.

(2) Central City shall have a quota of four (4) quota retail package licenses.

(3) Lancaster shall have a quota of three (3) quota retail package licenses.

(4) Paintsville shall have a quota of three (3) quota retail package licenses.

(5) Somerset shall have a quota of ten (10) quota retail package licenses.

CAROL BETH MARTIN, Commissioner

K. GAIL RUSSELL, Secretary

APPROVED BY AGENCY: June 14, 2019

FILED WITH LRC: June 14, 2019 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on 10:00 a.m. on July 25, 2019 at 1003 Twilight Trail. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on July 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 below.

CONTACT PERSON: Marc Manley, Executive Adviser, 1003 Twilight Trail, phone 5027821045, fax 5025647479, email marc.manley@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Marc Manley

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation satisfies the department's statutory requirements under KRS 241.067(1)(b) to promulgate a regulation listing specific city quotas issued by the department in excess of the population calculations established by KRS 241.067. KRS 241.069 and KRS 242.021 establish new procedures whereby wet cities can request and receive a higher specific quota number than the general population ratio based quota number. This regulation will be amended to list updated specific quota numbers as future city requests are granted.

(b) The necessity of this administrative regulation: By passing KRS 241.067(1)(b), the General Assembly directed the Alcoholic Beverage Control Board to promulgate a regulation which maintained a list of specific quota package licenses available in wet cities located in dry counties that exceeded the general population ratio based upon quotas of 1 per 2,300 residents.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 241.067 codifies the minimum number of quota package licenses available in cities that have elected to become wet separately from the county in which they are located pursuant to KRS 242.125. KRS 241.069 and KRS 242.021 permit wet cities to petition the board to increase the available quota package licenses available in that jurisdiction in excess of the general population ratio based quota number. The department is statutorily mandated to maintain a list in an administrative regulation of cities that have requested an increase in the available quota package license and the specific number of authorized quota package licenses in that city.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 241.067 requires the promulgation of this administrative regulation.

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

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to this administrative

regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects the Department of Alcoholic Beverage Control and all cities that have elected to become wet notwithstanding the dry status of the county in which they sit, as authorized by KRS 242.125, and have requested an increase in the number of authorized quota package licenses from the statutory ratio of 1 per 2,300 residents.

(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: No local government will have to take additional steps to comply with this regulation. Local governments seeking an increase in the number of authorized quota package licenses from the statutory ratio of 1 per 2,300 residents may be affected by the requirements of KRS 241.069, however, this regulation merely provides notice of the cities that have followed the provisions of KRS 241.069 and the number of quota package licenses authorized in each of those cities.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: There will be no cost to local governments for inclusion on the list established by this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities: The entities effected by this regulation will benefit from a centralized public list of the cities in the Commonwealth which have been authorized to issue more quota package licenses than the statutory minimum of 1 per 2,300 residents, and the specific number of authorized quota package licenses in each of those listed jurisdictions.

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

(a) Initially: There is no cost anticipated to implement this administrative regulation.

(b) On a continuing basis: There is no cost anticipated 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 additional funding is needed to implement this regulation, and no funding will be raised through fees.

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

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

(9) TIERING: Is tiering applied? No tiering is applied because this regulation applies equally to the regulated entities.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Alcoholic Beverage Control and any city of the Commonwealth that has elected to become wet notwithstanding the county in which they sit being dry, pursuant to KRS 242.125, and such city has requested an increase in the authorized quota package licenses pursuant to KRS 241.069. This administrative regulation will not have a direct fiscal impact on state or local government, but the Department notes that requiring the list's publication by promulgation of an administrative regulation that is updated every time the applicable number of licenses available changes will

create a significant lag time while amendments go through the Administrative Regulation review process.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 241.060(2); KRS 241.067.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

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

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

PUBLIC PROTECTION CABINET
Department of Insurance
(New Administrative Regulation)

806 KAR 3:240. Corporate Governance Annual Disclosure.

RELATES TO: 19 RS HB 220.

STATUTORY AUTHORITY: 19 RS HB 220, KRS 304.2-110.

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 authorizes the commissioner to make reasonable rules and administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. 19 RS HB 220 requires insurers and insurance groups to file a corporate governance annual disclosure form. This administrative regulation provides specific details on the contents of the required disclosure and incorporates a form to be utilized by reporting entities to permit efficiency in the review and submission.

Section 1. Definitions. (1) "Corporate Governance Annual Disclosure" or "CGAD" shall mean the corporate governance annual disclosure form to be filed pursuant to this administrative regulation.

(2) "Insurance group" shall mean those insurers and affiliates included within an insurance holding company system as defined by KRS 304.37-010(3).

(3) "Insurer" is defined by KRS 304.37-010(2).

(4) "Senior Management." The term "senior management" shall mean any corporate officer responsible for reporting information to the board of directors at regular intervals or providing this information to shareholders or regulators and shall include, for example and without limitation, the Chief Executive Officer ("CEO"), Chief Financial Officer ("CFO"), Chief Operations Officer ("COO"), Chief Procurement Officer ("CPO"), Chief Legal Officer ("CLO"), Chief Information Officer ("CIO"), Chief Technology Officer ("CTO"), Chief Revenue Officer ("CRO"), Chief Visionary Officer ("CVO"), or any other "C" level executive.

Section 2. Filing Procedures. (1) No later than June 1 of each

calendar year, an insurer required to file a CGAD, or the insurance group of which the insurer is a member required to file a CGAD, shall submit to the commissioner a Corporate Governance Annual Disclosure Form that contains the information described in Section 3 of this administrative regulation and include any additional relevant information necessary to permit the commissioner to gain an understanding of the corporate governance of the insurer or the insurance group of which the insurer is a member.

(2) The CGAD shall include a signature of the insurer's or insurance group's chief executive officer or corporate secretary attesting to the best of that individual's belief and knowledge that the insurer or insurance group has implemented the corporate governance practices described in the CGAD and that a copy of the CGAD has been provided to the insurer's or insurance group's Board of Directors or the appropriate committee of the board of directors.

(3)(a) The insurer or insurance group may choose to provide information on governance activities, depending on its corporate governance structure, that occur at:

1. The ultimate controlling parent level;
2. An intermediate holding company level; or
3. The individual legal entity level.

(b) The insurer or insurance group is encouraged to make the CGAD disclosures at the level at which the insurer's or insurance group's:

1. Risk appetite is determined;
2. Earnings, capital, liquidity, operations, and reputation are overseen collectively and at which the supervision of those factors are coordinated and exercised; or
3. Legal liability for failure of general corporate governance duties would be placed.

(c) If the insurer or insurance group determines the level of reporting based on these criteria, it shall indicate which of the three (3) criteria was used to determine the level of reporting and explain any subsequent changes in level of reporting.

(4) Notwithstanding subsection (1) of this section, if the CGAD is completed at the insurance group level, then it shall be filed with the lead state of the group as determined by the procedures outlined in the most recent Financial Analysis Handbook adopted by the NAIC. In these instances, a copy of the CGAD must also be provided to the chief regulatory official of any state in which the insurance group has a domestic insurer, upon request.

(5) An insurer or insurance group may comply with this section by referencing other existing documents if the documents provide information that is comparable to the information described in section 3. The insurer or insurance group shall clearly reference the location of the relevant information within the CGAD and attach the referenced document if it is not already filed or available to the regulator.

(6) Each year following the initial filing of the CGAD, the insurer or insurance group shall file an amended version of the previously filed CGAD indicating where changes have been made. The filing should identify if no changes were made in the information or activities reported by the insurer or insurance group.

Section 3. Contents of Corporate Governance Annual Disclosure. (1) The insurer or insurance group shall be as descriptive as possible in completing the CGAD, with inclusion of attachments or example documents that are used in the governance process.

(2) The CGAD shall describe the insurer's or insurance group's corporate governance framework and structure including consideration of the following:

(a) The board and various committees thereof ultimately responsible for overseeing the insurer or insurance group and the level at which that oversight occurs. The insurer or insurance group shall describe and discuss the rationale for the current board size and structure; and

(b) The duties of the board and each of its significant committees and how they are governed, as well as how the board's leadership is structured, including a discussion of the roles of chief executive officer and chairman of the board within the organization.

(3) The insurer or insurance group shall describe the policies

and practices of the most senior governing entity and significant committees thereof, including a discussion of the following factors:

(a) How the qualifications, expertise and experience of each board member meet the needs of the insurer or insurance group.

(b) How an appropriate amount of independence is maintained on the board and its significant committees.

(c) The number of meetings held by the board and its significant committees over the past year as well as information on director attendance.

(d) How the insurer or insurance group identifies, nominates and elects members to the board and its committees. The discussion should include, for example:

1. Whether a nomination committee is in place to identify and select individuals for consideration;
2. Whether term limits are placed on directors;
3. How the election and re-election processes function; and
4. Whether a board diversity policy is in place and if so, how it functions.

(e) The processes in place for the board to evaluate its performance and the performance of its committees, as well as any recent measures taken to improve performance (including any board or committee training programs that have been put in place).

(4) The insurer or insurance group shall describe the policies and practices for directing senior management, including a description of the following factors:

(a) Any processes or practices (i.e., suitability standards) to determine whether officers and key persons in control functions have the appropriate background, experience and integrity to fulfill their prospective roles, including:

1. Identification of the specific positions for which suitability standards have been developed and a description of the standards employed; and
2. Any changes in an officer's or key person's suitability as outlined by the insurer's or insurance group's standards and procedures to monitor and evaluate such changes.

(b) The insurer's or insurance group's code of business conduct and ethics, the discussion of which considers, for example:

1. Compliance with laws, rules, and regulations; and
2. Proactive reporting of any illegal or unethical behavior.

(c) The insurer's or insurance group's processes for performance evaluation, compensation and corrective action to ensure effective senior management throughout the organization, including a description of the general objectives of significant compensation programs and what the programs are designed to reward. The description shall include sufficient detail to allow the commissioner to understand how the organization ensures that compensation programs do not encourage and/or reward excessive risk taking. Elements to be discussed may include, for example:

1. The board's role in overseeing management compensation programs and practices;
2. The various elements of compensation awarded in the insurer's or insurance group's compensation programs and how the insurer or insurance group determines and calculates the amount of each element of compensation paid;
3. How compensation programs are related to both company and individual performance over time;
4. Whether compensation programs include risk adjustments and how those adjustments are incorporated into the programs for employees at different levels;
5. Any clawback provisions built into the programs to recover awards or payments if the performance measures upon which they are based are restated or otherwise adjusted; and
6. Any other factors relevant in understanding how the insurer or insurance group monitors its compensation policies to determine whether its risk management objectives are met by incentivizing its employees.

(d) The insurer's or insurance group's plans for CEO and senior management succession.

(5) The insurer or insurance group shall describe the processes by which the board, its committees and senior management ensure an appropriate amount of oversight to the critical risk areas impacting the insurer's business activities,

including a discussion of:

(a) How oversight and management responsibilities are delegated between the board, its committees and senior management;

(b) How the board is kept informed of the insurer's strategic plans, the associated risks, and steps that Senior Management is taking to monitor and manage those risks;

(c) How reporting responsibilities are organized for each critical risk area. The description should allow the commissioner to understand the frequency at which information on each critical risk area is reported to and reviewed by senior management and the board. This description may include, for example, the following critical risk areas of the insurer:

1. Risk management processes (An ORSA Summary Report filer may refer to its ORSA Summary Report pursuant to the Risk Management and Own Risk and Solvency Assessment Model Act);

2. Actuarial function;

3. Investment decision-making processes;

4. Reinsurance decision-making processes;

5. Business strategy/finance decision-making processes;

6. Compliance function;

7. Financial reporting/internal auditing; and

8. Market conduct decision-making processes.

Section 4. Incorporation by Reference. (1) "Corporate Governance Annual Disclosure," 06/2019, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

NANCY G. ATKINS, Commissioner

K. GAIL RUSSELL, Secretary

APPROVED BY AGENCY: June 14, 2019

FILED WITH LRC: June 14, 2019 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on 9:30 a.m. on July 24, 2019 at 215 W. Main Street, Frankfort, Kentucky 40602. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on July 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 below.

CONTACT PERSON: Patrick O'Connor II, Deputy Commissioner, Policy, 215 W. Main Street, Frankfort, Kentucky 40602, phone 502-564-6026, email patrick.oconnor@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Patrick O'Connor II

(1) Provide a brief summary of:

(a) What this administrative regulation does: The administrative regulation elaborates on the required disclosures included in the corporate governance annual disclosure form, and incorporates the actual form to be submitted by insurers and insurance groups to the Department.

(b) The necessity of this administrative regulation: The administrative regulation is required by 19 RS HB 220 and the National Association of Insurance Commissioners ("NAIC") as a department accreditation standard. It is also necessary to elaborate on the corporate governance annual disclosure requirements, and provide an actual form to be used by reporting entities.

(c) How this administrative regulation conforms to the content

of the authorizing statutes: The administrative regulation elaborates on the required board of director and management committee reporting requirements, and it incorporates a form to be used with the content as dictated by the authorizing statute.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation provides additional reporting details and the actual form to simplify the reporting process and diminish chances of errors.

(2) If 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 administrative regulation will impact domestic insurers.

(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: Insurers and insurance groups will need to complete the required corporate governance annual disclosure form. In the event insurers or insurance groups do not have the requested policies, they may be required to develop any missing or deficient oversight policies.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: Insurers and insurance groups will be required to compile the information requested into one form and submission. However, insurers and insurance groups should already have most of the information, so the cost and resources used to complete the form is anticipated to be minimal.

(c) As a result of compliance, what benefits will accrue to the entities: The entities will have undertaken a thorough review of their corporate governance policies to ensure all areas are adequately addressed. The form will provide important information to the Department, and provide the entities the opportunity to rectify any inadequacies.

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

(a) Initially: The corporate governance annual disclosure form will require the entities to expend resources on the initial submission to ensure everything is addressed. Because the entities should already have many of the oversight policies in place, the Department anticipates even the initial cost of putting together the information will be minimal.

(b) On a continuing basis: Entities are required to file the form annually. If no changes are made to any of the policies, the Department anticipates that the forms will be identical, and require no meaningful resources to compile and submit. Once the initial form is drafted and filed, the entities will be required to provide updates in the event changes are made. Thus, the primary continuing cost would only occur if policy changes are made.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Department will utilize existing funding and personnel to oversee and enforce the submission and review of the corporate governance annual disclosure form.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied because similarly situated insurers are treated similar.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What 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. The administrative regulation is required by 19 RS HB 220.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 administrative regulation will not generate any revenue.

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

(c) How much will it cost to administer this program for the first year? The administrative regulation will not have any administration costs.

(d) How much will it cost to administer this program for subsequent years? The administrative regulation will not have any administration costs.

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

(4) Revenues (+/-): Neutral.

(5) Expenditures (+/-): Neutral.

(6) Other Explanation: None.

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of June 11, 2019

Call to Order and Roll Call

The June meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, June 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 May 2019 were approved.

Present were:

Members: Senator Stephen West. Representatives David Hale, Deanna Frazier, Marylou Marzian, and Tommy Turner.

LRC Staff: Sarah Amburgey, Stacy Auterson, Emily Caudill, Betsy Cupp, Ange Darnell, Emily Harkenrider, Karen Howard, and Carrie Klaber.

Guests: Kate Ware, Higher Education Assistance Authority; Rob Akers, Amanda Ellis, Cassie Trueblood, Education Professional Standards Board; Cary Bishop, Department for Facilities and

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY: Division of Student and Administrative Services: KHEAA Grant Programs

11 KAR 5:145. CAP grant award determination procedure. Kate Ware, manager, Student Aid Branch, represented the division.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET: Education Professional Standards Board: Advanced Certification and Rank

16 KAR 8:030. Continuing education option for rank change. Rob Akers, associate commissioner, and Cassie Trueblood, policy advisor and counsel, represented the board.

A motion was made and seconded to approve the following amendments: to amend Sections 3 and 4 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

FINANCE AND ADMINISTRATION CABINET: Department for Facilities and Support Services: State-owned Buildings and Grounds

200 KAR 3:020 & E. Use of State-owned facilities and grounds. Cary Bishop, staff attorney, represented the department.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 through 6 to comply with the drafting and formatting requirements of KRS Chapter 13A; (2) to amend Section 1 to add definitions for "demonstration activities," "normal business hours," and "triggering events"; and (3) to amend Sections 2 through 4 to divide the event application form into five (5) separate forms to: (a) clarify when each applies; (b) exempt demonstration activities from the rental and lease portion of the form; and (c) allow state agencies to make specified adjustments to the rental and lease form for their own uses. Without objection, and with agreement of the agency, the amendments were approved.

BOARDS AND COMMISSIONS: Board of Physical Therapy

201 KAR 22:135. Fees. Scott Majors, executive director; Dan Martin, chair; and Keith Poynter, general counsel, represented the board.

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

301 KAR 2:030. Commercial guide license. Major J. Shane Carrier, Law Enforcement Division, and Karen Waldrop, deputy commissioner, represented the department.

In response to questions by Co-Chair West, Ms. Waldrop stated that changes to this administrative regulation included eliminating the hunting guide helper category. Hunting guide

Support Services; Scott Majors, Dan Martin, Keith Poynter, Board of Physical Therapy; J. Shane Carrier, Karen Waldrop, Department of Fish and Wildlife Resources; B. Dale Hamblin, Robert Swisher, Department of Workers' Claims; Steve Humphress, Marc Manley, Department of Alcoholic Beverage Control; Patrick O'Connor, Department of Insurance; Duane Curry, Max Fuller, Tim House, Steven Milby, David Startzman, Department of Housing, Buildings and Construction; Stephanie Brammer-Barnes, Office of Inspector General; Julie Brooks, Lewis Ramsey, Department for Public Health; Jonathan Scott, Lee Guice, Department for Medicaid Services; Shellie May, Jonathan Borden, Office for Children with Special Health Care Needs; Peter Naake, Heidi Schissler.

The Administrative Regulation Review Subcommittee met on Tuesday, June 11, 2019, and submits this report:

Administrative Regulations Reviewed by the Subcommittee:

helpers would be able to become licensed as hunting guides by complying with the requirements established for hunting guides. Previous to this amendment, hunting guide helpers had most of the same requirements as hunting guides. Additionally, a hunter who was hunting on land owned by another would be required to have in possession while hunting, identification and documentation of permission to hunt on that land, such as a letter of permission from the landowner or the landowner's phone number. Revocation of licensure due to state or federal violations of fishing and hunting requirements was changed from revocation from one (1) to three (3) years.

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.

LABOR CABINET: Department of Workers' Claims

803 KAR 25:270 & E. Pharmaceutical formulary. Dale Hamblin, Jr., assistant general counsel, and Robert Swisher, commissioner, represented the department. Peter Naake, president, Kentucky Workers' Association, appeared in support of the agency amendment to this administrative regulation.

In response to a question by Co-Chair West, Mr. Hamblin stated that the agency amendment to this administrative regulation required an injured employee to be notified of the preauthorization status for a prescribed "N" status drug. Mr. Naake thanked the department for adding the requirement. Representative Marzian, Co-Chair Hale, and Representative Frazier likewise thanked the department for reaching a compromise with stakeholders.

At the May 14, 2019, meeting of the subcommittee, a motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 2, and 5 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

A motion was made and seconded to approve the following amendments: to amend Section 3 to: (1) require notification to an injured employee of the preauthorization requirement for an "N" status drug; (2) delete the provision that a prescription drug dispensed for outpatient use by any person other than a pharmacist requires preauthorization; and (3) comply with the formatting 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: Retail Premises

804 KAR 7:020. Alcoholic beverage inventory during prohibited alcoholic beverage sales period. Steve Humphress, general counsel, and Mark Manley, attorney, represented the department.

A motion was made and seconded to approve the following

amendments: to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 through 3 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

804 KAR 7:031. Repeal of 804 KAR 007:030.

Department of Insurance: Surplus Lines

806 KAR 10:051. Repeal of 806 KAR 010:050. Patrick O'Connor, deputy commissioner, represented the department.

PUBLIC PROTECTION CABINET: Department of Housing, Buildings and Construction: Division of Building Code Enforcement

815 KAR 7:120. Kentucky Building Code. Duane S. Curry, director of building codes; Steven Milby, commissioner; and David Startman, general counsel, represented the division.

Co-Chair West thanked the division for working with industry stakeholders in the development of these administrative regulations.

815 KAR 7:125. Kentucky Residential Code.

CABINET FOR HEALTH AND FAMILY SERVICES: Office of Inspector General: Division of Healthcare: Health Services and Facilities

902 KAR 20:111. Medically managed intensive inpatient withdrawal management. Stephanie Brammer – Barnes, regulation coordinator, represented the division.

In response to a question by Co-Chair West, Ms. Brammer – Barnes stated that an on-staff physician who was an employee of the facility or a contracted physician would satisfy the requirement for at least one (1) physician per facility with the ability to prescribe drugs approved by the FDA for the treatment of opioid use disorder if the on-staff physician or contracted physician had a DEA waiver to prescribe the types of drugs used for opioid use disorder.

Department of Public Health: Division of Public Health and Safety: Milk and Milk Products

902 KAR 50:101. Repeal of 902 KAR 050:100. Julie Brooks, regulation coordinator, and Lewis Ramsey, branch manager, Milk Safety Branch, represented the division.

In response to questions by Co-Chair West, Ms. Brooks stated that 902 KAR 50:110 updated milk sanitation requirements commensurate with the current Pasteurized Milk Ordinance. Mr. Ramsey stated that these requirements pertained to dairy farms.

902 KAR 50:110. Grade A milk and milk products standards and Grade A milk sanitation requirements.

Department of Medicaid Services: Division of Policy and Operations

907 KAR 1:022. Nursing facility services and intermediate care facility for individuals with an intellectual disability. Lee Guice, director of policy and operations, and Jonathan Scott, regulation coordinator, represented the division. Heidi Schissler, legal director, Kentucky Protection and Advocacy, appeared in opposition to 907 KAR 1:755.

907 KAR 1:330. Hospice services.

907 KAR 1:340. Reimbursement for hospice services.

907 KAR 1:441. Repeal of 907 KAR 001:436.

907 KAR 1:755. Preadmission Screening and Resident

Review Program.

In response to questions by Co-Chair West, Mr. Scott stated that the Preadmission Screening and Resident Review Program (PASRR) administrative regulation included MAP form 409, which was incorporated by reference. The division received public comments that expressed concerns that MAP form 409 was confusing and did not conform to federal requirements. The division agreed that a person might have substantial functional limitations as a qualifying characteristic without an intellectual ability and vice versa, or a person might have both. Ms. Schissler stated that PASRR was a federal requirement for any Medicaid-certified nursing facility. Before each person was admitted to a Medicaid-certified nursing facility, the screening would be used to determine if the person had any mental illness or intellectual disability or related condition. Kentucky Protection and Advocacy was concerned that MAP form 409 did not accurately reflect federal screening requirements because of the way in which the factors were conjoined. Ms. Schissler requested that the form be amended to more accurately reflect the federal screening requirements. Misunderstanding of the requirements as paraphrased on the form led to at least two (2) patients with cerebral palsy not getting necessary specialized services, having their conditions deteriorate, and being admitted to nursing homes. Ms. Guice stated that the PASRR Technical Advisory Committee (PTAC) determined that the current version of MAP form 409 was adequate. PTAC allowed the form to use lay language for ease of interpretation and use, which was the intention regarding how the factors were conjoined on the form. Mr. Scott stated that the amended administrative regulation intended to add flexibility and make the form easier to interpret and use. Ms. Schissler stated that the federal definition itself had remained constant for many years.

In response to questions by Co-Chair Hale, Ms. Schissler requested that the MAP form 409, incorporated by reference in this administrative regulation, be amended to more accurately reflect the federal screening requirements. Mr. Scott stated that PTAC found the current language in the MAP form 409 adequate.

In response to questions by Representative Marzian, Ms. Guice stated that it was not possible to determine if patients other than the two (2) cited had specialized services denied due to misinterpretation of the form. Each month, approximately 1,200 Medicaid recipients applied for long-term care services. Ms. Schissler stated that the form could be amended to more accurately reflect federal requirements while still using easy to interpret, lay language. The federal government contracted with PTAC to provide guidance on PASRR issues. Representative Marzian requested that the division work with Kentucky Protection and Advocacy to consider developing an amendment for consideration once this administrative regulation was referred to the Interim Joint Committee on Health, Welfare, and Family Services. Co-Chair West reiterated Representative Marzian's request, and Mr. Scott and Ms. Guice agreed to consider an amendment for the Interim Joint Committee on Health, Welfare, and Family Services.

Office for Children with Special Health Care Needs

911 KAR 1:010. Application to office for children with special health care needs clinical programs. Jonathan Borden, regulation coordinator, and Shellie May, executive director, represented the office.

911 KAR 1:020. Billing and fees.

911 KAR 1:060. Office for children with special health care needs medical staff.

911 KAR 1:071. Repeal of 911 KAR 001:070 and 911 KAR 001:080.

VOLUME 46, NUMBER 1– JULY 1, 2019

The following administrative regulations were deferred or removed from the June 11, 2019, subcommittee agenda:

STATE BOARD OF ELECTIONS: Forms and Procedures

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

BOARDS AND COMMISSIONS: Board of Dentistry

201 KAR 8:581. Charity dental practices.

Board of Ophthalmic Dispensers

201 KAR 13:040. Licensing.

201 KAR 13:050. Apprentices.

201 KAR 13:055. Continuing education requirements.

201 KAR 13:060. Military service; reciprocity; endorsement.

Board of Social Work

201 KAR 23:150. Complaint procedure, disciplinary action, and reconsideration.

KENTUCKY LOTTERY CORPORATION

202 KAR 3:010. Code of ethics.

ENERGY AND ENVIRONMENT CABINET: Department for Natural Resources: Division of Mine Permits: Bond and Insurance Requirements

405 KAR 10:001. Definitions for 405 KAR Chapter 010.

405 KAR 10:015. General bonding provisions.

JUSTICE AND PUBLIC SAFETY CABINET: Asset Forfeiture

500 KAR 9:011. Repeal of 500 KAR 009:010, 500 KAR 009:020, 500 KAR 009:030, and 500 KAR 009:040.

Motorcycle Safety Education Commission

500 KAR 15:010 & E. Motorcycle safety education program.

TRANSPORTATION CABINET: Department of Vehicle Regulation: Division of Driver Licensing

601 KAR 2:030 & E. Ignition interlock.

PUBLIC PROTECTION CABINET: Department of Insurance: Agents, Consultants, Solicitors, and Adjustors

806 KAR 9:001. Prelicensing courses of study.

806 KAR 9:020. False or deceptive names, titles, prohibited.

806 KAR 9:061. Repeal of 806 KAR 009:060.

806 KAR 9:070. Examinations.

806 KAR 9:310. Life settlement licenses.

806 KAR 9:321. Repeal of 806 KAR 009:320.

Insurance Fraud

806 KAR 47:010. Fraud prevention.

Surplus Lines

806 KAR 47:021. Repeal of 806 KAR 047:020 and 806 KAR 047:030.

ENERGY AND ENVIRONMENT CABINET: Public Service Commission: Utilities

807 KAR 5:056. Fuel adjustment clause.

PUBLIC PROTECTION CABINET: Department of Financial Institutions: Administration

808 KAR 1:180. Use of special restricted funds.

CABINET FOR HEALTH AND FAMILY SERVICES: Department for Public Health: Division of Epidemiology and Health Planning: Communicable Diseases

902 KAR 2:070. Rabies control.

Division of Public Health Protection and Safety: Mobile Homes and Recreational Vehicles Parks; Facilities Standards

902 KAR 15:010. Manufactured and mobile homes.

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

902 KAR 20:036. Operation and services; personal care homes.

Food and Cosmetics

902 KAR 45:065. Tattooing.

902 KAR 45:070. Body piercing and ear piercing.

902 KAR 45:075. Tanning facilities.

Department of Medicaid Services: Division of Policy and Operations

907 KAR 1:604 & E. Recipient cost-sharing.

Department for Behavioral Health, Developmental and Intellectual Disabilities: Division of Behavioral Health: Substance Abuse

908 KAR 1:341. Repeal of 908 KAR 001:340.

908 KAR 1:370. Licensing procedures, fees, and general requirements for nonhospital-based alcohol and other drug treatment entities.

908 KAR 1:372. Licensure of residential alcohol and other drug treatment entities.

908 KAR 1:374. Licensure of nonhospital-based outpatient alcohol and other drug treatment entities.

Department for Aging and Independent Living: Division of Guardianship: Guardianship

910 KAR 2:020. Referral process for adult guardianship.

Department for Community Based Services: Division of Protection and Permanency: Family Support

922 KAR 1:310 & E. Standards for child-placing agencies.

922 KAR 1:350 & E. Requirements for public child welfare agency foster parents, adoptive parents, and respite care providers.

922 KAR 1:495 & E. Training requirements for foster parents, adoptive parents, and respite care providers for children in the custody of the cabinet.

The subcommittee adjourned at 1:50 p.m. The next meeting of the subcommittee is tentatively scheduled for July 10, 2019, at 10 a.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 ECONOMIC DEVELOPMENT
AND WORKFORCE INVESTMENT
Meeting of June 7, 2019**

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Economic Development and Workforce Investment for its meeting of June 06, 2019, having been referred to the Committee on June 05, 2019, pursuant to KRS 13A.290(6):

803 KAR 002:180

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the June 06, 2019 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

CUMULATIVE SUPPLEMENT

Unless otherwise noted, information contained in these indexes relates only to administrative regulations printed in this, the 46th year of the *Administrative Register of Kentucky*, from July 2019 through June 2020.

Locator Index - Effective Dates

A - 2

The Locator Index lists all administrative regulations published during this *Register* year. It also lists the page number on which each regulation is published, the effective date of the regulation after it has completed the review process, and other actions that may affect the regulation. NOTE: Regulations listed under REGISTER YEAR 45 are regulations that were originally published in last year's issues of the *Administrative Register of Kentucky* but had not yet gone into effect when the *Register* year ended.

KRS Index

A - 6

A cross-reference of statutes to which administrative regulations relate. These statute numbers are derived from the RELATES TO line of each regulation submitted for publication during this *Register* year.

Certifications Index

A - 9

A list of administrative regulations for which certification letters have been filed pursuant to KRS 13A.3104 during this *Register* year. Additionally, this index includes information regarding regulations that had letters that stated a regulation shall be amended within 18 months.

Technical Amendment Index

A - 10

A list of administrative regulations that have had technical, non-substantive amendments made during this *Register* year. 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*; however, they are usually available for a short time on the Legislative Research Commission's Web site.

Subject Index

A - 12

A general index of administrative regulations published during this *Register* year, and is mainly broken down by agency.

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	45 Ky.R. Page No.	Effective Date	Regulation Number	45 Ky.R. Page No.	Effective Date
REGISTER YEAR 45					
The administrative regulations listed under VOLUME 44 are those administrative regulations that were originally published in Volume 44 (last year's) issues of the <i>Administrative Register of Kentucky</i> but had not yet gone into effect when the <i>2018 Kentucky Administrative Regulations Service</i> was published.					
SYMBOL KEY:			As Amended	3399	
*	Statement of Consideration not filed by deadline		201 KAR 1:300		
**	Withdrawn, deferred more than twelve months (KRS 13A.300(2)(e) and 13A.315(1)(d))		Amended	2964	
***	Withdrawn before being printed in Register		As Amended	3401	
IJC	Interim Joint Committee		201 KAR 1:310	2804	
(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.		As Amended	3403	
-----			201 KAR 2:010		
EMERGENCY ADMINISTRATIVE REGULATIONS:			Amended	3447	
(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.)					
9 KAR 1:010E	3382	5-15-2019	201 KAR 2:090		
9 KAR 1:040E	3383	5-15-2019	Amended	3449	
200 KAR 3:020E	2304	1-4-2019	201 KAR 2:095		
500 KAR 15:010E	3011	4-5-2019	Amended	3450	
601 KAR 2:030E	2310	1-8-2019	201 KAR 2:100		
803 KAR 25:270E	2316	12-27-2018	Amended	3451	
907 KAR 1:604E	3015	3-15-2019	201 KAR 2:116		
921 KAR 2:015E	2322	12-28-2018	Amended	3453	
921 KAR 2:055E	1501	11-1-2018	201 KAR 2:165		
922 KAR 1:310E	3019	4-1-2019	Amended	3454	
922 KAR 1:350E	3033	4-1-2019	201 KAR 2:225		
922 KAR 1:495E	3042	4-1-2019	Amended	3456	
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ORDINARY ADMINISTRATIVE REGULATIONS:			Amended	3458	
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REGISTER YEAR 46

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.)

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SYMBOL KEY:

- * 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.

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324A.035		201 KAR 030:040	
		201 KAR 030:110	
		201 KAR 030:130	
		201 KAR 030:190	
		201 KAR 030:330	
324A.040		201 KAR 030:110	
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324A.045		201 KAR 030:110	
		201 KAR 030:190	
324A.047		201 KAR 030:110	
324A.050		201 KAR 030:040	
		201 KAR 030:070	
324A.052		201 KAR 030:070	
		201 KAR 030:190	
324A.065		201 KAR 030:110	
		201 KAR 030:190	
324A.075		201 KAR 030:190	
324A.152		201 KAR 030:330	
324A.154		201 KAR 030:330	
324A.155		201 KAR 030:330	
324A.163		201 KAR 030:330	
342.640		702 KAR 003:130	
343		787 KAR 003:010	
350		405 KAR 010:001	
369.102		601 KAR 009:130	
369.107		601 KAR 009:130	
422.317		201 KAR 008:540	
		907 KAR 003:170	
424.260		702 KAR 003:130	
434.840 – 434.860		907 KAR 003:170	
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		501 KAR 006:160	
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12 C.F.R.		201 KAR 030:040	
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		201 KAR 030:330	
16 C.F.R.		201 KAR 015:110	
21 C.F.R.		902 KAR 045:090	
26 C.F.R.		105 KAR 001:390	
30 C.F.R.		405 KAR 010:001	
40 C.F.R.		401 KAR 010:001	
		401 KAR 010:029	
		401 KAR 058:005	
		405 KAR 010:001	
42 C.F.R.		907 KAR 003:170	
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12 U.S.C.		201 KAR 030:010	
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15 U.S.C.		201 KAR 030:330	
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26 U.S.C.		105 KAR 001:390	
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30 U.S.C.		401 KAR 010:030	
33 U.S.C.		401 KAR 010:029	
42 U.S.C.		201 KAR 008:540	
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47 U.S.C.		202 KAR 006:010	
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CERTIFICATION LETTER SUMMARIES

The certification process is established in KRS 13A.3104. If the certification letter states the regulation shall be amended, the administrative body shall file an amendment to the regulation within 18 months of the date the certification letter was filed. If the certification letter states that the regulation shall remain in effect without amendment, the last effective date of the regulation is changed to the date the regulations compiler received the letter.

* KRS 13A.010(6) - "Effective" means that an administrative regulation has completed the legislative review process established by KRS 13A.290, 13A.330, and 13A.331.

Regulation Number	Last 13A Review Effective Date*	Letter Filed Date	Action
012 KAR 001:120	08-24-1994	06-06-2019	To be amended, filing deadline 12-10-20
012 KAR 001:125	08-24-1994	06-06-2019	To be amended, filing deadline 12-10-20
012 KAR 001:130	08-24-1994	06-06-2019	To be amended, filing deadline 12-10-20
012 KAR 001:160	08-24-1994	06-06-2019	To be amended, filing deadline 12-10-20
012 KAR 001:170	08-24-1994	06-06-2019	To be amended, filing deadline 12-10-20
012 KAR 001:175	08-24-1994	06-06-2019	To be amended, filing deadline 12-10-20
012 KAR 004:080	09-28-1994	06-06-2019	To be amended, filing deadline 12-10-20
012 KAR 004:090	09-28-1994	06-06-2019	To be amended, filing deadline 12-10-20
012 KAR 004:100	09-28-1994	06-06-2019	To be amended, filing deadline 12-10-20
012 KAR 004:110	09-28-1994	06-06-2019	To be amended, filing deadline 12-10-20
012 KAR 004:120	11-13-1984	06-06-2019	To be amended, filing deadline 12-10-20
012 KAR 004:130	09-28-1994	06-06-2019	To be amended, filing deadline 12-10-20
012 KAR 004:140	09-28-1994	06-06-2019	To be amended, filing deadline 12-10-20
012 KAR 004:160	09-28-1994	06-06-2019	To be amended, filing deadline 12-10-20
012 KAR 004:170	04-12-2000	06-06-2019	To be amended, filing deadline 12-10-20
012 KAR 005:010	03-19-2001	06-06-2019	To be amended, filing deadline 12-10-20
012 KAR 005:020	03-19-2001	06-06-2019	To be amended, filing deadline 12-10-20
012 KAR 005:030	03-19-2001	06-06-2019	To be amended, filing deadline 12-10-20
012 KAR 005:040	03-19-2001	06-06-2019	To be amended, filing deadline 12-10-20
012 KAR 005:050	03-19-2001	06-06-2019	To be amended, filing deadline 12-10-20
012 KAR 005:060	03-19-2001	06-06-2019	To be amended, filing deadline 12-10-20
012 KAR 005:070	03-19-2001	06-06-2019	To be amended, filing deadline 12-10-20
020 KAR 001:010	09-12-1994	06-07-2019	Remain in Effect without Amendment
020 KAR 001:020	10-12-1994	06-07-2019	Remain in Effect without Amendment
020 KAR 001:030	10-12-1994	06-07-2019	Remain in Effect without Amendment
020 KAR 001:040	03-18-2004	06-07-2019	Remain in Effect without Amendment
020 KAR 001:050	10-12-1994	06-07-2019	Remain in Effect without Amendment
020 KAR 001:060	10-12-1994	06-07-2019	Remain in Effect without Amendment
020 KAR 001:070	11-15-1999	06-07-2019	Remain in Effect without Amendment
020 KAR 001:080	10-06-2006	06-07-2019	Remain in Effect without Amendment
020 KAR 001:090	03-18-2004	06-07-2019	Remain in Effect without Amendment
020 KAR 001:100	03-18-2004	06-07-2019	Remain in Effect without Amendment
045 KAR 001:060	11-12-1992	06-10-2019	Remain in Effect without Amendment
045 KAR 001:080	02-08-1995	06-10-2019	Remain in Effect without Amendment
103 KAR 002:020	05-04-2007	06-07-2019	Remain in Effect without Amendment
103 KAR 005:180	05-07-2010	06-07-2019	Remain in Effect without Amendment
103 KAR 005:190	04-02-2010	06-07-2019	Remain in Effect without Amendment
103 KAR 005:220	03-08-2013	06-07-2019	Remain in Effect without Amendment
103 KAR 005:230	04-06-2018	06-07-2019	Remain in Effect without Amendment
103 KAR 027:030	12-11-1974	06-07-2019	Remain in Effect without Amendment
103 KAR 027:040	01-08-1975	06-07-2019	Remain in Effect without Amendment
103 KAR 027:240	05-04-2007	06-07-2019	Remain in Effect without Amendment
103 KAR 028:020	01-08-1975	06-07-2019	Remain in Effect without Amendment
103 KAR 028:051	02-02-2018	06-07-2019	Remain in Effect without Amendment
103 KAR 028:130	01-08-1975	06-07-2019	Remain in Effect without Amendment
103 KAR 030:160	01-08-1975	06-07-2019	Remain in Effect without Amendment
103 KAR 030:235	02-02-2018	06-07-2019	Remain in Effect without Amendment
103 KAR 030:280	05-04-2007	06-07-2019	Remain in Effect without Amendment
103 KAR 031:011	11-21-1990	06-07-2019	Remain in Effect without Amendment
103 KAR 031:050	01-05-2018	06-07-2019	Remain in Effect without Amendment
103 KAR 031:102	02-02-2018	06-07-2019	Remain in Effect without Amendment
103 KAR 031:170	02-02-2018	06-07-2019	Remain in Effect without Amendment
103 KAR 031:190	01-05-2018	06-07-2019	Remain in Effect without Amendment
105 KAR 001:190	09-28-2011	06-11-2019	Remain in Effect without Amendment
105 KAR 001:220	10-03-2008	06-11-2019	Remain in Effect without Amendment
105 KAR 001:260	12-21-2000	06-11-2019	Remain in Effect without Amendment
105 KAR 001:400	10-24-2012	06-11-2019	Remain in Effect without Amendment
105 KAR 001:440	01-06-2012	06-11-2019	Remain in Effect without Amendment
201 KAR 008:540	05-06-2011	04-08-2019	To be amended. Amendment filed 06-14-19.
201 KAR 008:581	05-06-2011	04-08-2019	To be amended. Amendment filed 04-15-19.

CERTIFICATION LETTER SUMMARIES

401 KAR 058:005	07-07-1998	07-30-2018	To be amended. Amendment filed 06-14-19.
902 KAR 008:130	08-19-1998	06-11-2019	Remain in Effect without Amendment
902 KAR 008:150	10-16-2002	06-11-2019	Remain in Effect without Amendment
902 KAR 008:160	08-17-2011	06-11-2019	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
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- Dentistry; 201 KAR Chapter 008
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- Medical Imaging and Radiation Therapy; 201 KAR Chapter 047
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