VOLUME 46, NUMBER 3 LEGISLATIVE RESEARCH COMMISSION SEPTEMBER 1, 2019

ADMINISTRATIVE REGISTER OF KENTUCKY

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

MEETING NOTICES

The **Administrative Regulation Review Subcommittee** is **tentatively** scheduled to meet on September 16, 2019, at 10:00 a.m. in room 149 Capitol Annex.

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

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Administrative Regulation Review Subcommittee
TENTATIVE Meeting Agenda
MONDAY, September 16, 2019, 10 AM
Annex Room 149

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103 KAR 041:220. Applications, stamp orders, returns, reports, and statements to be filed electronically – waiver.

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Department for Environmental Protection
Division of Water
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401 KAR 006:211. Repeal of 401 KAR 006:200.
401 KAR 006:310 & E. Water supply well construction practices and standards. ("E" expires 01-07-2020.)
401 KAR 006:320 & E. Certification of water well drillers and water well driller assistants. ("E" expires 01-07-2020.)
401 KAR 006:350 & E. Monitoring well construction practices ad standards.

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401 KAR 008:050. Drinking water program fees. (Amended After Comments)

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805 KAR 001:030. Well location and as-drilled location plat, preparation, form and contents.
805 KAR 001:050. Bonds, requirements, cancellation.
805 KAR 001:060. Plugging wells.
805 KAR 001:080. Gas storage reservoirs; drilling, plugging in vicinity.
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805 KAR 001:120. Operating or deepening existing wells and drilling deeper than the permitted depth.
805 KAR 001:140. Directional and horizontal wells.
805 KAR 001:170. Content of the operations and reclamation plan.
805 KAR 001:180. Production reporting.
805 KAR 001:190. Gathering lines.

805 KAR 001:200. General information associated with oil and gas permits.

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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. (Deferred from July)
806 KAR 009:061. Repeal of 806 KAR 009:060. (Deferred from June)
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806 KAR 009:200. Volume of insurance agent exchange of business. (Deferred from July)
806 KAR 009:310. Life settlement licenses. (Deferred from June)
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806 KAR 009:350. Recognition of financial planning certification and designation for receipt of fees and commissions. (Deferred from July)

Department of Financial Institutions

Administration

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

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808 KAR 009:050. Licensee change of control.

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Department for Public Health

Division of Public Health Protection and Safety

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902 KAR 007:010. Hotel and motel code. (Amended After Comments)

Office of Inspector General

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902 KAR 020:036. Operation and services; personal care homes. (Amended After Comments) (Deferred from August)
902 KAR 020:370. Operations and services; private duty nursing agencies.
902 KAR 020:430 & E. Facilities specifications, operation and services; behavioral health services organizations for mental health treatment. ("E" expires 12-25-2019)

Department for Public Health

Division of Prevention and Quality Improvement

Programs for the Underserved

902 KAR 021:020. Kentucky Colon Cancer Screening Program.

Division of Public Health Protection and Safety

Milk and Products

902 KAR 050:003. Repeal of 902 KAR 050:002.
902 KAR 050:005. Milk Advisory Committee.

Office of Inspector General

Division of Audits and Investigations

Controlled Substances

902 KAR 055:120. Disposal of prescription controlled substances.

Department for Medicaid Services

Division of Fiscal Management

Hospital Service Coverage and Reimbursement

907 KAR 010:830 & E. Acute care inpatient hospital reimbursement. ("E" expires 12-16-2019.)

Division of Policy and Operations

Behavioral Health

907 KAR 015:005 & E. Definitions for 907 KAR Chapter 015. ("E" expires 12-25-2019.)
907 KAR 015:010 & E. Coverage provisions and requirements regarding behavioral health services provided by individual approved behavioral health practitioners, behavioral health provider groups, and behavioral health multi-specialty groups. ("E" expires 12-25-2019.)
907 KAR 015:015 & E. Reimbursement provisions and requirements for behavioral health services provided by individual approved behavioral health practitioners, behavioral health provider groups or behavioral health multi-specialty groups. ("E" expires 12-25-2019.)
907 KAR 015:020 & E. Coverage provisions and requirement regarding services provided by behavioral health services organizations for mental health treatment. ("E" expires 12-25-2019.)
907 KAR 015:022 & E. Coverage provisions and requirements regarding services provided by behavioral health services organizations for substance use disorder treatment and co-occurring disorders. ("E" expires 12-25-2019.)
907 KAR 015:025 & E. Reimbursement provisions and requirements regarding behavioral health services provided by behavioral health

services organizations. ("E" expires 12-25-2019.)

Department for Aging and Independent Living
Division of Guardianship
910 KAR 002:040. Service provisions for adult guardianship. (Amended After Comments)

Department for Community Based Services
Division of Protection and Permanency
Child Welfare
922 KAR 001:320 & E. Service appeals. ("E" expires 12-25-2019.)
922 KAR 001:470. Central registry. (Amended After Comments)
922 KAR 001:560. Putative father registry and operating procedures.
922 KAR 001:565. Service array for a relative or fictive kin caregiver.

3. REGULATIONS REMOVED FROM SEPTEMBER'S AGENDA

BOARDS AND COMMISSIONS
Board of Dentistry
201 KAR 008:540. Dental practices and prescription writing. (Comments Received; SOC ext., due 09-13-2019)

Real Estate Authority
Real Estate Commission
201 KAR 011:011. Definitions for 201 KAR Chapter 011. (Comments Received; SOC ext. due 9-13-2019)
201 KAR 011:105. Advertising. (Comments Received; SOC ext. due 9-13-2019)
201 KAR 011:461. Repeal of 201 KAR 011:420. (Comments Received; SOC ext. due 9-13-2019)

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Water
Water Quality Standards
401 KAR 010:001. Definitions for 401 KAR Chapter 010. (Comments Received; SOC ext., due 09-13-2019)
401 KAR 010:026. Designation of uses of surface waters. (Comments Received; SOC ext., due 09-13-2019)
401 KAR 010:029. General provisions. (Comments Received; SOC ext., due 09-13-2019)
401 KAR 010:030. Antidegradation policy implementation methodology. (Comments Received; SOC ext., due 09-13-2019)
401 KAR 010:031. Surface water standards. (Comments Received; SOC ext., due 09-13-2019)

TRANSPORTATION CABINET
Department of Vehicle Licensing
Driver Improvement
601 KAR 013:090. Medical Review Board; basis for examination, evaluation, tests. (Comments Received; SOC ext., due 09-13-2019)
601 KAR 013:100. Medical standards for operators of motor vehicles. (Comments Received; SOC ext., due 09-13-2019)

LABOR CABINET
Department of Workers' Claims
803 KAR 025:271E. Pharmaceutical formulary. ("E" expires 12-18-2019.) (Withdrawn)

PUBLIC PROTECTION CABINET
Department of Insurance
Rates and Rating Organizations
806 KAR 013:120. Workers' compensation deductible policies. (Comments Received; SOC due 08-15-2019)(Withdrawn 8-15-2019, SOC not filed by deadline)

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Audits and Investigations
Controlled Substances
902 KAR 055:070. Emergency medication kits in long-term care facilities. (Comments Received; SOC ext., due 09-13-2019

Department for Medicaid Services
Payments and Services
907 KAR 003:170 & E. Telehealth service coverage and reimbursements. ("E" expires 12-11-2019) (Comments Received; SOC ext., due 09-13-2019)

ADMINISTRATIVE REGULATION REVIEW PROCEDURE

Overview for Regulations Filed BEFORE noon, July 15, 2019
(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.

Overview for Regulations Filed AFTER noon, July 15, 2019
(See KRS Chapter 13A for specific provisions)

Filing and Publication

Administrative bodies shall file all proposed administrative regulations with the Regulations Compiler. Filed regulations shall include public hearing and comment period information; a regulatory impact analysis and tiering statement; a fiscal note on state and local government; and, if applicable, a federal mandate comparison and any required incorporated material. 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 a proposed administrative regulation, which shall be held between the 21st and the last workday of the month following the month of publication. Written comments shall also be accepted until the end of the calendar month in which the public hearing was scheduled.

Information about the public comment period shall include: the place, time, and date of the hearing; the manner in which a person may submit written comments or a notification to attend the hearing; a statement specifying that unless a notification to attend the hearing is received no later than 5 workdays prior to the hearing date, the hearing may be cancelled; the deadline for submitting written comments; and the name, position, and contact information of the person to whom notifications and written comments shall be sent.

The administrative body shall notify the Compiler, by letter, whether the hearing was held or cancelled and whether or not 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 close of the public comment period.

Review Procedure

After the public hearing and public comment period processes are completed, the administrative regulation will be tentatively scheduled for review at the next meeting of the Administrative Regulation Review Subcommittee. 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. If a quorum is present, unless the administrative regulation is deferred or found deficient, the administrative regulation shall be considered in effect upon adjournment of the appropriate jurisdictional committee meets or 90 days after being referred by LRC, whichever occurs first.

EMERGENCY ADMINISTRATIVE REGULATIONS

STATEMENT OF EMERGENCY
601 KAR 2:030E

This is an emergency amendment. This emergency amendment establishes the guidelines and requirements for the implementation and use of ignition interlock devices. It is filed to address the risk to the public safety associated with driving under the influence. An ordinary administrative regulation is not sufficient because of immediate threat to public health, safety, or welfare. Moreover, an ordinary administration regulation is also not sufficient to meet the pending deadline for promulgation of an administrative regulation. The current emergency administrative regulation will expire on August 7, 2019. This emergency administrative regulation replaces the current emergency administrative regulation. This emergency administrative regulation also differs substantially by clarifying the defendant's payment of fees in Section 2(6)(a). This emergency administrative regulation will make necessary corrections relative to the maximum cost that can be charged pursuant to KRS 189A.420(6). This emergency administrative regulation will not be replaced by an ordinary administrative regulation at this time. The ordinary administrative regulation that will be filed at a later date will differ substantially from this new emergency administrative regulation due to the effective date of Senate Bill 85 from the 2019 Regular Session of the General Assembly. All changes enacted pursuant to Senate Bill 85 will not go into effect until July 1, 2020. This emergency administrative regulation will be in effect during a portion of the interim period before the effective date of Senate Bill 85.

MATTHEW G. BEVIN, Governor
GREG THOMAS, Secretary

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Driver Licensing
(Emergency Amendment)

601 KAR 2:030E. Ignition interlock[~~devices; the surrendering of license plates~~].

RELATES TO: KRS 45A, 186.010, 186.440, 186.442, 186.480, 186.531, 186.560, 186.570, 189A.005, 189A.010, 189A.040, 189A.070, 189A.085, 189A.090, 189A.103, 189A.105, 189A.107, 189A.200, 189A.240, 189A.250, 189A.340, 189A.345, 189A.400, 189A.410, 189A.420, 189A.440, 189A.500, 205.712, 18 U.S.C. 2721[~~57 C.F.R. 11772-11787~~]

STATUTORY AUTHORITY: KRS 189A.500[~~189A.085(1)(b), 189A.340(4)(f)~~]

EFFECTIVE: August 7, 2019

NECESSITY, FUNCTION, AND CONFORMITY: KRS 189A.500 requires the Transportation Cabinet to promulgate administrative regulations to carry out provisions regarding the implementation of the Commonwealth's ignition interlock program for motor vehicle drivers who violate KRS 189A.010. This administrative regulation establishes the duties and responsibilities of ignition interlock device providers wishing to enter into an agreement with the Commonwealth of Kentucky and the Transportation Cabinet for the administration and implementation of the ignition interlock device program and further establishes requirements for certifying ignition interlock devices under this program. This administrative regulation also establishes the requirements for a defendant charged with a violation of KRS 189A.010 to obtain an ignition interlock device and license. [~~KRS 189A.085 states that, after a license plate suspension by a judge pursuant to that provision, the circuit court clerk shall transmit surrendered plates to the Transportation Cabinet in the manner set forth by the Transportation Cabinet in administrative regulation. KRS 189A.340(4)(f) states that the Transportation Cabinet shall promulgate administrative regulations to carry out the provisions of that subsection regarding interlock devices. This administrative regulation outlines the procedure for surrendering plates to the Transportation Cabinet pursuant to court order, providing registration information on a convicted violator to the court, approving interlock device manufacturers, installers, and servicing entities and making an approved list available to the public.~~]

Section 1. Definitions. (1) "Cabinet" means the Transportation Cabinet.

(2) "Calibration" means the process that ensures an accurate alcohol concentration reading is being obtained on the ignition interlock device.

(3) "Certification" means the approval process required by the Commonwealth of Kentucky for ignition interlock devices and device providers prior to operating within the state.

(4) "Defendant" means an individual who is determined by the court to be eligible and who is ordered by the court to drive only motor vehicles that have certified ignition interlock devices installed.

(5) "Department" means the Department of Vehicle Regulation in the Kentucky Transportation Cabinet.

(6) "Device" means a breath alcohol ignition interlock device.

(7) "Fail-point" means the level at which the breath alcohol concentration is at or above .02 percent.

(8) "Ignition interlock certificate of installation" is defined by KRS 189A.005(3).

(9) "Ignition interlock device" is defined by KRS 189A.005(2).

(10) "Ignition interlock device provider" or "provider" is defined by KRS 189A.005 (4).

(11) "Ignition interlock license" is defined by KRS 189A.005(5).

(12) "Ignition interlock service provider" or "service provider" means a certified supplier, installer, service provider, and, if applicable, manufacturer of the certified ignition interlock devices.

(13) "Lockout" means the ability of the ignition interlock device to prevent a motor vehicle's engine from starting.

(14) "Manufacturer" means the actual maker of the ignition interlock device that assembles the product and distributes the device to device providers.

(15) "Medical accommodation" means non-standard calibration of a device that has been adjusted to detect the breath alcohol level of defendants who have a medically documented condition of diminished lung capacity requiring a reduced air sample.

(16) "Motor vehicle" as defined by KRS 186.010(4).

(17) "NHTSA" means the National Highway Traffic Safety Administration.

(18) "Provider representative" means a device provider employee who provides oversight of the provider's ignition interlock operations within the Commonwealth of Kentucky.

(19) "Retest" means an additional opportunity to provide a breath sample.

(20) "RFQ" means a request for qualifications pursuant to KRS Chapter 45A.

(21) "Rolling retest" means a test of the defendant's breath alcohol concentration required at random intervals during operation of the motor vehicle.

(22) "Service call" means an on-site remote service of an ignition interlock device, outside of a fixed facility, including for example:

(a) Diagnostic trouble shooting;

(b) Repair or replacement of a malfunctioning device; or

(c) Removal of a device from an inoperable vehicle.

(23) "Service facility" means the physical location where the service provider's technicians install, calibrate, or remove ignition interlock devices.

(24) "Service facility inspection" means the process for determining that a service provider and the service provider's technicians are qualified and approved to provide ignition interlock services within the Commonwealth of Kentucky.

(25) "Tampering" means an unlawful act or attempt to disable or circumvent the legal operation of the ignition interlock device.

(26) "Technician" means a service provider employee or contractor who installs, calibrates, and removes ignition interlock devices within the Commonwealth of Kentucky.

(27) "Violation" means:

(a) A breath test indicating an alcohol concentration at the fail-point or above upon initial startup and retest during operation of the motor vehicle;

(b) Altering, concealing, hiding, or attempting to hide one's identity from the ignition interlock system's camera while providing a breath sample;

(c) Failure to provide a minimum of fifty (50) breath samples within a thirty (30) day period;

(d) Tampering that breaches the guidelines for use of the interlock device; or

(e) Failure to pay provider fees as established in Section 2(17) of this administrative regulation.

Section 2. Ignition Interlock Device Applications. (1) The requirements established in this administrative regulation shall not be applied retroactively to ignition interlock devices in use prior to August 7, 2019.

(2)(a) Upon arraignment of an offense pursuant to KRS 189A.010 resulting in pretrial license suspension, a defendant seeking authorization to apply for and, if eligible, operate under an ignition interlock license shall file with the court a completed Pretrial Application to Court for Authorization to Apply for an Ignition Interlock License and Device, AOC-495.4, pursuant to KRS 189A.200.

(b) Upon conviction of an offense pursuant to KRS 189A.010 resulting in license revocation, a defendant seeking authorization to apply for and, if eligible, operate under an ignition interlock license shall file with the court a completed Application to Court Upon Conviction for Authorization to Apply for an Ignition Interlock License and Device, AOC-495.12, pursuant to KRS 189A.070.

(c) Upon judicial finding of a refusal pursuant to KRS 189A.107(2) and an acquittal of charges brought pursuant to KRS 186.010, the court may authorize the defendant to submit a completed Post-Acquittal Application for Authorization to Apply for an Ignition Interlock License and Device, AOC 495.10.

(d) An eligible defendant in compliance with KRS Chapters 186 and 205 shall receive an Order Upon Acquittal Authorizing Ignition Interlock License and Device, AOC-495.11.

(e) The cabinet shall issue an ignition interlock license for the period ordered by the court.

(3) A defendant requesting indigency status review shall file concurrently with the application a completed Financial Statement, Affidavit of Indigency, Request for Reduced Ignition Interlock Device Costs, AOC-495.8.

(4) Upon review of the appropriate application, the court may issue the defendant a Pretrial Order Authorizing Application for Ignition Interlock License and Device, AOC-495.5, or an Order Upon Conviction Authorizing Application for Ignition Interlock License and Device, AOC-495.13.

(5) Defendant eligibility guidelines, applications, and medical accommodation forms shall be made available electronically on the cabinet's Web site at http://drive.ky.gov and in printed form through the Department of Vehicle Regulation regional field offices. Regional office locations and contact information shall be available at http://drive.ky.gov.

(6)(a) Prior to application, a defendant shall be required to remit to the cabinet a non-refundable application fee in an amount not to exceed the actual cost to the cabinet for issuing the ignition interlock license, but not to exceed $200 pursuant to KRS 189A.420(6). Payment shall be made by cashier's check, certified check, or money order at one (1) of the cabinet's regional field offices or the central office in Frankfort.

(b) A defendant's payment of the application fee shall not be subject to a court's determination of indigency.

(7) A defendant and his or her counsel shall be hereby advised that a pre-existing out-of-state or in-state suspension for the offenses listed in KRS 186.560, 186.570, or 205.712 shall result in the defendant's ineligibility to obtain an ignition interlock device. Eligibility guidelines are available at http://drive.ky.gov.

(8) A defendant shall submit to the cabinet a completed Ignition Interlock Application, TC 94-175, with a court order authorizing application and proof of insurance and valid vehicle registration.

(9) A defendant seeking a medical accommodation due to diminished lung capacity shall submit with the application a completed Breath Alcohol Ignition Interlock Physician Statement, TC 94-176.

(10) The cabinet shall issue the defendant a letter providing notice of his or her eligibility or ineligibility to install an ignition interlock device based on if his or her current driving history record conforms to the eligibility guidelines established in KRS Chapters 186 and 205.

(11) A defendant eligible for device installation shall select and contact a certified device provider of his or her choice from the list maintained on the cabinet's Web site at http://drive.ky.gov.

(12) A technician designated by the device provider shall install a certified ignition interlock device on the defendant's vehicle upon receipt of the court order and letter of eligibility issued by the cabinet.

(13) A defendant shall be required to install an ignition interlock device on one (1) primary motor vehicle registered and titled in his or her name or another's motor vehicle with express notarized, written consent of the owner authorizing installation of the device.

(14) Nothing in this administrative regulation shall prohibit a person from installing devices on multiple motor vehicles prior to a court order and pursuant to subsection (13) of this section.

(15) Upon a defendant's payment of the applicable fees for installation, the service provider's technician shall install the device and issue to the defendant a Certificate of Installation for Ignition Interlock Device, TC 94-177.

(16) At the time of issuance of an ignition interlock license, a defendant shall:

(a) Present the Certificate of Installation to the circuit clerk in the defendant's county of residence; and

(b) Pay a licensing fee pursuant to KRS 186.531 in addition to the fees established in subsection (20)(c) of this section. The license shall display an ignition interlock device restriction.

(17) After ten (10) days' written notice to the defendant, the provider shall notify the appropriate county attorney and the cabinet for nonpayment of fees on an account that is in arrears for thirty (30) days or more.

(18) A defendant may voluntarily have the device removed and reinstalled onto a different motor vehicle pursuant to subsection (13) of this section, and upon payment of the appropriate fees to the provider.

(19) A defendant shall have the device removed by an approved service provider and technician designated by the device provider upon completion of the ignition interlock period established by the court.

(20)(a) Upon removal of the device, the service provider shall retain for their records and provide to the defendant a Certificate of Removal for Ignition Interlock Device, TC 94-178, documenting the successful removal of the interlock device and defendant's payment of all fees.

(b) Upon notice that the device has been removed or the time requirement has been met, the cabinet shall update the defendant's driver history record authorizing the circuit clerk's office to issue the defendant a new license without the ignition interlock restriction.

(c) A defendant shall pay the appropriate fee for a duplicate or renewal license pursuant to KRS 186.531.

(21) A defendant not participating in the ignition interlock program and with a license suspension or revocation period exceeding twelve (12) months shall be subject to retesting requirements prior to the issuance of a new license pursuant to KRS 186.480.

Section 3. General Requirements for Ignition Interlock Device Providers. (1) The cabinet shall certify ignition interlock device providers for two (2) years utilizing the provisions of KRS Chapter 45A and the terms of the RFQ. Application for new applicants and continuing certification renewals shall open on December 1 in the year prior to expiration.

(2) Ignition interlock device providers certified pursuant to this administrative regulation shall obtain re-certification in compliance with this administrative regulation prior to providing devices and

services.

(3) An ignition interlock device provider seeking certification to provide devices and services within the Commonwealth shall comply in all respects with the requirements of solicitation issued by the cabinet. Non-compliance shall result in a denial of certification.

(4) An ignition interlock device provider may subcontract with a person, firm, LLC, or corporation to provide a device and services if that device is specifically included in the original certification request and is specifically certified by the cabinet pursuant to KRS 189A.500.

(5) An ignition interlock device or service provider shall provide information and training for the operation and maintenance of the device to the defendant and other individuals operating a vehicle with an installed device.

(6)(a) A device and service provider shall be prohibited from removing a device owned by a different provider unless an agreement is in place or for the purpose of replacing a defendant's provider due to that provider's insolvency or business interruption.

(b) The original device provider shall bear the costs associated with the removal of the existing device and installation of the new device.

(7)(a) A device provider shall notify the cabinet within fifteen (15) days of a pending suspension, revocation, or disciplinary action taken against the device provider by a jurisdiction outside the commonwealth.

(b) Notice shall include a copy of the official correspondence or pleading establishing the reason for the pending action and shall be provided to the cabinet regardless of the existence of an appeal.

(8) The records required by Section 4(2)(e) of this administrative regulation shall be retained by an ignition interlock device provider for at least five (5) years from the date the device is removed from the defendant's vehicle. The records shall be disposed of in a manner compliant with relevant privacy laws and the provisions contained in this administrative regulation.

Section 4. Certification of Ignition Interlock Devices and Device Providers. (1) An ignition interlock device provider requesting certification of an ignition interlock device shall submit:

(a) An affidavit that the ignition interlock device complies with specifications and certification requirements established in the RFQ; and

(b) Documentation for each model from either a certified, independent testing laboratory or the NHTSA testing laboratory that the ignition interlock device meets or exceeds the current NHTSA model specifications at nhtsa.gov/staticfiles/nti/pdf/811859.pdf.

(2) An ignition interlock device provider requesting certification shall:

(a) Submit evidence demonstrating successful experience in the development and maintenance of an ignition interlock service program, including a list of jurisdictions served by the device provider;

(b) Provide a description of the training required including its frequency, for persons employed by, contracted with, or permitted by the provider to install, calibrate, remove, and provide continuing support for the devices;

(c) Provide a plan that includes a location map describing the areas and locations of the provider's proposed fixed installation and service facilities. The plan shall include at least one (1) fixed facility in each of the twelve (12) highway districts;

(d) Agree to initial service facility inspections, continuing random inspections, and annual inspections of each service facility by the cabinet or its designee. The provider shall also agree to provide sufficient notice to the cabinet or its designee of the opening of new service facilities to permit the inspection of the facility within thirty (30) days of opening;

(e) Provide a plan for the receipt, maintenance, and destruction or appropriate return of defendant records consistent with court rules and the confidential maintenance of defendant records as required by the Driver's Privacy Protection Act, 18 U.S.C. 2721 and other applicable statutes;

(f) Provide proof of insurance covering the liability related to the manufacture, operation, installation, service, calibration, and removal of the devices with policy limits as established in the RFQ. The provider's liability insurance shall be expressly considered primary in the policy;

(g) Designate a provider representative authorized to speak on behalf of and bind the device provider and designated to work with the cabinet, the courts, and other agencies in the administration of the ignition interlock program;

(h) Maintain a toll-free twenty-four (24) hour emergency phone service that shall be used by defendants to request assistance in the event of operational problems related to the device and that shall include technical assistance and aid in obtaining a roadside service call if needed; and

(i) Demonstrate the ability to maintain sufficient, secure computer hardware and software compatible with the cabinet and court requirements to record, compile, and transmit data and information requested by the cabinet and the Administrative Office of the Courts.

(3) Device providers shall notify the appropriate county attorney within twenty-four (24) hours electronically, or no later than seventy-two (72) hours by mail, fax, or other method requested the recipient pursuant to KRS 189A.500:

(a) Device tampering or circumvention violations; or

(b) A defendant's failure to comply with a court order pursuant to Section 6(6) of this administrative regulation.

(4) A provider shall indemnify and hold harmless the Commonwealth and its employees and agents from all claims, demands, or actions as a result of damages or injury to persons or property, including death, that arise directly or indirectly out of the installation, omission, failure of installation, servicing, calibrating, or removal of an ignition interlock device. If the device provider's report of ignition interlock activities contains a verified error, the cabinet, department, or cabinet or department employees or agents shall be indemnified relevant to the error.

Section 5. Ignition Interlock Device Installation. (1) A provider may charge a defendant for the commodities and services listed in the RFQ, including:

(a) Standard ignition interlock device installation, or installation on alternative fuel motor vehicles or a motor vehicle with a push button starter;

(b) Device rental on a monthly basis;

(c) Scheduled device calibrations and monitoring as established in the RFQ;

(d) Required insurance in case of theft, loss, or damage to the device and its components;

(e) Resets necessary due to the fault of the defendant;

(f) Missed appointments without notice;

(g) Service calls and mileage up to 100 miles at the current rate established by the Kentucky Finance and Administration Cabinet; and

(h) Device removal.

(2)(a) The court shall determine if a defendant is indigent. A defendant declared indigent shall pay a proportionate amount of the fees agreed to in the RFQ based upon the guidelines established by the Kentucky Supreme Court in Amendment to Administrative Procedures of the Court of Justice, Part XVI, Ignition interlock, Amended Order 2015-13.

(b) A device and service provider shall accept the court ordered amounts paid by an indigent defendant as payment in full.

(3)(a) The defendant shall remit the fees directly to the device or service provider as directed by the device provider.

(b) A device provider shall not prohibit the pre-payment of fees for the device and services.

(4) The device provider may pursue collection of amounts in arrears and recovery of the devices, if applicable. Collection and recovery shall be through separate legal action.

(5) An ignition interlock device shall be installed by or under the direction and supervision of a cabinet-certified ignition interlock device provider in conformance with procedures of the device manufacturer.

(6) A service provider and technician shall use the calibration

units approved by NHTSA and appearing on its list of Conforming Products List of Calibrating Units for Breath Alcohol Testers at http://www.transportation.gov/odapc/conforming-product-list-calibrating-units-breath-alcohol-testers.

(7) An ignition interlock device provider shall ensure that technicians installing the device:

(a) Inspect, calibrate, or replace devices with a newly calibrated device at each inspection as required;

(b) Retrieve data from ignition interlock device data logs for the previous period and send the information to the appropriate authority within twenty-four (24) hours electronically, or no later than seventy-two (72) hours by mail, fax, or other method requested by the recipient pursuant to KRS 189A.500;

(c) Record the odometer reading at installation and at service appointments;

(d) Inspect devices and wiring for signs of tampering or circumvention, record suspected violations, and transmit violation reports pursuant to Section 4(3) of this administrative regulation; and

(e) Conform to other calibration requirements established by the device manufacturer.

(8) The cabinet shall:

(a) Maintain a periodically updated, rotating list of certified ignition interlock device providers and approved facilities available at http://drive.ky.gov;

(b) Make available an Ignition Interlock Application, TC 94-175, available at http://drive.ky.gov and in regional field offices and the central office in Frankfort;

(c) Make available a uniform Certificate of Installation for Ignition Interlock Device, TC 94-177 to be printed and distributed by device providers to their approved service providers and technicians documenting successful ignition interlock device installation; and

(d) Issue an ignition interlock license to eligible defendants upon receipt of a court order and in compliance with the requirements of this administrative regulation. The license shall have in-force status and indicate that it is an ignition interlock license by displaying a restriction code for an ignition interlock device.

Section 6. Installation, Operation, Calibration, and Removal of Devices. (1) Prior to installing the device, the provider shall obtain and retain copies from the defendant:

(a) Photo identification;

(b) The vehicle registration or title containing the VIN of the vehicle designated as primary by the defendant and the name or names of the operators of the motor vehicle; and

(c) Consent of the defendant or registered owner to install the device.

(2)(a)The device shall be inspected or calibrated by a technician designated by the device provider within thirty (30) days of installation and every sixty (60) days thereafter, as established in KRS 189A.420(4)(b).

(b) A defendant shall have the option to service the device at thirty (30) day intervals following the initial calibration.

(3) If a defendant fails to have the device inspected or recalibrated as required by subsection (2)(a) of this section, the ignition interlock device shall be programmed to enter into a lockout condition, at which time the vehicle shall be required to be returned to the service provider.

(4) The defendant shall be responsible for costs related to roadside service unless it is determined that the interlock device failed through no fault of the defendant, in which case the device provider shall be responsible for the applicable costs.

(5) In the event of a violation resulting in an order from the court, the device provider shall remove the device and the cabinet shall suspend the defendant's ignition interlock license.

(6) A device provider shall, within ninety-six (96) hours of receipt of the court's order directing removal of the device, notify the defendant that he or she shall return the vehicle with the installed device for removal.

(7) If an ignition interlock device is removed for any reason, components of the motor vehicle altered by the installation of the device shall be restored to pre-installed conditions.

Section 7. Provider Suspension, Revocation, Voluntary Facility Closure, or Financial Insolvency. (1) The department shall indefinitely suspend or revoke certification of an ignition interlock device provider if:

(a) A device in use by that provider and previously certified by the cabinet is discontinued by the manufacturer or device provider;

(b) The device provider's liability insurance is terminated or cancelled;

(c) The device provider makes materially false or inaccurate information relating to a device's performance standards;

(d) There are defects in design, materials, or workmanship causing repeated failures of a device;

(e) A device provider fails to fully correct an identified service facility deficiency within thirty (30) days after having been notified by the cabinet or its designee to do so;

(f) A service provider impedes, interrupts, disrupts, or negatively impacts an investigation or inspection conducted by the cabinet or its designee involving customer service issues, vehicle damage, or a complaint brought by a third party;

(g) A public safety or client confidentiality issue with an ignition interlock device provider, service facility, or technician is identified;

(h) A provider becomes insolvent or files for bankruptcy;

(i) The device provider requests a voluntary suspension; or

(j) The provider fails to comply with the requirements established in the RFQ used to apply for certification.

(2)(a) The device provider shall be given at least thirty (30) days written notice of the existence of one (1) or more of the conditions established in subsection (1) of this section by letter from the Office of Highway Safety, served by certified mail, and an opportunity to respond to the allegations or correct the deficiencies within that period.

(b) The commissioner shall consider the provider's response or lack of response if deciding to suspend for a period of time or completely revoke the certification of the provider.

(c) The provider may appeal the decision of the Office of Highway Safety pursuant to the provisions of KRS Chapter 13B.

(3) A device provider subject to revocation shall be responsible for, and bear the costs associated with:

(a) Providing notice to defendants; and

(b) The removal of currently installed devices or the installation of a new device by a device provider in good standing.

(4) A provider subject to revocation shall continue to provide services for currently installed devices for a time to be determined by the cabinet, but no longer than ninety (90) days.

(5) A provider subject to suspension shall continue to provide services for currently installed devices. A new ignition interlock installation shall not be permitted during the period of suspension.

(6)(a) A provider that terminates certification or goes out of business shall comply with the requirements established in subsection (3) of this section, and shall continue to provide services in accordance with this administrative regulation for currently installed devices for ninety (90) days from the date of the provider's notification to the cabinet that the provider will be terminating ignition interlock services.

(b) A provider who terminates certification or goes out of business shall submit plans for transferring existing defendants to other providers to ensure continuity of service.

(c) A transfer plan shall be submitted to the cabinet for the commissioner's review within thirty (30) days of the initial notification of intent to cease operations in the Commonwealth.

(d) The provider shall be solely responsible for notifying defendants with currently installed devices serviced by the provider, and shall be solely responsible for charges related to installation of a device by a new provider.

Section 8. Surrender of Motor Vehicle Registration Plates. (1) A defendant who does not qualify for an ignition interlock license shall surrender his or her license plate or plates pursuant to KRS 189A.085.

(2) Upon receipt of a request for a vehicle registration inventory from a court, the cabinet shall:

(a) Conduct a search of the automated vehicle information system;

(b) Identify motor vehicles owned or jointly owned by the person named on the request; and

(c) Return the results of the search to the court by noon Eastern time, the next working day after the request is received, if the request is received by noon Eastern time. A request received after noon Eastern time shall be returned to the court by the close of business the second working day after the request is received.

(3) Upon receipt of a court order suspending a licensee's plate pursuant to KRS 189A.085, the cabinet shall suspend the licensee's registration. The cabinet shall not suspend the registration of any person pursuant to KRS 189A.085 unless a court order has been received.

(4) The court shall return each confiscated license plate to the cabinet. The cabinet shall bear the responsibility for reasonable postage or shipping costs for the return of confiscated license plate.

(5) After the motor vehicle registration suspension period has expired, the county clerk shall reissue a motor vehicle registration plate and registration receipt upon the request of the vehicle owner.

(a) If the registration period of the suspended license plate has not expired, the new registration shall be issued pursuant to KRS 186.180(2).

(b) If the suspended license plate has expired, the registration shall be issued as a renewal registration pursuant to KRS 186.050.

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

(a) "Breath Alcohol Ignition Interlock Physician Statement", TC 94-176, August 2015;

(b) "Certificate of Installation for Ignition Interlock Device", TC 94-177, August 2015;

(c) "Certificate of Removal for Ignition Interlock Device", TC 94-178, August 2015;

(d) "Ignition Interlock Application", TC 94-175, August 2015. Said application is available at "https://drive.ky.gov,"Regional field offices" and "Central Office"; and

(e) "Am I Eligible For An Ignition Interlock Device?", 2019.

(2) The material for (a) (b) (c) and (d) above may be inspected, copied, or obtained, subject to applicable copyright law, at the Transportation Cabinet Building, Department of Highways, 200 Mero Street, Frankfort, Kentucky 40622, Monday through Friday, 8:00 a.m. through 4:30 p.m. This material is also available on the cabinet's web site at http://drive.ky.gov.

(3) The material for (e) above may be inspected, copied, or obtained, subject to applicable copyright law, on the cabinet's web site at http://drive.ky.gov.[~~Surrender of Motor Vehicle Registration Plates. (1) Upon receipt of a request for a vehicle registration inventory from a court, the Transportation Cabinet shall:~~

~~(a) Conduct a search of the automated vehicle information system;~~

~~(b) Identify all motor vehicles owned or jointly owned by the person named on the request; and~~

~~(c) Return the results of the search to the court by 12 noon Eastern time, the next working day after the request is received, provided the request is received by 12 noon Eastern time. Requests received after 12 noon Eastern time shall be returned to the court by the close of business the second working day after they are received.~~

~~(2) Upon receipt of a court order suspending a licensee's plates, pursuant to KRS 189A.085, the Transportation Cabinet shall suspend the licensee's registration. The cabinet shall not suspend the registration of any person pursuant to KRS 189A.085 unless a court order has been received.~~

~~(3) The court shall return all confiscated license plates to the Transportation Cabinet. The cabinet shall bear the responsibility for reasonable postage or shipping costs for the return of all confiscated license plates.~~

~~(4) After the motor vehicle registration suspension period has expired, the county clerk shall reissue a motor vehicle registration plate and registration receipt upon the request of the vehicle owner as follows:~~

~~(a) If the registration period of the suspended license plate has not expired, the new registration shall be issued pursuant to KRS 186.180(2); or~~

~~(b) If the suspended license plate has expired, the registration shall be issued as a renewal registration pursuant to KRS 186.050.~~

~~Section 2. Breath Alcohol Ignition Interlock Device. (1) An ignition interlock device, installed pursuant to court order shall meet the following criteria:~~

~~(a) The ignition interlock device shall be designed and constructed to measure a person's breath alcohol concentration, as defined in KRS 189A.005(1), by utilizing a sample of the person's breath delivered directly into the device;~~

~~(b) The ignition interlock device shall be designed and constructed so that the ignition system of the vehicle in which it is installed will not be activated if the alcohol concentration of the operator's breath exceeds .02 alcohol concentration as defined in KRS 189A.005(1);~~

~~(c) The ignition interlock device shall meet or exceed performance standards contained in the Model Specifications for Breath Alcohol Ignition Interlock Devices (BAIIDS), as published in 57 FR 11772-11787 (April 7, 1992);~~

~~(d) The ignition interlock device shall prevent engine ignition if the device has not been calibrated within a period of ninety-seven (97) days subsequent to the last calibration;~~

~~(e) The ignition interlock device shall:~~

~~1. Record each time the vehicle is started;~~

~~2. Record results of the alcohol concentration test;~~

~~3. Record how long the vehicle is operated; and~~

~~4. Detect any indications of bypassing or tampering with the device;~~

~~(f) The ignition interlock device shall permit a sample free restart for a period of two (2) minutes or less after a stall;~~

~~(g) The ignition interlock device shall require:~~

~~1. That the operator of the vehicle submit to a retest within ten (10) minutes of starting the vehicle;~~

~~2. That retests continue at intervals not to exceed sixty (60) minutes after the first retest;~~

~~3. That retests occur during operation of the vehicle; and~~

~~4. That the device enter a lockout condition in five (5) days if a retest is not performed or the results of the test exceeds the maximum allowable alcohol concentration;~~

~~(h) The ignition interlock device shall be equipped with a method of immediately notifying peace officers:~~

~~1. If the retest is not performed; or~~

~~2. If the results exceed the maximum allowable alcohol concentration; and~~

~~(i) The ignition interlock device shall include instructions recommending a fifteen (15) minute waiting period between the last drink of an alcoholic beverage and the time of breath sample delivery into the device.~~

~~(2) An ignition interlock device shall be:~~

~~(a) Installed by the manufacturer or by private sector installers in conformance with the prescribed procedures of the manufacturer; and~~

~~(b) Be used in accordance with the manufacturer's instructions.~~

~~(3)(a) An ignition interlock device shall be calibrated at least once every ninety (90) days to maintain the device in proper working order.~~

~~(b) The manufacturer or installer shall calibrate the device or exchange the installed device for another calibrated device in lieu of calibration.~~

~~(c) The record of installation and calibration shall be kept in the vehicle at all times for inspection by a peace officer and shall include the following information:~~

~~1. Name of the person performing the installation and calibration;~~

~~2. Dates of activity;~~

~~3. Value and type of standard used;~~

~~4. Unit type and identification number of the ignition interlock device checked; and~~

~~5. Description of the vehicle in which the ignition interlock device is installed, including the registration plate number and~~

~~state, make, model, vehicle identification number, year and color.~~

~~(4) An ignition interlock device in a lockout condition shall be returned to the site of installation for service.~~

~~Section 3. Division of Driver Licensing Requirements. (1) The Division of Driver Licensing shall maintain a list of all manufacturers of ignition interlock devices meeting the requirements of this administrative regulation who have provided documentation to the division confirming that they offer appropriate ignition interlock devices and related services within the Commonwealth.~~

~~(2) The list of manufacturers who provide appropriate devices, approved installers, and servicing and monitoring entities shall be published and periodically updated by the Division of Driver Licensing on the Transportation Cabinet Web site.~~

~~(3) The Division of Driver Licensing shall provide a notation on the face of the operator's license stating that:~~

~~(a) The licensee is required by order of the court to be using a vehicle with an ignition interlock device; and~~

~~(b) The license has been granted an exception for employment purposes pursuant to KRS 189A.340, if granted by the court.~~

~~(4) Manufacturers, installers, and servicing and monitoring entities shall apply to the Division of Driver Licensing for approval and placement on the list maintained by the cabinet.~~

~~Section 4. Incorporation by Reference. (1) Model Specifications for Breath Alcohol Ignition Interlock Devices (BAIIDS), 57 FR 11772-11787 (April 7, 1992), 40 pages, is incorporated by reference.~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Transportation Cabinet, Division of Driver Licensing, 2nd Floor, State Office Building, 501 High Street, Frankfort, Kentucky 40622, Monday through Friday, 8 a.m. to 4:30 p.m.~~]

GREG THOMAS, Secretary
MATTHEW D. HENDERSON, Commissioner
P. KEVIN MOORE, Esq., Executive Director

APPROVED BY AGENCY: August 1, 2019

FILED WITH LRC: August 7, 2019 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this amended emergency regulation shall be held on October 21, 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 the 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 October 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, Esq., Executive Director, Office of Legal Services, Transportation Cabinet, 200 Mero Street, Frankfort, Kentucky 40622, phone: (502) 564-765, 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 ignition interlock program.

(b) The necessity of this administrative regulation: This administrative regulation is required by KRS 189A.500.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes forms, creates a uniform certificate of installation for ignition interlock devices, certifies the devices approved for use in the Commonwealth, and creates an ignition interlock license to be issued upon court approval.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will establish the regulatory requirements of KRS 189A.500.

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

(a) How the amendment will change this existing administrative regulation: This amendment clarifies the Commissioner's role in the submission of transfer plans by providers in Section 7.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to amend Section 7 (6)(d) that currently requires the Commissioner to approve, rather than to simply review a transfer plan.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to KRS 189A.500 that requires the cabinet to implement the ignition interlock program. (d) How the amendment will assist in the effective administration of the statutes: This amendment will clarify provisions in the current administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect: companies desiring to provide ignition interlock devices and services within Kentucky; motor vehicle drivers who violate KRS 189A.010 (defendants); the cabinet's Division of Drivers Licensing within the Division of Vehicle Regulation; circuit clerks, and the Administrative Office of the Courts.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the 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: Companies desiring to provide ignition interlock devices and services will apply to the cabinet for device certification and authorization; defendants will apply for both the ignition interlock device and authorization to operate with an ignition interlock license pursuant to court order; divisions within the department will approve and process the application forms; and circuit clerks will issue the ignition interlock licenses.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Defendants will pay device and servicing fees pursuant to KRS 189A.500, and an application fee in an amount not to exceed the actual cost to the cabinet for issuing the ignition interlock license, but not to exceed $200 pursuant to KRS 189A.420(6).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): If eligible pursuant to KRS chapter 186, defendants will be approved to drive with an Ignition Interlock license; businesses desiring to provide Ignition Interlock devices and services will be granted certification for devices and authority to provide services.

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

(a) Initially: Inspections, mailing of documents and staff time necessary to begin processing applications is estimated at $525,000.

(b) On a continuing basis: in an amount not to exceed the actual cost to the cabinet for issuing the ignition interlock license, but not to exceed $200 per defendant and up to approximately $525,000 annually.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Initially FHWA – Hazard Elimination Fund. There is presently no appropriation in place to administer or enforce this program.

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

funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: An appropriation will be needed to maintain this program.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The administrative fees created herein are pursuant to statute to offset any costs to KYTC.

(9) TIERING: Is tiering applied? No tiering is required for device providers. All device providers meeting or exceeding the qualifications will be treated the same. Tiering for defendants in this program is pursuant to statute and judicially determined indigency status.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What 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 Vehicle Regulation, Division of Driver Licensing, the Circuit Clerks, Administrative Office of the Courts, County Attorneys.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 189A.500(1)(f).

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. For local government, costs should be minimal as the process is judicially driven and the regulatory actions will be performed within the context of DUI prosecutions.

(a) How much 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? Up to approximately $525,000.

(d) How much will it cost to administer this program for subsequent years? in an amount not to exceed the actual cost to the cabinet for issuing the ignition interlock license, but not to exceed $200 per defendant and up to approximately $525,000 annually.

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 (+/-): Additional programming to the driver licensing system will need to be implemented. The cost is unknown.

Other Explanation: The cabinet is unsure precisely how many defendants will move for eligibility under this program and whether efficiencies can be achieved if they do.

STATEMENT OF EMERGENCY
922 KAR 1:330E

This emergency administrative regulation is necessary in accordance with KRS 13A.190(1)(a)1. to preserve the health and welfare of vulnerable children in the Commonwealth. The administrative regulation ensures that the regulatory definition of "caretaker" is in harmony with the Cabinet's full scope of statutory investigatory authority in instances where the abuse or neglect of a child is alleged. The amendment to the definition is necessary for consistency with Regular Session 2019 House Bill 158, Sections 8 through 10, codified in KRS 620.020, .030, and .040. Additionally, this administrative regulation allows for a formal "no-finding" outcome in certain investigations so as to better serve the Cabinet's overall statutory mission.

An ordinary administrative regulation would not allow the agency sufficient time to implement these regulatory revisions necessary to preserve the health and welfare of children in the Commonwealth relating to investigations of child abuse or neglect. This emergency administrative regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation is not identical to the emergency administrative regulation.

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

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Protection and Permanency
(Emergency Amendment)

922 KAR 1:330E. Child protective services.

RELATES TO: KRS [~~13B.050, 13B.120, 13B.140, 13B.150,~~] 159.140, 194A.005(1), 194A.050(1), 202A.011, 211.684, 214.036, 431.600(1), (8), 503.110(1), 529.010(5), (13), 532.045, 600.010, 600.020, 605.090(3), 605.130, 605.150(1), 610.010(2)(d), (9), 620.010-620.050, 620.070, 620.072, 620.180(1), 620.350, 620.990, 42 U.S.C. 5106a

STATUTORY AUTHORITY: KRS 194A.050(1), 605.150(1), 620.029(2)(a), 620.180(1)

EFFECTIVE: August 14, 2019

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Secretary for the Cabinet for Health and Family Services to promulgate administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 605.150(1) authorizes the cabinet to promulgate administrative regulations to implement the provisions of KRS Chapter 605 - Administrative Matters. KRS 620.180(1) authorizes the cabinet to promulgate administrative regulations to implement the provisions of KRS Chapter 620 - Dependency, Neglect, and Abuse. KRS 620.029(2)(a) requires the cabinet, in consultation with agencies serving victims of human trafficking, to promulgate administrative regulations for the treatment of children who are reported to be victims of human trafficking as dependent, neglected, or abused children, including providing for appropriate screening, assessment, treatment, and services. In addition, 42 U.S.C. 5106a(b) establishes eligibility requirements for a state to receive a grant for a child abuse and neglect prevention and treatment program. This administrative regulation establishes cabinet procedures, congruent with eligibility requirements under 42 U.S.C. 5106a(b), for a child protection investigation or assessment of abuse, neglect, or dependency.

Section 1. Definitions. (1) "Assessment" means the collection and analysis of information to inform decision-making about or service provision to a child or a family, including:

(a) An observable threat or threatening condition to the child's safety;

(b) A factor present that increases the likelihood of child abuse, neglect, or dependency; and

(c) Child or family strengths and protective capacities.

(2) "Cabinet" is defined by KRS 194A.005(1) and 600.020(7).

(3) "Caretaker" means a parent, guardian, fictive kin, person in a position of authority or special trust as defined in KRS 532.045(1), or other person exercising custodial control or supervision of a child.

(4) "Child fatality" is defined by KRS 211.684(1)(a).

(5) "Child protective services" means preventive and corrective services directed toward:

(a) Safeguarding the rights and welfare of an abused, neglected, or dependent child;

(b) Assuring for each child a safe and nurturing home;

(c) Improving the abilities of parents to carry out parental responsibilities;

(d) Strengthening family life; and

(e) Assisting a parent or other person responsible for the care of a child in recognizing and remedying conditions detrimental to the welfare of the child.

(6) "Dependent child" is defined by KRS 600.020(20).

(7) "Human trafficking" is defined by KRS 529.010(5).

(8) "Initial determination" means an evaluation of risk factors to determine immediate safety and risk of harm resulting in a decision whether to proceed with an:

(a) Investigation; or

(b) Assessment.

(9) "Investigation" means a process of collecting information and evaluating risk factors to determine if a child:

(a) Has been abused or neglected;

(b) Is dependent; or

(c) Is a victim of human trafficking.

(10) "Near fatality" is defined by KRS 600.020(40) and 42 U.S.C. 5106a(b)(4)(A).

(11) "No finding" means that the information contained in a report that met criteria to open an investigation has been found to be false or erroneous and no longer meets acceptance criteria.

(12) "Preponderance of evidence" means that evidence is sufficient to conclude that it is more likely than not that an alleged perpetrator committed an act of child abuse or neglect as defined by KRS 600.020(1).

(13)[~~(12)~~] "Prior involvement" means any assessment or investigation, of which the cabinet has record, with a child or family in the area of protection and permanency prior to the child's fatality or near fatality investigation.

(14)[~~(13)~~] "Services needed" means a low risk finding with no perpetrator that indicates a family needs to be linked to community services.

(15)[~~(14)~~] "Sexual abuse" is defined by KRS 600.020(61).

(16)[~~(15)~~] "Sexual exploitation" is defined by KRS 600.020(62).

(17)[~~(16)~~] "Substantiated" means:

(a) An admission of abuse or neglect by the person responsible;

(b) A judicial finding of child abuse or neglect; or

(c) A preponderance of evidence exists that abuse or neglect was committed by the caretaker.

(18)[~~(17)~~] "Unable to locate" means that:

(a) Identifying information about the family is insufficient for locating them; or

(b) The family has moved and their new location is not known.

(19)[~~(18)~~] "Unsubstantiated" means there is insufficient evidence, indicators, or justification present for substantiation of abuse or neglect.

(20)[~~(19)~~] "Victim of human trafficking" is defined by KRS 529.010(13).

Section 2. A Report of Child Abuse, Neglect, or Dependency. (1) In accordance with 42 U.S.C. 5106a(b)(2)(B)(i), the cabinet shall accept reports of alleged child abuse, neglect, or dependency made pursuant to KRS 620.030.

(a) A twenty-four (24) hour on-call response system and the child abuse hotline, for the receipt of emergency reports after normal office hours, shall be made available to those in a community who may have information regarding:

1. Child abuse, neglect, or dependency; or

2. Human trafficking of a child.

(b) Cabinet staff or designee shall attempt to elicit from the person reporting suspected child abuse, neglect, dependency, or human trafficking as much information about the child's circumstances as possible, including:

1. Specific information as to the nature and extent of:

a. Abuse, neglect, or dependency; or

b. Human trafficking;

2. The cause of the abuse, neglect, or dependency;

3. The location of the child and family;

4. Knowledge or suspicion of a previous incident;

5. Identifying information regarding a witness to the alleged incident that resulted in the child's condition;

6. An action taken by the reporting person, if applicable;

7. Present danger or threat of danger to the child or cabinet staff; and

8. Information in accordance with KRS 620.030(2) and (3).

(c) The reporting person's identity shall remain confidential, unless ordered to be divulged by a court of competent jurisdiction.

(d) The cabinet shall investigate or accept as an assessment an anonymous report that provides sufficient information regarding an incident involving a child:

1. Who is alleged to be dependent; or

2. And alleged:

a. Abuse or neglect perpetrated by a caretaker; or

b. Human trafficking of the child.

(e) Immunity from liability shall be in accordance with 42 U.S.C. 5106a(b)(2)(B)(vii) and KRS 620.050(1) and (2).

(2) The cabinet shall not undertake an investigation or assessment for a report of abuse or neglect allegedly perpetrated by a non-caretaker, with the exception of a report of human trafficking, but shall refer the matter in compliance with KRS 620.030(1).

(3) Pursuant to KRS 620.040(1)(b) and (2)(b), if a report does not meet an acceptance criterion for an investigation or assessment, the cabinet shall:

(a) Not accept the report for investigation or assessment;

(b) Refer the caller to a community resource that may meet family needs if available; and

(c) Keep a record of the report in accordance with 42 U.S.C. 5106a(b)(2)(B)(xii).

(4) Acceptance criteria for an investigation or assessment. The cabinet shall:

(a) Investigate or conduct an assessment upon the receipt of a report of physical abuse, if the report alleges:

1. An injury that is, or has been, observed on a child that was allegedly inflicted non-accidentally by a caretaker;

2. Physical abuse if no current observable injury is seen;

3. A child being hit in a critical area of the body, such as the head, neck, genitals, abdomen, or back; or

4. Physical injury to a child, as defined by KRS 600.020(49) [~~600.020(46)~~], that is the result of an altercation between the child and the caretaker. The cabinet shall explore the following:

a. Age of the child;

b. Precipitating factors;

c. Degree of appropriateness of force used by the caretaker; and

d. Need for further services to assist in eliminating violent behavior in the home;

(b) Investigate or conduct an assessment upon receipt of a report that alleges neglect of a child perpetrated by a caretaker that may result in harm to the health and safety of a child in the following areas:

1. Hygiene neglect if:

a. A child has physical symptoms that require treatment due to poor care; or

b. The child's physical health and safety are negatively affected due to an act or omission by the caretaker;

2. Supervision neglect if the individual reporting has reason to believe that the physical health and safety of the child may be negatively affected by lack of necessary and appropriate supervision;

3. Food neglect if a child shows symptoms of:

a. Malnutrition;

b. Dehydration; or

c. Not having been provided adequate food for a period of time that interferes with the health needs of the child, based on height or weight norms for the child's age;

4. Clothing neglect if a child suffers from:

a. Illness;

b. Exposure; or

c. Frostbite due to inadequate clothing provided to the child or the clothing provided is insufficient to protect the child from the elements;

5. Environmental neglect, if a serious health and safety hazard is present and the caretaker is not taking appropriate action to eliminate the problem;

6. Educational neglect if the:

a. School system has exhausted its resources to correct the problem and complied with its duties pursuant to KRS 159.140; and

b. Caretaker's neglect prevents the child from attending school or receiving appropriate education;

7. Medical neglect, in accordance with 42 U.S.C. 5106a(b)(2)(C), if a child has not received a medical assessment or is not receiving treatment for an injury, illness, or dis-ability that if left untreated may:

a. Be life-threatening;

b. Result in permanent impairment;

c. Interfere with normal functioning and worsen; or

d. Be a serious threat to the child's health due to the outbreak of a vaccine preventable disease, unless the child is granted an exception to immunization pursuant to KRS 214.036;

8. At risk of harm due to an act described at KRS 600.020(1), if a child is:

a. Born exposed to drugs or alcohol, as documented by a health care provider pursuant to:

(i) 42 U.S.C. 5106a(b)(2)(B)(ii); and

(ii) KRS 620.030(2);

b. Involved in an incident of domestic violence;

c. Permitted to use drugs or alcohol under circumstances that create a risk to the emotional or physical health of the child;

d. In a situation if the factors provided in a report indicate that:

(i) An act of sexual abuse, sexual exploitation, or prostitution involving a child may occur; or

(ii) The child exhibits physical or behavioral indicators of sexual abuse; or

e. In a situation where the circumstances are such that a child is likely to be physically abused; or

9. Exploitation neglect if the:

a. Caretaker has used a child or child's financial resources for personal gain;

b. Caretaker has enticed a child to become involved in criminal activities; or

c. Child is a victim of human trafficking;

(c) Receive and investigate a report that alleges sexual abuse of a child committed or allowed to be committed by a caretaker. An investigation may be conducted without a specific allegation if a child has a sexually transmitted disease;

(d) Receive and investigate or complete an assessment upon the receipt of a report that alleges a child is dependent, pursuant to KRS 600.020(20)[~~600.020(19)~~]; and

(e) Investigate or complete an assessment upon the receipt of a report that alleges emotional injury or risk of emotional injury to a child by a caretaker pursuant to KRS 600.020(26)[~~600.020(25)~~].

(5) The following criteria shall be used in identifying a report of abuse, neglect, or dependency not requiring a child protective services investigation or assessment:

(a) The victim of the report of abuse, neglect, or dependency is age eighteen (18) or over at the time of the report;

(b) There is insufficient information to locate the child or to explore leads to locate;

(c) The problem described does not meet the statutory definitions of abuse, neglect, or dependency;

(d) The reporter notifies the cabinet that a child is injured, but the reporter does not allege injuries were the result of abuse or neglect;

(e) The report concerns custody changes, custody related issues, or lifestyle issues, without allegations of abuse, neglect, or dependency;

(f) Pursuant to KRS 503.110(1), corporal punishment appropriate to the age of the child, without an injury, mark, bruise, or substantial risk of harm;

(g) The report concerns a newborn infant abandoned pursuant to KRS 620.350; or

(h) An allegation of spouse abuse to a married youth under the age eighteen (18).

(6) A report of corporal punishment described in subsection (5)(f) of this section shall be reported to and assessed by the cabinet, if alleged to be committed by a caretaker parent who:

(a) Provides foster, pre-adoptive, or respite care services for a child in the custody of the cabinet; and

(b) Is approved pursuant to 922 KAR 1:310 or 922 KAR 1:350.

Section 3. Initial Investigation or Assessment. (1) Based upon an accepted report of child abuse, neglect, or dependency, the cabinet shall, in accordance with KRS 620.040(1)(b) or (2)(b), and 42 U.S.C. 5106a(b)(2)(B)(iv), make an initial determination as to the immediate safety and risk of harm to a child.

(2) The cabinet shall have face-to-face contact with the child or, in the case of a child fatality, initiate the investigation within four (4) hours after acceptance of the report if a report of child abuse, neglect, or dependency:

(a) Includes a child who is:

1. The alleged victim of a fatality or near fatality; or

2. A surviving child in the care of the alleged perpetrator of a child fatality or near fatality; or

(b)1. Involves a child who is:

a. Under four (4) years of age; or

b. Unable to verbally or nonverbally communicate the child's needs as provided by the reporting source; and

2. Indicates a high risk of harm to the child due to:

a. Physical abuse in accordance with Section 2(4)(a) of this administrative regulation;

b. Supervision neglect in accordance with Section 2(4)(b)2. of this administrative regulation;

c. Sexual abuse in accordance with Section 2(4)(c) of this administrative regulation, and the alleged:

(i) Perpetrator has access to the child; or

(ii) Perpetrator's access to the child is unknown by the reporting source.

(3) The cabinet shall have face-to-face contact with the child within twenty-four (24) hours after acceptance of the report, if a report of child abuse, neglect, or dependency:

(a)1. Indicates a high risk of harm to the child; or

2. Alleges the child is the victim of human trafficking; and

(b) Criteria of subsection (2) of this section are not met.

(4) If the report of child abuse, neglect, or dependency indicates a moderate risk of harm to a child, the cabinet shall have face-to-face contact with the child within forty-eight (48) hours after acceptance of the report.

(5) If the report of child abuse, neglect, or dependency indicates a low risk of harm to a child, the cabinet shall have face-to-face contact with the child within seventy-two (72) hours after acceptance of the report.

(6) Cabinet staff shall be permitted to interview an alleged victim of child abuse or neglect without obtaining the consent of the caretaker[~~child's parent, guardian, or person exercising custodial control~~] in accordance with KRS 620.072.

(7) Cabinet staff shall incorporate an unannounced home visit in accordance with provisions in KRS 620.072.

(8) Cabinet staff shall advise the individual under investigation of the complaints or allegations in accordance with 42 U.S.C. 5106a(b)(2)(B)(xviii).

(9) A written assessment shall:

(a) Be completed by the cabinet on every investigation; and

(b) Document efforts if the cabinet is unable to locate the family.

(10) The cabinet shall provide or make a referral to any community-based service:

(a) Available to a child, caretaker, or a child's family:

1. In accordance with 42 U.S.C. 5106a(b)(2)(B)(v),(vi),(ix),(xi), or (xxi); or

2. Pursuant to KRS 620.029 or 620.040(1)(b) or (2)(b); and

(b) Necessary to:

1. Reduce risk to a child; and

2. Provide family support.

(11) The cabinet shall make a referral for early intervention services pursuant to 42 U.S.C. 5106a(b)(2)(B)(xxi) for a child under the age of three (3) who is involved in a substantiated case of abuse or neglect.

(12)(a) The cabinet may develop a plan for services[~~Prevention Plan~~] at any point during an investigation or assessment to protect

the health and safety of a child.

(b) The plan[~~Prevention Plan~~] shall be:

1.[~~Completed in hardcopy;~~

~~2.~~] Developed in conjunction with a family and the family's identified support system;

2.[~~3.~~] Agreed upon by the participants;

3.[~~and~~

~~4.~~] Signed by all parties identified to participate in the plan[~~Prevention Plan~~], unless a party is unwilling or unable to sign; and

4. Provided to all participants.

(13) If an investigation or assessment is conducted as a result of a child being referred pursuant to Section 2(4)(b)8. of this administrative regulation, the cabinet shall develop a plan[~~Prevention Plan~~] in accordance with 42 U.S.C. 5106a(b)(2)(B)(iii).

(14) Collateral contact shall be made pursuant to KRS 620.030, 620.040, and 620.050.

(15)(a) A medical or psychological examination may be required if a report of child abuse, neglect, or dependency alleges that a child has suffered physical or sexual harm or emotional injury.

(b) A medical examination shall be conducted in accordance with KRS 620.050(14).

(16) Cabinet staff shall coordinate an investigation with a children's advocacy center governed by 922 KAR 1:580[~~920 KAR 2:040~~], in accordance with KRS 620.040(6) and (7).

(17) Pursuant to KRS 620.030(5), an agency, institution, or facility serving the child or family shall provide cooperation, assistance, and information necessary for the cabinet to conduct an investigation or assessment.

(18) Photographs may be taken of a child or a child's environment during a protective services investigation or assessment in accordance with KRS 620.050(14).

(19) An interview with a child shall be conducted pursuant to KRS 620.040(6).

(20)(a) A child sexual abuse or human trafficking investigation shall be conducted jointly with law enforcement and other multidisciplinary team members pursuant to KRS 431.600(1) and (8), 620.040(3), and 42 U.S.C. 5106a(b)(2)(B)(xi).

(b) The cabinet's primary responsibility shall be the protection of the child.

(21) If there is reason to believe a child is in imminent danger, or if a parent or caretaker of a child refuses the cabinet entry to a child's home or refuses to allow a child to be interviewed, the cabinet may request assistance:

(a) From law enforcement; or

(b) Through a request for a court order pursuant to KRS 620.040(5)(a).

(22)(a) If the court issues a search warrant for execution by law enforcement, cabinet staff may accompany law enforcement officers.

(b) Except as provided in KRS 605.090(3), the cabinet shall not remove a committed child from the child's home without a court order.

(23) At the request of law enforcement, the cabinet shall, pursuant to KRS 620.040(3):

(a) Provide assistance in interviewing an alleged child abuse victim in a noncaretaker report; and

(b) Not be the lead investigator in a noncaretaker investigation.

Section 4. Alleged Perpetrators of Abuse, Neglect, or Dependency Age Twelve (12) to Eighteen (18). (1) A report of child abuse, neglect, or dependency involving alleged perpetrators in a care-taking role age twelve (12) to eighteen (18) shall be subject to investigation or assessment.

(2) If substantiated, a child age twelve (12) to eighteen (18) shall be identified as the alleged perpetrator.

Section 5. Child Fatality or Near Fatality Investigations. (1) The cabinet shall investigate a report of child fatality or near fatality alleged to be the result of abuse or neglect in accordance with KRS 620.040.

(2) If there is a surviving child in the care of the alleged perpetrator, the cabinet shall determine the safety of the surviving child through immediate assessment in accordance with this administrative regulation.

(3) If a child fatality or near fatality allegedly due to abuse or neglect occurs, cabinet staff shall immediately notify the Office of the Director of the Division of Protection and Permanency.

(4) If a fatality or near fatality occurs to a child in the custody of the cabinet in an out-of-home placement, the cabinet shall make an immediate effort to notify:

(a) The biological or legal parents; and

(b) The Office of the Director of the Division of Protection and Permanency.

(5) If parental rights have been terminated, and there are special circumstances including ongoing contact with the child, the cabinet shall notify a child's biological or legal parents of the child's fatality or near fatality.

(6) The cabinet shall notify the Department of Public Advocacy, Protection and Advocacy Division, in the Justice and Public Safety Cabinet if:

(a)1. A child identified as a protection and advocacy client dies as a result of alleged abuse or neglect; and

2. The alleged perpetrator is a person exercising custodial control or supervision; or

(b) A child fatality has occurred as a result of:

1. Placement in a seclusion room pursuant to 922 KAR 1:390; or

2. Therapeutic hold applied pursuant to 922 KAR 1:300.

(7) The cabinet shall notify the following persons, in writing, of a fatality of a child in the custody of the cabinet:

(a) Judge of the committing court; and

(b) Guardian ad litem for the deceased child.

(8) The cabinet may make public disclosure of a fatality or near fatality in accordance with:

(a) KRS 620.050(5) and (12); and

(b) 42 U.S.C. 5106a(b)(2)(A)(x).

(9) If the alleged perpetrator was not a caretaker[~~parent, guardian, or person exercising custodial control or supervision~~], notification of the child fatality or near fatality shall be in accordance with KRS 620.030(1).

(10) The cabinet shall:

(a) Be in compliance with KRS 620.050(12) in cases where the cabinet has had prior involvement; and

(b) Provide annual reporting in accordance with 42 U.S.C. 5106a(d)(4)(5)(6)(11).

(11) If a child fatality or near fatality occurs in a licensed facility, the cabinet shall notify the licensing authority in accordance with 42 U.S.C. 5106a(b)(2)(A)(ix).

Section 6. Reports of Child Abuse, Neglect, or Dependency in Cabinet-approved Homes or Licensed Facilities. (1) Pursuant to KRS 620.030(5), the cabinet shall have the authority to obtain necessary information to complete an investigation in a report of child abuse, neglect, or dependency in a:

(a) Child-caring facility licensed in accordance with 922 KAR 1:300 or its subcontractor;

(b) Child-placing agency licensed in accordance with 922 KAR 1:310 or its subcontractor;

(c) Child-care center licensed in accordance with 922 KAR 2:090;

(d) Family child-care home certified in accordance with 922 KAR 2:100;

(e) Child care provider registered in accordance with 922 KAR 2:180; or

(f) Foster, adoptive, or respite care provider home approved pursuant to 922 KAR 1:350.

(2) If a report of alleged child abuse, neglect, or dependency in a home approved pursuant to 922 KAR 1:310 or 922 KAR 1:350 is accepted, the designated cabinet staff shall:

(a) Immediately contact the service region administrator or designee; and

(b) Assign staff to conduct the investigation.

(3) If a report of alleged child abuse or neglect in a licensed

child-care center, a certified family child-care home, or a registered child care provider is accepted, cabinet staff shall:

(a) Notify the cabinet's Division of Child Care to share information and request assistance in locating alternate care if needed; and

(b) Conduct an investigation.

(4) If a report of alleged child abuse or neglect in a licensed child-caring facility, child-placing agency placement, certified family child-care home, or licensed child-care center is accepted, cabinet staff shall:

(a) Notify the Office of the Inspector General, Division of Regulated Child Care; and

(b) Conduct an investigation.

1. If possible, an investigation shall be coordinated and conducted jointly with the Division of Regulated Child Care. However, if not possible, the cabinet shall proceed with an investigation.

2.a. An entrance interview with the facility administrator or designee shall be conducted; and

b. The nature of the report shall be outlined without disclosing the name of the reporting source.

3. If the cabinet substantiates the report of child abuse or neglect and the alleged perpetrator is an employee of the facility, the cabinet shall notify the provider or program director within thirty (30) working days, unless a necessary extension is granted by the designated cabinet staff in a supervisory role.

(5) The cabinet shall share written findings of an investigation with the Division of Child Care for a:

(a) Licensed child-care center;

(b) Certified family child-care home; or

(c) Registered child care provider.

(6) The cabinet shall share written findings of an investigation with the Office of Inspector General for a:

(a) Licensed child-care center;

(b) Certified family child-care home;

(c) Registered child care provider;

(d) Licensed child-caring facility; or

(e) Licensed child-placing agency.

(7) As soon as practical after a determination has been made that a child is in imminent danger or that a child needs to be removed, verbal or written notification shall be provided to the Division of Child Care or to the Office of the Inspector General.

Section 7. Interviewing a Child in a School Setting. (1) Pursuant to KRS 620.030(5) and 620.072(4), the cabinet may, upon receipt of a report of child abuse or neglect, initiate an investigation or assessment at a school, which may include the review and copying of relevant school records pertaining to the child.

(2) If initiating an investigation or assessment at a school, the cabinet shall:

(a) Inform appropriate school personnel of the need to interview a child regarding the report; and

(b) Give necessary information concerning the allegation and investigation only to school personnel with a legitimate interest in the case.

Section 8. Investigation of an Employee of the School System. If a report of child abuse or neglect involving school personnel is accepted, the following shall apply:

(1) An investigation shall be conducted;

(2) If the allegation is made about a school employee in a caretaker role of a child, the cabinet shall, if possible, conduct an interview away from the school grounds, with each of the following persons:

(a) The child;

(b) The parent or legal guardian;

(c) The alleged perpetrator; and

(d) Other collateral source, if any, in accordance with Section 3(14) of this administrative regulation;

(3) The findings shall be shared with the custodial parent and the alleged perpetrator;

(4) The cabinet shall notify the appropriate supervisor of the alleged perpetrator, in writing, of the following:

(a) That an investigation has been conducted;

(b) The results of the investigation; and

(c) That the alleged perpetrator has the right to appeal pursuant to 922 KAR 1:480; and

(5) A person desiring other information shall employ the open records procedure, as described in 922 KAR 1:510.

Section 9. Written Notice of Findings of Investigation. The cabinet shall provide notification to specified government officials in accordance with KRS 620.040(1) or (2) and 42 U.S.C. 5106a(b)(2)(B)(ix).

Section 10. Substantiation Criteria and Submission of Findings. (1) The cabinet shall use the definitions of "abused or neglected child" in KRS 600.020(1) in determining if an allegation is substantiated.

(2) A finding of an investigation or assessment shall be based upon the:

(a) Information and evidence collected by the cabinet during the report's investigation or assessment; and

(b) Condition that is present, rather than an action taken to remediate an issue or concern pertaining to a child's health, safety, or welfare.

(3) Cabinet staff may find and substantiate abuse or neglect, or make a services needed finding, at any point during an investigation or assessment or prior to case closure and after-care planning in accordance with Section 12 of this administrative regulation, if preponderance of the evidence exists.

(4)(a) At the completion of an investigation or assessment involving a caretaker, the cabinet shall make a finding of:

1. Unsubstantiated child abuse or neglect;

2. Substantiated child abuse or neglect;

3. Child fatality or near fatality related to abuse or neglect;

4. Unable to locate the child;

5. Services needed for the child or child's family, which may include a dependent child; [~~or~~]

6. No finding; or

7. Closed, which may include completed service provision.

(b) At the completion of an investigation involving human trafficking of a child by a non-caretaker, the cabinet shall make a finding of:

1. Confirmed human trafficking;

2. Not confirmed human trafficking; or

3. Unable to locate the child.

(5) A cabinet finding shall not be a judicial finding.

(6) The cabinet staff's supervisor or designee shall review and approve the final finding of the investigation or assessment.

(7) Upon approval of the finding by designated cabinet staff in a supervisory role, the cabinet shall send a notice of finding and notice of the perpetrator's right to appeal in accordance with 922 KAR 1:480, Section 2 [~~3~~], to the alleged or substantiated perpetrator by certified mail to the last known address of the perpetrator.

(8) Upon approval of the finding by designated cabinet staff in a supervisory role, the cabinet shall:

(a) Send a notice of finding to the child's parent or guardian by certified mail; or

(b) Give a notice of finding to the parent or guardian, in person, with the parent or guardian and a witness signature to document receipt of the notice.

(9) The cabinet's notice of a substantiated finding of child abuse or neglect shall include:

(a) The factual basis for the finding of child abuse or neglect;

(b) The results of the investigation;

(c) Information about the perpetrator's right to appeal the substantiated finding in accordance with 922 KAR 1:480; and

(d) A statement informing the perpetrator that the perpetrator's name shall be added to the central registry in accordance with 922 KAR 1:470.

Section 11. Appeals. (1) The perpetrator of a substantiated finding of child abuse or neglect may request a hearing in

accordance with 922 KAR 1:480.

(2) A person may have additional hearing rights as specified in 922 KAR 1:320.

Section 12. Closure[~~and Aftercare Planning~~]. (1)(a) A decision to close a child protective services case shall be based on evidence that the factors resulting in the child abuse, neglect, or dependency have been resolved to the extent that the family is able to:

1. Protect the child; and

2. Meet the needs of the child.

(b) Prior to a case's closure in accordance with paragraph (a) of this subsection, designated cabinet staff in a supervisory role shall review and agree to the decision to close the child protective services case.

(2) If the cabinet does not have the authority to obtain court-ordered cooperation from a family, the cabinet shall close the child protective services investigation or assessment.

(3) Unless court-ordered cooperation from the family cannot be obtained in accordance in subsection (2) of this section, a child protective services case shall not be closed if withdrawal of services places a child at risk of abuse, neglect, or dependency.

(4) A family shall be:

(a) Notified in writing of the decision to close the protective services case; and

(b) Advised of the right to a fair hearing in compliance with 922 KAR 1:320, Section 2.

(5) Aftercare planning shall link a family to community resources for the purpose of continuing preventive measures if the cabinet discontinues services in accordance with this section.

(6) An aftercare plan[~~The Aftercare Plan~~] shall be developed upon the completion of an investigation or assessment, if an issue or concern identified by the cabinet falls below the level that triggers a protection services case being opened.

(7)(a) When it is determined that a protective services case is appropriate for closure, the cabinet shall work with the family to develop the aftercare plan[~~Aftercare Plan~~].

(b) The focus of the aftercare plan[~~Aftercare Plan~~] shall be to prevent a recurrence of abuse, neglect, or dependency to the child in the home.

(8) The cabinet may open a child protective services case in accordance with 922 KAR 1:140, 1:400[~~, 1:410~~], or 1:430.

(9) The cabinet may request the assistance of a court of competent jurisdiction to protect the child in accordance with KRS 620.070.[~~Section 13. Incorporation by Reference. (1) The following material is incorporated by reference:~~

~~(a) "Aftercare Plan", 2/04; and~~

~~(b) "Prevention Plan", 6/04.~~

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

ERIC T. CLARK, Commissioner
ADAM M. MEIER, Secretary

APPROVED BY AGENCY: August 12, 2019

FILED WITH LRC: August 14, 2019 at 1 p.m.

CONTACT PERSON: Chase Coffey, Executive Administrative Assistant, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, KY 40621; phone: 502-564-6746; fax: 502-564-7091; CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Agency Contacts: Laura Begin, Phone: (502) 564-3703, Email: Laura.Begin@ky.gov.; and Chase Coffey

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes cabinet procedures, congruent with eligibility requirements under 42 U.S.C. 5106a(b), for a child protection investigation or assessment of abuse, neglect, or dependency.

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to establish child protective services procedures.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation assists with the effective administration of the statutes by establishing cabinet procedures for a child protection investigation of assessment of abuse, neglect, or dependency, consistent with KRS 620.180(1).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 605.150(1) authorizes the cabinet to promulgate administrative regulations to implement the provisions of KRS Chapter 605 - Administrative Matters. KRS 620.180(1) authorizes the cabinet to promulgate administrative regulations to implement the provisions of KRS Chapter 620 - Dependency, Neglect, and Abuse. KRS 620.029(2)(a) requires the cabinet, in consultation with agencies serving victims of human trafficking, to promulgate administrative regulations for the treatment of children who are reported to be victims of human trafficking as dependent, neglected, or abused children, including providing for appropriate screening, assessment, treatment, and services.

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

(a) How the amendment will change this existing administrative regulation: The amendment adds to the definition of "caretaker" consistent with recently passed legislation to include a person in a position of authority or special trust. The amendment changes this administrative regulation by including and defining the term "no finding" as a possible outcome for an investigation regarding an allegation that has been found to be erroneous or false. The amendment also includes changes to services provided when a child protective services case is opened and closed, moving from a set form to be filled out to an interactive process with the flexibility to meet a family's needs.

(b) The necessity of the amendment to this administrative regulation: The amendment to the definition of "caretaker" is necessary for consistency with recently passed legislation. It is necessary to amend the administrative regulation to make allowances for reports that are a result of erroneous or false information associated with no high-risk behaviors. Additional amendments to the administrative regulation alter the process by which staff develop service plans with families who need services and plans for services when a case is set to close.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes through its enhancement of cabinet procedures pertaining to the investigation and assessment of child abuse, neglect, and dependency.

(d) How the amendment will assist in the effective administration of the statutes: The amendment is necessary for consistency with related Kentucky Revised Statutes amended to include persons in position of authority or special trust and to account for erroneous or false reports received.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: According to the cabinet's Statewide Child Protective Services Intake Fact Sheet (July 1, 2018, through June 30, 2019), the cabinet received 130,455 intakes with nearly 52,628 meeting acceptance criteria. Of those, 13,088 resulted in a finding of substantiated child abuse or neglect involving 25,936 unique children. Approximately 2,094 resulted in a services needed finding involving 3,670 unique children.

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

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

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Regulated entities will experience no new or

additional costs as a result of this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Regulated entities will benefit from the amendment's consistency with legislation, planning for services and case closure, and expanding available finding results when applicable.

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

(a) Initially: The amendment to this administrative regulation is not projected to have a fiscal impact on the administrative body.

(b) On a continuing basis: The amendment to this administrative regulation is not projected to have a fiscal impact on the administrative body.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The cabinet's provision of child protective services is funded by the federal Social Services Block Grant, General Funds, and Agency Restricted Funds derived from Medicaid. Child protective and other child welfare services are further enhanced and supported by funding made available through federal grants authorized through Title IV of the Social Security Act, including Child Abuse Prevention and Treatment Act as amended.

(7) Provide an assessment of whether an 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: This administrative regulation does not establish any fees or directly or indirectly increase any fees.

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

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.
42 U.S.C. 5106a.

2. State compliance standards. KRS 194A.050(1), 605.150(1), 620.029(2)(a), 620.180(1).

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 5106a.

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 42 U.S.C. 5106a, KRS 194A.050(1), 605.150(1), 620.029(2)(a), 620.180(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? The amendment to this administrative regulation will not generate any revenue for state or local government.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The amendment to this administrative regulation will not generate any revenue for state or local government in subsequent years.

(c) How much will it cost to administer this program for the first year? The amendment to this administrative regulation is not projected to have a new fiscal impact on the administrative body.

(d) How much will it cost to administer this program for subsequent years? The amendment to this administrative regulation is not projected to have a new fiscal impact 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:

ADMINISTRATIVE REGULATIONS AS AMENDED BY PROMULGATING AGENCY AND REVIEWING SUBCOMMITTEE

ARRS = Administrative Regulation Review Subcommittee
IJC = Interim Joint Committee

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
(As Amended at ARRS, August 9, 2019)

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 ***shall[~~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 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***, in accordance with 103 KAR 1:040***; 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.

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.

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
(As Amended at ARRS, August 9, 2019)

103 KAR 1:060. Electronic fund transfer.

RELATES TO: KRS 131.155[~~, 131.180, 131.183, 131.990~~]***, 131.180, 131.183, 131.990, Chapter 139, 141.310***

STATUTORY AUTHORITY: KRS 131.130[~~(1)~~], 131.155***(3)***[~~(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, ***these[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 ***shall[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) ***The department may approve this method if extreme circumstances are demonstrated[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 ***administrative*** 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.***[Section 7. This administrative regulation shall apply to any taxable or payroll period beginning after December 31, 2000.]***

Section ***7. Form 10A70[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. ***or online at https://revenue.ky.gov.*** [~~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.
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.

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
(As Amended at ARRS, August 9, 2019)

103 KAR 8:130. Ad valorem taxation of machinery actually engaged in the manufacturing of coal, crushed stone, sand, gravel and hot *mix* 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(1)(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 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]***:

1. 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

2.[~~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

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FINANCE AND ADMINISTRATION CABINET
Department of Revenue
(As Amended at ARRS, August 2019)

103 KAR 15:050. Filing dates and extensions.

RELATES TO: KRS 131.081(11), 131.170, [~~136.100, 141.041,~~]141.160, 141.170[~~141.300~~]

STATUTORY AUTHORITY: KRS 131.130, ***131.170,*** 141.050, **141.170**[141.042, 141.050, 141.300]

NECESSITY, FUNCTION, AND CONFORMITY: KRS **131.170***[131.081(11), 131.170,]* [141.042(7),] and 141.170 authorize the Department of Revenue to grant a taxpayer an extension of time to file a tax return[~~or to pay an installment of estimated income or limited liability entity tax~~]. This administrative regulation establishes the procedures to be used by an individual, a corporation, a pass-through entity, or a fiduciary[~~or a non corporate~~]***[entity]*** to obtain an extension of time to file an income or limited liability entity tax return[~~or to pay an installment of estimated income tax for a taxable year~~].

Section 1. Definitions.

(1) "Corporation" means a corporation as defined by KRS 141.010(4),[~~an S corporation as defined by KRS 141.010(25),~~] a limited liability company taxed as a corporation, or other entity taxed as a corporation for Kentucky income tax purposes.

(2) "Date prescribed by KRS[~~136.100 or~~] 141.160" means the 15th day of the fourth month following the close of the taxable year.

(3) "Fiduciary" is defined by KRS 141.010(10).

(4) "General partnership" is a partnership composed of only general partners, who are personally liable for the partnership debts.

(5) "Pass-through entity" has the same meaning as KRS 141.010***(22)[(21)]***.[~~"Noncorporate entity" means a partnership, a limited liability company treated as a partnership, a trust, a fiduciary, or other entity not tax as a corporation for Kentucky income tax purposes.~~]

Section 2. An extension of Time for Filing an ***Individual, General Partnership, or Fiduciary[Income or Limited Liability Entity]*** Tax Return.

(1) Pursuant to KRS 131.081(11) and 141.170, a taxpayer may obtain an extension of time for filing a Kentucky ***individual, fiduciary, or general partnership[income or limited liability entity]*** tax return by means of either a federal extension or a Kentucky extension.

(2) Federal extension.

(a) A taxpayer granted an extension of time for filing a federal income tax return shall be granted the same extension of the due date***[, except as otherwise provided in KRS 141.170(2)]*** [~~time~~] for filing a Kentucky ***[income or limited liability entity]*** tax return for the same taxable year***. A [if a]***copy of the federal extension approval or the request for an automatic extension ***shall be[is]*** attached to the Kentucky ***[income or limited liability entity]*** tax return when it is filed ***if the taxpayer is relying upon the federal extension to extend the due date***.

(b) An extension of time for filing a Kentucky ***[income or limited liability entity]***tax return granted pursuant to this subsection shall be valid for the extension period granted by the Internal Revenue Service***[, except as otherwise provided in KRS 141.170(2), in which a corporation may be granted an extension of seven (7) month]***.

(c) A copy of the federal extension shall not be mailed to the department ***separate from the Kentucky tax return.***[~~on or before the date prescribed by KRS 141.160,~~]***[except as provided in Section 3 of this administrative regulation.***

(d) A corporation or pass-through entity shall write its Kentucky Account Number in the upper right hand corner of any federal extension submitted.]

(3) Kentucky extension. A taxpayer may file an application for extension with the department, on or before the date prescribed by KRS 141.160 for filing the return. ***[(a)]***An individual, general partnership, or fiduciary[~~or a noncorporate~~]***[entity]*** shall file Form 740EXT "Application for Extension of Time to File", Revenue Form 40A102.

(a)[1.] An individual, general partnership, or fiduciary[~~or a noncorporate~~]***[entity]*** shall state the reason for the request on the application for extension. ***The*** inability to pay shall not be a valid reason.

(b)[2.] An individual***, general partnership, or fiduciary***[~~or a noncorporate~~]***[entity]*** shall be notified by mail if the application for extension is denied. A copy of an approved application for extension shall not be returned to the ***taxpayer.[individual, general partnership, or fiduciary]***[~~or noncorporate~~]***[entity.]***

(c)[3.] In accordance with KRS 141.170, an individual, general partnership, or fiduciary[~~or a noncorporate~~]***[entity]*** be granted an extension of time to file for six (6) months unless the application is denied.

(d)[4.] In accordance with KRS 141.170, an individual outside the United States shall be granted an extension of time to file for twelve (12) months unless the application is denied.

(e)[5.] A copy of the signed and dated application for extension shall be attached to the ***[income]*** tax return when it is filed.

Section 3. An extension of Time for Filing a Corporation, S-corporation, or Pass-Through Entity Income or Limited Liability Entity Tax Return.

(1) Pursuant to KRS 131.081(11) and 141.170, a taxpayer may obtain an extension of time for filing a Kentucky corporation, S-corporation, or pass-through entity income or limited liability entity tax return by means of either a federal extension or a Kentucky extension.

(2) Federal extension.

(a) A taxpayer granted an extension of time for filing a federal income tax return shall be granted the same extension of the due date, except as otherwise provided in KRS 141.170(2), for filing a Kentucky income or limited liability entity tax return for the same taxable year. A copy of the federal extension approval or the request for an automatic extension shall be attached to the Kentucky income or limited liability entity tax return when it is filed if the taxpayer is relying upon the federal extension to extend the due date.

(b) An extension of time for filing a Kentucky income or limited liability entity tax return granted pursuant to this subsection shall be valid for the extension period granted by the Internal Revenue Service, except as otherwise provided in

KRS 141.170(2).

(c) A copy of the federal extension shall not be mailed to the department separate from the Kentucky tax return.

(3) Kentucky extension. A taxpayer may file an application for extension with the department, on or before the date prescribed by KRS 141.160 for filing the return. [(b)]A corporation, S-corporation, or pass-through entity shall file Form 720EXT "Extension of Time to File Kentucky Corporation/LLET Return", Revenue Form 41A720SL.

(a)[1.] A corporation shall be granted an extension of time to file for seven (7) months ***pursuant to KRS 141.170(2).***[six (6) months.]

(b)[2.] A pass-through entity ***or S-corporation*** shall be granted an extension of time to file for six (6) months.

(c)[3.] A copy of an approved application for extension shall not be returned to the corporation***, S-corporation,*** or pass-through entity.

(d)[4.][3.] The extension shall become valid when mailed to the department on or before the date prescribed by KRS 141.160 for filing the return.

(e)[5.][4.] The corporation***, S-corporation*** or pass-through entity shall attach a copy of the signed and dated application for extension to its Kentucky income tax ***or limited liability entity tax [and LLET]*** return when it is filed["Kentucky Corporation Income Tax And LLET Return", Revenue Form 71A720, which it is filed].

(4) An extension of time for filing a unitary combined or elective consolidated[mandatory nexus consolidated] income ***and limited liability entity*** tax return shall constitute an extension of time for filing each member of the [affiliated] group.

(5) An extension of time for filing a corporation income tax return shall constitute an extension of time for filing a limited liability entity tax return for the same taxable year.

Section 4[Section 3]. Payment of Tax.

(1) An extension of time to file an income or limited liability entity tax return shall not constitute an extension to pay the tax.

(2) A taxpayer shall determine if an amount of tax remains unpaid on or before the date prescribed by KRS [136.100 or] 141.160 for filing the return.

(3) If tax remains unpaid, a payment[check] for the amount of the unpaid tax shall be submitted to the department on or before the date prescribed by KRS [136.100 or]141.160 for filing the return along with the Kentucky extension[or copy of the federal extension].

(4) A group filing a unitary or elective consolidated income and limited liability entity tax return and making a payment of tax with the application for extension shall file a Kentucky extension to ensure proper processing of payments[A corporation shall write its Kentucky Account Number in the upper right hand corner of the federal extension submitted].[(5) An affiliated group filing a mandatory nexus consolidated income tax return and making a payment of tax with the application for extension shall file a Kentucky extension to ensure the proper processing of payments.]

Section 5[Section 4]. Interest and Penalties. (1) Statutory interest shall be paid from the date prescribed by KRS [136.100 or] 141.160 for filing the return until the tax is paid.

(2) If the envelope bearing the return is postmarked on or before the filing date, the late filing penalty prescribe by 131.180 shall not apply.

Section 6[Section 5]. [Extension of Time to Pay Estimated Income Tax. (1) A request for an extension of time to pay an installment of estimated tax prescribed by KRS 141.042 and 141.300 shall be submitted to the Department of Revenue, 501 High Street, Frankfort, Kentucky 40601.

(2) The request shall state a basis for the extension.

(3) An extension of time to pay an installment of estimated tax shall be granted for thirty (30) days under exceptional circumstances.

(4) Interest shall be paid from the due date of the installment of estimated tax until the tax is paid.

Section 6.] The forms and materials listed herein may be obtained or inspected, subject to applicable copyright law, from 8:00 a.m. until 4:30 p.m. at the Kentucky Department of Revenue, 501 High Street, Frankfort, Kentucky 40601, on the department Web site at http://revenue.ky.gov, or at a Kentucky Department of Revenue Taxpayer Service Center during their hours of operation.

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FINANCE AND ADMINISTRATION CABINET
Department Of Revenue
(As Amended at ARRS, August 9, 2019)

103 KAR 16:200. Consolidated Kentucky corporation income tax return.

RELATES TO: KRS ***141.0401, 141.120(9), 141.121(3),*** 141.201[141.200]***, 141.901***

STATUTORY AUTHORITY: KRS 131.130[(1)], 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 ***shall[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 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:~~

~~(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.

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FINANCE AND ADMINISTRATION CABINET
Department of Revenue
(As Amended at ARRS, August 9, 2019)

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

RELATES TO: KRS 141.011, ***141.120, 141.121,*** 141.200, 141.201, 141.202***, 141.901***

STATUTORY AUTHORITY: KRS 131.130, 141.018***, 141.050***

NECESSITY, FUNCTION AND CONFORMITY: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations necessary to administer and enforce

Kentucky's tax laws. ***KRS 141.150(4) requires the department to promulgate administrative regulations and rules necessary for the proper administration of KRS Chapter 141.*** 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(11)(c),[~~(b),~~] and 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)***(b)***.

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 ***carryforwards[~~carryforward~~]*** shall ***not*** 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 ***carryforwards [~~carryforward~~]*** shall ***not*** 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 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~~	~~556~~	~~5,000~~	~~15,000~~

~~Loss **~~			
~~Group NOL~~	~~$5,000~~	~~$40,000~~	~~$40,000~~
~~** Remaining Members' NOL~~	~~$2,223~~	~~$15,000~~	~~$25,000~~

~~* Sub A: $25,000/$45,000 X $5,000 = $2,777~~
~~Sub B: $10,000/$45,000 X $5,000 = $1,111~~
~~Sub C: $5,000/$45,000 X $5,000 = $556~~
~~Parent Corporation: $5,000/$45,000 X $5,000 = $556~~]

(d) 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-Apportioned 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-Apportioned 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).

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 ($638+$7,000+$4,800) to Year 4 (see Figure 1-4).~~]

(2) Example 2 – Remaining Nexus Consolidated Group Dissolves.

(a)[(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 ***"Group Carryforward Per Year" amounts from*** Figure 1-***5***[~~-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%

(b) 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.

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

2.[(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).

a.[1.] Year 4 Losses Remaining: $40,000
b.[2.] Year 3 Losses Remaining: $12,223

3.[(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~~

4.[(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.

(a)[(1)] Parent Corporation and its three ***(3)*** 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).

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

(b) 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.

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

2.[(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).

a.[1.] Year 3 No NOL Generated
b.[2.] Year 2 Losses Remaining: $4,000
c.[3.] Year 1 Losses Remaining: $19,500

3.[(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~~

~~* Sub A: $25,000/$45,000 X $19,500 = $10,833~~
~~Sub B: $10,000/$45,000 X $19,500 = $4,333~~
~~Sub C: $5,000/$45,000 X $19,500 = $2,167~~
~~Parent Corporation: $5,000/$45,000 X $19,500 = $2,167~~
~~** Sub A: $25,000/$40,000 X $4,000 = $2,500~~
~~Sub B: $10,000/$40,000 X $4,000 = $1,000~~
~~Parent Corporation: $5,000/$40,000 X $4,000 = $500~~
~~The elective consolidated group will carryforward a total post-apportioned NOL of $10,167 to Year 4, and Sub A will carryforward a total post-apportioned NOL of $13,333 to Year 4 (see Figure 3-2).~~

(4) Example 4 – Remaining Elective Consolidated Group Dissolves.

(a) This example is a continuation of Example 3.
Parent Corporation and its two ***(2)*** 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)

(b) 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.

1.[(a)] Determine the post-apportioned group NOL carryforward: $13,167 (see Figure 4-1).

2.[(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).

a.[1.] Year 4 Losses Remaining: $3,000
b.[2.] Year 3 No NOL Generated
c.[3.] Year 2 Losses Remaining: $1,500
d.[4.] Year 1 Losses Remaining: $8,667

3.[(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%
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
			$35,000
Total Losses of all Loss Corporations			
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 X $3,000 = $1,286~~
~~Parent Corporation: $20,000/$35,000 X $3,000 = $1,714~~
~~** See Figure 3-2 from Example 3~~

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

(5) Example 5-***[:]*** Sharing of Kentucky Net Operating Losses within a Combined Group.

(a) Parent Corporation and its three ***(3)*** 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.				

(b) 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, ***if[~~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

(c) 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).

1. 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;

2. 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; ***and***

3. Subtract the NOL amounts available to be shared from other taxpayer members of the combined group up to the maximum allowable shared amount (***fifty (50) percent[~~50%~~]*** of 2019 taxable income) from the amount remaining after Step 2.

(d)[~~In no case can~~] The utilization of NOLs ***to*** reduce taxable income ***shall not be reduced*** below zero ***under any circumstances[~~(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 NOLD	$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 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.

(a)[~~(1)~~] Parent Corporation and its three ***(3)*** 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

(b) 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

(c) 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

(d)[~~**~~]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.

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FINANCE AND ADMINISTRATION CABINET
Department of Revenue
(As Amended at ARRS, August 9, 2019)

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 ***establishes[~~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***(24)[~~(23)~~]***.
(5)[~~(6)~~] "Taxpayer" is defined by KRS 141.202***[~~.~~]***(2)(e).
(6)[~~(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 ***may[~~can~~]*** be part of a combined group only if they meet the fifty (50) percent ownership test in KRS 141.202(2)(a).
(1)[~~(a)~~] The fifty (50) percent test ***shall be[~~is~~]*** satisfied in the following circumstances:
(a)[~~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 ***the[~~such~~]*** ownership is direct or indirect, but only if:
1.[~~a.~~] The parent owns more than fifty (50) percent of the outstanding voting stock of at least one (1) corporation***;[~~,~~]*** and***[~~, if applicable,~~]***
2. 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 ***subsection (1) of this section[~~subparagraph (a) above~~]***, or one (1) or more corporations that satisfy the conditions of this subparagraph***;[~~.~~]***
(b)[~~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***; or[~~.~~]***
(c)[~~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 ***in subsection (2) of this section)[~~below in paragraph (b)1.~~]*** by, or for the benefit of, members of the same family. Members of the same family ***shall be[~~are~~]*** limited to an individual, his or her spouse, parents, brothers or sisters, grandparents, children and grandchildren, and their respective spouses.
(2)[~~(b)~~] Except as otherwise provided ***in this section***, voting stock is "owned" ***if[~~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***(a)***, shall be used to determine if the voting stock is indirectly owned except ***if[~~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.
(3)[~~(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 ***that[~~such~~]*** power.
(4)[~~(d)~~] In addition to the tests in ***subsection (1) of this section[~~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.
(5)[~~(e)~~] Membership in a combined group shall be treated as terminated in any year, or fraction thereof, in which the conditions of ***subsection (1) of this section[~~paragraph (a)~~]*** are not met, except as follows:
(a) If[~~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 ***subsection (1) of this section[~~paragraph (a)~~]*** are again met immediately after the sale, exchange, or disposition.
(b)[~~2.~~] The department may treat the combined group as remaining in place if the conditions of ***subsection (1) of this section[~~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***:***
1. Requiring that the operation of one ***(1)*** part of the business be dependent upon, or contribute to, the operation of another part of the business***; or***
2.[~~. Phrased in the disjunctive, the foregoing means that~~] If the activities of one ***(1)*** business either ***contribute[~~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) of this section[~~1~~]*** that defines the scope of a unitary business ***shall require[~~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 ***the[~~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 ***these[~~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***, shall be determined***. The apportionable income of each unitary business ***shall[~~is~~]*** then ***be*** 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 ***shall be[~~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 ***these[~~the~~]*** factors ***shall[~~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 ***shall refer[~~refers~~]*** to transfers between, or pooling among, business activities that significantly affect the operation of the business activities. Functional integration ***shall include[~~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. ***A[~~There is no~~]*** specific type of functional integration ***shall not be required[~~that must be present~~]***. The following is a list of examples of business operations that ***may[~~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 ***may*** 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 ***shall not be[~~is not~~]*** negated by the use of a readily determinable market price to effect the intercompany sales, because ***those[~~such~~]*** sales ***may[~~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 ***shall indicate[~~is an indication of~~]*** functional integration ***if the[~~when such~~]*** marketing results in significant mutual advantage. Common marketing exists ***if[~~when~~]*** a substantial portion of the entities' products, services, or intangibles are distributed or sold to a common customer, ***if[~~when~~]*** the entities use a common trade name or other common identification, or ***if[~~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 ***shall[~~does~~]*** not by itself establish common marketing that is suggestive of functional integration. ***That[~~Such~~]*** activity, however, ***shall be[~~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, ***shall*** provide evidence of functional integration ***if[~~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 ***shall provide[~~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 ***if[~~where~~]*** the purchasing results in significant cost savings or ***if[~~where~~]*** the products, services or intangibles are not readily available from other sources and are significant to each entity's operations or sales, ***shall provide[~~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 ***shall provide[~~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 ***shall[~~does~~]*** not necessarily provide evidence of functional integration.

(b) Centralization of Management. Centralization of management ***shall exist if[~~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 ***may[~~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 ***if[~~when~~]*** day-to-day management responsibility and accountability has been decentralized, ***if[~~so long as~~]*** the management has an ongoing operational role with respect to the business activities. An operational role ***may[~~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 ***shall be[~~is~~]*** provided ***if[~~when~~]*** common officers participate in the decisions relating to the business operations of the different segments. Centralization of management may exist ***if[~~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, ***shall[~~does~~]*** not alone provide evidence of centralization of management. Common officers ***may be[~~are~~]*** more likely to provide evidence of centralization of management than are common directors.

2. Stewardship Distinguished. Centralized efforts to fulfill stewardship oversight ***shall not provide[~~are not~~]*** evidence of centralization of management. Stewardship oversight ***shall consist[~~consists~~]*** of those activities that any owner would take to review the performance of or safeguard an investment. Stewardship oversight ***shall be[~~is~~]*** distinguished from those activities that an owner may take to enhance value by integrating one (1) or more significant operating aspects of one ***(1)*** 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 ***shall*** 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 ***may[~~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 ***shall provide[~~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, ***shall provide[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 ***shall*** 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 ***tha[which]*** might otherwise be considered as part of more than one (1) unitary business may constitute one (1) unitary business ***if[when]*** there is a strong central management, coupled with the existence of centralized departments for***[such]*** functions ***such*** as financing, advertising, research, or purchasing. Strong centralized management ***shall exist if[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 ***if[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 ***shall be[is]*** determined as follows:

(1)[(a)] If two (2) or more members of a group file a federal consolidated return, the combined group's taxable year ***shall be[is]*** the taxable year of the federal consolidated group; or

(2)[(b)] In all other cases, the taxable year ***shall be[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) ***Except as provided by subsection (3) of this section,*** 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 ***shall be[is]*** the only method that may be used with respect to members of the combined group***[except upon prior approval by the department]***.

(3) A designated filer may request to change the method in subsection (1) that is used to determine the portion of a member's income to be included in a combined group by utilizing the method to petition for alternative apportionment as established in 103 KAR 16:330.

Section 8. Designated Filer.***[(1)]*** Responsibilities of designated filer.

(1)[(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:

(a)[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

(b)[2.] Non-financial records of the combined group.

(2)[(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.

(3)[(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.

(4)[(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.

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.

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
(As Amended at ARRS, August 9, 2019)

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, **139.710,** 139.720

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1), 139.260, and 139.710 ***authorize[authorized]*** the Department of Revenue to promulgate administrative regulations for the***[: (1)]*** assessment, collection, refunding, administration, and enforcement of Kentucky tax laws ***and[; 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)[(16)].

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:

(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 ***or[~~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

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FINANCE AND ADMINISTRATION CABINET
Department of Revenue
(As Amended at ARRS, August 9, 2019)

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 ***enumerated[~~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~~];

(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

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FINANCE AND ADMINISTRATION CABINET
Kentucky Retirement Systems
(As Amended at ARRS, August 9, 2019)

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***, 26 U.S.C. 401(a), 26 C.F.R. 1.401-1, 1.401(a)-1***

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)~~] ***requires[~~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 ***for reemployment[~~to reemploy~~]*** with a participating employer ***after the member's initial retirement date as required by KRS 61.637, 26 U.S.C. 401(a), 26 C.F.R. 1.401-1, and 1.401(a)-1[~~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 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;~~]

(a)[~~(b)~~] A properly signed, witnessed, and dated Form 6010, Estimated Retirement Allowance;

(b)[~~(c)~~] A copy of the member's birth verification;

(c)[~~(d)~~] A copy of the birth verification for the beneficiary if selecting a survivorship option; and

(d)[~~(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;~~]

(g)[~~(h)~~] Form 2035, "Beneficiary Designation", May 2015; and

(h)[~~(i)~~] 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

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.

FINANCE AND ADMINISTRATION CABINET
Kentucky Retirement Systems
(As Amended at ARRS, August 9, 2019)

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 ***61.590, 61.637(18),*** 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[~~61.515~~] 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 ***administrative*** 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. ***This administrative regulation establishes provisions relating to employment after retirement.***

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 ***(1)*** 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 ***by[in]*** KRS 61.510(21) and 78.510(21) or a regular full-time officer position as defined ***by[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***, as incorporated by reference in 105 KAR 1:200***. 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 ***paragraph[(3)]***(a) of this ***subsection[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 ***and[~~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 non-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 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;

(b)[~~***(c)]***~~ Form 6752, "Employer Certification of Independent Contractor/Leased Employee," June 2019; ***(c)[***~~***and***~~

~~***(d)]***~~ Form 6753, "Employer Certification of Volunteer," June 2019***; and***

(d)[.

~~***(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.[~~(1) 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 non-participating 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.

BOARDS AND COMMISSIONS
Kentucky Real Estate Authority
Kentucky Real Estate Appraisers Board
(As Amended at ARRS, August 9, 2019)

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" ***is defined by KRS 324A.150(5)[***~~***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)[~~(1)~~] ***"AQB" means the Appraiser Qualification Board of the Appriasal Foundation.***

(5) "Associate real property appraiser" means an individual who has fulfilled the requirements for licensure as an associate real property appraiser established by the board.[~~***"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 (1)~~] 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~~

~~(e) National Credit Union Administration.~~

~~(8)~~] "Federally-related transaction" ***is defined by KRS 324A.010(8)[~~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)[(~~10~~)] "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.~~

~~(11)~~] "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) "Required Core Curriculum" means the list of course topics established in Sections 8 through 12 of 201 KAR 30:190.

(20)[(~~12~~)] "Residential" means having one (1) to four (4) residential units.

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.

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.

PUBLIC PROTECTION CABINET
Kentucky Real Estate Authority
Kentucky Real Estate Appraisers Board
(As Amended at ARRS, August 9, 2019)

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, 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***, because the content of these administrative regulations is now located in 201 KAR 30:010, 30:040, 30:110, 30:190, and 30:330***.

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;

(7)[(12)] 201 KAR 30:310. Fees for Registration of Appraisal Management Companies

(8)[(13)] 201 KAR 30:315. Renewal and reinstatement;

(9)[(14)] 201 KAR 30:360. Operation of an appraisal management company;

(10)[(15)] 201 KAR 30:375. Appraisal procedures for appraisal management companies; and

(11)[(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.

CONTACT PERSON: Heather Becker, General Counsel,

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BOARDS AND COMMISSIONS
Kentucky Real Estate Authority
Kentucky Real Estate Appraisers Board
(As Amended at ARRS, August 9, 2019)

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***, and includes[, 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 ***paragraphs[subsections]*** (a)[~~(1)~~] through (e)[~~(5)~~] of this ***subsection[section]*** shall comply with the Uniform Standards of Professional Appraisal Practice:

(a)[~~(1)~~] 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", ***2018-2019[~~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.
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.

BOARDS AND COMMISSIONS
Kentucky Real Estate Authority
Kentucky Real Estate Appraisers Board
(As Amended at ARRS, August 9, 2019)

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)(1)~~]
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 ***as established in Section 3 of this administrative regulation[~~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***, as incorporated by reference in 201 KAR 30:040,*** 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; ***and***
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***; and***
6. Roster fee: one (1) dollar.
(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.
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.

BOARDS AND COMMISSIONS
Kentucky Real Estate Authority
Kentucky Real Estate Appraisers Board
(As Amended at ARRS, August 9, 2019)

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)***(a) through[~~(d), (e), and~~]*** (f) require[~~requires~~] the board to establish by administrative regulations[~~regulation~~] requirements for ***classifications of appraisers, certification and licensure, renewal, suspension, or revocation of certificate or licensure,*** experience***, continuing education,*** and examination of applicants. ***KRS 324A.045 requires each license or certificate to be renewed annually on the date or dates determined by the board by administrative regulation.*** 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***, and[~~, 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***; and[~~. 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.
(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 ***for Appraiser Credential and Reciprocal***.

Section 4. Armed Forces Exemption. An applicant who was a member of a Reserve component of the ***U.S.[~~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 ***AQB*** 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***; and[~~.~~]***

(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.~~

~~(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***; and[~~.~~]***

(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***; and[.]***

(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 ***in this paragraph[~~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 ***paragraphs*** (c) and (d) ***of this subsection*** that ensure coverage of all topics and hours identified in ***paragraph*** (c) ***of this subsection***; 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***; and[.]***

(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 ***2018 AQB Real Property Appraiser Qualification[~~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:

(a) 3,000 hours of appraisal experience, which shall not be acquired in a period of fewer than eighteen (18) calendar months; ***and***

(b) At least 1,500 hours of appraisal experience ***that is[~~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 ***contained in the Application for Appraiser Credential and Reciprocal***.

(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 ***or her*** application, if ***the applicant***:

(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 ***or her*** 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 ***Non-Resident Appraiser*** Application for Temporary ***Practice[~~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 ***the applicant[~~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 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 ***(1)*** 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.

(5)[~~(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.

(6)[~~(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.

(7)[~~(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.

(8)[~~(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.

(2) An applicant shall be licensed as a nonfederal real property appraiser if he ***or she*** 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***(1)(b)[~~(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-***Resident[~~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***; and***

(h) "AQB Real Property Appraiser Qualification Criteria", 1/2008.

(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.

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.

BOARDS AND COMMISSIONS
Kentucky Real Estate Authority
Kentucky Real Estate Appraisers Board
(As Amended at ARRS, August 9, 2019)

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, ***324B.060(2),*** 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***(2),*** (8), 324A.154, ***324A.155, 324A.163,*** 12 C.F.R. 34.210-216

NECESSITY, FUNCTION, AND CONFORMITY: KRS ***324B.060(2) requires the executive director of the Kentucky Real Estate Authority to review and approve or disapprove any administrative regulation proposed by the Real Estate Appraisers Board prior to the promulgation of the administrative regulation[~~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 ***filing*** 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 ***and for the implementation and enforcement of KRS 324A.150 to 324A.164.*** 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***; and[~~. This administrative regulation also establishes~~]*** the amount to be charged to registrants for the appraisal management company recovery fund and ***the[~~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 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 ***end[~~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:

(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 ***(2)*** 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 ***(3) of this section*** 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[~~", 12/11, 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.

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.

OFFICE OF HOMELAND SECURITY
911 Services Board
(As Amended at ARRS, August 9, 2019)

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 ***establishes[~~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" ***is defined by KRS 65.7621(17)[~~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)[~~(9)~~] "NRC" means nonrecurring cost.

(11)[~~(10)~~] "P-ANI" means pseudo automatic number identification as defined by KRS 65.7621(21)[~~(16)~~].

(12)[~~(11)~~] "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)[~~(12)~~] "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)[~~(13)~~] "RC" means recurring cost.

(15)[~~(14)~~] "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)[~~(15)~~] "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.

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.

OFFICE OF HOMELAND SECURITY
911 Services Board
(As Amended at ARRS, August 9, 2019)

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***(1)***

NECESSITY, FUNCTION, AND CONFORMITY: KRS ***65.7631(3)[~~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***(1)*** 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; ***and***

(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 name and office of any individual[~~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 ***evaluated for conformity with the requirements established in Sections 2 and 3 of this administrative regulation, and 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 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 ***65.7631(3)[~~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 ***that[~~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.

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), ***enforcement of*** 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[~~40601~~], 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.

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.

OFFICE OF HOMELAND SECURITY
911 Services Board
(As Amended at ARRS, August 9, 2019)

202 KAR 6:050. PSAP certification.

RELATES TO: KRS ***65.760,*** 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***(6)[(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***(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 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)[~~(c)~~] 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.

(4)[(5) Nothing in] Subsection (3)[~~(4)~~](b)1. of this section shall

not prohibit the Kentucky State Police from establishing a public safety answering point as otherwise permitted by law.

(5)[(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 ***evaluate an application for adherence and compliance with all requirements, standards, and guidelines listed in the Kentucky 911 Services Board PSAP Certification Application[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; ***or***

(c) ***If[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:

(1)[(a)] Seek additional documentation and substantiation of a PSAP's continuing ability to handle E9-1-1 calls; or

(2)[(b)] Impose more stringent requirements to receive or maintain certification.

Section 5. Decertification of a PSAP. ***(1)*** The board shall decertify a PSAP if the PSAP:

(a)[(1)] Has used funds for purposes other than as prescribed by KRS 65.7631 and ***202 KAR Chapter 6[administrative regulations promulgated pursuant thereto]***; or

(b)[(2)] Has not maintained or purchased the necessary technology or infrastructure to comply with evolving requirements.

(2)[(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[40601], 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.

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.govmailto:Mike.Sunseri@ky.gov.

OFFICE OF HOMELAND SECURITY
911 Services Board
(As Amended at ARRS, August 9, 2019)

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)***, and (5)*** 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 ***shall[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

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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.

OFFICE OF HOMELAND SECURITY
911 Services Board
(As Amended at ARRS, August 9, 2019)

202 KAR 6:070. PSAP workload fund disbursement.

RELATES TO: KRS 65.7621, 65.7627, 65.7629(5)-(8), 65.7631***(5)[(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)***, and (5)***. 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 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.

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.

OFFICE OF HOMELAND SECURITY
911 Services Board
(As Amended at ARRS, August 9, 2019)

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, ***142.100-142.135,*** 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***(1)***

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. ***KRS 65.7633(1) requires the Kentucky 911 Services Board to promulgate administrative regulations to implement the provisions of KRS 65.7621 to 65.7643.***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, ***and*** 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 ***Provider Remittance*** 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 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[~~6/2001~~]***["]***; 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[~~40601~~], 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.

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.

OFFICE OF HOMELAND SECURITY
911 Services Board
(As Amended at ARRS, August 9, 2019)

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 ***requirements[~~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 ***vehicles[~~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 ***that[~~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 ***that[~~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 ***that[~~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 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 ***if[~~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) Connectivity 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.

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.

OFFICE OF HOMELAND SECURITY
911 Services Board
(As Amended at ARRS, August 9, 2019)

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***(6)(a)[(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***(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 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 ***5 through 7*** of this administrative regulation.

Section 2. PSAPs Already Certified by the Kentucky 911 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***; and[.]***

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], ***in accordance with subsection (3) of this section;[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 ***that[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 ***data set[dataset]*** of all address site and structure points ***that[which]*** meets the mapping criteria as ***established[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 ***or[, but requires updated digital mapping data sets are presented to the board]*** at least quarterly, as ***established[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 ***third[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.]

(3) Digital maps of the PSAP's response area boundary and emergency service boundaries.

(a) The digital maps required by subsection (2)(c)1. of this section shall comply with the mapping criteria as established in the Kentucky 911 Services Board Kentucky NG911 Mapping Guide.

(b) Updated electronic response boundary and emergency response boundaries shall be updated or validated at least quarterly.

(c)1. If 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.

2. The affected PSAPs shall:

a. Negotiate a mutually agreeable resolution to the identified problem; and

b. Notify the Kentucky 911 Services Board of the result.

3. 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.

4. A PSAP may appeal the final determination of a boundary in accordance with KRS Chapter 13B.

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 ***established[~~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 ***established[~~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 ***established[~~outlined~~]*** in the Kentucky 911 Services[~~CRMS~~] Board ***[~~"~~]***Kentucky NG911 Mapping Guide***[~~."~~]***["PSAP Mapping Requirements" Table; and];

(d) Beginning July 1, 2021, site and structure points as ***established[~~outlined~~]*** in the Kentucky 911 Services Board ***[~~"~~]***Kentucky NG911 Mapping Guide***[~~"~~]***; and

(e)[~~(d)~~] Address data that is ninety (90) percent accurate upon audit as ***established[~~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;

(b)[~~2.~~] Identify the incoming 911 call on the map display; and

(c)[~~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 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***(5)[(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~~]***, 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[~~40601~~], 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.

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.

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division for Air Quality
(As Amended at ARRS, August 9, 2019)

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 ***can[~~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 ***that[~~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 ***that[~~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. 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 ***can[~~may~~]*** also perform the 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, ***the proofs of training[~~they~~]*** shall be returned to the applicant ***at the time[~~when~~]*** the requested accreditation certificate is provided or ***at the time[~~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 ***pursuant to[~~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 ***the applicant[~~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 ***established[~~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 ***with[~~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)[~~(c)~~] 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

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.

ENERGY AND ENVIRONMENT CABINET
Department for Natural Resources
Division of Mine Permits
(As Amended at ARRS, August 9, 2019)

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"***:***

(a) 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***; and***

(b) Does not mean[~~. Active acre does not include~~]:

1.[~~(a)~~] Acreage contained in a permit for which the entire permit has not been initially disturbed by the permittee after permit issuance;

2.[~~(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

3.[~~(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, ***surface water,[~~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 ***405 KAR Chapters 7 through 24[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"***:***

(a) 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***; and***

(b) Does not mean[, 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 ***that[~~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 ***that[~~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 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

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ENERGY AND ENVIRONMENT CABINET
Department for Natural Resources
Division of Mine Permits
(As Amended at ARRS, August 9, 2019)

405 KAR 10:015. General bonding provisions.

RELATES TO: KRS 350.020, 350.060, 350.062, 350.064, 350.093, 350.095, 350.100, 350.151, 350.465

STATUTORY AUTHORITY: KRS 350.060, 350.062, 350.064, 350.093, 350.095, 350.100, 350.151, 350.465, 350.515, 350.518

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 350 authorizes the cabinet to promulgate administrative regulations to establish procedures for determining amounts for performance bonds for surface coal mining operations. This administrative regulation establishes criteria for the base determination of bond amounts and requires certain periods of liability during which the bonds shall remain in effect. This administrative regulation establishes requirements for filing and maintaining performance bonds and provides for adjustments in bond amounts and additional information related to minimum bonds and application of bonds to ensure performance of the requirements of KRS Chapter 350 in the event work is performed by the cabinet, taking into consideration such things as topography, geology, future land use, and the difficulty of reclamation.

Section 1. Bonding Requirements. (1) An applicant shall not disturb surface acreage or extend an underground shaft, tunnel, or operation prior to receipt of approval from the cabinet of a performance bond covering an area to be affected by surface operations and facilities.

(2) After an application for a new, amended, revised, or renewed permit to conduct surface coal mining and reclamation operations has been approved pursuant to 405 KAR Chapter 8, but before the permit is issued, the applicant shall file with the cabinet, on ***Performance Bond, Form SME-42[~~a form prescribed and furnished by the cabinet~~]***, a performance bond payable to the cabinet.

(a) The applicant shall file the Performance Bond, Form SME-42, for an operation on land other than federal lands, or the Performance Bond for Surface Coal Mining and Reclamation on Federal Lands, Form SME-42-F, for an operation on federal land.

(b) The performance bond shall be conditioned upon compliance with all of the requirements of KRS Chapter 350, 405

KAR Chapters 7 through 24, and the provisions of the reclamation plan and permit, and shall cover all surface coal mining and reclamation operations to be conducted within the permit area or increment thereof until all reclamation requirements of 405 KAR Chapters 7 through 24 have been met.

(c) The amount, duration, type, conditions, and terms of the performance bond shall conform to the requirements of this administrative regulation.

(3) A permit shall not be revised or amended to include additional area unless the liability of the current bond is extended to cover the entire permit area or increment as revised or amended, and the liability of the supplemental bond covers the entire permit area as revised or amended. Unless these conditions are met with respect to the bond, the additional area shall be permitted as a separate increment of the current permit area or pursuant to a new permit.

(4) A rider to the applicable performance bond, confirming coverage of the revision, shall be submitted by the applicant if a revision to a permit does not change the acreage of the permit area or increment but:

(a) Adds a coal washer, a crush and load facility, a refuse pile, or a coal mine waste impoundment to the existing permit; or

(b) Alters the boundary of a permit area or increment.

Section 2. Terms and Conditions of Performance Bond. (1) The performance bond shall be in an amount determined by the cabinet as established in Sections 6, 7, and 8 of this administrative regulation.

(2) The performance bond shall be payable to the cabinet.

(3) The performance bond shall be conditioned upon faithful performance of all of the requirements of KRS Chapter 350, 405 KAR Chapters 7 through 24, and the conditions of the permit and shall cover the entire permit area or the incremental area as the cabinet has approved pursuant to Section 4(2) of this administrative regulation.

(4) The duration of the bond shall be for a time period established in Section 9 of this administrative regulation.

(5) Surety bonds shall be subject to the***[following]*** conditions ***established in paragraphs (a) through (d) of this subsection.[:]***

(a) The cabinet shall not accept the bond of a surety company unless the bond shall not be cancelable by the surety at any time for any reason.

1. Surety bond coverage for permitted lands not disturbed shall be cancelled only with the written approval of the cabinet, provided the surety gives written notice to both the permittee and the cabinet of the intent to cancel prior to the proposed cancellation.

a. A cancellation notice shall be by certified mail.

b. Cancellation shall not be effective for lands subject to bond coverage that are affected after receipt of notice, but prior to approval by the cabinet.

c. The cabinet shall approve a cancellation only if a replacement bond has been filed by the permittee, or if the permit area has been reduced by revision to the extent that the remaining bond amount, after cancellation, is sufficient to cover all the costs attributable to the completion of reclamation operations on the reduced permit area in accordance with Section 10 of this administrative regulation.

2. The cabinet shall advise the surety, within thirty (30) days after receipt of a notice to cancel bond, if the bond may be cancelled on an undisturbed area.

(b) The bond shall provide that the surety and the permittee shall be jointly and severally liable.

(c)1. The surety shall give prompt notice to the permittee and the cabinet of a notice received or action filed alleging the insolvency or bankruptcy of the surety, or alleging violations of regulatory requirements that could result in suspension or revocation of the surety's license to do business.

2. In the event the surety becomes unable to fulfill its obligations pursuant to the bond, the surety shall promptly provide written notice to the permittee and the cabinet.

3. Upon the incapacity of a surety by reason of bankruptcy, insolvency, or suspension or revocation of its license or certificate of authority, the permittee shall be deemed to be without proper bond coverage and shall promptly notify the cabinet.

a. Nothing in this paragraph shall relieve the permittee of responsibility pursuant to the permit or the surety of liability on the permittee's bond.

b. The cabinet shall issue a notice to the permittee specifying a reasonable period to replace bond coverage, not to exceed ninety (90) days.

c. If an adequate bond is not posted by the end of the period allowed, the permittee shall cease coal extraction and coal processing operations and shall comply with the provisions of 405 KAR 16:010, Section 6, or 405 KAR 18:010, Section 4, and shall immediately begin to conduct reclamation operations in accordance with the reclamation plan.

d. Coal extraction and coal processing operations shall not resume until the cabinet has determined that***, in accordance with 405 KAR Chapters 7 through 24,*** an acceptable bond has been posted.

e. If an acceptable bond has not been posted by the end of the period allowed, the cabinet shall suspend the permit until acceptable bond***, in accordance with 405 KAR Chapters 7 through 24,*** is posted.

(d) A surety bond shall be executed by the operator and a corporate surety licensed to do business in the Commonwealth of Kentucky.

(6) Collateral bonds may include cash deposits with the cabinet, certificates of deposit, or letters of credit. Collateral bonds, except for letters of credit, shall be subject to the***[following]*** conditions ***established in paragraphs (a) through (f) of this subsection.[:]***

(a) The cabinet or its authorized agent shall obtain possession of and keep in custody all collateral deposited by the applicant, until authorized for release or replacement as established in 405 KAR Chapter 10.

(b) The cabinet shall require that certificates of deposit be assigned to the cabinet or its authorized agent in writing, through the submittal of Escrow Agreement Form SME-64, and the assignment evidenced on the books of the bank issuing ***the[such]*** certificates.

(c) The cabinet shall not accept an individual certificate of deposit unless it is issued by ***an[a]*** FDIC or FSLIC insured financial institution, and the cabinet shall not in any circumstance accept a denomination in excess of the maximum insurable amount as determined by FDIC and FSLIC.

(d) The cabinet shall require the issuer of certificates of deposit to waive all rights of setoff or liens that it has or might have against those certificates.

(e) Persons with an interest in collateral posted as a bond, and who desire notification of actions pursuant to the bond, shall request the notification in writing to the cabinet upon an offering of collateral.

(f) The cabinet shall require the applicant to deposit sufficient amounts of certificates of deposit, so as to assure that the cabinet will be able to liquidate those certificates prior to maturity, upon forfeiture, for the amount of the bond required by this chapter.

(7) A letter of credit shall be subject to the***[following]*** conditions ***established in paragraphs (a) through (d) of this subsection.[:]***

(a)1. The letter shall only be issued by a bank organized or authorized to do business in the United States.

2. A letter of credit issued by a non-Kentucky lending institution shall be confirmed by an approved Kentucky lending institution.

(b) A letter of credit shall be irrevocable.

(c) The letter shall be payable to the cabinet upon demand and receipt from the cabinet of a notice of forfeiture issued in accordance with 405 KAR 10:050, or in the event the bank wishes to terminate the letter on its expiration date, the cabinet may draw upon demand. The Irrevocable Standby Letter of Credit, Form SME-72, and the Confirmation of Irrevocable ***Standby*** Letter of***[Standby]*** Credit, form SME-72-A, shall be submitted to the cabinet, as necessary.

(d)1. The issuer shall give prompt notice to the permittee and the cabinet of notice received or action filed alleging the insolvency or bankruptcy of the issuer, or alleging violations of regulatory

requirements that could result in suspension or revocation of the issuer's charter or license to do business.

2. In the event the issuer becomes unable to fulfill its obligations pursuant to the letter of credit, notice shall be given immediately to the permittee and the cabinet.

3. Upon the incapacity of an issuer by reason of bankruptcy, insolvency, or suspension or revocation of its charter or license, the permittee shall be deemed to be without proper performance bond coverage and shall promptly notify the cabinet.

a. Nothing in this paragraph shall relieve the permittee of responsibility pursuant to the permit or the issuer of liability on the letter of credit.

b. The cabinet shall issue a notice to the permittee specifying a reasonable period to replace bond coverage, not to exceed ninety (90) days.

c. If an adequate bond is not posted by the end of the period allowed, the permittee shall cease coal extraction and coal processing operations and shall comply with the provisions of 405 KAR 16:010, Section 6, or 405 KAR 18:010, Section 4, and shall immediately begin to conduct reclamation operations in accordance with the reclamation plan.

d. Coal extraction and coal processing operations shall not resume until the cabinet has determined that an acceptable bond has been posted.

e. If an acceptable bond has not been posted by the end of the period allowed, the cabinet shall suspend the permit until acceptable bond is posted.

(8) If a permittee chooses to combine two (2) or more bonds for one (1) permit area or increment, the bonds may be accompanied by a schedule, acceptable to the cabinet and agreed to by all parties, which sets forth the agreed distribution of bond amounts to be released or reduced pursuant to 405 KAR 10:040 and Section 10 of this administrative regulation, respectively. If no schedule is submitted, the cabinet may release equal percentages of each bond.

(9) Permit specific bonds posted by members of the Voluntary Bond Pool on existing permits prior to the establishment of the Kentucky Reclamation Guaranty Fund shall be released in their entirety upon successfully achieving reclamation Phase I bond release in accordance with 405 KAR 10:040, Section 2(4)(a). Permit specific bonds posted by members of the Voluntary Bond Pool on new permits after the establishment of the Kentucky Reclamation Guaranty Fund shall be released in equal percentages at each reclamation phase with the Kentucky Reclamation Guaranty Bond.

Section 3. Types of Performance Bond. (1) The cabinet shall approve performance bonds of only those types established in this section.

(2) The performance bond shall be a:

(a) Surety bond;

(b) Collateral bond;

(c) Bond filed pursuant to the provisions of the Kentucky Reclamation Guaranty Fund, KRS 350.518;

(d) Bond filed by the Voluntary Bond Pool; or

(e) Combination of the bond types listed in paragraphs (a) through (d) of this subsection.

(3) Bonds filed by the Voluntary Bond Pool prior to its repeal in 2013 Ky. Acts ch. 78, Section 12, shall be deemed valid and convey the same legal right as bonds issued by the KRGF. The amount, duration, conditions, and terms of bonds issued by the Voluntary Bond Pool shall be deemed in compliance with the requirements of this administrative regulation.

Section 4. Bonding Methods. The method of performance bonding for a permit area shall be selected by the applicant and approved by the cabinet prior to the issuance of a permit, and shall consist of one (1) of the***[following]*** methods ***established in subsections (1) or (2) of this section.[:]***

(1) Method "S" - single area bonding. A single area bond shall be a bond that covers the entire permit area as a single undivided area, for which the applicant shall file the entire bond amount required by the cabinet prior to issuance of the permit.

(a) Liability pursuant to the bond shall extend to every part of the permit area at all times.

(b) Except as ***established[provided]*** in Section 9(2) of this administrative regulation regarding extended bond liability, there shall not be a release of all or part of the bond amount for completion of a particular phase of reclamation on a part of the permit area pursuant to 405 KAR 10:040 until that phase of reclamation has been successfully completed on the entire permit area.

(2) Method "I" - incremental bonding. Incremental bonding shall be a method of bonding in which the permit area shall be divided into individual increments, each of which is bonded separately and independently, and for which a bond shall be filed as operations proceed through the permit area.

(a) The permit area shall be divided into distinct increments subject to approval by the cabinet ***based on this subsection***.

1. Each increment shall be of sufficient size and configuration to provide for efficient reclamation operations should reclamation operations by the cabinet become necessary.

2. If the approved postmining land use is of such nature that successful implementation of the postmining land use capability depends upon an area being integrally reclaimed, then that area shall be contained within a single increment.

3. These increments shall be clearly identified on maps submitted in the permit application pursuant to 405 KAR Chapter 8, and the applicant shall describe the approximate time schedule for beginning operations in each increment.

(b) Prior to issuance of a permit, the applicant shall file with the cabinet the full bond amount required by the cabinet for the first increment or increments of the permit area to be disturbed, which shall be not less than the minimum bond required for the permit area required pursuant to Section 7 of this administrative regulation.

(c) The permittee shall not engage in surface coal mining and reclamation operations on an increment of the permit area unless the full bond amount required by the cabinet has been filed with the appropriate regional office of the department for that increment, the cabinet has verified the validity of the bond, and written authorization to conduct surface coal mining and reclamation operations on that increment is issued by the administrator of the regional office. Credit shall not be given for reclamation on other increments.

(d) The boundaries of each increment shall be physically marked at the site in a manner approved by the cabinet pursuant to 405 KAR 16:030.

(e) The bond amount for an increment shall be released or forfeited independently of another increment of the permit area, and liability pursuant to the performance bond shall extend only to the increment expressly covered by the bond. A single bond amount may be filed to cover more than one (1) increment, in which case the increments covered shall be treated as a single increment.

(f) Except as ***established[provided]*** in Section 9(2) of this administrative regulation regarding extended bond liability, there shall not be a release of bond for completion of a phase of reclamation on part of an increment until that phase of reclamation has been successfully completed on the entire increment.

(g) If the bond for an increment is completely released pursuant to 405 KAR 10:040, the increment shall be deleted from the permit area.

Section 5. Substitution of Bonds. (1) The cabinet may allow permittees to substitute existing surety or collateral bonds for equivalent surety or collateral bonds, in which case the liability that has accrued against the permittee on the permit area or increment ***shall be[is]*** transferred to ***the[such]*** substitute bonds.

(2) The cabinet shall not release existing performance bonds until the permittee has submitted and the cabinet has***, in accordance with 405 KAR Chapters 7 through 24,*** approved acceptable substitute performance bonds. A substitution of performance bonds pursuant to this section shall not constitute a release of bond pursuant to 405 KAR 10:040.

(3) The cabinet may refuse to allow substitution of bonds if an

action for revocation or suspension of the permit covered by the bond is pending or if there is a pending action for forfeiture of the bond.

Section 6. Determination of Bond Amounts. (1) In determining the bond amount, the cabinet shall estimate the cost to the cabinet if the cabinet had to perform the reclamation, restoration, and abatement work required of a person who conducts surface coal mining and reclamation operations pursuant to KRS Chapter 350, 405 KAR Chapters 7 through 24, and the permit, except as ***established[~~provided~~]*** in subsection (4) of this section. This amount shall be based on:

(a) The estimated costs submitted by the permittee in accordance with 405 KAR 8:030, Section 24(4), ***or[~~and~~]*** 405 KAR 8:040, Section 24(4)***, or both if applicable***;

(b) The additional estimated costs to the cabinet that may arise from applicable public contracting requirements or the need to bring personnel and equipment to the permit area after its abandonment by the permittee to perform reclamation, restoration, and abatement work;

(c) All additional estimated costs necessary, expedient, and incident to the satisfactory completion of the requirements ***established[~~identified~~]*** in this section;

(d) An additional amount based on factors of cost changes during the previous five (5) years for the types of activities associated with the reclamation to be performed; and

(e) Other cost information required or available to the cabinet.

(2) If the reclamation cost calculated submitted in a permit application is higher than the minimum bond or bond calculated by the cabinet, the higher calculation shall be used in any issued permit.

(3) The cabinet shall review the bonding amounts ***established[~~identified~~]*** in Sections 7 and 8 of this administrative regulation at a minimum of every two (2) years to determine if the amounts are adequate due to inflation and increases in reclamation costs.

(4) Full cost bonding participants shall provide the cabinet a cost estimate that reflects the costs of reclamation to the cabinet in accordance with the requirements of 405 KAR 10:080, Section 3.

Section 7. Minimum Bond Amount. The minimum amount of the bond for surface coal mining and reclamation operations at the time the permit is issued or amended shall be:

(1) $75,000 for the entire surface area under one (1) permit;

(2) $75,000 per increment for incrementally bonded permits, subject to Section 4(2) of this administrative regulation;

(3) $50,000 for a permit or increment operating on ***a*** previously mined ***area[~~areas~~]***, as defined ***by[~~in~~]*** of 405 KAR 8:001, Section 1(86), to be evaluated by the cabinet; or

(4) $10,000 for underground mines that have only underground operations.

Section 8. Bonding Rate of Additional Areas. Areas of a surface coal mine and reclamation operation shall be bonded at the***[~~following~~]*** rates ***established in subsections (1) through (7) of this section*** for a permit issued by the Division of Mine Permits***.[~~:~~]***

(1) Coal haul roads, other mine access roads, and mine management areas shall be bonded at $2,500 per acre and each fraction thereof.

(2) Refuse disposal areas shall be bonded at a minimum rate of $7,500 per acre and each fraction thereof.

(3)(a) An embankment sediment control pond shall be bonded at a rate of $10,000 per acre and each fraction thereof, with each pond being measured separately, if the pond is located off-bench and located downstream and outside the proposed mining or spoil storage area.

(b) This rate may be applied to partial embankment structures as necessary to meet the requirements of Section 6(1) of this administrative regulation.

(4) Coal preparation plants shall be bonded at the base acreage rate, in accordance with subsection (6) of this section, in addition to the costs associated with demolition and disposal costs relating to concrete, masonry, steel, timber, and other materials associated with surface coal mining and reclamation operations.

(5) Operations on ***a*** previously mined ***area[~~areas~~]***, as defined ***by[~~in~~]*** 405 KAR 8:001, Section 1(86), shall be bonded at rate of $2,000 per acre and each fraction thereof.

(6) All areas of surface coal mining and reclamation operations not otherwise addressed in subsections (1) through (5) of this section shall be bonded at the rate of $3,500 per acre and each fraction thereof.

(7)(a) For permits that have been identified as requiring[~~a producer of~~] long-term treatment[~~drainage~~], the cabinet shall calculate an additional bond or other financial assurance instrument amount based on the estimated annual treatment cost, provided by the permittee and verified by the cabinet, multiplied by a factor of twenty-five (25)[~~twenty (20) years~~] plus any capital costs of the treatment system.

(b) The long-term treatment cost estimate shall be subject to verification and acceptance by the cabinet. The department shall use its own estimate for annual treatment costs if the department cannot verify the accuracy of the permittee's estimate.[~~(c) In lieu of this calculation, the permittee may submit a remediation plan to be approved by the cabinet for the areas deemed to be producing substandard drainage.~~

~~1. The remediation plan shall demonstrate that substandard discharge shall be permanently abated by land reclamation techniques prior to phase II bond release.~~

~~2. If the department rejects the plan, the permittee shall submit the additional acid mine drainage bond previously established in this section.~~]

Section 9. Period of Liability. (1) Liability pursuant to a performance bond applicable to an entire permit area or increment thereof shall continue until all reclamation, restoration, and abatement work required of persons who conduct surface coal mining and reclamation operations pursuant to requirements of KRS Chapter 350, 405 KAR Chapters 7 through 24, and the provisions of the permit have been completed, and the permit or increment terminated by release of the permittee from further liability in accordance with 405 KAR 10:040.

(2) In addition to the period necessary to achieve compliance with all of the requirements of KRS Chapter 350, 405 KAR Chapters 7 through 24, and the permit, including the standards for the success of revegetation as required by 405 KAR 16:200 and 405 KAR 18:200, the period of liability pursuant to a performance bond shall continue for a period of five (5) years beginning with the last year of augmented seeding, fertilizing, irrigation, or other work.

(a) The period of liability shall begin again upon augmented seeding, fertilizing, irrigation, or other work required or conducted on the site prior to bond release.

(b) Isolated and clearly defined portions of a bonded area requiring extended liability because of augmentation may be separated from the original area and bonded separately upon approval by the cabinet.

(c) These areas shall be limited in extent, and not constitute a scattered, intermittent, or checkerboard pattern of failure.

(d) Access to the separated areas for remedial work may be included in the area pursuant to extended liability if necessary.

(3) If the cabinet approves a long-term intensive agricultural postmining land use in accordance with 405 KAR 16:210, augmented seeding, fertilization, irrigation, or other husbandry practices normally associated with the approved postmining land use shall not require restarting the five (5) year period of liability.

(4) The bond liability of the permittee shall include only those actions that the permittee is required to take pursuant to the permit, including completion of the reclamation plan in a manner that the land ***shall[~~will~~]*** be capable of supporting a postmining land use approved pursuant to 405 KAR 16:210. Actions of third parties beyond the control and influence of the permittee and for which the permittee is not responsible pursuant to the permit shall not be covered by the bond.

Section 10. Adjustment of Amount. (1) The amount of the performance bond liability applicable to a permit or increment shall

be adjusted by the cabinet if the:

(a) Acreage in the permit area or increment is either increased or decreased; or

(b) Cabinet determines that the cost of future reclamation, restoration, or abatement work has changed. If it is determined that an adjustment pursuant to this paragraph is necessary, the cabinet shall:

1. Notify the permittee, the surety, and any person with a property interest in collateral who has previously requested***[such]*** a notification in writing; and

2. Provide the permittee an opportunity for an informal conference on the adjustment. The requirements of 400 KAR 1:090 and 400 KAR 1:110 shall not apply to the conduct of the conference.

(2) The amount of the performance bond liability applicable to a permit or increment may be adjusted by the cabinet upon application by the permittee ***pursuant to[under]*** 405 KAR 8:010, Section 20, to delete acreage from the permit area or increment thereof if the acreage has not been affected by the surface coal mining and reclamation operation. The provisions of 405 KAR 10:040, Section 2(3), shall apply. A reduction due to***[such]*** a deletion of acreage shall not constitute a bond release and shall not be subject to the procedures of 405 KAR 10:040, Section 1.

(3) The cabinet may grant reduction of the required performance bond amount if the permittee's method of operation or other circumstances will reduce the maximum estimated cost to the cabinet to complete the reclamation responsibilities and therefore warrant a reduction of the bond amount. The request shall not be considered as a request for partial bond release subject to the procedures of 405 KAR 10:040, Section 1.

(4) The cabinet shall refuse to approve a reduction of the performance bond liability amount if an action for revocation or suspension of the permit covered by the bond is pending, if there is a pending action for forfeiture of the bond, or if the permittee is currently in violation of 405 KAR Chapters 7 through 24 on that permit or increment.

Section 11. Supplemental Assurance. (1) If alternative distance limits or additional pits are approved pursuant to 405 KAR 16:020, Section ***3.[2]***, the applicant shall submit to the cabinet supplemental assurance in the amount established in this section. This supplemental assurance shall be for the purpose of assuring the reclamation of the additional unreclaimed disturbed area and shall be in addition to the performance bond required pursuant to 405 KAR Chapter 10. The applicant shall submit supplemental assurance on the cabinet form, Supplemental Assurance, SME-42 (SA). This form shall be accompanied by the Escrow Agreement form (for use with Supplemental Assurance form only), SME-64 (SA).

(a) The supplemental assurance shall not be subject to the bond release requirements of 405 KAR 10:040, but shall be returned in accordance with the requirements of this section.

(b) The requirements of Sections 2, 3, and 5 of this administrative regulation and 405 KAR 10:035 and 10:050 shall apply to supplemental assurance.

(2) Single seam contour mining. For single seam contour operations subject to 405 KAR 16:020, Section ***3.[2(3)]***, the amount required shall be $150,000 per 1,500 feet, or any portion thereof, of additional distance approved for the first pit pursuant to 405 KAR 16:020, Section ***3.[2(3)]***. If an additional pit or pits are approved, the amount shall be $150,000 per 1,500 feet, or any portion thereof, including the first 1,500 feet of each additional pit.

(3) Multiple seam contour mining. For multiple seam contour mining operations subject to of 405 KAR 16:020, Section 3(6)[Section 2(4)], the amount required shall be $150,000 per 1,500 feet, or any portion thereof, of additional distance approved for the first multiple seam operation pursuant to of 405 KAR 16:020, Section ***3.[2(4)]***. If additional multiple seam operations are approved, the amount shall be $150,000 per 1,500 feet, or any portion thereof, including the first 1,500 feet of each additional multiple seam operation.

(4) Mountaintop removal. If a mountaintop removal operation begins by mining a contour cut around all or a portion of the mountaintop, that contour portion shall require the same supplemental assurance established in subsection (2) of this section.

(5) Area mining. The amount required shall be $150,000 for any four (4) spoil ridges, or any portion thereof, of additional distance approved for the first pit pursuant to 405 KAR 16:020, Section ***3.[2(1)]***. If an additional pit or pits are approved, the amount shall be $150,000 for any four (4) spoil ridges, or any portion thereof, including the first four (4) spoil ridges of each additional pit.

(6) Return of supplemental assurance. Supplemental assurance shall be returned to the person that submitted it upon:

(a) Application to the cabinet for the return; and

(b) Inspection and written documentation (including photographs) by the cabinet verifying that the area for which the supplemental assurance was submitted has been backfilled and graded (or in the case of mountaintop removal, the associated highwall has been eliminated by mining operations).

Section 12. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Performance Bond, Form SME-42", June 2013;

(b) "Irrevocable Standby Letter of Credit, Form SME-72", July 1994;

(c) "Confirmation of Irrevocable Standby Letter of Credit, Form SME-72-A", July 1994;

(d) "Supplemental Assurance, SME-42 (SA)", July 1994;

(e) "Escrow Agreement (for use with Supplemental Assurance form only), SME-64 (SA)", July 1994;

(f) "Escrow Agreement, Form SME-64", October 2008; ***and***

(g)***[***~~***"Remining Issues and Procedures, Reclamation Advisory Memorandum No. 154", May 2012; and***~~

~~***(h)]***~~ "Performance Bond for Surface Coal Mining and Reclamation on Federal Lands, Form SME-42-F", June 2013.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department for Natural Resources, 300 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: March 13, 2019

FILED WITH LRC: March 14, 2019 at 4 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.

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(As Amended at ARRS, August 9, 2019)

501 KAR 6:160. Correctional Industries.

RELATES TO: KRS Chapters 196, 197, 439, 18 U.S.C. ***[§]***1761, 64 ***Fed. Reg.[FR]*** 17000 ***April 7, 1999***

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 ***Fed. Reg.[FR]*** 17000 ***April 7, 1999***

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***", August 9[***~~***," 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 ***8/9/19[~~6/14/19~~]***)
CI 08-02-01	Voluntary Participation and Agreement with Wage Deductions (PIECP) (Added ***8/9/19[~~6/14/19~~]***)
CI 08-03-01	Local Business and Local Labor Consultation to Prison Industry Enhancement Certification Programs (PIECP) (Added ***8/9/19[~~6/14/19~~]***)
CI 08-04-01	Non-Inmate Worker Displacement in Prison Industry Enhancement (PIE) Programs (Added ***8/9/19[~~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.
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.RegsContact@ky.gov.

TRANSPORTATION CABINET
Department of Vehicle Licensing
Division of Motor Licensing
(As Amended at ARRS, August 9, 2019)

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 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[~~1~~]. (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[~~10~~]. 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[~~to~~] 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[~~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[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[~~18~~]. 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[~~19~~]. Incorporation by Reference. The following material is incorporated by reference: (1)(a) Form TC 96-15[~~96-15E,~~]**,** "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 ***TC 96-***332[325], "[Special Plate Donation]Affidavit for Special License Plate Donation" May 2014[, 2009];

(e) DD Form1300, "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.
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.

TRANSPORTATION CABINET
Department of Highways
Division of Maintenance
(As Amended at ARRS, August 9, 2019)

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. 01] 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.
CONTACT PERSON: P. Kevin Moore, Executive Director, 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.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Kentucky Board of Education
Kentucky Department of Education
(As Amended at ARRS, August 9, 2019)

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, ***or[~~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[~~prior to~~] being made public;

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

(19) Require any student enrolled initially in grade seven (7) through twelve (12) who is repeating a grade for any reason, to be ineligible, during the school year that the grade is repeated, to compete in 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[~~prior to~~] trying for a place on a middle school athletic team, shall provide an annual medical examination, in accordance with KRS 156.070(2)(d), and shall use the KHSAA form PPE;

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

1. Heat index and heat illness programs;

2. Wrestling weight management programs;

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

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

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

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

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

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

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

(i) Five (5) days in helmets;

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

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

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

d. Beginning July 1, 2020, the first regular season interscholastic contest shall not be played before the Saturday preceding ***week*** 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.

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.

PUBLIC PROTECTION CABINET
Department of Alcoholic Beverage Control
(As Amended at ARRS, August 9, 2019)

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.

CONTACT PERSON: Marc Manley, Executive Adviser, 1003 Twilight Trail, phone 5027821045, fax 5025647479, email marc.manley@ky.gov.

PUBLIC PROTECTION CABINET
Department of Insurance
(As Amended at ARRS, August 9, 2019)

806 KAR 3:240. Corporate governance annual disclosure.

RELATES TO: ***KRS 304.3-235[~~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 ***of the Department of Insurance*** to make reasonable rules and administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code***, as defined in KRS 304.1-010***. ***KRS 304.3-235[~~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" ***is defined by KRS 304.3-235(1)(c)[shall mean the corporate governance annual disclosure form to be filed pursuant to this administrative regulation]***.

(2) "Insurance group" ***is defined by KRS 301.3-235(1)(a)[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***(7)[***~~(2)~~***]***.

(4) "***Senior Management" means["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***, such as[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) The Corporate Governance Annual Disclosure form or CGAD form shall be filed by June 1 of each calendar year in accordance with the provisions of KRS 304.3-235(3) through (6)[(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].

(2)[(4)] If[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***, which is available at www.naic.org***. In these instances, a copy of the CGAD ***shall[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 description of the governance framework and structure required by KRS 304.3-235(5) shall include the following considerations: (a)[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.

(2) In accordance with KRS 304.3-235(5)(a)4., the description of the policies and practices of the most senior governing entity and significant committees shall include a discussion of the following factors:[(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***[)]***.

(3)[(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 ***these[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 ***administrative*** 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 ***or[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.

(4) The description of processes required by KRS 304.3-235(5)(a)4.c. shall include a discussion of:[(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***, for example, an[(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***, NAIC model law III-505[)]***;

2. Actuarial function;

3. Investment decision-making processes;

4. Reinsurance decision-making processes;

5. Business ***strategy or finance[strategy/finance]*** decision-making processes;

6. Compliance function;

7. Financial ***reporting or internal auditing[reporting/internal auditing]***; and

8. Market conduct decision-making processes.

Section 4. Incorporation by Reference. (1) "Corporate Governance Annual Disclosure", ***07/19[06/2019]***, is incorporated by reference.

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CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Public Health Protection and Safety
(As Amended at ARRS, August 9, 2019)

902 KAR 45:065. Tattooing.

RELATES TO: KRS 194A.050[Chapter 13B], 211.005, 211.015, 211.025, 211.760, 383.085, 387.010, 28 C.F.R. 36.104, 29 C.F.R. 1910.1030

STATUTORY AUTHORITY: KRS 194A.050(1), 211.760[(3)]

NECESSITY, FUNCTION AND CONFORMITY: KRS 194A.050(1) requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate programs and **fulfill[fulfil]** the responsibilities vested in the cabinet. KRS 211.760(2) requires nonmedical persons who engage in or carry on any business of tattooing to register with a local health department. KRS 211.760(3) requires the cabinet[for Health Services] to promulgate administrative regulations relating to: (a) health and cleanliness of places of business; (b) sterilization of tattooing instruments and equipment; (c) procedures to prevent the spread of disease; (d) procedures to prevent tattooing of minors without the written notarized consent of a custodial parent or legal guardian; and (e) other administrative regulations as may be necessary to protect public health. This administrative regulation establishes the standards for tattooing[required by KRS 211.760(3)].

Section 1. Definitions. (1) "Antiseptic" means a substance applied to the skin that reduces the number of microorganisms.

(2) "Autoclave" means **a device intended to sterilize products by means of pressurized steam[equipment sold as sterilizing equipment for medical instruments and employs steam under pressure to sterilize]**.

(3) "Blood" is defined by 29 C.F.R. 1910.1030[means human blood or any human body fluid or tissue that is visibly contaminated with blood].

(4) "Bloodborne **pathogen training" means training that meets the requirements established in[pathogens" is defined by]** 29 C.F.R. 1910.1030[pathogen(s)" means the pathogenic microorganisms that are present in human blood that can cause disease in humans such as Hepatitis B (HBV), Hepatitis C (HCV), and human immunodeficiency virus (HIV)].

(5) "Contaminated" is defined by 29 C.F.R. 1910.1030[means the presence of or reasonably expected presence of blood or other potentially-infectious material in or on the surface of an item].

(6) "Contaminated sharps" is defined by 29 C.F.R. 1910.1030[means any contaminated object that can penetrate the skin such as tattoo needles and razors].

(7) "Contaminated waste" means any material to be disposed of that has been soiled by blood or other potentially-infectious material in the process of tattooing.

(8) "Disinfectant" means a **product that is tuberculocidal and registered with the federal Environmental Protection Agency as indicated on the label for use in disinfection[chemical agent that destroys disease-causing pathogens or other harmful microorganisms but does not ordinarily kill bacterial spores. Approved disinfectants are:**

(a) List D: the EPA's Registered Antimicrobial Products Effective Against Human HIV-1 and Hepatitis B Virus; and

(b) List E: the EPA's Registered Antimicrobial Products Effective Against Mycobacterium tuberculosis, Human HIV-1 and Hepatitis B Virus].

(9) "Hand washing" means the **act of cleaning the hands for the purpose of removing dirt, soil, or microorganisms through the use of soap, warm water, and friction[following process:**

(a) Wetting hands and forearms with warm running water between][,][**101 degrees Fahrenheit and**][–][**120 degrees**

~~Fahrenheit~~][~~° F~~][~~;~~

~~**(b) Applying liquid**~~][~~antibacterial or antimicrobial~~]~~**[soap and thoroughly distributing over hands and forearms;**~~

~~**(c) Rubbing hands vigorously for twenty (20) seconds, covering all surfaces of the hands, forearms and fingers, paying special attention to the thumbs, backs of fingers, backs of the hands, and between the fingers;**~~

~~**(d) Rinsing hands and forearms thoroughly to remove residual soap; and**~~

~~**(e) Drying hands and forearms with paper towels dispensed from sanitary dispensers**~~]**.**

(10)[~~(9) "Health care professional" means a physician, physician assistant, nurse, doctor of chiropractic, mental health professional, optometrist, dentist, or allied health professional who is licensed in Kentucky.~~

~~(10) "High-level disinfection" means the elimination of pathogenic microorganisms except for bacterial spores from inanimate objects, rendering them safe to handle.~~

~~(11)~~] "Instrument" means any tattooing implement that comes into contact with blood or**[~~nonintact~~]** skin **to be tattooed** such as needles, needle bars, needle tubes, or other implements used to insert pigment.

(11)[~~(12)~~] "Minor" is defined **by[~~at~~]** KRS 387.010(1).

(12)[~~(13)~~] "Mobile studio" means a tattooing studio that is designed to be readily movable.

(13)[~~(14)~~]~~**["Nonintact skin" means human skin that has an open wound from a cut, burn, rash, infection, or any other condition that has altered the skin.**~~

~~**(14)]**~~[~~(15)~~] "Purchased presterilized" means procedure set-ups that are sold individually packaged, processed, and marked with a sterilization lot number, and expiration date, to render them free of all microorganisms.

(14)[~~(15)~~][~~(16) "Registrant" means the individual duly authorized to engage in the business of tattooing.~~

~~(17)~~] "Registration" means the issuance of a document by the local health department to a tattoo artist authorizing the tattoo artist to engage in the business of tattooing.

(15)[~~(16)~~] "Service animal" is defined by 28 C.F.R. 36.104.

(16)[~~(17)~~][~~(18) "Regulated waste" means waste as defined by the Department of Labor, OSHA, Bloodborne Pathogens Regulation, 29 C.F.R. 1910.1030 and incorporated by reference in 803 KAR 2:320.~~

~~(19) "Sanitize" means a bactericidal treatment to clean surfaces of equipment, approved by the local health department for being effective in destroying microorganisms, including pathogens, to a safe level.~~

~~(20)~~] "Sterilization" means **a validated process used to render a product free from viable microorganisms**~~**[the use of an autoclave to kill microbial life by holding instruments and equipment under steam pressure for a minimum of fifteen (15) minutes, at fifteen (15) pounds of pressure per square inch (PSI), at a temperature of 250 degrees Fahrenheit**~~][~~° F~~]~~**[or 121 degrees Celsius**~~]~~[~~° C~~].

(17)[~~(18)~~][~~(21)~~] "Studio" **means[~~is~~]** a facility as defined by KRS 211.760(1)(b).

(18)[~~(19)~~][~~(22)~~] "Studio certification" means the issuance of a document by the local health department to a studio owner certifying that studio, after inspection, was in compliance with the applicable provisions of this administrative regulation.

(19)[~~(20)~~][~~(23)~~] "Studio owner" means:

(a) An owner of a facility where tattooing is conducted;~~**[or]**~~

(b) A sole proprietor who performs tattooing; or

(c) A person who employs tattoo artists.

(20)[~~(21)~~][~~(24)~~] "Tattoo artist" means a person registered by the local health department to engage in tattooing.

(21)[~~(22)~~] "Tattooing" is defined by KRS 211.760(1)(c).

(22)[~~(23)~~][~~(25)~~] "Temporary permit[~~studio~~]" means a permit to operate at a fixed location for[~~facility setup that operates~~] no more than seven (7) calendar days**, and that:**

(a) Is nontransferable~~**;[,]**~~ and

(b) Cannot be renewed for[~~in a~~] ninety (90) days after the expiration[~~day period~~].

(23) "Ultrasonic cleaner" means a device that transmits high-energy, high-frequency sound waves into a fluid-filled container, used to remove deposits from instruments and appliances.

Section 2. Registration of Tattoo Artist. (1)[~~An applicant shall be at least eighteen (18) years of age at the time of application.~~

~~(2) Pursuant to KRS 211.760(2),~~] A person shall not **advertise or solicit business with the intent to perform tattooing, or use or assume the title of tattooist,**~~**[act as or engage in the business of tattooing]**~~ unless registered with the local health department in the district or county where the person is to tattoo.

(2) All tattooing shall be under the auspices of a Kentucky certified studio.

(3) **A[~~No~~]** tattoo artist shall **not** engage in the act of tattooing unless that person has proof of completion of**[a]** bloodborne pathogen training~~**[program compliant with 29 C.F.R. 1910.1030]**~~.

(4) The artist shall maintain documentation of completion of bloodborne pathogen training at the studio.

(5) An applicant for registration as a tattoo artist shall be at least eighteen (18) years of age at the time of application.

(6)[~~(3)~~] An applicant for registration [~~for tattoo artists~~] shall submit [~~a completed Application Form, DFS-303, incorporated by reference,~~] to the local [~~or district~~] health department in the district or county where the applicant intends to perform tattooing:

(a) A completed DFS-303**,** Application for Certification **or[*/*]** Registration~~**[, incorporated by reference]**~~;

(b) Payment of $100 registration fee; and

(c) Proof of completion of approved bloodborne pathogen training as required by subsection (3) of this section.

(7)[~~(4) Pursuant to KRS 211.760(2), payment of the registration fee shall be made to the local or district health department where the applicant intends to tattoo.~~

~~(5)~~] The tattoo artist registration shall be:

(a) Mailed to the owner of the Kentucky[~~-~~] certified studio listed on the application for registration;

(b) Prominently displayed to the public in the workstation**;** and~~**[;]**~~

(c) Nontransferable from one (1) person to another, or from one (1) district or county to another.

(8) **Each registration**[~~(6) All tattooing shall be under the auspices of a Kentucky-certified studio.~~

~~(7) A registrant shall post his registration document prominently at his workstation.~~

~~(8) A registration is nontransferable from one (1) person to another, or from one (1) district or county to another.~~

~~(9) Applicants for registration must be eighteen (18) years of age or older at the time of registration.~~

~~(10) Pursuant to KRS 211.760(2),~~]**[Registrations]** shall be valid for[~~expire~~] one (1) calendar year and expire on December 31st of each year.

(9) A late **renewal[~~penalty~~]** fee of fifty (50) dollars shall be assessed on **each[~~all~~]** tattoo artist ***registration[~~certification~~]*** renewal **application[~~applications~~]** not received by~~**[January 30th]**~~***[~~or postmarked on~~]***~~**[after]**~~ January 31st each year[~~from the date of issuance~~].

Section 3. Studio Certification. (1) A person shall not engage in the business of tattooing unless the owner of the facility holds a studio certification issued by the local health department in the district or county where the person is to tattoo.

(2) A holder of a studio certification issued under this administrative regulation shall not allow **a person[~~persons~~]** to tattoo unless the individual is registered in accordance with Section 2 of this administrative regulation.

(3) **An application[~~Applications~~]** for studio certification shall be:

(a) On DFS-200**,** Application for Permit **or[*/*]** License~~**[, incorporated by reference in 902 KAR 10:040]**~~;

(b) Submitted to the local health department in the district or county where the studio is located; and

(c) Accompanied by an annual inspection fee of:

1. $400 for the studio with one (1) to four (4) work stations; and

2. An additional fifty (50) dollars for each additional work

station over four (4).

(4) A studio certification shall not be issued or renewed unless the studio has been inspected and found to be in compliance with the provisions of this administrative regulation.

(5) The studio certification shall be:

(a)[~~(3) A studio certification shall be required for each district or county in which a registrant performs any activity regulated by this administrative regulation.~~

~~(4) The studio certification shall be~~] Prominently displayed to the public in the studio; and

(b)[~~.~~

~~(5) A studio certification is~~] Nontransferable from one (1) person to another, or from one (1) location to another.

(6) [~~A holder of a studio certification issued under this administrative regulation shall not allow persons to tattoo unless registered in accordance with Section 2 of this administrative regulation.~~

~~(7) Payment of an annual inspection fee of $100 shall be made to the local health department in the district or county where the person is to tattoo.~~

~~(8) Applications for studio certification shall be submitted to the local health department on application form DFS-200, incorporated by reference.~~

~~(9)~~] The studio certification shall expire December 31st each year.

(7) A late **renewal[~~penalty~~]** fee of $100 shall be assessed on **each[~~all~~]** studio ***certification[~~registration~~]*** renewal **application[~~applications~~]** not received by**[~~January 30th~~]*[~~or postmarked on~~]*[~~after~~]** January 31st each year[~~one (1) year from the date of issuance~~].

Section 4. Studio[~~Facility~~] Requirements. (1) A studio[~~facility~~] shall:

(a) Be kept clean and in good repair;

(b) Be free of insect and rodent infestation;

(c) Store only items necessary to its operation and maintenance;

(d) Provide artificial light of at least twenty (20) foot-candles[~~, measured at a height of thirty-six (36) inches from the floor~~];

(e) Be well ventilated;

(f) Not permit the presence of a pet or other animal in the studio, except for a service animal[~~:~~

~~1. A trained guide or assistance animal for the disabled; and~~

~~2. Fish in an aquarium in the waiting area~~];

(g) Not use a room otherwise used as living or sleeping quarters;

(h) Use a solid, self-closing door to separate living or sleeping quarters from the business operation;

(i)[~~Have an entrance allowing direct entry into the facility, except for a facility existing on the effective date of this administrative regulation which is exempt from this requirement;~~

~~(j)~~] Have convenient, clean, and sanitary toilet and hand-washing facilities for the use of clientele with liquid soap, single-use paper towels from a sanitary dispenser or air dryer, covered waste receptacle, and self-closing door;

(j)[~~(k)~~] Be organized to keep clean areas separate from contaminated areas;

(k) Have[~~(l) Use only~~] a utility sink that shall only be used to**[~~:~~**

~~1.~~] wash[~~Clean~~] contaminated instruments;**[~~and~~**

~~2. Empty mop water, without placing the mop bucket into the sink;~~]

(l)[~~(m)~~] Use, clean, and maintain equipment according to manufacturers' recommendations;

(m)[~~(n)~~] Use an approved[~~a hard surface high-level EPA registered~~] disinfectant;

(n)[~~or~~

~~1. A solution of five and one-fourth (5.25) percent chlorine bleach, fifty (50) parts per million to 100 parts per million; and~~

~~2. A chlorine test kit to test concentration;~~

~~(o)~~] Have plumbing sized, installed, and maintained in accordance with**[~~the~~]**[~~Kentucky State Plumbing Code,~~] 815 KAR Chapter 20;

(o)[~~(p)~~] Have sufficient[~~an adequate~~] potable water supply for the needs of the studio provided from a source constructed, maintained, and operated pursuant to the applicable requirements established in 401 KAR Chapter 8[~~from:~~

~~1. A public or municipal water district, if available; or~~

~~2. A private water source approved by the Cabinet for Natural Resources and Environmental Protection, until a public water supply becomes available~~]; and

(p)[~~(q)~~] Dispose of sewage, including liquid waste, by connection to:

1. A public sewer system, if available; or

2. A private sewer system designed, constructed, and operated pursuant to the requirements of 401 KAR Chapter 5 and 902 KAR Chapter 10[~~the Cabinet for Health Services or the Cabinet for Natural Resources, until a public sewer system becomes available~~].

(2) A workstation shall:

(a) Have nonporous[~~light-colored~~], smooth, easy-to-clean floors, walls, and ceilings;

(b) Have surfaces, including counters, cabinets, chairs, and dispensers, composed of[~~light-colored,~~] smooth, nonporous material able to withstand repeated cleaning and disinfecting[~~, except for a facility existing on the effective date of this administrative regulation which is exempt from the color requirement~~];

(c) Be kept clean, organized**,** and in good repair;

(d) 1. Have all product containers clearly labeled with common product name in English; and

2. If filling a product container from a larger bulk container, **retain** the original container**[~~shall be retained~~]** on the studio premises;

(e) Have at least sixty (60) square feet of floor space with permanent walls a minimum of four (4) feet high[~~one half (1/2) walls~~] between workstations;

(f)[~~(d)~~] Have 100 foot-candles of light at the procedure level;

(g)[~~(e)~~] Have unimpeded access to a hand sink**[~~, without opening a door~~]**;

(h)[~~(f)~~] Have a sink for each artist with hot**[~~water between 101 and~~]**[~~at least~~]**[~~120 degrees Fahrenheit~~]**[~~°F~~] and cold water**[~~less than 101 degrees Fahrenheit~~]**[~~°F~~], delivered by a**[~~mixing~~]** faucet, operated by wrist, knee, or foot action**, or other hands-free method**;

1. Each sink shall be supplied with:

a. Liquid soap; and

b. Single-use paper towels dispensed from a sanitary dispenser; and

2. A hand sink shall not be used for any other purpose;

(i)[~~(g)~~] Be designated as a tattoo workstation, and shall not be used for any other purpose;

(j)[~~(h)~~] Have**[~~double bagged~~]**[~~lined~~] plastic or metal waste receptacles:

1. With or without a lid; and

2. If **the** waste receptacle has a lid**, the lid[~~it~~]** shall be foot operated; and

(k)[~~(i)~~] Have a container for disposable sharps that:

1. Is rigid, puncture proof, and leak proof on sides and bottom;

2. Is closeable and sealable; and

3. If sealed, is leak resistant and incapable of being opened without great difficulty.

Section 5. Cleaning and Sterilization. (1) A studio **using any reusable instruments, materials, or supplies**[~~facility~~] may have a one (1) room or two (2) room cleaning and sterilization arrangement.

(a) A two (2) room arrangement shall have:

1. One (1) room for contaminated items, equipped with:

a. A utility sink with minimum dimensions of 18 in. x 18 in. x 12 in.;

b. A hand sink;

c.[~~,~~] A presoak container;

d. An[~~,~~] ultrasonic **cleaner[~~cleaning unit~~]**;[~~,~~] and

e. Autoclaving packaging materials; and

2. A second room for autoclave sterilization of instruments and equipment.

(b) A one (1) room cleaning and sterilization process shall be arranged to provide two (2) distinct areas.

1. Nonporous barriers may be utilized to delineate the two (2) distinct areas.

2.[~~The ultrasonic unit shall be as far away as possible from the autoclave to prevent contamination of sterile instruments, equipment, or other items.~~] The cleaning area shall be equipped in accordance with paragraph (a)**1.[~~subparagraph 1~~]** of this **subsection[~~section~~]**.

3. The ultrasonic **cleaner[~~unit~~]** shall be as far away as possible from the autoclave to prevent contamination of sterile instruments, equipment**,** or other items[~~with a utility sink with minimum dimensions of 18 in. x 18 in. x 12 in., a presoak container, ultrasonic cleaning unit, and autoclaving packaging materials. Nonporous barriers may be utilized to delineate the two (2) distinct areas~~].

(2) **A studio that uses only pre-sterilized disposable instruments, materials, and supplies shall not be required to have a separate room or area for autoclave, ultrasonic cleaner, and sterilization.**

(3) All instruments shall be disposable or be made of surgical implant stainless steel and shall **have only rubber gripping that can be removed and sanitized[~~not have rubber gripping~~]** on the handles.

(4)[~~(3)~~] Instruments shall be processed as follows:

(a) Soak contaminated reusable[~~used~~] instruments in a covered container of cool water with**[~~or without~~]** detergent until ready to be cleaned and sterilized;

(b) Wash hands and forearms**[~~in accordance with Section 1(9) of this administrative regulation~~]**;

(c) Use disposable, single-use gloves, such as examination or surgical gloves;

(d)[~~(c)~~] Prepare the ultrasonic cleaner according to manufacturer's instructions;

(e)[~~(d)~~] Take instruments apart and rinse in warm water;

(f)[~~(e)~~] Load the ultrasonic cleaner and process according to manufacturer's recommendations, disposing of the ultrasonic cleaner liquid after each use;

(g) Wash hands and forearms**[~~in accordance with Section 1(9) of this administrative regulation~~]**;

(h)[~~(f)~~] Wearing examination gloves, remove instruments from the ultrasonic cleaner, rinse with clean water, [~~and dry with a clean, lint-free towel, or~~] allow to air dry; and

(i)[~~(g)~~] Store cleaned instruments in a labeled, covered**,** nonporous container until packaged for sterilization.

(5)[~~(4)~~] Autoclave[~~Sterilization~~] equipment. Equipment used to sterilize instruments shall meet the following requirements:

(a) The equipment was sold as sterilizing equipment for medical instruments; [~~and~~]

(b) The equipment is used, cleaned, and maintained to manufacturer's instructions; and

(c) The equipment meets the minimum requirements for sterilization ***as verified by a negative spore test***[~~in the definition of "sterilization"~~].

(6)[~~(5)~~](a)[~~Needles or other~~] Reusable instruments placed in contact with skin that is tattooed shall be cleaned and sterilized**;**[~~.~~]

(b) Disinfection shall not be used in place of cleaning and sterilization; and[~~.~~]

(c) Liquid sterilants shall not be used for sterilization of reusable instruments.

(7)[~~(6)~~] Instrument sterilization. Instruments that touch**[~~nonintact~~]** skin **to be tattooed[~~,~~]** shall be sterilized as follows:

(a) Wash hands and forearms**[~~in accordance with Section 1(9) of this administrative regulation~~]**;

(b) Use clean disposable, single-use surgical or examination gloves;

(c)[~~(b)~~] Package cleaned instruments individually in:

1. [~~paper or plastic, or~~]Paper-and-plastic peel-pack with color change indicator[~~, peel-pack(s) with color (heat) change indicator(s)~~]; or

2. Package as set-ups with color change indicator;

(d)[~~(c)~~] Label with content, date, lot number, and preparer's initials;

(e)[~~(d)~~] Load the sterilizer and process according to the manufacturer's directions;

(f)[~~(e)~~] Remove the items from autoclave only when completely[~~cool and~~] dry and cool;

(g)[~~(f)~~] Store the items in a nonporous, clean, dry, labeled container, cabinet**,** or other place that is protected from dust and contamination; and

(h) 1.[~~(g)~~] Sterilized instruments shall be resterilized at intervals of no more than six (6) months from the date of the last sterilization; and

2. New packaging shall be used when instruments are resterilized.

(8)[~~(7)~~] Sterilization equipment monitoring.

(a) Sterilization equipment shall be tested:

1. During the initial installation;

2.[~~,~~] After any major repair;[~~,~~] and

3. At least monthly by using a commercial biological monitoring system;**[~~and~~]**

(b) Biological indicator test results for each sterilization unit used in the studio shall be kept on site, and made available for inspection at time of inspection; and

(c) Sterilization monitoring shall be noted on sterilizer log.

(9)[~~(8)~~] Sterilizer recordkeeping. A sterilizer log system shall be maintained for each sterilizer in the studio. For each sterilization cycle the following information shall be documented:

(a) Date of load;

(b) Lot number;

(c) Preparer's[~~Practitioner's~~] name;

(d) The general contents of the load;

(e) The exposure time and temperature or the sterilizer recording chart or tape; and

(f) The results of the chemical indicator.

Section 6. Studio Owner Responsibilities. The owner of a certified studio shall:

(1) Exclude**[~~, and report to the local or district health department,~~]** any tattoo artist who is:

(a)[~~while~~] Infected with a disease in a communicable form that can be transmitted by blood;

(b)[~~or who is~~] A carrier of organisms that cause disease;

(c)[~~or while~~] Infected with a boil **or[~~,~~]** an infected wound;[~~,~~] or

(d) Diagnosed with an acute respiratory infection;

(2) Report any accident involving exposure to body fluids to the local or district health department;

(3) Receive, review**,** and distribute tattoo artist registrations issued for employees of the certified studio. If the artist is no longer employed by the certified studio, the registration shall be returned to the district or local health department where the certified studio is located;

(4)[~~(3) Continuously~~] Maintain a record of all persons performing any activity within the studio that is regulated by the cabinet. The record shall include at a minimum the following information:

(a) Full name;

(b) Date of birth;

(c) Home address;

(d) [~~Home~~] Phone number;

(e) Email address if available;

(f) Photograph of tattoo artist; and

(g) Complete description of all tattooing procedures performed by the tattoo artist;

(5)[~~(4)~~] Maintain a current copy of this administrative regulation at the studio for use by tattoo artists;

(6)[~~(5)~~] Maintain **an adequate supply[~~a minimum of twenty-four (24) sets~~]** of sterilized needles and tubes for each artist;

(7)[~~(6)~~] Not resterilize or reuse single-use, disposable components; and

(8)[~~(7)~~] If presterilized, disposable instruments are utilized, the following records shall be maintained [~~in accordance with Section 8(6) of this administrative regulation~~] and [~~shall be~~] made available at all times to the local health department:

(a) An accurate inventory of all purchased presterilized

instruments by name with the date purchased and the quantity on hand; and

(b) Invoices for the purchase of all purchased presterilized instruments.

Section 7. Tattooing of Minors[~~Client Restrictions~~]. (1) **A[~~No~~]** person shall **not** perform any tattoo procedure on a minor without parental consent.

(2) **A minor[~~Minors~~]** shall be at least **sixteen (16)[~~16~~]** years old with custodial parent or legal guardian consent prior to tattooing.

(3) Consent shall be provided by***[:***

~~(a)~~]*[~~1.~~]** a written notarized statement that contains[~~consent, with~~] an official seal or assigned identification of the notary[; or***

~~(b)~~]*[~~2.~~]*[~~The custodial parent or legal guardian present during the tattoo procedure~~].

(4) The notarized statement shall contain:

(a) The printed name of the custodial parent or legal guardian;

(b) The government issued photo identification number of the custodial parent or legal guardian;

(c) The address and phone number of the custodial parent or legal guardian;

(d) The printed name of the minor child;

(e) The date of birth of the minor child;

(f) The government issued photo identification number of the minor child, if applicable;

(g) A statement that the custodial parent or legal guardian is fully aware of the tattoo procedure and gives ***his or her[~~their~~]*** consent for the procedure to be performed;

(h) The signature of the custodial parent or legal guardian; and

(i) The date of the signature of the custodial parent or legal guardian.

(5)***[~~The custodial parent or legal guardian present during the tattoo procedure shall provide a government issued photo identification.~~***

~~(6)~~] The custodial parent or legal guardian, and minor client shall complete the attestation requirements of Section **8(3)(g)[~~8(3)(h)~~]** of this administrative regulation[~~and with the signature of a custodial parent or legal guardian, shall be obtained for all minors prior to application of a tattoo~~.

~~(2) Tattooing shall not be applied on skin which has a rash, pimples, evidence of infection, open lesions, mole, sunburn, or manifests any evidence of unhealthy conditions without written clearance by a medical physician licensed by the Kentucky Board of Medical Licensure~~].

Section 8. Client Information and Records. (1) Before receiving a tattoo, the client shall be provided written information that tattooing poses a risk of infection, that tattooing is permanent**,** and that removal of a tattoo may leave scars.

(2) Before the application of a tattoo, the client shall be provided **written,**[~~written and~~] verbal**, or electronic** aftercare instructions that includes the following information:

(a) Information on the care of the site of the tattoo;

(b) Instructions on possible side effects;

(c) Information on any restrictions;

(d) Information on signs and symptoms of infection; and

(e) Instructions to consult a physician if signs and symptoms of infection such as fever, excessive swelling, excessive redness, or drainage occur.

(3) A record of all clients who have received any tattoos shall be kept by the studio owner. The record shall include the following information:

(a) Studio name and ***certification[~~registration~~]*** number;

(b) The date the procedure was performed;

(c) Client's name, date of birth, address, and **phone[~~telephone~~]** number;

(d)1. Copy of client's government issued photo ID, if applicable; or

2. Copy of custodial parent or legal guardian's government issued photo ID;

(e) Name of the tattoo artist who performed the procedure[~~procedure(s)~~];

(f) The type, location**,** and description of the procedure; **and**[~~and~~]

(g)**[~~The lot number of instruments and inks used; and~~**

~~(h)~~] Client's attestation[~~attestment~~] to the fact that the client is:

1. Not intoxicated or under the influence of drugs or alcohol;

2. Not pregnant; and

3. Not currently taking medications such as anticoagulants that thin the blood or interfere with blood clotting[~~with signature~~].

(4) Records of each client shall be**[~~typed or printed in ink prior to any procedure being performed.~~**

~~(5) (a) All records shall be~~] maintained [~~in a bound log~~] for two (2)[~~five (5)~~] years. **(5)[~~(b)~~]**[~~The current calendar year~~] Client **records and[~~,~~]** consent and other required records shall be**[~~kept at the certified studio and shall be~~]** made readily available to inspectors.[~~All records for the previous four (4) years may be maintained off site and shall be made readily available upon request of the cabinet, district or local health department.~~]

Section 9. Disposal of Contaminated Wastes. All wastes produced during the process of tattooing shall be separated for disposal into two (2)[~~three (3)~~] classifications as **established in this section.**[~~**follows:**~~]

(1) Contaminated sharps shall be disposed of by using a licensed medical waste disposal company.

(2)[~~Regulated waste, as defined by the Department of Labor, Occupational Safety and Health Administration, shall be disposed of in accordance with the bloodborne pathogens regulation 19 C.F.R. 1910.1030 as adopted in Kentucky by 803 KAR 2:320.~~

~~(3)~~] Contaminated waste[~~, other than contaminated sharps and regulated waste,~~] shall be**[~~sprayed with an approved disinfectant~~]**[~~a dilution of five and one-fourth (5.25) chlorine bleach, with a range of fifty (50) parts per million to 100 parts per million~~]**[~~, double~~]** bagged, securely tied**,** and disposed of daily in a trash container that prevents unauthorized access. This material shall be disposed of in an approved site by a general trash hauler.

Section 10. Standard Operating Procedures for Tattooing. (1) Tattooing shall not be applied on skin **that[~~which~~]** has a rash, pimples, evidence of infection, open lesions,**[~~mole,~~]** sunburn, or manifests any evidence of **an** unhealthy **condition[~~conditions~~]** without written clearance by a **licensed medical provider[~~medical physician licensed by the Kentucky Board of Medical Licensure~~]**.

(2)**[~~Tattooing of scarred skin is prohibited.~~**

~~(3)~~] The tattoo artist shall follow the procedures listed in this section in preparation for tattooing**.[~~:~~]**

(a)[~~(1)~~] The tattoo artist and the client shall not eat, drink**, or** use tobacco products, an electronic cigarette, or other vapor producing product[~~smoke~~] in the workstation.

(b)[~~(2)~~] The tattoo artist shall wash hands and forearms**[~~according to Section 1(9)~~]**[~~(8)~~]**[~~of this administrative regulation~~]** prior to and after every procedure.

(c)[~~(3)~~] The tattoo artist shall wear new clean disposable examination gloves for every client. If a glove is pierced, torn, **or** contaminated in any way, or if there is an interruption in the application of the tattoo**:**

1.[~~,~~] Both gloves shall be removed immediately **and[~~,~~]**[~~and~~] discarded**;**

2. The[~~,~~] hands and forearms **shall be** washed**;[~~in accordance with Section 1(9) of this administrative regulation~~]** and

3. New, clean examination gloves **shall be** used.

(d)[~~(4)~~] The tattoo artist shall use a new [~~or~~] disposable lap cloth, drape, or apron for each client. All lap cloths, drapes**,** and aprons shall be stored in a closed cabinet or container until used.

(e)[~~(5)~~] The tattoo artist shall wear clean clothing.[~~Shirts shall have short sleeves, pants shall be to the ankle in length, and feet shall be completely enclosed in shoes.~~]

(3)[~~(4)~~][~~(6)~~] All instruments, equipment**,** and items to be used in the procedure shall be placed on a disposable, plastic backed towel.

(4)[~~(5)~~][~~(7)~~] All inks, dyes, and pigments used in a procedure shall be:

(a) Nontoxic;

(b) Dispensed from containers in a manner to prevent contamination of the unused portion in the supply bottle; and

(c) [then] Discarded:

1. After the procedure; or

2. When the original container label becomes unreadable.

(5)[(6)] Inks, dyes, and pigments transferred from bulk containers **shall[must]** be labeled with:

(a) Manufacturer name;

(b) Lot number; and

(c) A statement of nontoxicity.

(6)[(7)] All devices used to apply inks, dyes, or pigments shall be designed to prevent backflow of inks or pigments into the machine.

(7)[(8)] If a workstation rinse cup is used, [alone or in an ultrasonic cleaner,] a fresh cup shall be used for each client[,] and discarded immediately upon completion of the procedure.

(8)[(9)] All single-use ointment tubes, applicators**,** and supplies placed on the plastic backed towel shall be discarded immediately after use.

(9)[(10)][Inks, dyes or pigments that are prepared by the tattoo artist shall be nontoxic.

(11)] Tattoo needles shall be used once and discarded. [If the needlebar is reused, the needlebar shall be cleaned and sterilized before the needles are removed.]

(10)[(11)][(12)] If the tattoo artist uses any reusable components, autoclave[sterilization] equipment[meeting the requirements in the definition of "sterilization"] shall be required.

(11)[(12)][(13) All devices used to apply pigments shall be designed to prevent backflow of pigments into the machine.

(14) Position] The sharps container and waste receptacle shall be positioned to be within easy reach and in a manner to prevent contamination.

Section 11. Application of the Tattoo. The tattoo artist shall use the procedure in this section when applying a tattoo**.[:]** (1) Disinfect the chair or table and tray[procedure area and lay out plastic film or a clean, disposable plastic backed towel].

(2)[Wash hands and forearms in accordance with Section 1(9)[(8)] of this administrative regulation.

(3)] Position the client [comfortably].

(3)[(4)] Arrange all instruments and supplies to be used in the procedure on plastic film or on a clean, disposable plastic backed towel within easy reach.

(4)[(5)] Wash hands and forearms**[in accordance with Section 1(9)]**[(8)]**[of this administrative regulation]**, and use new, clean examination gloves.

(5)[(6)] Gently clean the client's skin with soap and water and apply an antiseptic that is appropriate for the area where the tattoo is to be applied. If shaving is necessary, use a new[anew], single-use disposable razor.

(6)[(7)] Acetate or other reusable stencils shall not be used. Place the design on the skin by one (1) of the following methods:

(a) Free-hand drawing using a new disposable marker; or

(b) Apply a single-use hectographic or tissue stencil using an[antimicrobial soap or other] approved product dispensed from a container in a manner that does not contaminate the unused portion.

(7)[(8)] Remove gloves, wash hands**[in accordance with Section 1(9)]**[(8)]**[of this administrative regulation]**, and use new clean examination gloves.

(8)[(9)] Open sterile needles in front of the client and place them into the tattoo machine without touching the end of the needles.

(9)[(10)] Apply the tattoo.

(10)[(11)] Apply a thin layer of suitable[antibiotic] cream**[using a swab or cotton ball]** and if appropriate, cover the area with a suitable nonstick dressing**[that is held in place with suitable skin tape]**. Plastic film **intended for household use** shall not be used.

(11)[(12)] When the tattooing is complete, the tattoo artist shall answer any questions and provide **the** client with[written] instructions regarding the tattoo and aftercare.

(12)[(13)] Immediately after the client leaves the workstation, the tattoo artist shall break down the workstation, properly dispose of any sharps, soak any reusable instruments for later cleaning, and clean and disinfect any surface that may have become contaminated.

Section 12. Standard Operating Procedures for a Mobile Studio. (1) **An application[Applications]** for mobile studio certification shall be:

(a) On DFS-200**,** Application for Permit **or[/]** License**[, incorporated by reference in 902 KAR 10:040]**;

(b) Submitted to the local health department in the district or county where the mobile studio ***owner resides[is located]***; and

(c) Accompanied by a fee of:

1. $400 for the studio with one (1) to four (4) work stations; and

2. An additional fifty (50) dollars **for** each additional work station over four (4)[The mobile studio shall be registered with the local health department in each district or county in which the studio is operated, and pay the appropriate fees].

(2) ***The mobile studio certification shall be:***

(a) Valid for statewide operation;

(b) Prominently displayed to the public in the mobile studio; and

(c) Nontransferable from one (1) person to another.

(3) The mobile studio certificate shall expire December 31 each year.

(4) A late renewal fee of $100 shall be assessed on each mobile studio registration renewal application not received by January 31 each year.

(5) If not currently registered in accordance with Section 2(6) of this administrative regulation, the tattoo artist shall be registered with the local health department in each district or county where the mobile studio is operated, and pay the appropriate fees.

(6)[(3)] The mobile studio shall be used exclusively for performing tattooing. Habitation, cooking,**[pets]** and animals except service animals shall not be allowed in the mobile studio.

(7)[(4)] The mobile studio shall:

(a) Meet the sterilization, operating, **and** clientele requirements, and tattoo performance procedures[same requirements] as a stationary studio; and

(b) Be inspected by the local health department prior to operation.[(3) All sewage shall be stored in a storage tank with a capacity at least 100 percent greater than the capacity of the on-board potable water, and shall be discharged into a public sewage system.]

(8)[(5)][(4)] Any on-board restroom shall be supplied with hot running water**[at least 120 degrees Fahrenheit]**[° F] and cold running water**[less than 101 degrees Fahrenheit]**[° F as in subsection (6) of this section] and shall be supplied with toilet paper, liquid[antibacterial or antimicrobial] soap,[and] single-use paper towels from a sanitary dispenser, **a** covered waste receptacle, and a self-closing door.

(9)[(6)][(5)] If the vehicle lacks an on-board restroom, the owner shall not operate the studio unless it is within 200 feet of a public restroom with hand-washing facilities.

(10)[(7)][(6)] All plumbing shall comply with the requirements of**[the]**[State Plumbing Code,] 815 KAR Chapter 20.

(11)[(8)](a)[(7)] Each mobile studio shall have a potable water system under pressure.

(b) The system shall be of sufficient capability to furnish enough hot and cold water for hand washing, instrument cleaning, and sanitization pursuant to the requirements of this administrative regulation.

(c) The water inlet shall be:

1. Located in a position that it will not be contaminated by waste discharge, road dust, oil, or grease; and

2.[, and it shall be] Provided with a transition connection of a size**[of]** or type that will prevent its use for any other service.

(d) All water distribution pipes or tubing shall be constructed and installed in accordance with[the State Plumbing Code,] 815 KAR Chapter 20.

(e) Hoses, if used, shall bear the National Sanitation Foundation potable water (NSF-pw) mark and be fitted[be food grade,] with a backflow prevention device.

(12)[(9)](a)[(8)] Each mobile studio shall have a permanently[-] installed retention tank that is at least fifty (50)[100] percent larger than the potable water supply tank.

(b) Wastewater shall be discharged into a public sewage system.

(c) Liquid wastewater shall not be discharged from the retention tank if the mobile studio is in motion.

(d) All connections on the vehicle for servicing the mobile studio waste disposal shall be of a different size or type than those used for supplying potable water to the mobile studio.

(e) The wastewater connection shall be located below the water connection to preclude contamination of the potable water system.[(9) The vehicle shall be used exclusively for performing tattooing. Habitation, cooking, pets and animals shall not be allowed in the mobile studio.]

Section 13. Standard Operating Procedures for a Temporary Permit[Studio]. (1) The event organizer or studio owner for the event shall submit to the local health department in the district or county where the temporary studio is to be located:

(a) A DFS-200**,** Application for Permit **or[*/*]** License,**[incorporated by reference in 902 KAR 10:040,]** accompanied by a **$100[$250]** ***permit[registration]*** fee for each workstation;

(b) A layout of the event floor showing where the tattoo artists will be tattooing;

(c) A list of all tattoo artists participating in the event that includes:

1. Name of tattoo artist;
2. Artist date of birth;
3. Home address;
4. **Phone[Telephone]** number;
5. Email address;
6. Proof of artist completion of **bloodborne[blood-borne]** pathogen training;
7. Studio name;
8. Studio address;
9. Studio owner name; **and**
10. Description of procedures to be performed at the event; and

(d) A copy of the client consent form to be used during the event.

(2) The event organizer or studio owner for the event shall:

(a) Be responsible for ensuring that the event is run in a manner that is safe for the tattoo artists and the general public;

(b) Provide a separate cleaning and sterilization room as a backup, unless only pre-sterilized disposables are used for the event;

(c) Provide an approved autoclave that has certification of a negative spore test within thirty (30) days prior to the event;

(d) Arrange for pick-up and disposal of contaminated waste in accordance with Section 9 of this administrative regulation; and

(e) Ensure the cleaning and sterilization room, if used, is disinfected at the close of the event.

(3) Prior to the event,[The event organizer or studio owner shall provide a list of all tattoo artists participating in the event to the local health department in the district or county where the event is being held that includes the following information for each participating tattoo artist:

(a) Name of exhibitor/tattoo artist;
(b) Date of birth;
(c) Home address;
(d) Business name;
(e) Business address;
(f) Home and work telephone numbers;
(g) Email address if available;
(h) Description of procedures to be performed at the event; and
(i) Copy of current tattoo artist's registration.

(2) The event coordinator or studio owner shall provide a layout of the event floor to the local health department in the district or county where the event is being held showing where the tattoo artists will be tattooing.

(3) Each participant who performs tattooing shall bring enough presterilized instruments and supplies to last for the whole event.

(4) The event coordinator or studio owner shall provide a separate cleaning and sterilization room as a back-up for use by participants who have used all of the presterilized instruments and supplies that were brought to the event. If used, the cleaning and sterilization room shall be disinfected at the close of the event. Presterilized disposable instruments and equipment shall not be reused.

(5) The event coordinator or studio owner shall provide an approved autoclave that has certification of a negative spore test within thirty (30) days prior to the event.

(6) The event coordinator or studio owner shall provide for pick-up and disposal of contaminated waste in accordance with Section 9 of this administrative regulation.

(7) Temporary studios located at locations such as fairs, festivals, or flea markets, shall comply with all requirements for a certified studio in accordance with Sections 1 through 11 of this administrative regulation in their entirety.]

(8)] the tattoo artist participating in the event[and the studio] shall:

(a) Be registered in accordance **with[of]** Section 2 of this administrative regulation with the local health department in the[each] district or county where[in which] the temporary studio is operated;

(b) Submit ***the[a]*** $100 registration fee ***required by Section 2(6)(b) of this administrative regulation***; and

(c)1. Ensure an adequate supply of presterilized instruments and supplies are available to last the length of the event; or

2. Provide certification of an autoclave negative spore test completed within thirty (30) days prior to the event if tattooing with reusable instruments.

(4)[, and pay the appropriate fees.

(9)] The temporary workstation shall meet the following minimum conditions:

(a) Be at least **5[6]**[10] ft. x 10 ft., and be constructed in a manner to separate the tattoo artist from the public in such a way as to protect the procedure area from contamination, and to prevent accidental exposure of the public to potentially-infectious materials created during tattooing;

(b)**[1.]** Have a floor and sides that are**:**

1. Smooth, nonporous**,** and easy to clean; or

2.**[Be]** Covered in plastic if the floor and sides are not smooth, nonporous**,** and easy to clean**;[.]**

(c) Have at least 100 foot-candles of light available at the procedure level[where the tattoo, body piercing or the application of permanent makeup is conducted]; **and**

(d) Be equipped with a hand-wash facility that[. A hand-wash facility at the minimum] shall be:

1.**a.** A portable handwashing station; or

b.[2.] A minimum of a one (1) gallon container with a lever-type spigot, filled with warm potable water that**:**

(i)[;

a.] Is placed at least thirty (30) inches off the floor to allow for easy use;

(ii) Is[b.] supplied with a bucket to catch the wastewater; and

(iii)[c.] Has a minimum reserve of five (5) gallons warm potable water available**; and[.]**

2.[3.] Supplied with**:**

a.[consist of] Liquid[antibacterial or antimicrobial] soap; and

b.[4.][,] Single-use paper towels from a sanitary dispenser.[, and an insulated five (5) gallon container with a lever-type spigot, filled with warm potable water 101-120°F, and a bucket to catch the wastewater. The water container shall be placed at least thirty (30) inches off the floor to allow for easy use, and shall be filled regularly to ensure an adequate supply of warm water for hand washing;]

(5)[(e)] Wastewater shall be disposed of into a public sewerage system, if available. If a public sewerage system is not available, disposal shall be made into a private system designed, constructed**,** and operated pursuant to the requirements of**[the]** [Cabinet for Natural Resources and Environmental Protection administrative regulations] 401 KAR Chapter 5 and [the Cabinet for Health Services administrative regulations] 902 KAR Chapter 10[;

~~and~~

~~(f) Shall be supplied with an adequate supply of paper or plastic barrier film to protect equipment, pigment supply bottles, and any other item that must be protected to prevent cross-contamination~~].

Section 14. Inspection of Studios. (1) At least twice per year, the cabinet **or the[,]**[~~or the~~] local or district health department shall inspect each studio and shall make as many additional inspections and re-inspections as are necessary for the enforcement of this administrative regulation.

(2)(a) The cabinet **or the[,]**[~~or the~~] local or district health department inspector shall record the inspection findings[~~in writing~~] on an inspection report form DFS-342**[, incorporated by reference]**[~~and which shall constitute a written notice~~].

(b) The inspection report form shall:

1. Summarize the requirements of this administrative regulation; and [~~shall~~]

2. Set forth a weighted point value for each requirement.

(3) The rating score of the studio shall be the total of the weighted point value for all violations, subtracted from 100.

(4) The inspector shall provide the original[~~of the~~] inspection report to the certificate holder or **the holder's[his]** designee. The findings shall:

(a) Set forth the specific violations if found; ***and***

(b) Establish a[~~specific and reasonable~~] period of time for the correction of the violations specified, pursuant to the**[following]** provisions **established in this paragraph.[**:**]**

1. If the rating score of the studio is eighty-five (85) or more, all violations of one (1) and two (2) point weighted items shall be corrected[~~as soon as possible and~~] before the next routine inspection.

2. If the rating score of the studio is at least seventy (70) but not more than eighty-four (84), all violations of one (1) and two (2) point weighted items shall be corrected[~~as soon as possible and~~] within a period not to exceed thirty (30) days.

3. Regardless of the rating score of the studio, all violations of three (3) or four (4) point weighted items shall be corrected within[~~a time specified by the cabinet and within~~] ten (10) days.

4. If the rating score of the studio is less than seventy (70), the studio shall be issued a notice of intent to suspend the studio certification. The certification shall be suspended within ten (10) days after receipt of the notice unless a written request to an administrative conference is filed with the local or district health department within the ten (10) day period.

(5)[~~(3)~~] Notices provided for under this administrative regulation shall be deemed to have been properly served if the original of the 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.

(6)[~~(4)~~] Failure to comply with any notice issued pursuant to the provisions of this administrative regulation may result in suspension or revocation of the certificate or the individual's registration.

(7)[~~(5)~~] Temporary and mobile studios shall correct any violative conditions within twenty-four (24) hours.

Section 15. Suspension of Studio Certificates or Individual's Registration. (1) The studio certificate or the individual's registration shall be suspended immediately upon notice to the ***certificate holder or registered individual[~~holder~~]*** if:

(a) The cabinet **or the[,]**[~~or the~~] local or district health department has reason to believe that an imminent public health hazard exists;

(b)[~~, if~~] The studio certificate holder or registered individual has interfered with the cabinet **or the[,]**[~~or the~~] local or district health department in the performance of its duties; or

(c)[~~if~~] An inspection of a studio reveals a rating score of less than sixty (60).

(2)[~~, the certificate or the individual's registration shall be suspended immediately upon notice to the holder. If this occurs,~~] The studio certificate holder or individual registration holder whose certificate or registration has been suspended may request an administrative conference in accordance with 902 KAR 1:400[~~Section 19(2) of this administrative regulation. The conference shall be granted as soon as practical and before ten (10) days~~.

~~(2) In all other instances of a violation of the provisions of this administrative regulation, the cabinet or the local or district health department shall serve on the certificate holder or registered individual a written notice specifying the violation and shall afford the certificate holder or registered individual a reasonable opportunity for correction~~].

(3) The cabinet **or the[,]**[~~or the~~] local or district health department shall notify, in writing, the studio certificate holder or registered individual who fails to comply with a written notice issued under the provisions of this section, that the studio certificate or individual's registration shall be suspended at the end of ten (10) days following service of this notice unless a request for an administrative conference is requested.

(4)[~~Section 16. Reinstatement of Suspended Certificates or an Individual's Registration.~~] A person whose studio certificate or individual registration has been suspended may, at any time, make application for[~~a reinspection for the purpose of~~] reinstatement of the certification or registration in accordance with 902 KAR 1:400**,** Section 2[~~The application for reinstatement shall be submitted on Form DFS-215, provided by the cabinet. Within ten (10) days following receipt of an Application for Reinstatement, the cabinet or the local or district health department shall make a reinspection. If the applicant is found to comply with the requirements of this administrative regulation, the certificate or individual's registration shall be reinstated~~].

Section 16.[~~17.~~] Revocation of a Studio Certificate or an Individual's Registration. (1) For serious or repeated violations of any of the requirements of this administrative regulation, or for interference with agents of the cabinet **or the[,]**[~~or the~~] local or district health department in the performance of its duties, a studio certificate or an individual's registration may be permanently revoked.

(2) Prior to this action, the cabinet **or the[,]**[~~or the~~] local or district health department shall notify the studio certificate holder or registered individual, in writing, stating the reasons for which the studio certification or individual registration is subject to revocation and advising that the studio certification or individual registration shall be permanently revoked at the end of ten (10) days following service of the notice, unless a request for an administrative conference is filed with the cabinet by the certification or registration holder within the ten (10) day period.

(3) A studio certification or individual registration may be suspended for cause pending its revocation or an administrative conference relative to the revocation.

Section 17.[~~18.~~] Appeals.[~~(1)~~] A studio certificate or individual registration holder or an applicant aggrieved by a decision of the cabinet **or the[,]** [~~or~~] local or district health department may request [~~either~~] an administrative hearing in accordance with 902 KAR 1:400[~~conference or an administrative hearing. The request shall be submitted within ten (10) days of receipt of a written notice of:~~

~~(a) A violation;~~

~~(b) Suspension or revocation of a certificate or individual's registration;~~

~~(c) Denial to renew a certificate or individual's registration; or~~

~~(d) Denial of an initial application for a certificate or individual's registration.~~

~~(2) Administrative conference. An administrative conference shall be conducted in accordance with 902 KAR 1:400, Administrative hearings, with the following exceptions:~~

~~(a) The administrative conference shall be less formal than an administrative hearing;~~

~~(b) The matter at issue shall be discussed before a representative of the Department for Public Health or the local or district health department; and~~

~~(c) Participants in the discussion shall be:~~

~~1. An agent of the cabinet or the local or district health~~

~~department; and~~

~~2. The certificate holder, individual registered, or the applicant;~~

~~(d) A request for a conference shall be:~~

~~1. In writing; and~~

~~2. Submitted or addressed to the local or district health department that issued or gave notice of the violation, suspension, or revocation; and~~

~~(e) A certificate or registration holder or an applicant who does not agree with final ruling of the conference report issued by the local or district health department may appeal by requesting an administrative hearing.~~

~~(3) Administrative hearing.~~

~~(a) Conduct of the administrative hearing shall be pursuant to 902 KAR 1:400, Administrative hearings and KRS Chapter 13B; and~~

~~(b) A request for an administrative hearing shall be:~~

~~1. In writing;~~

~~2. Submitted or addressed to the Commissioner, Department for Public Health, 275 East Main Street, Frankfort, Kentucky 40621; and~~

~~3. Accompanied by a copy of the notice of violation, notice to suspend or revoke, letter denying an application, or the conference hearing report~~].

Section 18.[~~19.~~] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) **DFS-200, "Application for Permit or License", 07/19;**

(b)[~~DFS-200, Application for Studio Certification (Rev. 7-01);~~

~~(b)~~] DFS-303, "Application for Certification **or[/]** Registration"**, [~~To: (~~**]Rev. 2/19[~~7-03~~]**[)]**; and

(c)[~~(b)~~][~~(c)~~] DFS-342, "Tattoo and Body Piercing[~~,~~] Studio Inspection Report"**,[(]**Rev. 2/19[~~6-03~~]**[)]**[~~;~~

~~(d) DFS-214, Enforcement~~]~~Notice (Rev. 8-96);~~

~~(e) DFS-212, Request for Conference (Rev. 10-96);~~

~~(f) DFS-213, Notice of Conference (Rev. 8-96); and~~

~~(g) DFS-215, Application for Reinstatement (Rev. 2-95)~~].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department for Public Health, Division of Public Health Protection and Safety, Food Safety Branch, 275 East Main Street, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.

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

APPROVED BY AGENCY: July 12, 2019

FILED WITH LRC: July 15, 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.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Public Health Protection and Safety
(As Amended at ARRS, August 9, 2019)

902 KAR 45:070. Body piercing and ear piercing.

RELATES TO: KRS 194A.050[~~Chapter 13B~~], 211.005, 211.015, 211.025, 383.085, 387.010, 28 C.F.R. 36.104[~~211.760~~], 29 C.F.R. 1910.1030

STATUTORY AUTHORITY: KRS 194A.050(1), 211.760[~~(3), EO 2004-444~~]

NECESSITY, FUNCTION AND CONFORMITY: KRS 194A.050(1) requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet.[~~EO 2004-444, effective May 11, 2004, reorganized the Cabinet for Health and Family Services and placed the Department for Public Health under the Cabinet for Health and Family Services.~~] KRS 211.760(2) requires nonmedical persons who engage in or carry on any business of body piercing to register with a local health department. KRS 211.760(3) requires the cabinet to promulgate administrative regulations relating to: (a) health and cleanliness of places of business; (b) sterilization of body piercing instruments and equipment; (c) procedures to prevent the spread of disease; (d) procedures to prevent body piercing of minors without the written notarized consent of a custodial parent or legal guardian; and (e) other administrative regulations as may be necessary to protect public health. This administrative regulation establishes the standards required by KRS 211.760(3).

Section 1. Definitions. (1) "Antiseptic" means a substance applied to the skin that reduces the number of microorganisms.

(2) "Autoclave" means **a device intended to sterilize products by means of pressurized steam[~~equipment sold as sterilizing equipment for medical instruments and employs steam under pressure to sterilize~~]**.

(3) "Blood" is defined by 29 C.F.R. 1910.1030[~~means human blood or any human body fluid or tissue that is visibly contaminated with blood~~].

(4) "Bloodborne **pathogen training" means training that meets the requirements established in[~~pathogens" is defined by~~]** 29 C.F.R. 1910.1030[~~pathogen(s)" means the pathogenic microorganisms that are present in human blood that can cause disease in humans such as Hepatitis B (HBV), Hepatitis C (HCV), and human immunodeficiency virus (HIV)~~].

(5) "Body piercer" means a person registered by the local health department.

(6) "Body piercing" is defined by KRS 211.760(1)(a).

(7) "Contaminated" means the presence of or reasonably-expected presence of blood or other potentially-infectious material in or on the surface of an item.

(8) "Contaminated sharps" is defined by 29 C.F.R. 1910.1030.[~~means any contaminated object that can penetrate the skin such as piercing needles and razors.~~]

(9) "Contaminated waste" means any material to be disposed of that has been soiled by blood or other potentially-infectious material in the process of body piercing.

(10) "Disinfectant" means a **product that is tuberculocidal and registered with the federal Environmental Protection Agency as indicated on the label for use in disinfection[~~chemical agent that destroys disease-causing pathogens or other harmful microorganisms but does not ordinarily kill bacterial spores. Approved disinfectants are:~~**

~~(a) List D: the EPA's Registered Antimicrobial Products Effective Against Human HIV-1 and Hepatitis B Virus; and~~

~~(b) List E: the EPA's Registered Antimicrobial Products Effective Against Mycobacterium tuberculosis, Human HIV-1 and Hepatitis B Virus~~].

(11)[~~(10)~~] "Ear piercing" means a process by which the lobe or outer perimeter of the ear is pierced by use of a hand-pressured instrument utilizing presterilized earrings.

(12)[~~(11)~~] "Ear piercing instrument" **or "piercing instrument"** means a hand-pressured instrument**, which[~~that~~]** does not make contact with the client, utilizing encapsulated presterilized earrings used exclusively for piercing the lobe[~~and outer perimeter~~] of the ear.**[~~This may sometimes be referred to as a "piercing gun".~~]**

(13)[~~(12)~~] "Handwashing" means the **act of cleaning the hands for the purpose of removing dirt, soil, or microorganisms through the use of soap, warm water, and friction[~~following process:~~**

~~(a) Wetting hands and forearms with warm running water between~~][~~,~~]**[~~101 degrees Fahrenheit and~~]**[~~–~~]**[~~120 degrees Fahrenheit~~]**[~~° F~~]**[~~;~~**

~~(b) Applying liquid~~][~~antibacterial or antimicrobial~~]**[~~soap and thoroughly distributing over hands and forearms;~~**

~~(c) Rubbing hands vigorously for twenty (20) seconds, covering all surfaces of the hands, forearms and fingers, paying special attention to the thumbs, backs of fingers, backs of the hands, and between the fingers;~~

~~(d) Rinsing hands and forearms thoroughly to remove residual soap; and~~

~~(e) Drying hands and forearms with one of the following: individual, disposable towels; a continuous towel system that~~

supplies the user with a clean towel; a heated-air hand drying device; or a hand drying device that employs an air-knife system that delivers high velocity, pressurized air at ambient temperatures][paper towels dispensed from sanitary dispensers].

(14)[(13) "Health care professional" means a physician, physician assistant, nurse, doctor of chiropractic, mental health professional, optometrist, dentist, or allied health professional who is licensed in Kentucky.

(14) "High-level disinfection" means the elimination of pathogenic microorganisms except for bacterial spores from inanimate objects, rendering them safe to handle.

(15)] "Instrument" means any body-piercing implement that comes into contact with blood or**[nonintact]** skin **to be pierced** such as needles, needle tubes, forceps, hemostats, tweezers, or other implements used to puncture or pierce the human body.

(15)[(16)] "Jewelry" means any personal ornament or decoration inserted into a newly-pierced area.

(16)[(17)] "Minor" is defined **by[at]** KRS 387.010(1).

(17)[(18)] "Mobile studio" means a body-piercing studio that is designed to be readily movable.

(18)[(19)]**["Nonintact skin" means human skin that has an open wound from a cut, burn, rash, infection, or any other condition that has altered the skin.**

(19)][(20) "Piercing gun" means a handheld tool that is used exclusively for piercing the lobe and outer perimeter of the ear.

(21)] "Purchased presterilized" means procedure set-ups that are sold individually packaged, processed, and marked with a sterilization lot number, and expiration date to render them free of all microorganisms.

(19)[(20)][(22) "Registrant" means the individual duly authorized to engage in the business of body piercing or ear piercing.

(23)] "Registration" means the issuance of a document by the local health department to a body piercer or ear piercer authorizing the person named in the document to engage in the business of body piercing or ear piercing.

(20)[(21)] "Service animal" is defined by 28 C.F.R. 36.104.

(21)[(22)][(24) "Regulated waste" means waste as defined by the Department of Labor, OSHA, Bloodborne Pathogens Regulation, 29 C.F.R. 1910.1030 and incorporated by reference in 803 KAR 2:320.

(25) "Sanitize" means a bactericidal treatment to clean surfaces of equipment, approved by the local health department for being effective in destroying microorganisms, including pathogens, to a safe level.

(26)] "Sterilization" means **a validated process used to render a product free from viable microorganisms[the use of an autoclave to kill microbial life by holding instruments and equipment under steam pressure for a minimum of fifteen (15) minutes, at fifteen (15) pounds of pressure, at a temperature of 250 degrees Fahrenheit or 121 degrees Celsius]**.

(22)[(23)][(27)] "Studio" **means[is]** a facility as defined by KRS 211.760(1)(b).

(23)[(24)][(28)] "Studio certification" means the issuance of a document by the local health department to a studio owner certifying that the studio, after inspection, was in compliance with the applicable provisions of this administrative regulation.

(24)[(25)][(29)] "Studio owner" means:

(a) An owner of a facility where body piercing or ear piercing is conducted;**[or]**

(b) A sole proprietor who performs body piercing or ear piercing; or

(c) A person who employs body piercers or ear piercers.

(25)[(26)][(30)] "Temporary permit[studio]" means a permit to operate at a fixed location for[facility setup that operates] no more than seven (7) calendar days, **and that:**

(a) Is nontransferable**;[,]** and

(b) Cannot be renewed for[in a] ninety (90) days after the expiration[day period].

(26) "Ultrasonic cleaner" means a device that transmits high-energy, high-frequency sound waves into a fluid-filled container, used to remove deposits from instruments and appliances.

Section 2. Registration. (1)[Except as otherwise provided in Section 12 of this administrative regulation, an applicant shall be at least eighteen (18) years of age at the time of application.

(2) Pursuant to KRS 211.760(2),] A person shall not act as or engage in the business of body piercing or ear piercing unless registered with the local health department in the district or county where the person is to body pierce or perform ear piercing.

(2) All body piercing or ear piercing shall be under the auspices of a Kentucky certified studio.

(3) **A[No]** body piercer or ear piercer shall **not** engage in the act of piercing unless that person has proof of completion of**[a]** bloodborne pathogen training**[that is in compliance with 29 C.F.R. 1910.1030]**.

(4) The body piercer or ear piercer shall maintain documentation of completion of bloodborne pathogen training at the studio.

(5) An applicant for registration shall be at least eighteen (18) years of age at the time of application.

(6) An applicant for registration[for body piercer or ear piercer] shall submit[a completed Application Form DFS-303, incorporated by reference,] to the local[or district] health department in the district or county where the applicant intends to perform body piercing or ear piercing:

(a) A completed DFS-303**,** Application for Certification **or[/]** Registration, incorporated by reference in 902 KAR 45:065;

(b) Payment of $100 registration fee; and

(c) Proof of completion of approved bloodborne pathogen training as required by subsection **(3)[(2)]** of this section.

(7)[(4) Pursuant to KRS 211.760(2), payment of the registration fee shall be made to the local or district health department where the applicant intends to body pierce or perform ear piercing.

(5)] The body piercer or ear piercer registration shall be:

(a) Mailed to the owner of the Kentucky certified studio listed on the application for registration;

(b) Prominently displayed to the public in the workstation; and

(c) Nontransferable from one (1) person to another, or from one (1) district or county to another.

(8) **A registration**[(6) All body piercing or ear piercing shall be under the auspices of a Kentucky certified studio.

(7) A registrant shall post his registration document prominently at their workstation.

(8) A registration shall not be transferable from one (1) person to another, or from one (1) district or county to another.

(9) Pursuant to KRS 211.760(2),]**[Registrations]** shall be valid for[expire] one (1) calendar year and expire on December 31st of each year[from the date of issuance].

(9) A late **renewal[penalty]** fee of fifty (50) dollars shall be assessed on **each[all]** body piercer **or[and]** ear piercer certification renewal **application[applications]** not received by**[January 30th]** ***[or postmarked on]***[**after**] January 31st each year.

Section 3. Studio Certification. (1) A person shall not engage in the business of body piercing or ear piercing unless the owner of the facility holds a studio certification issued by the local health department in the district or county where the person is to body pierce or perform ear piercing.

(2) A holder of a studio certification issued under this administrative regulation shall not allow **a person[persons]** to engage in body piercing or ear piercing unless the individual is registered in accordance with Section 2 of this administrative regulation.

(3) **An application[Applications]** for studio certification shall be:

(a) On DFS-200**,** Application for Permit **or[/]** License, incorporated by reference in 902 KAR **45:065[10:040]**;

(b) Submitted to the local health department in the district or county where the studio is located; and

(c) Accompanied by an annual inspection fee of:

1. $400 for a body piercing studio with one (1) to four (4) work stations;

2. $200 for an ear piercing studio with one (1) to four (4) work

stations; and

3. An additional fifty dollars ($50) for each additional work station over four (4).

(4) A studio certification shall not be issued or renewed unless the studio has been inspected and found to be in compliance with the provisions of this administrative regulation.

(5)[(3)] A studio certification shall be:

(a)[required for each district or county in which a registrant performs any activity regulated by this administrative regulation.

(4) The studio certification shall be] Prominently displayed to the public in the studio; and

(b)[.

(5) A studio certification is] Nontransferable from one (1) person to another, or from one (1) location to another.

(6)[A holder of a studio certification issued under this administrative regulation shall not allow persons to body pierce or perform ear piercing unless registered in accordance with Section 2 of this administrative regulation.

(7) Payment of an annual inspection fee of $100 shall be made to the local health department in the district or county where the person is to body pierce or perform ear piercing. Payment of an annual inspection fee of twenty-five (25) dollars shall be made in the district or county where the person is to perform ear piercing only.

(8) Applications for studio certification shall be submitted to the local health department on Application Form DFS-200, incorporated by reference.

(9)] The studio certification shall be valid for one (1) calendar year and expire December 31st each year.

(7) A late **renewal[penalty]** fee of one-half (1/2) the annual inspection fee shall be assessed on **each[all]** studio registration renewal **application[applications]** not received by**[January 30th]*[or postmarked on]*[after]** January 31st each year[one (1) year from the date of issuance].

Section 4. Studio[Facility] Requirements. (1) A studio[facility] shall:

(a) Be kept clean and in good repair;

(b) Be free of insect and rodent infestation;

(c) Store only items necessary to its operation and maintenance;

(d) Provide artificial light of at least twenty (20) foot-candles[, measured at a height of thirty-six (36) inches from the floor];

(e) Be well ventilated;

(f) Not permit the presence of **an[a pet or other]** animal in the studio, except for a service animal[:

1. A trained guide or assistance animal for the disabled; or

2. Fish in an aquarium in the waiting area];

(g) Not use a room otherwise used as living or sleeping quarters;[.]

(h) Use a solid, self-closing door to separate living or sleeping quarters from the business operation;[.]

(i) [Have an entrance allowing direct entry into the facility, except for a facility existing on the effective date of this administrative regulation which is exempt from this requirement;

(j)] Have convenient, clean, and sanitary toilet and handwashing facilities for the use of clientele with liquid soap, single-use paper towels from a sanitary dispenser or air dryer, **a** covered waste receptacle**,** and **a** self-closing door;

(j)[(k)] Be organized to keep clean areas separate from contaminated areas;

(k) Have[(l) Use only] a utility sink that shall only be used to**[:**

1.] wash[Clean] contaminated instruments;**[and**

2. Empty mop water, without placing the mop bucket into the sink;]

(l)[(m)] Use, clean, and maintain equipment according to manufacturers' recommendations;

(m)[(n)] Use an approved[a hard surface high-level EPA registered] disinfectant;

(n)[or

1. A solution of five and one-quarter (5.25) percent chlorine bleach, fifty (50) parts per million to 100 parts per million; and

2. A chlorine test kit to test concentration;

(o)] Have plumbing sized, installed, and maintained in accordance with**[the]** [Kentucky State Plumbing Code,] 815 KAR Chapter 20;

(o)[(p)] Have sufficient[an adequate] potable water supply for the needs of the studio provided from a source constructed, maintained, and operated pursuant to the applicable requirements established in 401 KAR Chapter 8[from:

1. A public or municipal water district, if available; or

2. A private water source approved by the Cabinet for Natural Resources and Environmental Protection, until a public water supply becomes available]; and

(p)[(q)] Dispose of sewage by connection to:

1. A public sewer system, if available; or

2. A private sewer system designed, constructed, and operated pursuant to the requirements of 401 KAR Chapter 5 and 902 KAR Chapter 10[the Cabinet for Health and Family Services or the Cabinet for Natural Resources, until a public sewer system becomes available].

(2) A workstation shall:

(a) Have nonporous[light-colored], smooth, easy-to-clean floors, walls, and ceilings;

(b) Have surfaces, including counters, cabinets, chairs, and dispensers, composed of[light-colored,] smooth, nonporous material able to withstand repeated cleaning and disinfecting[, except for a facility existing on the effective date of this administrative regulation which is exempt from the color requirement];

(c) Be kept clean, organized**,** and in good repair;

(d) 1. Have all product containers clearly labeled with common product name in English; and

2. If filling a product container from a larger bulk container, **retain** the original container**[shall be retained]** on the premises;

(e) Have at least sixty (60) square feet of floor space with permanent walls a minimum of four (4) **feet[fee]** high[one-half (1/2) walls] between workstations;

(f)[(d)] Have 100 foot-candles of light at the procedure level;

(g)[(e)] Have unimpeded access to a hand sink**[, without opening a door]**;

(h)[(f)] Have a sink for each body piercer with hot**[water between 101 and]**[at least]**[120 degrees Fahrenheit]** and cold water**[less than 101 degrees Fahrenheit]**, delivered by a**[mixing]** faucet, operated by wrist, knee, or foot action**, or other hands-free method**;

1. Each sink shall be supplied with:

a. Liquid soap; and

b. Single use paper towels dispensed from a sanitary dispenser; and

2. A hand sink shall not be used for any other purpose;

(i)[(g)] Be designated as a body piercing workstation, and shall not be used for any other purpose;

(j)[(h)] Have**[double bagged]**[lined] plastic or metal waste receptacles:

1. With or without a lid; and

2. If **the** waste receptacle has a lid**, the lid[it]** shall be **foot[food]** operated; and

(k)[(i)] Have a container for disposable sharps that:

1. Is rigid, puncture proof, and leak proof on sides and bottom;

2. Is closeable and sealable; and

3. If sealed, is leak resistant and incapable of being opened without great difficulty.

Section 5. Cleaning and Sterilization. (1) A studio **using any reusable instruments, materials, or supplies**[facility] may have a one (1) room or two (2) room cleaning and sterilization arrangement.

(a) A two (2) room arrangement shall have:

1. One (1) room for contaminated items, equipped with:

a. A utility sink with minimum dimensions of 18 in. x 18 in. x 12 in.;

b. A hand sink;

c.[,] A presoak container;

d. An[,] ultrasonic **cleaner[cleaning unit]**; and

e. Autoclaving packaging materials; and

2. A second room for autoclave sterilization of instruments, equipment**,** and body jewelry or decorations.

(b) A one (1) room cleaning and sterilization process shall be arranged to provide two (2) distinct areas.

1. The ultrasonic **cleaner[~~unit~~]** shall be as far away as possible from the autoclave to prevent contamination of sterile instruments, equipment, jewelry, or other items.

2. The cleaning area shall be equipped in accordance with paragraph (a)**[~~subparagraph~~]**1. of this **subsection[~~section~~]**[~~with a utility sink with minimum dimensions of 18 in. x 18 in. x 12 in., a presoak container, ultrasonic cleaning unit and autoclaving packaging materials~~].

3. Nonporous barriers may be utilized to delineate the two (2) distinct areas.

(2) **A** body **piercer[~~piercers~~]** that **shares**[~~which~~]**[~~share~~]** a certified studio with **a** tattoo **artist[~~artists~~]** shall have a dedicated ultrasonic **cleaner[~~unit~~]** for cleaning body piercing instruments or equipment.

(3) **A studio that uses only pre-sterilized disposable instruments, materials, and supplies shall not be required to have a separate room or area for autoclave, ultrasonic cleaner, and sterilization.**

(4) All instruments shall be disposable or be made of surgical implant stainless steel and shall **have only rubber gripping that can be removed and sanitized[~~not have rubber gripping~~]** on the handles.

(5)[~~(4)~~] Instruments shall be processed as follows:

(a) Soak contaminated reusable[~~used~~] instruments in a covered container of cool water with**[~~or without~~]** detergent until ready to be cleaned and sterilized;

(b) Wash hands and forearms**[~~in accordance with Section 1(13) of this administrative regulation~~]**;

(c) Use disposable, single-use gloves such as examination or surgical gloves;

(d)[~~(c)~~] Prepare the ultrasonic cleaner according to manufacturer's instructions;

(e)[~~(d)~~] Take instruments apart and rinse in warm water;

(f)[~~(e)~~] Load the ultrasonic cleaner and process according to manufacturer's recommendations, disposing of the ultrasonic cleaner liquid after each use;

(g) Wash hands and forearms**[~~in accordance with Section 1(13) of this administrative regulation~~]**;

(h)[~~(f)~~] Wearing examination gloves, remove instruments from the ultrasonic cleaner, rinse with clean water, and[~~dry with a clean lint-free towel, or~~] allow to air dry; and

(i)[~~(g)~~] Store cleaned instruments in a labeled, covered, nonporous container until packaged for sterilization.

(6)[~~(5)~~] Sterilization equipment. Equipment used to sterilize instruments shall meet the following requirements:

(a) The equipment was sold as sterilizing equipment for medical instruments;

(b) The equipment is used, cleaned, and maintained to manufacturer's instructions; and

(c) The equipment meets the minimum requirements for sterilization[~~in the definition of "sterilization"~~].

(7)[~~(6)~~] Reusable instruments.

(a) Reusable instruments placed in contact with skin that is body pierced shall be cleaned and sterilized;

(b)[~~.~~] Disinfection shall not be used in place of cleaning and sterilization; and

(c)[~~.~~] Liquid sterilants shall not be used for sterilization of reusable instruments.

(8)[~~(7)~~] Instrument sterilization. Instruments that pierce the skin**[~~, or touch nonintact skin,~~]** shall be sterilized as follows:

(a) Wash hands and forearms**[~~in accordance with Section 1(13) of this administrative regulation~~]**;

(b) Use clean disposable, single-use surgical or examination gloves;

(c)[~~(b)~~] Package cleaned instruments individually in:

1. [~~paper or plastic, or~~] Paper and plastic peel-packs with color change indicator;[~~peel-pack(s) with color (heat) change indicator(s),~~] or

2. Package as set-ups with color change indicator;

(d)[~~(c)~~] Label with content, date, lot number, and preparer's initials;

(e)[~~(d)~~] Load the sterilizer and process according to manufacturer's directions;

(f)[~~(e)~~] Remove the items from autoclave only when completely dry and cool [~~and dry~~];

(g)[~~(f)~~] Store the items in a nonporous, clean, dry, labeled container, cabinet**,** or other place that is protected from dust and contamination; and

(h)1.[~~(g)~~] Sterilized instruments shall be resterilized at intervals of no more than six (6) months from the date of the last sterilization; and

2. New packaging shall be used when instruments are resterilized.

(9)[~~(8)~~] Sterilization equipment monitoring.

(a) Sterilization equipment shall be tested**:[~~;~~]**

1. During the initial installation;

2.[~~,~~] After any major repair;[~~,~~] and

3. At least monthly by using a commercial biological monitoring system;**[~~and~~]**

(b) Biological indicator test results for each sterilization unit used in the studio shall be kept on site, and made available for inspection at time of inspection; and

(c) Sterilization monitoring shall be noted on the sterilizer log.

(10)[~~(9)~~] Sterilizer recordkeeping. A sterilizer log system shall be maintained for each sterilizer in the studio. For each sterilization cycle the following information shall be documented:

(a) Date of load;

(b) Lot number;

(c) Preparer's[~~Practitioner's~~] name;

(d) The general contents of the load;

(e) The exposure time and temperature or the sterilizer recording chart or tape; and

(f) The results of the chemical indicator.

Section 6. Studio Owner Responsibilities. The owner of a certified studio shall:

(1) Exclude**[~~and report to the local or district health department,~~]** a[~~any~~] body piercer or ear piercer who is:

(a)[~~while~~] Infected with a disease in a communicable form that can be transmitted by blood;

(b)[~~or who is~~] A carrier of organisms that cause disease;

(c)[~~or while~~] Infected with a boil **or[~~,~~]** an infected wound;[~~,~~] or

(d) Diagnosed with an acute respiratory infection**;[~~,~~]**[~~;~~]

(2) Report any accident involving exposure to body fluids to the local or district health department;

(3) Receive, review**,** and distribute body piercer or ear piercer registrations issued for employees of the certified studio. If the body piercer or ear piercer is no longer employed by the certified studio, the registration shall be returned to the district or local health department where the certified studio is located;

(4)[~~(3) Continuously~~] Maintain a record of all persons performing any activity within the studio that is regulated by the cabinet. The record shall include at a minimum the following information:

(a) Full name;

(b) Date of birth;

(c) Home address;

(d) [~~Home~~] Phone number;

(e) Email address [~~if available~~];

(f) Photograph of body piercer or ear piercer; and

(g) Complete description of all body piercing or ear piercing procedures performed by the body piercer or ear piercer;

(5)[~~(4)~~] Maintain a current copy of this administrative regulation at the studio for use by body piercers or ear piercers;

(6)[~~(5)~~] Maintain **an adequate supply[~~a minimum of twenty-four (24) sets~~]** of sterilized needles, instruments, jewelry, and other decorations for each piercer;

(7)[~~(6)~~] Not resterilize or reuse single-use, disposable components;**[~~and~~]**

(8)[~~(7)~~] Maintain records in accordance with Section **8(3)[~~8(5)~~]** of this administrative regulation**[~~if presterilized, disposable instruments and jewelry are utilized~~]**;

(9)[~~(8)~~] Maintain an accurate inventory of all purchased presterilized instruments and jewelry by name with the date purchased and the quantity on hand; and

(10)[~~(9)~~] Maintain invoices for the purchase of all purchased presterilized instruments and jewelry.

Section 7. Piercing of Minors. (1) **A[~~No~~]** person shall **not** perform any body piercing or ear piercing procedure on a minor without parental consent.

(2) **A minor[~~Minors~~]** shall be at least **sixteen (16)[~~16~~]** years old with custodial parent or legal guardian consent prior to body piercing.

(3) Consent shall be provided by***[~~:~~***

[~~(a)~~]*[~~1.~~]** a written notarized statement that contains[~~consent, with~~] an official seal or assigned identification of notary[~~; or~~***

[~~(b)~~]*[~~2.~~]*[~~The custodial parent or legal guardian present during the body piercing procedure~~].

(4) The notarized statement shall contain:

(a) The printed name of the custodial parent or legal guardian;

(b) The government issued photo identification number of the custodial parent or legal guardian;

(c) The address and phone number of the custodial parent or legal guardian;

(d) The printed name of the minor child;

(e) The date of birth of the minor child;

(f) The government issued photo identification number of the minor child, if **applicable[~~available~~]**;

(g) A statement that the custodial parent or legal guardian is fully aware of the body piercing procedure and gives their consent for the procedure to be performed;

(h) The signature of the custodial parent or legal guardian; and

(i) The date of the signature of the custodial parent or legal guardian.

(5)***[~~The custodial parent or legal guardian present during the body piercing procedure shall provide a government issued photo identification.~~***

[~~(6)~~] The custodial parent or legal guardian, and minor client shall complete the attestation requirements of Section **8(3)(g)[~~8(3)(h)~~]** of this administrative regulation[~~and with the signature of a custodial parent or legal guardian, shall be obtained for all minors prior to body piercing or ear piercing~~].

Section 8. Client Information and Records. (1) Before receiving a body piercing or ear piercing, the client shall be provided written information that the piercing poses a risk of infection.

(2) Before the body piercing or ear piercing, the client shall be provided **written,**[~~written and~~] verbal**, or electronic** aftercare instructions that include the following information:

(a) Information on the care of the site of the piercing;

(b) Instructions on possible side effects;

(c) Information on any restrictions;

(d) Information on signs and symptoms of infection; and

(e) Instructions to consult a physician if signs and symptoms of infection such as fever, excessive swelling, excessive redness, or drainage occur.

(3) A record of all clients who have received any body piercings or ear piercings shall be kept by the studio owner. The record shall include the following information:

(a) Studio name and registration number;

(b) The date the procedure was performed;

(c) Client's name, date of birth, address, and **phone[~~telephone~~]** number;

(d)1. Copy of client's government issued photo ID, if applicable; or

2. Copy of custodial parent or legal **guardian's[~~guardians~~]** government issued photo identification[~~or recorded identification number from government issued documentation~~];

(e) Name of the body piercer or ear piercer who performed **each procedure[~~the procedure(s)~~]**;

(f) The type, location**,** and description of the procedure; **and**[~~and~~]

(g)**[~~Lot number of items used; and~~**

[~~(h)~~] Client's attestation[~~attestment~~] to the fact that the client is:

1. Not intoxicated or under the influence of drugs or alcohol; and

2. Not currently taking medications, such as anticoagulants, that thin the blood or interfere with blood clotting[~~with signature~~].

(4) Records of each client shall be**[~~typed or printed in ink prior to any procedure being performed.~~**

[~~(5) (a) All records shall be~~] maintained[~~in a bound log~~] for two (2)[~~five (5)~~] years. **(5)[~~(b)~~]**[~~The current calendar year~~] Client **records and[~~,~~]** consent and other required records shall be**[~~kept at the certified studio and shall be~~]** made readily available to inspectors.[~~All records for the previous four (4) years may be maintained off site and shall be made readily available upon request of the cabinet, district or local health department.~~]

Section 9. Disposal of Contaminated Wastes. All wastes produced during the process of body piercing or ear piercing shall be separated for disposal into two (2)[~~three (3)~~] classifications as follows:

(1) Contaminated sharps shall be disposed of by using a licensed medical waste disposal company; **and**

(2)[~~Regulated waste, as defined by the Department of Labor, Occupational Safety and Health Administration, shall be disposed of in accordance with the bloodborne pathogens regulation 29 C.F.R. 1910.1030 as adopted in Kentucky by 803 KAR 2:320.~~

~~(3)~~] Contaminated waste[~~, other than contaminated sharps and regulated waste.~~] shall be**[~~sprayed with an approved disinfectant~~]**[~~a dilution of five and one-quarter (5.25) chlorine bleach, with a range of fifty (50) parts per million to 100 parts per million~~]**[~~, double~~]** bagged, securely tied**,** and disposed of daily in a trash container that prevents unauthorized access. This material shall be disposed of in an approved site by a general trash hauler.

Section 10. Standard Operating Procedures for Body Piercing. (1) Body piercing shall not be performed on skin **that[~~which~~]** has a rash, pimples, evidence of infection, open lesions, **or[~~mole,~~]** sunburn, or manifests any evidence of **an** unhealthy **condition[~~conditions~~]** without written clearance by a **licensed medical provider[~~medical physician licensed by the Kentucky Board of Medical Licensure~~]**.

(2) The body piercer shall follow the procedures listed in this section in preparation for body piercing:[~~.~~]

(a) The body piercer and the client shall not eat, drink**, or** use tobacco products, an electronic cigarette, or other vapor producing product[~~smoke~~] in the workstation;

(b) The body piercer shall wash hands and forearms **[~~in accordance with Section 1(13)~~]**[~~(10)~~]**[~~of this administrative regulation~~]** prior to and after every procedure;

(c) The body piercer shall wear new clean disposable examination gloves for every client. If a glove is pierced, torn, **or** contaminated in any way, or if there is an interruption in the body piercing, both gloves shall be removed immediately,[~~and~~] discarded, hands and forearms washed**,[~~in accordance with Section 1(13) of this administrative regulation~~]** and new, clean examination gloves used;

(d) The body piercer shall wear clean clothing;

(e) All instruments, needles, jewelry, and items to be used in the procedure shall be placed on plastic film or on a plastic-backed towel;

(f) Only hollow needles shall be used for body piercing;

(g) Only presterilized jewelry shall be installed in a fresh piercing;

(h) Only sterile jewelry made of**[~~surgical steel,~~]** implant stainless steel, solid 14K or 18K white or yellow gold, niobium, titanium**,** or platinum and that is free of scratches, nicks**,** or irregular surfaces**, and internally threaded or threadless,** shall be placed in newly pierced skin;**[~~and~~]**

(i) All single-use disposable items shall be placed on the plastic backed towel and shall be discarded after each client including:

1. Corks;
2. Rubber bands;
3. Skin prepping materials;
4. Marking devices;
5. Dental bibs;

6. Tray covers;
7. Gauze; and
8. Applicators; and

(j) The sharps container and waste receptacle shall be positioned within easy reach and in a manner to prevent contamination.

Section 11. Performance of Body Piercing. The body piercer shall use the procedure in this section when performing a body piercing:

(1) Disinfect the chair or table, and[procedure] tray [or area];

(2) Wash hands and forearms**[in accordance with Section 1(13)]**[(10)]**[of this administrative regulation]**;

(3) Use new disposable gloves and arrange all instruments and supplies to be used in the procedure on plastic film or on a clean, disposable plastic-backed towel within easy reach;

(4) Position the client[comfortably];

(5) Clean the skin**.[and then apply an antiseptic to the area to be pierced and]** mark the location of the piercing with a new, disposable marking device**, and apply an antiseptic to the area to be pierced**;

(6) Remove and discard all materials used to prep the client, including gloves;

(7) Wash hands and forearms**[in accordance with Section 1(13)]**[(10)]**[of this administrative regulation]** and use new, clean examination gloves;

(8) Hold or stabilize the tissue with sterile instruments only. Pierce the skin using a sterile, single-use piercing needle**[that is the same gauge or that is only slightly larger gauge than the jewelry or ornament to be inserted]**;

(9) Immediately after use, place all needles, snip wires, or any other sharps into a sharps container**;[.]**

(10) When the body piercing is complete,**[the body piercer shall]** answer any questions regarding the piercing and provide[written] aftercare instructions to the client; and

(11) Immediately after the client leaves the workstation,**[the body piercer shall]** place contaminated instruments into a covered container that is labeled "contaminated instruments" and disinfect all surfaces that have come into contact with the client or the client's tissues, including the piercing tray, chair**,** or table.

Section 12. Standard Operating Procedures for Ear Piercing. (1) An ear piercing studio shall be exempt from Sections[4,] 5, [6(5), 8(3)(d),] 9(1)[and (2)], 10, and 11 of this administrative regulation.

(2) Ear piercing studs and clasps shall not be used under any circumstances anywhere on the body other than the lobe of the ear.

(3) An ear piercer[piercing studio] shall[follow the procedures listed in this section of this administrative regulation when preparing for and performing ear piercing]:

(a)[A piercer shall] Be registered in accordance with Section 2 of this administrative regulation[at least sixteen (16) years of age at the time of the application];

(b)[The piercer and the client shall] Not allow any eating, drinking, **or** use of tobacco products, an electronic cigarette**,** or other vapor producing product[eat, drink or smoke] in the area where ear piercing is conducted;

(c) Obtain consent for the procedure in accordance with Section 7 of this administrative regulation;

(d) Obtain client information in accordance with Section 8 of this administrative regulation;

(e) Wash their hands and forearms**[in accordance with Section 1(13) of this administrative regulation]** before and after each piercing is performed;

(f)[cleanse the hands prior to each procedure by utilizing an antibacterial gel to cleanse the hands or a handwash facility. A handwash facility at the minimum consists of liquid antibacterial or antimicrobial soap, single-use paper towels, and an insulated five (5) gallon container with a liner type spigot, filled with warm water, and a bucket to catch the wastewater. The container shall be placed thirty (30) inches off the floor to allow easy use, and shall be filled regularly to ensure an adequate supply of warm water;

(d) The piercer shall] Wear new, clean disposable gloves for every client. If a glove is pierced, torn, **or** contaminated in any way, or if there is an interruption in the ear piercing, both gloves shall be removed immediately,[and] discarded, hands and forearms washed**, [in accordance with Section 1(13) of this administrative regulation]** and new, clean examination gloves used;

(g)[(e) The piercer shall] Wear clean clothing;

(h) Load presterilized, encapsulated cartridges for earrings into the ear piercing instrument without touching the cartridge, stud**,** or clasp;

(i)[The piercer shall record the client or parent/guardian's government issued identification number, such as a driver's license number, on the client record;

(g) The piercer shall verbally review with the client all aftercare instructions and] Answer any questions prior to performing an ear piercing;

(j)[(h) The piercer shall] Clean the ear with an antiseptic towelette before the procedure and mark the location of the piercing with a single use disposable marking pen or a surgical marking pen sanitized by design such as an iodine-based or alcohol;

(k)[(i) All ear piercers shall conform to the manufacturer's directions on use and applicable U.S. Food and Drug Administration requirements;

(j) When the piercing is complete, the piercer shall answer any questions and] Provide the client with[written] instructions regarding aftercare; and

(l)[(k) If a piercing gun is used,] Immediately after the client leaves the ear piercing area,[the piercer shall] thoroughly disinfect the piercing instrument[gun] with an approved[a high-level] disinfectant.

(4) When not in use, the piercing instrument[gun] shall be stored in a cabinet or other place that is protected from dust and contamination[; and

(l) Ear piercing studs and clasps shall not be used under any circumstances anywhere on the body other than the outer perimeter and lobe of the ear].

Section 13. Standard Operating Procedures for a Mobile Studio. (1) **An application[Applications]** for mobile studio certification shall be:

(a) On DFS-200**,** Application for Permit **or[/]** License, incorporated by reference in 902 KAR **45:065[10:040]**;

(b) Submitted to the local health department in the district or county where the mobile studio ***owner resides[is located]***; and

(c) Accompanied by a fee of:

1. $400 for the studio with one (1) to four (4) work stations; and

2. An additional fifty dollars ($50) **for** each additional work station over four (4)[Ear piercers shall not operate a mobile studio].

(2) ***The mobile studio certification shall be:***

(a) Valid for statewide operation;

(b) Prominently displayed to the public in the mobile studio; and

(c) Nontransferable from one (1) person to another.

(3) The mobile studio certificate shall expire December 31 each year.

(4) A late renewal fee of $100 shall be assessed on each mobile studio registration renewal application not received by January 31 each year.

(5) If not currently registered in accordance with Section 2(6) of this administrative regulation, **each[the]** body piercer and ear piercer[the mobile studio] shall be registered with the local health department in each district or county in which the studio is operated, and pay the appropriate fees.

(6)[(3)] The mobile studio shall be used exclusively for performing body or ear piercing. Habitation, cooking,**[pets]** and animals except service animals shall not be allowed in the mobile studio.

(7)[(4)] The mobile studio shall[meet the same requirements as a stationary studio and] be inspected by the local health department prior to operation.[(4) All sewage shall be stored in a storage tank with a capacity at least 100 percent greater than the

~~capacity of the on-board potable water, and shall be discharged into a public sewage system.~~]

(8)[~~(5)~~] Any on-board restroom shall be supplied with hot[~~**running water at least 120 degrees Fahrenheit**~~] and cold running water[~~**less than 101 degrees Fahrenheit**~~][~~as in subsection (6) of this section~~] and shall be supplied with toilet paper, liquid[~~antibacterial or antimicrobial~~] soap and single-use paper towels from a sanitary dispenser, **a** covered waste receptacle, and a self-closing door.

(9)[~~(6)~~] If the vehicle lacks an on-board restroom, the owner shall not operate the studio unless it is within 200 feet of a public restroom with handwashing facilities.

(10)[~~(7)~~] All plumbing shall comply with the requirements of[~~**the**~~] [~~State Plumbing Code,~~] 815 KAR Chapter 20.

(11)[~~(8)~~](a) Each mobile studio shall have a potable water system under pressure.

(b) The system shall be of sufficient capability to furnish enough hot and cold water for handwashing, instrument cleaning, and sanitization pursuant to the requirements of this administrative regulation.

(c) The water inlet shall be:

1. Located in a position that it will not be contaminated by waste discharge, road dust, oil, or grease;[~~,~~] and[~~it shall be~~]

2. Provided with a transition connection of a size or type that will prevent its use for any other service.

(d) All water distribution pipes or tubing shall be constructed and installed in accordance with[~~**the**~~] [~~State Plumbing Code,~~] 815 KAR Chapter 20.

(e) Hoses, if used, shall bear the National Sanitation Foundation potable water (NSF-pw) mark and be fitted[~~be food grade,~~] with a backflow prevention device.

(12)[~~(9)~~](a) Each mobile studio shall have a permanently installed retention tank that is at least fifty (50)[~~100~~] percent larger than the potable water supply tank.

(b) Wastewater shall be discharged into a public sewage system.

(c) Liquid wastewater shall not be discharged from the retention tank if the mobile studio is in motion.

(d) All connections on the vehicle for servicing the mobile studio waste disposal shall be of a different size or type than those used for supplying potable water to the mobile studio.

(e) The wastewater connection shall be located below the water connection to preclude contamination of the potable water system.[~~(10) The vehicle shall be used exclusively for body piercing. Habitation, cooking, pets and animals shall not be allowed in the mobile studio.~~]

Section 14. Standard Operating Procedures for a Temporary Permit[~~Studio~~]. (1) At least thirty (30) days prior to the event date, the event organizer or studio owner for the event shall submit to the local health department in the district or county where the temporary studio is to be located:

(a) A DFS-200**,** Application for Permit **or[*/*]** License, incorporated by reference in 902 KAR **45:065[~~10:040~~]**, accompanied by a **$100[~~$250~~]** registration fee for each workstation;

(b) A layout of the event floor showing where body piercing and ear piercing will be performed;

(c) A list of all body piercers and ear piercers participating in the event that includes:

1. Name of body piercer or ear piercer;

2. Piercer's date of birth;

3. Home address;

4. **Phone[~~Telephone~~]** number;

5. Email address;

6. Proof of piercer completion of **bloodborne[~~blood-borne~~]** pathogen training;

7. Studio name;

8. Studio address;

9. Studio owner name; **and**

10. Description of body piercing and ear piercing procedures to be performed at the event; and

(d) A copy of the client consent form to be used during the event[~~Ear piercers shall not operate a temporary studio~~].

(2) The event organizer or studio owner for the event shall be responsible for ensuring that the event is run in a manner that is safe for the body piercers, ear piercers, and the general public.[~~The event organizer or studio owner shall provide a list of all body piercers participating in the event to the local health department in the district or county where the event is being held that includes the following information for each participating body piercer:~~

~~(a) Name;~~

~~(b) Date of birth;~~

~~(c) Home address;~~

~~(d) Business name;~~

~~(e) Business address;~~

~~(f) Home and work telephone numbers;~~

~~(g) Email address if available;~~

~~(h) Description of procedures to be performed at the event; and~~

~~(i) Copy of current body piercer registration.~~]

(3)[~~The event coordinator or studio owner shall provide a layout of the event floor to the local health department in the district or county where the event is being held showing where the body piercer will be piercing.~~

~~(4)~~] Each participant who performs body or ear piercing shall bring enough presterilized instruments and supplies to last for the whole event.

(4)[~~(5)~~] The event coordinator or studio owner shall:

(a) Provide a separate cleaning and sterilization room as a backup, unless only pre-sterilized disposables are used for the event;

(b) Provide an approved autoclave that has certification of a negative spore test within thirty (30) days prior to the event;

(c) Arrange for pick-up and disposal of contaminated waste in accordance with Section 9 of this administrative regulation; and

(d) Ensure the cleaning and sterilization room, if used, is disinfected at the close of the event.[~~provide a separate cleaning and sterilization room as a back up for use by participants who have used all of the presterilized instruments and supplies that were brought to the event. If used, the cleaning and sterilization room shall be disinfected at the close of the event. Presterilized disposable instruments and equipment shall not be reused.~~]

(5)[~~(6) The event coordinator or studio owner shall provide an approved autoclave that has certification of a negative spore test within thirty (30) days prior to the event.~~

~~(7) The event coordinator or studio owner shall provide for pick up and disposal of contaminated waste in accordance with Section 9 of this administrative regulation.~~

~~(8) Temporary studios located at locations such as fairs, festivals, or flea markets, shall comply with all requirements for a certified studio in accordance with Section 1 through 11 of this administrative regulation in their entirety.~~

~~(9) The body piercer and the temporary studio shall be registered with the local health department in each district or county in which the studio is operated, and pay the appropriate fees.~~

~~(10)~~] The temporary workstation shall meet the following minimum conditions:

(a) Be at least **5[6]**[~~10~~] ft. x 10 ft., and be constructed in a manner to separate the body and ear piercer from the public in such a way as to protect the procedure area from contamination, and to prevent accidental exposure of the public to potentially-infectious materials created during [~~body~~] piercing.

(b) Have a floor and sides that are smooth, nonporous**,** and easy to clean;

(c) Have at least 100 foot-candles of light available at the level where the[~~body~~] piercing is conducted;

(d) Be supplied with an adequate supply of paper or plastic barrier film to protect equipment and any other item that **needs to[~~must~~]** be protected to prevent cross-contamination; **and**

(e) Be equipped with a hand-wash facility that[~~. A hand-wash facility at the minimum~~] shall be:

1.**a.** A portable handwashing station; or

b.[2.] A minimum of a one (1) gallon container with a lever-type spigot, filled with warm potable water that:

(i)[a.] Is placed at least thirty (30) inches off the floor to allow for easy use;

(ii) Is[b.] supplied with a bucket to catch the wastewater; and

(iii)[c.] Has a minimum reserve of five (5) gallons of warm potable water available**; and[.]**

2. Is[3.] supplied with:

a.[Consist of] Liquid[antibacterial or antimicrobial] soap; and

b.[,] Single use paper towels from a sanitary dispenser.

(6)[(f)][, and an insulated five (5) gallon container with a lever-type spigot, filled with warm potable water 101-120 °F, and a bucket to catch the wastewater. The water container shall be placed at least thirty (30) inches off the floor to allow for easy use, and shall be filled regularly to ensure an adequate supply of warm water for hand washing;

(e)] Waste water shall be disposed of into a public sewerage system, if available. If a public sewerage system is not available, disposal shall be made into a private system designed, constructed**,** and operated pursuant to the requirements of**[the]** 401 KAR Chapter 5 and 902 KAR Chapter 10[; and

(f) Shall be supplied with an adequate supply of paper or plastic barrier film to protect equipment and any other item that must be protected to prevent cross-contamination].

Section 15. Inspection of Studios. (1) The cabinet **or the[,]** [or the] local or district health department shall inspect each body piercing studio at least twice per year and each ear piercing studio once per year and shall make as many additional inspections and reinspections as are necessary for the enforcement of this administrative regulation.

(2)(a) The cabinet **or the[,]**[or the] local or district health department inspector shall record the inspection findings[in writing] for body piercing studios on an inspection report form DFS-342, incorporated by reference in 902 KAR 45:065.

(b)[, provided for that purpose and which shall constitute a written notice.]

The inspection report form shall:

1. Summarize the requirements of this administrative regulation; and[shall]

2. Set forth a weighted point value for each requirement.

(3) The rating score of the studio shall be the total of the weighted point value for all violations, subtracted from 100.

(4) The inspector shall provide the original[of the] inspection report to the certificate holder or [his] designee. The findings shall:

(a) Set forth the specific violations if found; **and**

(b) Establish a [specific and reasonable] period of time for the correction of the violations specified, pursuant to the**[following]** provisions **established in this paragraph.[;]**

1. If the rating score of the studio is eighty-five (85) or more, all violations of one (1) and two (2) point weighted items shall be corrected[as soon as possible and] before the next routine inspection.

2. If the rating score of the studio is at least seventy (70) and not more than eighty-four (84), all violations of one (1) and two (2) point weighted items shall be corrected [as soon as possible and] within a period not to exceed thirty (30) days.

3. Regardless of the rating score of the studio, all violations of three (3) or four (4) point weighted items shall be corrected within[a time specified by the cabinet and within] ten (10) days.

4. If the rating score of the studio is less than seventy (70), the studio shall be issued a notice of intent to suspend the studio certification. The certification shall be suspended within ten (10) days after receipt of the notice unless a written request to an administrative conference is filed with the local or district health department within the ten (10) day period.

(5)(a)[(3)] The cabinet or local health department inspector shall record the findings[in writing] for ear piercing studios on inspection report form DFS-253[, provided for that purpose and shall constitute a written notice].

(b) The inspection report form shall summarize the requirements of this administrative regulation.

(c) The inspector shall provide the original of the inspection report to the certificate holder or[his] designee.

(d) The findings shall set forth the specific violations if found.

(e) All violations shall be corrected within twenty-four (24) hours.

(6)[(4)] Notices provided for under this administrative regulation shall be deemed to have been properly served if the original[of the] 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.

(7)[(5)] Failure to comply with any notice issued pursuant to the provisions of this administrative regulation may result in suspension or revocation of the studio certificate or the individual's registration.

(8) **A**[(6)] temporary **or[and]** mobile **studio[studios]** shall correct any violative conditions within twenty-four (24) hours.

Section 16. Suspension of Studio Certificates or Individual's Registration. (1) The studio certificate or the individual's registration shall be suspended immediately upon notice to the holder if:

(a)[If] The cabinet **or the[,]**[or the] local or district health department has reason to believe that an imminent public health hazard exists;

(b)[, if] The studio certificate holder or registered individual has interfered with the cabinet or the local or district health department in the performance of its duties; or

(c)[if] An inspection of a studio reveals a rating score of less than sixty (60).

(2)[, the certificate or the individual's registration shall be suspended immediately upon notice to the holder.

If this occurs,] The studio certificate holder or individual registration holder whose certificate or registration has been suspended may request an administrative hearing[conference] in accordance with 902 KAR 1:400[Section 19(2) of this administrative regulation. The conference shall be granted as soon as practical and before ten (10) days.

(2) In all other instances of a violation of the provisions of this administrative regulation, the cabinet or the local or district health department shall serve on the certificate holder or registered individual a written notice specifying the violation and shall afford the certificate holder or registered individual a reasonable opportunity for correction].

(3) The cabinet **or the[,]**[or the] local or district health department shall notify, in writing, the studio certificate holder or registered individual who fails to comply with a written notice issued under the provisions of this section, that the studio certificate or individual's registration shall be suspended at the end of ten (10) days following service of this notice unless a request for an administrative hearing[conference] is requested.

(4)[Section 17. Reinstatement of Suspended Certificates or an Individual's Registration.] A person whose studio certificate or individual registration has been suspended may, at any time, make application for a reinspection for the purpose of reinstatement of the certification or registration.[The application for reinstatement shall be submitted on form DFS-215, provided by the cabinet. Within ten (10) days following receipt of an Application for Reinstatement, the cabinet or the local or district health department shall make a reinspection. If the applicant is found to comply with the requirements of this administrative regulation, the certificate or individual's registration shall be reinstated]**[.]**

Section 17.[18.] Revocation of a Studio Certificate or an Individual's Registration. (1) For serious or repeated violations of any of the requirements of this administrative regulation, or for interference with agents of the cabinet **or the[,]**[or the] local or district health department in the performance of its duties, a studio certificate or an individual's registration may be permanently revoked.

(2) Prior to this action, the cabinet **or the[,]**[or the] local or district health department shall notify the studio certificate holder or registered individual, in writing, stating the reasons for which the studio certification or registration is subject to revocation and advising that the studio certification or registration shall be permanently revoked at the end of ten (10) days following service

of the notice, unless a request for an administrative hearing[~~conference~~] is filed with the cabinet by the certification or registration holder within the ten (10) day period.

(3) A studio certification or individual registration may be suspended for cause pending its revocation or an administrative hearing[~~conference~~] relative to the revocation.

Section 18.[~~19.~~] Appeals. (1) A certificate or registration holder or an applicant aggrieved by a decision of the cabinet **or the[,]**[~~or~~] local or district health department may request[~~either~~] an administrative hearing in accordance with 902 KAR 1:400[~~conference or an administrative hearing. The request shall be submitted within ten (10) days of receipt of a written notice of:~~

~~(a) A violation;~~

~~(b) Suspension or revocation of a certificate or individual's registration;~~

~~(c) Denial to renew a certificate or individual's registration; or~~

~~(d) Denial of an initial application for a certificate or individual's registration.~~

~~(2) Administrative conference. An administrative conference shall be conducted in accordance with 902 KAR 1:400, Administrative hearings, with the following exceptions:~~

~~(a) The conference shall be less formal than an administrative hearing;~~

~~(b) The matter at issue shall be discussed before a representative of the Department of Public Health or the local or district health department; and~~

~~(c) Participants in the discussion shall be:~~

~~1. An agent of the cabinet or the local or district health department and;~~

~~2. The certificate holder, individual registered, or the applicant;~~

~~(d) A request for a conference shall be:~~

~~1. In writing; and~~

~~2. Submitted or addressed to the local or district health department that issued or gave notice of the violation, suspension, or revocation; and~~

~~(e) A certificate or registration holder or an applicant who does not agree with final ruling of the conference report issued by the local or district health department may appeal by requesting an administrative hearing.~~

~~(3) Administrative hearing.~~

~~(a) Conduct of the administrative hearing shall be pursuant to 902 KAR 1:400, Administrative hearings and KRS Chapter 13B; and~~

~~(b) A request for an administrative hearing shall be:~~

~~1. In writing;~~

~~2. Submitted or addressed to the Commissioner, Department for Public Health, 275 East Main Street, Frankfort, Kentucky 40621; and~~

~~3. Accompanied by a copy of the notice of violation, notice to suspend or revoke, letter denying an application, or the conference hearing report~~].

Section 19.[~~20.~~] Incorporation by Reference. (1) **["]**DFS-253, "Ear Piercing Studio Inspection Report"**, [(]**Rev. 2/19**,[)]** is incorporated by reference[~~The following material is incorporated by reference:~~

~~(a) DFS-200, Application for Studio Certification (Rev. 7-01);~~

~~(b) DFS-303, Application for Registration (Rev. 7-03);~~

~~(c) DFS-342, Tattoo and Body Piercing Studio Inspection Report (Rev. 6-03);~~

~~(d) DFS-214, Enforcement Notice (Rev. 8-96);~~

~~(e) DFS-212, Request for Conference (Rev. 10-96);~~

~~(f) DFS-213, Notice of Conference (Rev. 8-96);~~

~~(g) DFS-215, Application for Reinstatement (Rev. 2-95); and~~

~~(h) DFS-253, Ear Piercing Studio Inspection Report (Rev. 05-04)~~].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department for Public Health, Division of Public Health Protection and Safety, Food Safety Branch, 275 East Main Street, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.

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

APPROVED BY AGENCY: July 12, 2019

FILED WITH LRC: July 15, 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.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Policy and Operations
(As Amended at ARRS, August 9, 2019)

907 KAR 1:604. Recipient cost-sharing.

RELATES TO: KRS 205.560, 205.6312, 205.6485, 205.8451, 319A.010, 327.010, 334A.020, 42 C.F.R. 430.10, 431.51, 447.15, 447.20, 447.21, 447.50, 447.52, [~~447.53,~~] 447.54, 447.55, 447.56, 447.57[~~447.59~~], 457.224, 457.310, 457.505, 457.510, 457.515, 457.520, 457.530, 457.535, 457.570, 42 U.S.C. 1396a, 1396b, 1396c, 1396d, 1396o, 1396r-6, 1396r-8, 1396u-1, 1397aa -1397jj**[~~,~~ ~~2014 Ky. Acts ch. 117, Part I.G.3.b.(10)~~]**

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.6312(5), 205.6485(1), 42 C.F.R. 431.51, 447.15, 447.50-447.90[~~447.82~~], 457.535, 457.560, 42 U.S.C. 1396r-6(b)(5)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law to qualify for federal Medicaid funds. KRS 205.6312(5) requires the cabinet to promulgate administrative regulations that implement copayments for Medicaid recipients. This administrative regulation establishes the provisions relating to Medicaid Program copayments.

Section 1. Definitions. (1) "Community spouse" means the individual who is married to an institutionalized spouse and who:

(a) Remains at home in the community; and

(b) Is not:

1. Living in a medical institution;

2. Living in a nursing facility; or

3. Participating in a 1915(c) home and community based services waiver program.

(2) "Copayment" means a dollar amount representing the portion of the cost of a Medicaid benefit that a recipient is required to pay.

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

(4) "Dependent child" means a [~~couple's~~] child, including a child gained through adoption, who:

(a) Lives with the community spouse; and

(b) Is claimed as a dependent by either spouse under the Internal Revenue Service Code.

(5) "DMEPOS" means durable medical equipment, prosthetics, orthotics, and supplies.

(6) "Drug" means a covered drug provided in accordance with 907 KAR 23:010 for which the Department for Medicaid Services provides reimbursement.

(7) "Enrollee" means a Medicaid recipient who is enrolled with a managed care organization.

(8) "Federal Poverty Level" or "FPL" means guidelines that are updated annually in the Federal Register by the United States Department of Health and Human Services under authority of 42 U.S.C. 9902(2).

(9) "KCHIP" means the Kentucky Children's Health Insurance Program.

(10)***["KCHIP - Separate Program" means a health benefit program for individuals with eligibility determined in accordance with 907 KAR 4:030, Section 2.***

(11)] "Managed care organization" or "MCO" means an entity

for which the Department for Medicaid Services has contracted to serve as a managed care organization as defined **by[in]** 42 C.F.R. 438.2.

(11)[(12)] "Medicaid Works individual" means an individual who:

(a) But for earning in excess of the income limit established under 42 U.S.C. 1396d(q)(2)(B) would be considered to be receiving supplemental security income;

(b) Is at least sixteen (16), but less than sixty-five (65), years of age;

(c) Is engaged in active employment verifiable with:

1. Paycheck stubs;
2. Tax returns;
3. 1099 forms; or
4. Proof of quarterly estimated tax;

(d) Meets the income standards established in 907 KAR 20:020; and

(e) Meets the resource standards established in 907 KAR 20:025.

(12)[(13)] "Nonemergency" means a condition **that[which]** does not require an emergency service pursuant to 42 C.F.R. 447.54[447.53].

(13)[(14) "Nonpreferred brand name drug" means a brand name drug that is not on the department's preferred drug list.

(15)] "**Office visit for behavioral health care" means a visit to a clinician or prescriber in which a:**

(a) Diagnosis of a behavioral health condition is made;

(b) Treatment decision related to the diagnosis of a behavioral health condition is continued; or

(c) Prescription for a behavioral health condition is:

1. Initially issued; or

2. Renewed.

(14)[(16) "Preferred brand name drug" means a brand name drug:

(a) For which no generic equivalent exists which has a more favorable cost to the department; and

(b) Which prescribers are encouraged to prescribe, if medically appropriate.

(17)]*[(16)] *["Preventive service" means:

(a)1. All of the preventive services assigned a grade of A or B by the United States Preventive Services Task Force (USPSTF); or

2. All approved adult vaccines, including their administration, recommended by the Advisory Committee on Immunization Practices;

(b) Preventive care and screening for infants, children, and adults recommended by the Health Resources and Services Administration Bright Futures Program Project; or

(c) Preventive services for women recommended by the Institute of Medicine.

***(18)]*[(17)] "Recipient" is defined in KRS 205.8451(9).

(15)[(19)]*[(18)]*["Transitional medical assistance" or "TMA" means an extension of Medicaid benefits in accordance with 907 KAR 20:005, Section 5(5).

***(20)]* "Visit" means:**

(a)1. An encounter; or

2. A series of encounters that are performed on the same date of service at the same physical location;

(b) Between a recipient or enrollee and a health care provider during which time a covered service is delivered; and

(c) A service that occurs:

1. In person; or

2. Via telehealth if authorized by 907 KAR 3:170.

Section 2. Copayments. (1) The following table shall establish the:

(a) Copayment amounts that a recipient shall pay, unless the recipient is exempt from cost sharing pursuant to Section 3(1) ***and (2)*** of this administrative regulation; and

(b) Corresponding provider reimbursement deductions.

Benefit	Copayment Amount
Acute inpatient hospital admission	$50
Outpatient hospital or ambulatory surgical center visit	$4
[Generic prescription drug]	[$1]
[Preferred brand name drug]	[$4]
[Nonpreferred brand name drug]	[$8]
Emergency room for a nonemergency visit	$8
DMEPOS	$4
Podiatry office visit	$3
Chiropractic office visit	$3
Dental office visit	$3
Optometry office visit	$3
General ophthalmological office visit	$3
Physician office visit	$3
Office visit for care by a physician assistant, an advanced practice registered nurse, a certified pediatric and family nurse practitioner, or a nurse midwife	$3
Office visit for behavioral health care	$3
Office visit to a rural health clinic	$3
Office visit to a federally qualified health center or a federally qualified health center look-alike	$3
Office visit to a primary care center	$3
Physical therapy office visit	$3
Occupational therapy office visit	$3
Speech-language pathology services office visit	$3
Laboratory, diagnostic, or radiological service	$3
A Medicaid or KCHIP beneficiary who is younger than nineteen (19) years of age[.]	$0
Brand name drug	$4
Generic drug	$1
Brand name drug preferred over generic drug	$1
Pharmacy product class: certain antipsychotic ***drugs[drug]***	$1
Pharmacy product class: contraceptives for family planning	$0
Pharmacy product class: tobacco cessation	$0
Pharmacy product class: diabetes supplies, blood glucose meters	$0
Pharmacy product class: Diabetes supplies, all other covered diabetic supplies	$4 for first fill, $0 for second fill and beyond, per day
Pharmacy patient attribute: pregnant	$0
Pharmacy patient attribute: long-term care resident	$0
Pharmacy patient attribute: under eighteen (18) years of age[.]	$0
KI-HIPP participant	$0
Kentucky HEALTH: Medically Frail	$0
Kentucky HEALTH: Former Foster Care Youth up to 26 years of age	$0
Kentucky HEALTH: enrollee current on premiums	$0

(2) The full amount of the copayment established in the table in subsection (1) of this section shall be deducted from the provider reimbursement.

(3) The maximum amount of cost-sharing shall not exceed five (5) percent of a family's income for a quarter.

Section 3. Copayment General Provisions and Exemptions. (1) A Medicaid or KCHIP beneficiary who is younger than nineteen (19) years of age shall be exempt from the copayment or cost-sharing requirements established pursuant to this administrative regulation.

(2)(a)[(a) Except for a foster care child, a recipient shall not be exempt from paying the eight (8) dollar copayment for a nonpreferred brand name drug prescription.

(b)] A copayment shall not be imposed for a service,

prescription, item, supply, equipment, or any type of Medicaid benefit provided to a foster care child.

(b)[~~(c) Except for the mandatory copayment referenced in paragraph (a) of this subsection,~~] The department shall impose no cost sharing for an individual or recipient who is exempt pursuant to 42 C.F.R. 447.56.

(c) A provider shall not deny services to a recipient who:

1. Makes less than or equal to 100 percent of the federal poverty level even if the recipient cannot pay any required cost-sharing; or

2. Makes more than 100 percent of the federal poverty level if:

a. The recipient cannot pay any required cost sharing; and

b. The provider does not have a policy that applies to all patients that allows for denial of services upon nonpayment of a cost sharing obligation.[~~the following:~~

~~1. A service furnished to an individual who has reached his or her 18th birthday, but has not turned nineteen (19), and who is required to be provided medical assistance under 42 U.S.C. 1396a(a)(10)(A)(i)(I), including services furnished to an individual with respect to whom aid or assistance is made available under Title IV, Part B (42 U.S.C. 620 to 629i) to children in foster care and individuals with respect to whom adoption or foster care assistance is made available under Title IV, Part E (42 U.S.C. 670 to 679b), without regard to age;~~

~~2. A preventive service;~~

~~3. A service furnished to a pregnant woman;~~

~~4. A service furnished to a terminally ill individual who is receiving hospice care as defined in 42 U.S.C. 1396d(o);~~

~~5. A service furnished to an individual who is an inpatient in a hospital, nursing facility, intermediate care facility for individuals with an intellectual disability, or other medical institution, if the individual is required, as a condition of receiving services in the institution under Kentucky's Medicaid Program, to spend for costs of medical care all but a minimal amount of the individual's income required for personal needs;~~

~~6. An emergency service as defined by 42 C.F.R. 447.53;~~

~~7. A family planning service or supply as described in 42 U.S.C. 1396d (a)(4)(C); or~~

~~8. A service furnished to a woman who is receiving medical assistance via the application of 42 U.S.C. 1396a(a)(10)(A)(ii)(XVIII) and 1396a(aa).~~

~~(2) The department has determined that any individual liable for a copayment shall:~~

~~(a) Be able to pay a required copayment; and~~

~~(b) Be responsible for a required copayment.~~]

(3) A pharmacy provider or supplier, including a pharmaceutical manufacturer as defined in 42 U.S.C. 1396r-8(k)(5), or a representative, employee, independent contractor**,** or agent of a pharmaceutical manufacturer, shall not make a copayment for a recipient.

(4) A parent or guardian shall be responsible for a copayment imposed on a dependent child under the age of twenty-one (21).

(5)**(a)** Any amount of uncollected copayment by a provider from a recipient **with income above 100 percent of the Federal Poverty Level at the time of service provision** shall be considered a debt to the provider **if that is the current business practice for all patients.**

(b) Any amount of uncollected copayment by a provider from a recipient with income at or below 100 percent of the Federal Poverty Level at the time of service provision shall not be considered a debt to the provider.

(6)[~~(a)~~] A provider shall:

(a)[~~1.~~] Collect from a recipient the copayment as imposed by the department for a recipient in accordance with this administrative regulation **or have a written process for attempting to collect the copayment**;

(b)[~~2.~~] Not waive a copayment obligation as imposed by the department for a recipient; and

(c) **Document each attempt to collect the copayment or**[~~3.~~] collect a copayment at the time a benefit is provided or at a later date **not to exceed six (6) months from the date of provision of the service**.[~~(b) Regarding a service or item for an enrollee in which the managed care organization in which the enrollee is enrolled does not impose a copayment, the provider shall not collect a copayment from the enrollee.~~]

(7) Cumulative cost sharing for copayments for a family with children who receive benefits under Title XXI, 42 U.S.C. 1397aa to 1397jj, shall be limited to five (5) percent of the annual family income.

(8) In accordance with 42 C.F.R. 447.15 and 447.20[~~447.82~~], the department shall not increase its reimbursement to a provider to offset an uncollected copayment from a recipient.

Section 4. Premiums for Medicaid Works Individuals. (1)(a) A Medicaid Works individual shall pay a monthly premium that is:

1. Based on income used to determine eligibility for the program; and

2. Established in ***paragraph (b) of this*** subsection***[~~(2) of this section~~]***.

(b) The monthly premium shall be:

1. Thirty-five (35) dollars for an individual whose income is greater than 100 percent but no more than 150 percent of the FPL;

2. Forty-five (45) dollars for an individual whose income is greater than 150 percent but no more than 200 percent of the FPL; and

3. Fifty-five (55) dollars for an individual whose income is greater than 200 percent but no more than 250 percent of the FPL.

(2) An individual whose family income is equal to or below 100 percent of the FPL shall not be required to pay a monthly premium.

(3) A Medicaid Works individual shall begin paying a premium with the first full month of benefits after the month of application.

(4) Benefits shall be effective with the date of application if the premium specified in subsection (1) of this section has been paid.

(5) Retroactive eligibility pursuant to 907 KAR 20:010, Section 1(3), shall not apply to a Medicaid Works individual.

(6) If a recipient fails to make two (2) consecutive premium payments, benefits shall be discontinued at the end of the first benefit month for which the premium has not been paid.

(7) A Medicaid Works individual shall be eligible for reenrollment upon payment of the missed premium providing all other technical eligibility, income, and resource standards continue to be met.

(8) If twelve (12) months have elapsed since a missed premium, a Medicaid Works individual shall not be required to pay the missed premium before reenrolling.

Section 5. Provisions for Enrollees. A managed care organization shall**[:**

~~(1) Shall~~] not impose a copayment on an enrollee that exceeds a copayment established in this administrative regulation[~~; and~~

~~(2) May impose on an enrollee:~~

~~(a) A lower copayment than established in this administrative regulation; or~~

~~(b) No copayment~~].

Section 6. Freedom of Choice. (1) In accordance with 42 C.F.R. 431.51, a recipient who is not an enrollee may obtain services from any qualified provider who is willing to provide services to that particular recipient.

(2) A managed care organization may restrict an enrollee's choice of providers to the providers in the provider network of the managed care organization in which the enrollee is enrolled except as established in:

(a) 42 C.F.R. 438.52; or

(b) 42 C.F.R. 438.114(c).

Section 7. Appeal Rights. An appeal of a department decision regarding the Medicaid eligibility of an individual shall be in accordance with 907 KAR 1:560.

Section 8. Applicability of ***KAR*** Title 895***[KAR]***. If eligible for Kentucky HEALTH, an individual subject to this administrative regulation shall also comply with any applicable requirements established pursuant to ***KAR*** Title 895***[KAR]***[**~~, including 895 KAR 1:010~~**][~~Effective Date. The cost sharing provisions and~~

~~requirements established in this administrative regulation shall be effective beginning January 1, 2014~~].

Section 9. Federal Approval and Federal Financial Participation. The department's copayment provisions and any coverage of services established in this administrative regulation shall be contingent upon:

(1) Receipt of federal financial participation; and

(2) Centers for Medicare and Medicaid Services' approval.

Section 10. This administrative regulation was found deficient by the Administrative Regulation Review Subcommittee on May 13, 2014.

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

APPROVED BY AGENCY: July 8, 2019

FILED WITH LRC: July 11, 2019 at 2 p.m.

CONTACT PERSON: Chase Coffey, Executive Administrative Assistant, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone: 502-564-6746; fax: 502-564-7091; email CHFSregs@ky.gov.

CABINET FOR HEALTH AND FAMILY SERVICES
Office for Children with Special Health Care Needs
(As Amended at IJC on Health, Welfare, and Family Services, August 19, 2019)

911 KAR 1:010. Application to[~~Office for Children with Special Health Care Needs~~] clinical programs.

RELATES TO: KRS 200.460, 200.470, 200.654(13), Chapters 311, 319, 334A, 42 U.S.C. 9902(2), 42 C.F.R. 435.603

STATUTORY AUTHORITY: KRS 194A.030(5)**[~~, 200.460(1), 200.470(2)~~]**

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.030(5) authorizes the Office for Children with Special Health Care Needs to promulgate administrative regulations to implement and administer its responsibilities.**[~~KRS 200.460 mandates the Office for Children with Special Health Care Needs to provide services to children with disabilities. KRS 200.470(2) mandates the Office for Children with Special Health Care Needs to determine the ability of a child's parent or guardian to pay for costs of treatment, and provides for families to pay for services commensurate with their ability.~~]** This administrative regulation establishes application forms used for clinical programs, procedures for application and reapplication, eligibility criteria, assignment of pay category, and processes used to determine initial and continuing eligibility for services, as well as a process for reconsideration of an adverse decision.

Section 1. Definitions. (1) "**Affordable Care Act" is defined by 42 U.S.C. 9902(2).**

(2) "Applicant" means **a** person in need of services offered by the Office for Children with Special Health Care Needs clinical program.

(3)[~~(2)~~] "Clinical program" means an established clinical service by which OCSHCN delivers care to treat conditions listed on the OCSHCN-10g, Medical Eligibility List for Clinical and Case Management Services, through a provider:

(a) Contracted in accordance with 911 KAR 1:060; or

(b) Employed by OCSHCN as an audiologist.

(4)[~~(3)~~] "**[~~Financial~~]**Eligibility Committee" means an OCSHCN committee that is charged with:

(a) Clarifying financial eligibility questions that arise during:

1. The application review process; and

2. Ongoing eligibility reviews;**[~~and~~]**

(b) Evaluating appeal requests for reconsideration pursuant to Section 13 of this administrative regulation**;**

(c) Clarifying medical eligibility questions that arise during the application review process; and

(d) Determining if a diagnosis qualifies for inclusion in the clinical program.

(5)[~~(4)~~] "Income" means money received from:

(a) Statutory benefits (for example, Social Security, Veterans Administration pension, black lung benefits, or railroad retirement benefits);

(b) Military housing;

(c) Clerical housing;

(d) Farm or business operations;

(e) Pensions;

(f) Wages for labor or services;

(g) Royalties;

(h) Alimony, maintenance, or child support;

(i) Miscellaneous income as defined by the Internal Revenue Service at www.irs.gov/form1099misc;

(j) Retirement Survivors Disability Insurance;

(k) Disability benefits;

(l) Unemployment benefits;

(m) Supplemental Security Income;

(n) Workers' compensation;

(o) Annuities; or

(p) Interest and dividends.**[~~(5) "Medical Eligibility Committee" means an OCSHCN committee that is charged with:~~**

~~(a) Clarifying medical eligibility questions that arise during the application review process; and~~

~~(b) Determining whether a diagnosis qualifies for inclusion in the clinical program.~~]

(6) "OCSHCN" means Office for Children with Special Health Care Needs.

(7) "Responsible adult" means a person who is:

(a) Responsible for making decisions about an OCSHCN clinical program applicant or recipient of services; or

(b) Required to provide financial support for an OCSHCN clinical program applicant or recipient of services.

Section 2. Criteria for Application to an OCSHCN Clinical Program. (1) In order to be eligible to apply to an OCSHCN clinical program, an applicant shall:

(a) Be under twenty-one (21) years of age;

(b) Live in**[a]** Kentucky**;**

(c) Provide a Kentucky physical mailing address at which the applicant receives mail; and

(d)[dwelling that has an established street mailing address; and

~~(c)~~] Declare Kentucky as permanent domicile and residency**.**

(2)[~~for the purposes of:~~

~~1. Paying state taxes;~~

~~2. Voter registration; or~~

~~3. Driver's license procurement.~~

~~(2) A minor's residence shall be considered that of the legal guardian.~~

~~(3)~~] An applicant to the OCSHCN Autism Spectrum Disorder Diagnostic Service shall be referred by**[a]**:

(a) **A** physician, licensed in accordance with KRS Chapter 311;

(b) **An advanced practice registered nurse, licensed in accordance with KRS Chapter 314;**

(c) A licensed behavioral analyst, licensed in accordance with KRS Chapter 319;

(d) A therapist, licensed in accordance with KRS Chapter 334A;

(e) A[~~(c)~~] qualified service provider with the Kentucky Early Intervention System, as defined by KRS 200.654(13); or

(f)[~~(d)~~] School personnel, based on testing results.

(3)[~~(4)~~] An applicant to the OCSHCN Autism Spectrum Disorder Medical Service shall be:

(a) Referred by a:

1. Physician, licensed in accordance with KRS Chapter 311;

2. Psychologist, licensed in accordance with KRS Chapter 319; or

3. Speech-language pathologist, licensed in accordance with KRS Chapter 334A, if an Autism Diagnostic Observation Schedule assessment tool was used; and

(b) Diagnosed with **an autism spectrum disorder[~~:~~**

~~1. Autistic disorder;~~
~~2. Other childhood disintegrative disorder;~~
~~3. Asperger's syndrome; or~~
~~4. Other pervasive developmental disorder~~].

(4)[~~(5)~~] An applicant to the OCSHCN Hearing Aid Only Service shall be:

(a) Diagnosed to have a permanent childhood hearing loss; and

(b) Under the care of a licensed otorhinolaryngologist.

(5)[~~(6)~~] An applicant to clinical services not **established**[~~described~~] in subsections **(2), (3), or (4)**[~~(3), (4), or (5)~~] of this section may be referred by any person or provider.

(6)[~~(7)~~] An individual shall be ineligible for application to clinical programs if a write-off balance for services is owed to OCSHCN for clinical services delivered to **the individual**[~~:~~

~~(a) The individual; or~~
~~(b) A member of the individual's household~~].

(7)[~~(8)~~] Any balances owed pursuant to subsection **(6)**[~~(7)~~] of this section shall be paid in accordance with the:

(a) Individual's pay category status; and

(b) Provisions of 911 KAR 1:020.

(8)[~~(9)~~] OCSHCN shall allow up to three (3) reapplications for an applicant if the applicant has been discharged for[~~:~~

~~(a)~~] failure to:

(a)[~~1.~~] Complete financial update in accordance with Section 12 of this administrative regulation;

(b)[~~2.~~] Cooperate with medical care;

(c)[~~3.~~] Make payments on a past due account balance;

(d)[~~4.~~] Pay OCSHCN for services received; or

(e)[~~5.~~] Reimburse OCSHCN if an insurance payment has been received by the applicant[~~; or~~

~~(b) Declining treatment or care~~].

(9)[~~(10)~~] Exceptions to subsections **(7)**[~~(8)~~] and **(8)**[~~(9)~~] this section shall be determined by the OCSHCN request for reconsideration process in accordance with Section 13 of this administrative regulation.

Section 3. Initial Application. (1) If an individual who meets the criteria **established**[~~specified~~] in Section 2 of this administrative regulation expresses interest in submitting an application to OCSHCN's clinical program, designated staff shall provide the application packet indicated for the individual's situation, in accordance with Section 4 of this administrative regulation:

(a) At a scheduled intake appointment with the individual;

(b) By postal mail; or

(c) Electronically.

(2) An application shall be made by:

(a) The parent or other legally appointed guardian, if the individual is:

1. A minor who is not legally emancipated; or

2. An adult who is in custodial care; or

(b) The individual, if the individual is:

1. An adult; and

2. Not in the custodial care of another person or entity.

(3) OCSHCN may require the signature of both the applicant and responsible adult if:

(a) The applicant is over the age of eighteen (18); and

(b) There is a question of the applicant's competence to make decisions regarding self-care.

Section 4. Application Forms. (1) An applicant to an OCSHCN clinical program shall provide to the agency **within thirty (30) days**:

(a) A copy of the applicant's insurance card, or documentation thereof, if the applicant is not receiving Medicaid or K-CHIP;

(b) OCSHCN-10b, Consent for Care Agreement;

(c) OCSHCN-10c, Guaranty of Payment Agreement;

(d) OCSHCN-10d, Coordination of Benefits Agreement;

(e) OCSHCN-10a, Application for Service Legal Guardian, if the application is made by a legal guardian on behalf of a child or adult who is:

1. Under the age of twenty-one (21); and

2. Not legally emancipated;

(f) OCSHCN-10e, Application for Service Young Adult, if the application is made by an individual who is:

1. Not legally emancipated; or

2.a. Between **the ages of eighteen (18) and twenty-one (21)**[~~18 and 21~~]; and

b. A full-time student; and

(g) OCSHCN-10f, Application for Service Head of Household, if the application is made by an individual who is:

1. Under the age of eighteen (18) and legally emancipated; or

2. Between the **ages**[~~age~~] of eighteen (18) and twenty-one (21) and financially emancipated.

(2) OCSHCN may request that the applicant submit additional information or documentation concerning medical history **within thirty (30) days**, based on:

(a) Medical staff request; and

(b) Specific medical need.

Section 5. Limited English Proficiency. (1) OCSHCN shall ensure the availability of foreign language interpretation services in order to assure that families, staff, and providers have an opportunity to communicate effectively.

(2) OCSHCN shall arrange sign language interpreter services for persons who are deaf or hard of hearing, pursuant to 920 KAR 1:070.

Section 6. Proof of Custody for Applicants. (1) OCSHCN shall require a signed and dated legal court filing establishing custody rights of a minor if:

(a) The parents of a minor are divorced;

(b) The minor is adopted or in the legal custody of the commonwealth; or

(c) The legal guardianship of the minor is in question.

(2) OCSHCN shall require a signed and dated legal court filing establishing custody rights of an adult if the adult is said to be in custodial care of another individual.

(3) OCSHCN may require that the application be signed by the responsible adult if:

(a) The applicant is his or her own legal guardian; and

(b) There is a legitimate concern as to the applicant's ability to make decisions regarding self-care.

Section 7. Application Review Process. (1) Upon receipt of an application for the OCSHCN clinical program, designated staff shall review the packet to ensure all materials have been completed in accordance with Sections 3 and 4 of this administrative regulation.

(2) Designated staff shall notify the applicant of:

(a) Missing information or clarification needed; and

(b) The timeframe for submitting requested information.

(3) Complete applications shall be processed in accordance with Sections 8, 9, and 10 of this administrative regulation.

(4) Failure to submit requested information to OCSHCN within the specified timeframe shall result in the application process being closed.

Section 8. Medical Eligibility Determination. (1) In order to be eligible for an OCSHCN clinical program, the applicant shall have a documented condition that is **treated by OCSHCN**[~~:~~

~~(a) Treated by OCSHCN; and~~
~~(b) Listed on the OCSHCN-10g, Medical Eligibility List for Clinical and Case Management Services~~].

(2) An application shall be eligible for expedited review if designated OCSHCN staff determine that recent medical records exist documenting that a contracted provider staffing an OCSHCN clinical program has:

(a) Diagnosed the applicant with a condition on the OCSHCN-10g, Medical Eligibility List for Clinical and Case Management Services; and

(b) Agreed to a treatment plan for the child's condition that is supported by the OCSHCN services offered.

(3) If records **established**[~~specified~~] in subsection (2) of this section are not available for OCSHCN review, designated OCSHCN staff shall schedule an onsite clinical evaluation:

(a) By:

1. A contracted provider staffing an OCSHCN clinical program; or

2. An OCSHCN clinic employee; and

(b) To obtain documentation needed to confirm medical eligibility.

(4) Upon receipt of documentation pursuant to this section, designated staff shall determine **an applicant's** medical eligibility for the OCSHCN clinical program.

Section 9. Financial Eligibility Determination and Pay Category Assignment. (1) Each applicant shall undergo a financial review process upon:

(a) Application;

(b) Confirmation of medical eligibility;

(c) Change in income or household size prior to annual financial review; and

(d) Annual financial review.

(2) The OCSHCN process to determine pay category assignment shall:

(a) Be based on the household income of the responsible adult requesting services; and

(b) Include income of:

1. The applicant, if the applicant is:

a. An adult; or

b. Not in the custodial care of another person or entity;

2. Parents, step-parents, or legal guardians, if the applicant is:

a. A minor who is not legally emancipated; or

b. An adult who is in custodial care; and

3. Spouse of the applicant, if the applicant is married.

(3) Designated OCSHCN staff shall establish a household size based on family composition, including:

(a) The applicant;

(b) If the applicant is a minor:

1. Parents;

2. Step-parents;

3. Siblings, including:

a. Half siblings; and

b. Step-siblings; and

4. Any other dependent child claimed by the **applicant[~~parent or step-parent~~]** on a federal tax return; and

(c) If the applicant is an emancipated minor or adult:

1. Spouse;

2. Children, including:

a. Half children; and

b. Step-children; and

3. Any other dependent child claimed by the **applicant[~~parent or step-parent~~]** on a federal tax return.

(4) The **documents[~~document~~]** required for income verification shall be **the most recent**:

(a)**[~~The most recent~~]** Federal tax return of the applicant or the responsible adult; and

(b)**[~~The most recent~~]** Paycheck statement with year-to-date gross earnings for each currently held job.

(5) An applicant or responsible adult without a paycheck containing the criteria **established[~~specified~~]** in subsection (4)(b) of this section shall provide two (2) consecutive and **the most recent[~~current~~]** pay stubs or a written statement from the employer that shows:

(a) Gross amount earned; and

(b) Frequency of pay.

(6) An applicant who is covered by Kentucky Medicaid shall be:

(a) Exempt from income verification;

(b) Considered financially eligible; and

(c) Placed in the zero percent pay category.

(7) If household income suggests that an applicant is possibly Medicaid- eligible, a Medicaid application shall be completed within **thirty (30) days[~~the specified timeframe requested by designated OCSHCN staff~~]**.

(8) If a Medicaid application completed pursuant to subsection (7) of this section is denied for a reason other than being over income, the applicant shall:

(a) Be considered financially eligible;

(b) Meet medical eligibility criteria pursuant to Section 8 of this administrative regulation; and

(c) Be assigned a pay category in accordance with Section 10 of this administrative regulation.

(9) If a Medicaid application completed pursuant to subsection (7) of this section is denied for being over income, the applicant shall be:

(a) Considered financially eligible; and

(b) Assigned a pay category in accordance with Section 10 of this administrative regulation.

(10) If an application for Medicaid is not completed as requested within the specified timeframe, the application process shall be closed.

Section 10. Family Participation Scale. (1) An eligible applicant shall be assigned a pay category, which is determined based on:

(a) Annual gross income; and

(b) Household size.

(2) OCSHCN shall:

(a) Calculate minimum and maximum annual gross income limits annually, utilizing:

1. The federal poverty level established annually by the United States Department of Health and Human Services pursuant to 42 U.S.C. 9902(2); and

2. Modified adjusted gross income-based methods established in 42 C.F.R. 435.603; and

(b) Post the current Family Participation Scale at https://chfs.ky.gov/agencies/ccshcn.

(3) **Except as established in subsection (5) of this section,** pay categories shall:

(a) Represent eligibility requirements at income levels for the Kentucky Children's Health Insurance Program established in 907 KAR 4:030; and

(b) Be established at**[~~the following levels~~]**:

1. Zero percent;

2. Twenty (20) percent;

3. Forty (40) percent;

4. Sixty (60) percent;

5. Eighty (80) percent; and

6. 100 percent.

(4) In accordance with KRS 200.470(1), an applicant who is placed in the 100 percent pay category shall be eligible for acceptance only if access to adequate care and treatment is limited as evidenced by:

(a) Service needed is not otherwise available within a fifty (50) mile radius of where the patient resides;

(b) Treatment requires a multi-disciplinary team, which may include a physician, RN care coordinator, social worker, nutritionist, and therapist;

(c) Service is needed for the purchase of hearing aids;

(d) The patient is:

1. Uninsured; and

2. A member of a religious sect that is exempt from the requirement to maintain minimum essential coverage as required by the Affordable Care Act;

(e) The patient is:

1. Uninsured;

2. Not eligible for Medicaid or the Kentucky Children's Health Insurance Program (KCHIP); and

3. Is exempt from the requirement to maintain minimum essential coverage as required by the Affordable Care Act; or

(f) The medical care or service ordered by an OCSHCN-contracted specialist as treatment for a qualifying condition:

1. Is a non-covered benefit or excluded under the patient's insurance policy; and

2. The patient would benefit from the OCSHCN negotiated rate.

(5) An exception to subsection (3) of this section shall be determined by the OCSHCN request for reconsideration process in accordance with Section 13 of this administrative regulation.

Section 11. Notice of Eligibility Determination. (1) If an applicant is determined to be eligible in accordance with Sections 8 and 9 of this administrative regulation, designated staff shall notify

the applicant in writing of the:
(a) Acceptance into the OCSHCN clinical program;
(b) Effective date of eligibility;
(c) Pay category assigned and a description of family participation fees and responsibilities;
(d) Annual review date;
(e) Name of the OCSHCN contact person assigned to:
1. Manage medical care;
2. Schedule appointments; and
3. Discuss services available; and
(f) Right to request reconsideration of pay category assignment, in accordance with Section 13 of this administrative regulation.
(2) If an applicant is determined to be ineligible for acceptance into the OCSHCN clinical program, designated staff shall notify the following individuals, in writing, of the reason for denial:
(a) The applicant, enumerating a right to request reconsideration of the adverse decision; and
(b) The applicant's primary care or referring physician, if applicable.

Section 12. Continuing Eligibility and Reapplication. (1) A responsible adult shall advise OCSHCN if there is a change in:
(a) Employment;
(b) Contact information;
(c) Insurance coverage; or
(d) Family composition.
(2) **A**[~~An annual~~] financial recertification shall be completed **annually**[~~by the last day of the month in which the application was approved~~].
(3) During the financial recertification, designated OCSHCN staff shall:
(a) Verify continued Medicaid enrollment; or
(b) If the recipient of services is not enrolled in Kentucky Medicaid, send the responsible adult written notice **pursuant to Section 4 of this administrative regulation,**[~~:~~
~~1.~~] requesting completion of:
1.[~~a.~~] The financial portion of the application form[~~to be completed pursuant to Section 4 of this administrative regulation~~]; and
2.[~~b.~~] The OCSHCN-10c, Guaranty of Payment Agreement form[~~; and~~
~~2. Providing a timeframe for submission of requested forms~~].
(4) If the forms requested pursuant to subsection (3)(b) of this section are not returned in accordance with the requested timeframe, designated staff shall follow up in writing.
(5) If the requested forms are not returned subsequent to a written follow up pursuant to subsection (4) of this section, designated staff shall:
(a) Initiate discharge of the recipient from the OCSHCN clinical program; and
(b) Notify the responsible adult or person receiving services, providing the:
1. Date of discharge;
2. Referral to primary care physician;
3. Option to reapply for OCSHCN services, and contact phone number; and
4.[~~5.~~]Courtesy copies of notifications of discharge sent to:
a. Primary care physician;
b. Dental provider, if applicable; and
c. Pharmacy provider, if applicable.
(6) Financial recertification shall occur if there is:
(a) A loss of Medicaid;
(b) Change in circumstances, such as income or household size; or
(c) Change in guardianship.
(7) Upon receipt of documentation related to this section's continuing eligibility and reapplication, designated staff shall notify the responsible adult in writing of the:
(a) Acceptance into the OCSHCN clinical program**;**
(b) Effective date of eligibility;
(c) Pay category assigned and a description of family participation fees and responsibilities;
(d) Annual review date;
(e) Name of OCSHCN contact person assigned to:
1. Manage medical care;
2. Schedule appointments; and
3. Discuss services available; and
(f) Right to request reconsideration of pay category assignment, pursuant to Section 13 of this administrative regulation.

Section 13. Request for Reconsideration. (1) An individual who is aggrieved by an adverse decision regarding initial eligibility, termination of services, **or**[~~and~~] pay category assignment in accordance with the procedures **established**[~~contained~~] in Section 10 of this administrative regulation may request a reconsideration. A request for reconsideration shall be filed within thirty (30) days of receipt of the adverse decision.
(2) A request for reconsideration of pay category assignment shall be directed to the[~~Financial~~] Eligibility Committee for resolution.
(3) **Once**[~~When~~] a request for reconsideration of the pay category assigned is received, the applicant shall be provided with an OCSHCN-10h, Medical Expense Worksheet, which shall be completed and returned to OCSHCN within **thirty (30)**[~~ten (10) working~~] days.
(4) An applicant shall submit with the OCSHCN-10h, Medical Expense Worksheet, and written proof of out of pocket payment for allowable medical expenses as established in subsection (5) of this section and paid for:
(a) By the applicant or a member of the applicant's household; and
(b) Within the last twelve (12) months from the date of the letter of pay category assignment.
(5) Allowable medical expenses shall include:
(a) Insurance premiums;
(b) Medical office or clinic visits;
(c) Medical supplies;
(d) Nutritional supplies;
(e) Prescription medications;
(f) Over the counter medications;
(g) Durable medical equipment;
(h) Hearing aids;
(i) Dental or orthodontia;
(j) Vision or Eye;
(k) Hospitalizations;
(l) Additional expenses for consideration; and
(m) OCSHCN payments in accordance with 911 KAR 1:020.
(6) Upon receipt of the OCSHCN-10h, Medical Expense Worksheet, and documentation **established**[~~specified~~] in subsection (4) of this section, OCSHCN staff shall:
(a) Verify expenses;
(b) Present to the OCSHCN[~~Financial~~] Eligibility Committee for review; and
(c) Notify the applicant in writing of the determination.

Section 14. Request for Hearing. An individual who has received a notice of adverse action following a reconsideration may request an administrative hearing**. A request for an administrative hearing shall be:**
(1) In accordance with KRS Chapter 13B**; and**
(2)[~~. The request for an administrative hearing shall be~~] Received by OCSHCN within thirty (30) days of the notice of adverse action.

Section 15. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) [~~"~~]OCSHCN-10a, **"**Application for Service Legal Guardian," 01/2019;
(b) [~~"~~]OCSHCN-10b, **"**Consent for Care Agreement," 01/2019;
(c) [~~"~~]OCSHCN-10c, "Guaranty of Payment Agreement," 01/2019;
(d) [~~"~~]OCSHCN-10d, **"**Coordination of Benefits Agreement," 01/2019;

(e) [~~"~~]OCSHCN-10e, "Application for Service Young Adult," 01/2019;

(f) [~~"~~]OCSHCN-10f, "Application for Service Head of Household," 01/2019;

(g) [~~"~~]OCSHCN-10g, "Medical Eligibility List for Clinical and Case Management Services," ***08/2019[01/2019]***;

(h) [~~"~~]OCSHCN-10h, "Medical Expense Worksheet," 01/2019; and

(i) "Family Participation Scale," 04/01/2019.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office for Children with Special Health Care Needs, 310 Whittington Parkway, Suite 200, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. to 4:30 p.m. or online at the agency's Web site at https://chfs.ky.gov/agencies/ccshcn.

SHELLIE A. MAY, BSN, Executive Director
ADAM M. MEIER, Secretary

APPROVED BY AGENCY: May 7, 2019

FILED WITH LRC: May 14, 2019 at 4 p.m.

CONTACT PERSON: Chase Coffey, Executive Administrative Assistant, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746; fax 502-564-7091; email CHFSregs@ky.gov.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Protection and Permanency
(As Amended at ARRS, August 9, 2019)

922 KAR 1:495. Training requirements for foster parents, adoptive parents, and respite care providers for children in the custody of the cabinet.

RELATES TO: KRS 61.870, 158.135(1)(c), 194A.005(1), 194A.050(1), 199.011[~~199.011(9)~~], 199.464, 199.472(1), 199.640, 311.720(12)[~~311.720(9)~~], 311.840(3), 314.011(5), (7), 600.020, 605.100(1), 605.150(1), 620.360, 45 C.F.R. Parts 160, 164, 42 U.S.C. 671(a), 675

STATUTORY AUTHORITY: KRS 194A.050(1), 199.472(1), 199.640(5), 605.100(1), 605.150(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Secretary for the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate the programs and fulfill the responsibilities vested in the cabinet. KRS 199.472(1) requires[~~authorizes~~] the cabinet to promulgate administrative regulations to establish the process of determining an applicant's capacity for adoptive parenthood. KRS 199.640(5)(a) requires the Secretary of the Cabinet for Health and Family Services to promulgate administrative regulations establishing basic standards of care and service for child-caring facilities and child-placing agencies. KRS 605.100(1) requires the cabinet to arrange programs designed to provide for classification, segregation, and specialized treatment of children according to their respective problems, needs, and characteristics. KRS 605.150(1) authorizes the cabinet to promulgate administrative regulations to implement the provisions of KRS Chapter 605. In addition, 42 U.S.C. 671(a)(24) includes a certification that, before a child in foster care under the responsibility of the state is placed with prospective foster parents, the prospective foster parents will be prepared adequately with the appropriate knowledge and skills to provide for the needs of the child, and that such preparation will be continued, as necessary, after the placement of the child. This administrative regulation establishes minimum training requirements for foster parents, adoptive parents, and respite care providers caring for foster or adoptive children in the custody of the cabinet.

Section 1. Definitions. (1) "Adoptive parent" means an individual who is seeking to adopt a child placed in the custody of the cabinet.

(2) "Applicant" means an individual or family, subject to approval by the cabinet, or by a private child-placing agency, as a foster or adoptive home.

(3) "Cabinet" is defined by KRS 194A.005(1) and 600.020(7) [~~600.020(6)~~].

(4) "Care Plus" means a foster care program for a child who is determined to have specialized care needs as specified in 922 KAR 1:350, Section 5.

(5) "Child specific foster home" means an individual or family subject to approval by the cabinet as a foster family home for a relative or fictive kin placement.

(6) "Foster home" means:

(a) A "foster family home" as defined by KRS 199.011(10)[~~199.011(9)~~] and 600.020(30)[~~600.020(28)~~], if referring to a physical structure; or

(b) If referring to an individual, any individual approved as a foster parent by:

1. A child-placing agency in accordance with 922 KAR 1:310; or

2. The cabinet in accordance with 922 KAR 1:350.

(7)[~~(6)~~] "Health professional" means a person actively licensed as a:

(a) Physician as defined by KRS 311.720(12)[~~311.720(9)~~];

(b) Physician assistant as defined by KRS 311.840(3);

(c) Advanced practice registered nurse as defined by KRS 314.011(7); or

(d) Registered nurse as defined by KRS 314.011(5) under the supervision of a physician.

(8)[~~(7)~~] "Medically complex" means a foster care program for a child who is determined to have a medical condition as specified in 922 KAR 1:350, Section 4.

(9)[~~(8)~~] "Professional experience" means paid employment or volunteer work in a setting where there is supervision or periodic evaluation.

(10)[~~(9)~~] "Reasonable and prudent parent standard" is defined by 42 U.S.C. 675(10).

(11)[~~(10)~~] "Respite care" means temporary care provided by another individual or family:

(a) To **meet the needs of the child or** provide relief to a foster or adoptive parent approved in accordance with 922 KAR 1:310 or 922 KAR 1:350; and

(b) With the expectation of a child's return to the current foster or adoptive home.

(12)[~~(11)~~] "Therapeutic foster care" is defined by KRS 158.135(1)(c).

(13)[~~(12)~~] "Trauma informed care" means training developed using an organizational strengths-based framework to recognize and respond to the impact of traumatic stress on children, caregivers, and service providers with a goal to facilitate and support the recovery and resiliency of the child and family.

Section 2. General Training Requirements. (1) The purpose of the foster or adoptive parent training shall be to:

(a) Orient the applicant to the philosophy and process of the foster care or adoption programs;

(b) Develop greater self-awareness on the part of the applicant to determine strengths and needs;

(c) Sensitize the applicant to the kinds of situations, feelings, and reactions that are apt to occur with a child in the custody of the cabinet;

(d) Effect behavior so that an applicant may better fulfill the role as a foster or adoptive parent to a child; and

(e) Emphasize:

1. Self-evaluation; and

2. Experiential learning.

(2)(a) A foster or adoptive parent applicant shall complete a minimum of fifteen (15) hours of curricula in the following topic areas:

1. Information about the rights, responsibilities, and expectations of a foster or adoptive parent;

2. The importance of birth parents and culture;

3. The process of a child entering foster care;

4. Types of child maltreatment;

5. Impact of childhood trauma;

6. Stages of grief;

7. Long term effects of separation and loss;

8. Permanency planning for a child, including independent living for transitioning youth;

9. Importance of attachment on a child's growth and development and the way a child maintains and develops a healthy attachment;

10. Family functioning, values, and expectations of a foster or adoptive home;

11. Cultural competency;

12. Emergency preparedness;

13. Child development;

14. Basic discipline and behavior management skills; and

15. Reasonable and prudent parent standard.

(b) The cabinet ***shall[~~may~~]*** waive up to twelve (12) hours of preservice training curricula for an applicant seeking approval as a child specific foster home ***unless the cabinet identifies an unmet need that necessates training***.

(c) The cabinet shall not waive the required electronic courses required by subsection (3) of this section.

(d)[~~(b) Beginning July 1, 2016,~~] Training curricula specified in paragraph (a) of this subsection shall be:

1. Provided by the cabinet; or

2. Approved by the cabinet in accordance with Section 8 of this administrative regulation.

(e)[~~(c)~~] Unless justification is documented pursuant to paragraphs (f)[~~(d)~~] and (g)[~~(e)~~] of this subsection, foster or adoptive parent training for placement of a child in the custody of the cabinet shall be completed in a group setting by each adult who resides in the household and may provide routine care to a child in the custody of the cabinet.

(f)[~~(d)~~] A justification to provide foster or adoptive parent training other than in a group setting pursuant to paragraph (e)[~~(c)~~] of this subsection shall:

1. Include the circumstance that[~~, which~~] prevents the foster or adoptive parent training from occurring in a group setting; and

2. Be documented utilizing the DPP-113, Request for Applicant or Adult Household Member to Attend Individualized Training.

(g)[~~(e)~~] A justification completed in accordance with paragraph (f)[~~(d)~~] of this subsection shall be placed in the foster or adoptive parent's case file.

(h)[~~(f)~~] An applicant shall not receive more than eight (8) hours of individualized training during a twenty-four (24) hour period.

(3) In addition to initial training requirements in subsection (2)(a) of this section, a foster or adoptive parent applicant shall complete the following electronic courses provided by the cabinet prior to approval:

(a) Pediatric Abusive Head Trauma;

(b) First Aid and Universal Precautions;

(c) Medication Administration;[~~and~~]

(d) Medical Passports; and

(e) Reasonable and Prudent Parenting.

(4) First aid certification may substitute for the training requirement provided within subsection (3)(b) of this section if the foster or adoptive parent applicant provides documentation of current certification.

Section 3. General Annual Training Requirements. (1) Prior to or during the month of the second anniversary date of a foster or adoptive parent's initial approval, the foster or adoptive parent shall complete a minimum of thirty (30) hours of training in the following areas:

(a) Trauma informed care curriculum provided or approved by the cabinet in accordance with Section 8 of this administrative regulation;

(b) Psychotropic medications curriculum provided by the cabinet;

(c) Sexual abuse curriculum provided or approved by the cabinet in accordance with Section 8 of this administrative regulation; and

(d) Behavior management and skill development.

(2) If a private child-placing agency provides training in accordance with subsection (1) of this section prior to a foster or adoptive home's approval, the thirty (30) hours shall be in addition to the fifteen (15) hours of pre-service training required by Section 2(2) of this administrative regulation.

(3)[~~A foster or adoptive home approved prior to the adoption of this administrative regulation shall complete the training described in subsection (1) of this section within two (2) years of the effective date of this administrative regulation.~~

~~(4)~~] If training requirements of subsections (1) and (2) [~~through (3)~~] of this section are met, a foster or adoptive parent shall complete the following prior to or during each subsequent anniversary of the foster or adoptive parent's initial approval:

(a) Ten (10) hours of private child-placing agency or cabinet-sponsored training related to knowledge or skills relevant to foster parenting, or training approved in advance by the private child-placing agency or the cabinet; and

(b) If applicable, training as specified in Section 2(3)(a) of this administrative regulation once every five (5) years in accordance with KRS 199.464.

(4)(a) The cabinet may waive annual ongoing training requirements for a foster home approved as a child specific foster home.

(b) The cabinet shall assess the need for ongoing training for the child specific foster home during the**[~~annual~~]** re-evaluation [~~(5) A foster or adoptive parent shall complete training regarding the reasonable and prudent parent standard in accordance with 42 U.S.C. 671(a) and Section 2(2)(a)15 of this administrative regulation within one (1) year of the effective date of this administrative regulation~~].

(5) A foster or adoptive home who has accepted the placement of a child age fourteen (14) or older shall complete a cabinet-approved training that instructs parents on facilitating the development of life skills for the child, effective July 1, 2020.

Section 4. Medically Complex Foster Parent Training Requirements. (1) In addition to the general training requirements established[~~specified~~] in Section 2 of this administrative regulation and annual training requirements established[~~specified~~] in Section 3 of this administrative regulation, a medically complex foster parent applicant shall:

(a) Complete twelve (12) hours of cabinet-provided medically complex training in the following topic areas specific to children with medical complexity:

1. Growth and development;

2. Nutrition;

3.[~~An overview of procedures and techniques which may be utilized to provide care~~;

~~3. Observation and assessment~~;

~~4. Management of diet and environment;~~

~~5.~~] Documentation of provided care;

4. Medical conditions[~~6. Parenting skills~~]; and

5. Standards of practice related to the medically complex home type[~~7. Permanency planning~~]; and

(b) Hold a current certification in infant, child, and adult CPR and first aid.

(2) Prior to or during the anniversary month of the foster parent's initial approval as a foster parent and annually thereafter, an approved medically complex foster parent shall:

(a) Meet the requirements in subsection (1)(b) of this section;

(b) Complete the annual training requirements as specified in Section 3 of this administrative regulation; and

(c) Complete twelve (12) hours of ongoing cabinet-provided training related to the care of children with medical complexity.

(3) Professional experience related to the care of a child with medical complexity may substitute for the initial and annual medically complex training requirements specified in subsections (1)(a) and (2)(c) of this section if approved by designated cabinet staff based on the foster or adoptive parent:

(a) Being a health professional; and

(b) Having completed twelve (12) hours of continuing education focusing on pediatrics within the past year that will assist the parent in the care of a child with medical complexity.

Section 5. Therapeutic Foster Care Training Requirements. (1) In addition to the general training requirements specified in Section 2 of this administrative regulation and annual training requirements specified in Section 3 of this administrative regulation, a therapeutic foster care applicant in accordance with 922 KAR 1:310 shall complete twelve (12) hours of private agency-sponsored training or training approved in advance by the child-placing agency in the following topic areas:

(a) Specific requirements and responsibilities of a therapeutic foster care home;

(b) Crisis intervention and behavior management;

(c) De-escalation techniques;

(d) Communication skills;

(e) Skill development;

(f) The dynamics of a child who has experienced sexual abuse or human trafficking; and

(g) The effect of substance use, abuse, or dependency by either the child or the child's biological parent.

(2) An approved therapeutic foster parent shall:

(a) Complete the annual training requirements as specified in Section 3 of this administrative regulation; and

(b) Prior to or during the anniversary month of the foster parent's initial approval as a foster parent and annually thereafter, complete twelve (12) hours of private agency-sponsored training or training approved in advance by the private agency in topic areas relevant to therapeutic foster care.

(3) A therapeutic foster care applicant may concurrently complete general training requirements as specified in Section 2 of this administrative regulation and training requirements established in subsection (1) of this section.

Section 6. Care Plus Training Requirements. (1) In addition to the general training requirements specified in Section 2 of this administrative regulation and annual training requirements specified in Section 3 of this administrative regulation, a care plus applicant in accordance with 922 KAR 1:350 shall complete twelve (12) hours of cabinet-sponsored training or training approved in advance by the cabinet in the following topic areas:

(a) Specific requirements and responsibilities of a care plus foster home;

(b) Crisis intervention and behavior management;

(c) De-escalation techniques;

(d) Communication skills;

(e) Skill development;

(f) Cultural competency;

(g) The dynamics of a child who has experienced sexual abuse or human trafficking; and

(h) The effect of substance use, abuse, or dependency by either the child or the child's biological parent.

(2) An approved care plus foster parent shall:

(a) Complete the annual training requirements as specified in Section 3 of this administrative regulation; and

(b) Prior to or during the anniversary month of the foster parent's initial approval as a foster parent and annually thereafter, complete twelve (12) hours of ongoing cabinet-sponsored training or training approved in advance by the cabinet prior to or during the anniversary month of initial approval as a foster parent in the topic areas described in subsection (1) of this section.

Section 7. Respite Care Providers. If a respite provider is not approved as a foster or adoptive parent in accordance with 922 KAR 1:350 or 922 KAR 1:310, prior to initial approval as a respite care provider, the individual shall complete a minimum of two (2) hours of cabinet or private child-placing agency provided curriculum including an overview of the department and the policies and procedures of the agency related to the care of the child.

Section 8. Preapproval of Training Curricula. (1) If a private child-placing agency intends to offer curricula other than curricula provided by the cabinet as specified in Sections 2(2) or 3(1) of this administrative regulation, the private child-placing agency shall submit its curricula to the cabinet or its designee for consideration.

(2) The cabinet shall approve curricula that are:

(a) Comparable in content to curricula provided by the cabinet; or

(b) Recognized evidence-based practices.

(3) The cabinet shall make a determination:

(a) Within thirty (30) calendar days; or

(b) As a part of the child-placing agency's initial application to provide services to a child in the custody of the cabinet.

Section 9. Incorporation by Reference. (1) "DPP-113, Request for Applicant or Adult Household Member to Attend Individualized Training", 11/15, is incorporated by reference.

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

ERIC T. CLARK, Commissioner
ADAM M. MEIER, Secretary

APPROVED BY AGENCY: July 12, 2019

FILED WITH LRC: July 15, 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.

ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING OR RECEIPT OF WRITTEN COMMENTS

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Water
(Amended After Comments)

401 KAR 8:030. Water treatment plant and water distribution system classification and staffing.

RELATES TO: KRS 223.180, 223.190, 223.200, 223.210, 223.220, 224.10-110**,[;]**42 U.S.C. 300g-7, Section 1419

STATUTORY AUTHORITY: KRS 223.180 **-[through]** 223.220[223.180-223.220], 224.10-100, 224.10-110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 223.180-223.220 authorizes the cabinet to classify water treatment plants and distribution systems based on size, type, and physical condition and according to the skill, knowledge, and experience needed by the plant operator. KRS 224.10-110 requires the cabinet to enforce administrative regulations for the regulation and control of the purification of water for public and semipublic use and for the certification of water plant operators. This administrative regulation establishes standards for the staffing and classification of water treatment plants and water distribution systems.

Section 1. General Provisions. (1)(a) A public water system shall be operated according to the provisions of KRS Chapters 223 and 224 and 401 KAR Chapter 8.

(b) A certified operator shall not be required for a semipublic water system.

(c) Except as **established[provided]** in subsection **(3)(c)[(2)(c)]**1b, 2b, and 4b of this section, a public water system shall be operated by a certified operator, other than an operator-in-training, in direct responsible charge who holds a valid certificate in a class equal to or higher than that required for the system under supervision.

(2) (a) A Class I Operator In Training shall not be in direct responsible charge of a water treatment, distribution, or bottled water system.

(b) A certified operator with an Operator In Training designation shall work under the direct supervision of a certified operator who:

1. Works at the same facility; and

2. Has obtained a certification level that is equal to or greater than the certification level required to serve in direct responsible charge of the facility.

(c) An Operator In Training may have direct responsible charge for a water treatment or water distribution system for which the operator holds a valid certification in a class equal to or higher than that as required by 401 KAR 11:040.

(3) Staffing requirements.

(a) Water distribution systems. A water distribution system shall be operated by or under the supervision of a distribution system operator certified in a class equal to or higher than the class of the distribution system.

(b) Combination water treatment plants and water distribution systems.

1. A combination water treatment plant or water distribution system shall be classified as Class IA-D, Class IB-D, or Class IIB-D.

2. A system classified as a combination system in subparagraph 1. of this paragraph shall be operated by or under the supervision of an operator who:

a. Holds an active[a valid] combination or separate water treatment and distribution system operator certificate of the appropriate class or higher; and

b. Who shall be in direct responsible charge of the system.

3. A certified operator of a Class IA-D combination system shall be at the water treatment plant if water is being treated, unless the operator is performing other system-related duties.

(c) Water treatment plants.

1. Class IIA.

a. Except as **established[provided]** in subparagraph b. of this paragraph, if water is being treated, a Class IIA water treatment plant shall be operated by a certified water treatment plant operator who:

(i) Holds an active[a valid] certificate in a class equal to or higher than Class IIA who shall be in direct responsible charge of the plant; and

(ii) Shall be present at the water treatment plant or performing system-related duties.

b. A Class IIA water treatment plant that treats water during more than one (1) shift per day may employ a Class IA-D certified operator for one (1) shift per day, other than the shift worked by the Class IIA operator in direct responsible charge, **if[provided that]**[so long as] the Class IIA operator in direct responsible charge shall be able to respond on site within thirty (30) minutes.

2. Class IIIA.

a. Except as **established[provided]** in subparagraph b. of this paragraph, if water is being treated, a Class IIIA water treatment plant shall be operated by a certified water treatment plant operator who:

(i) Holds an active[a valid] certificate in a class equal to or higher than Class IIIA who shall be in direct responsible charge of the plant; and

(ii) Shall be present at the water treatment plant or performing system- related duties.

b. A Class IIIA water treatment plant that treats water during more than one (1) shift per day may employ a Class IIA operator for one (1) shift per day, other than the shift worked by the Class IIIA operator in direct responsible charge, **if[provided that]**[so long as] the Class IIIA operator in direct responsible charge shall be able to respond on site within thirty (30) minutes.

3. Class IIIB. A[a] Class IIIB water treatment plant shall be operated by or under the supervision of a certified water treatment plant operator who:

(i) Holds an active[a valid] certificate in a class equal to or higher than Class IIIB; and

(ii) Who shall be in direct responsible charge of the system.

4. Class IVA.

a. Except as **established[provided]** in subparagraph b, of this paragraph, if water is being treated, a Class IVA water treatment plant shall be operated by a certified water treatment plant operator who:

(i) Holds an active[a valid] Class IVA certificate who shall be in direct responsible charge of the plant; and

(ii) Who shall be present at the water treatment plant or performing system-related duties.

b. A Class IVA water treatment plant that treats water during more than one (1) shift per day may employ a Class IIIA operator for one (1) shift per day, other than the shift worked by the Class IVA operator in direct responsible charge, **if[provided that]**[so long as] the Class IVA operator in direct responsible charge shall be able to respond on site within thirty (30) minutes.

5. Class IVB. A Class IVB water treatment plant shall be operated by or under the supervision of a certified water treatment plant operator who holds an active[a valid] certificate in a class equal to or higher than Class IVB who is in direct responsible charge of the system.

6. A public water system may propose an alternate staffing plan to the staffing requirement established in this paragraph.

a. The proposal shall be submitted to the cabinet and shall thoroughly explain the alternate proposal.

b. The proposal shall demonstrate:

(i) A necessity for the water system to vary from the requirements[requirement] in this paragraph; and

(ii) An equal level of protection of human health and the environment.

c. The cabinet shall not approve an alternate proposal that does not propose that a duly certified operator in direct responsible charge operate a water treatment plant, in accordance with KRS

223.210.

(d) Bottled Water Systems. A bottled water treatment plant shall be operated by or under the supervision of a certified water treatment plant operator who:

1. Holds an active[~~a valid~~] bottled water certification; and

2. Who shall be in direct responsible charge of the system.

(e) System-related duties shall be for:

1. Class IIA, Class IIIA, and Class IVA water systems, duties related to the operation and maintenance of the water treatment plant; or

2. Class IA-D water systems, duties related to the operation and maintenance of the water treatment plant and distribution system.

(4)[~~(3)~~](a) A public water system may comply with the staffing requirements of this section by securing a contract operator or an operations firm.

(b) If a public water system secures a contract operator or operations firm to operate a treatment plant or distribution system, the public water system shall provide**[~~the following information~~]** to the cabinet:

1. Name, mailing address, and telephone number of the:

a. Certified operator or contract operations firm; and

b. Principal contact within the firm for certification activities, if different;

2. Name, certificate type, and certificate number for each certified operator;

3. Facility name, public water supply identification number, and county location of each system for which the contract or operations firm operator is assuming responsibility;

4. Effective date and expiration date of the contract; and

5. Duties and responsibilities of each party to the contract.

(5)[~~(4)~~] Certificate display. If a public water system office is available at the water treatment plant or within the distribution system, each operator's certificate shall be prominently displayed.

(6)[~~(5)~~] Reporting requirements.

(a) A public water system shall notify the cabinet in writing within thirty (30) calendar days of a certified operator employment change.

(b)1. A certified operator shall notify the cabinet within thirty (30) calendar days of a change in employment or mailing address.

2. Employment change information shall include:

a. The name and identification number of the public water system;

b. The effective date of the change; and

c. Whether the operator is assuming or relinquishing responsibility for the plant or system.

Section 2. Classification of Water Treatment Plants and Water Distribution Systems. There shall be four (4) classes of water treatment plants, Class I, II, III, or IV; two (2) subclasses of treatment types, A or B; four (4) classes of water distribution systems, Class I, II, III, or IV; and one (1) bottled water class.

(1)(a) Class IV is the highest class and subclass A is the highest subclass.

(b) Combined treatment and distribution classifications[~~also exist~~] for Class I and II systems shall be[~~:~~] Class IA-D, Class IB-D, and Class IIB-D.

(2) The water treatment plant and water distribution system classifications shall correspond to the operator classifications established in 401 KAR 11:040.

(3) A public water system shall be classified according to the criteria in subsection (4) of this section.

(a)1. The[~~the~~] cabinet may change a public water system classification if necessary because of:

a. Complexity of the system due to engineering design;

b. Source water quality; or

c. Operation conditions.

2. Notice of a change shall be given to the owner of the public water system.

(b) The cabinet shall reclassify a nontransient noncommunity water system that treats water primarily for its industrial process with limited employee use if the calculated portion of the water produced by the water treatment plant not used for the industrial process averages less than ten (10) percent of the average daily production averaged over the most recent twelve (12) months.

(4)(a)1. A water treatment plant or system based on the cabinet-assigned design capacity for finished water production the treatment plant is able to produce in twenty-four (24) continuous hours of production, taking into consideration all limiting factors and the treatment process employed.

2. A water treatment plant classification shall be as established in Table 1 of this subsection.

(b)1. A water distribution system shall be classified according to population served, determined as established in 401 KAR 8:200, Section 3.

2. A water distribution system classification shall be as established in Table 1 of this subsection.

TABLE 1

	WaterTreatment Plant (Assigned Design Capacity)	Water Distribution System (Population Served)
Class I	Less than 50,000 gallons per day	Less than 1,500
Class II	50,000 gallons or more per day but less than 500,000 gallons per day	Equal to or greater than 1,500 but less than 15,000
Class III	500,000 gallons or more per day but less than 3,000,000 gallons per day	Equal to or greater than 15,000 but less than 50,000
Class IV	3,000,000 gallons or more per day	Equal to or greater than 50,000

(c) Each class of water treatment plan shall be subdivided according to the type of treatment used by the plant. The subclasses shall be:

1. Subclass A: a water treatment plant that treats:

a. Surface water or groundwater under the direct influence of surface water; or

b. Groundwater not under the direct influence of surface water that uses gravity filtration; and

2. Subclass B: a water treatment plant that treats groundwater:

a. Not under the direct influence of surface water and uses a filtration process other than gravity filtration; or

b.[~~Groundwater~~] Not under the direct influence of surface water that does not use filtration processes.

(d) A combination treatment and distribution system shall be classified as Class IA-D, Class IB-D, or Class IIB-D.

(e) Each treatment plant comprising a single public water system shall be classified in accordance with this section, and each plant shall be operated in accordance with Section 1 of this administrative regulation.

(5) A bottled water treatment plant classification shall only apply to a bottled water system that bottles water for sale.

(6) Limited. A limited classification is available to a water treatment facility serving a school or a semipublic water system.

401 KAR 8:030 Water treatment plant and water distribution system classification and staffing is approved for filing.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: August 13, 2019

FILED WITH LRC: August 14, 2019 at 10 a.m.

CONTACT PERSON: Carole J. Catalfo, Internal Policy Analyst, RPPS,, Division of Water, 3rd Floor, 300 Sower Boulevard, Frankfort, Kentucky 40601, phone (502) 564-3410, fax (502) 564-9003, email water@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Carole J. Catalfo

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes standards for the staffing and classification of water treatment plants and water distribution systems.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure that water treatment plants, distribution, and bottled water systems are staffed

by operators who have passed a certification examination by the cabinet and have obtained the appropriate level of certification for the type of plant or system being operated.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 223.180-223.220 authorizes the cabinet to classify water treatment plants and distribution systems based on size, type, and physical condition and according to the skill, knowledge, and experience needed by the plant operator. KRS 224.10-110 requires the cabinet to enforce administrative regulations for the regulation and control of the purification of water for public and semipublic use and for the certification of water plant operators.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation informs water treatment plants, distribution, and bottled water systems of the staffing requirements for each class of system or plant.

(2) If 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 corrects regulatory language and paragraph numbers to meet KRS 13A requirements.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to correct regulatory language and paragraph numbers to meet KRS 13A requirements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 223.180 through 223.220 authorizes the cabinet to classify water treatment plants and distribution systems based on size, type, and physical condition and according to the skill, knowledge, and experience needed by the plant operator. KRS 224.10-110 requires the cabinet to enforce administrative regulations for the regulation and control of the purification of water for public and semipublic use and for the certification of water plant operators.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation is necessary to correct regulatory language and paragraph numbers to meet KRS 13A requirements.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Certified water operators, Operators In Training, and state or local governments that operate drinking water plants are affected by the amendment.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the 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. This amendment is only to correct regulatory language and paragraph numbers to conform with KRS 13A.

(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. This amendment is only to correct regulatory language and paragraph numbers to conform with KRS 13A.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment is only to correct regulatory language and paragraph numbers to conform with KRS 13A.

(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: The Division uses federal funds to administer the Safe Drinking Water Act.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase or changes in funding will be necessary to implement the amendment to this administrative regulation. This amendment is only to correct regulatory language and paragraph numbers to conform with KRS 13A.

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

(9) TIERING: Is tiering applied? Yes, tiering is applied dependent upon the type, size, and classification of water system being operated.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? There are approximately 436 public water systems, and 52 semipublic water systems. Public water systems are often owned by city governments or organized under county governments, and other districts may also have a water system.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 223.180 through 223.220, 224.10-100, 224.10-110.

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

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

(d) How much will it cost to administer this program for subsequent years? This administrative regulation will not increase 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 will not generate revenue or increase costs. This amendment is only to correct regulatory language and paragraph numbers to conform with KRS 13A.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 300g-7, Section 1419

2. State compliance standards. KRS 223.180 through 223.220, 224.10-100, 224.10-110

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 300g-7, Section 1419 establishes minimum standards for operator certification.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate? No, this administrative regulation does not impose stricter, additional, or different requirements or responsibilities than those required by federal law. This amendment is only to correct regulatory language and paragraph numbers to conform with KRS 13A.

5. Justification for the imposition of the stricter standard, or

additional or different responsibilities or requirements. This administrative regulation does not impose stricter, additional, or different requirements or responsibilities than those required by federal law. This amendment is only to correct regulatory language and paragraph numbers to conform with KRS 13A.

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Water
(Amended After Comments)

401 KAR 8:050. Drinking water program fees.

RELATES TO: KRS 223.220, 224.10-100, 224.10-110, 40 C.F.R. 142.10, Pub.L. 104-182, 2008-531

STATUTORY AUTHORITY: KRS 223.220, 224.10-100(20), 224.10-110

NECESSITY, FUNCTION, AND CONFORMITY: KRS[~~Chapter~~] 224.10-100(20) authorizes the cabinet to establish, by administrative regulation, a fee or schedule of fees for the cost of processing applications for permits authorized by KRS Chapter 224. KRS 224.10-110 requires the cabinet to enforce cabinet **administrative** regulations for review, approval, or disapproval of plans for water purification and distribution systems. This administrative regulation establishes fees for reviewing plans and specifications of public water systems[~~, for operator certification,~~] and for laboratory certification.

Section 1. Fees for the Review of Plans and Specifications for New and Existing Public and Semipublic Water Systems. (1) Filing fees.

(a) Except as **established[~~provided~~]** in KRS 224.10-100, a person who submits the plans and specifications **established[~~listed~~]** in subsection (2) of this section shall simultaneously submit a filing fee in the amount of twenty (20) percent of the required project fee **established[~~described~~]** in subsection (2) of this section.

(b) A filing fee shall not be refundable if the plans and specifications for which the filing fee is required are denied or withdrawn.

(c) The filing fee shall be applied toward the project fee assessed **as established** in subsection (2) of this section.

(d)1. Plans and specifications not approved shall be returned to the applicant.

2. Further consideration of plans and specifications not approved shall require a new submittal and payment of the appropriate filing fee.

(2) Project fees.

(a) Following preliminary review of the plans and specifications, the cabinet shall notify the applicant whether **or not** the plans and specifications comply with 401 KAR 8:100. If the applicant is notified that the plans and specifications comply, the applicant shall submit the remainder of the fee required by paragraph (b) of this subsection.

(b) A fee for review and approval of the plans and specifications shall be assessed according to **subparagraphs 1. through 3. of this paragraph.**[~~the following schedule:~~]

1. Fee for reviewing plans of community public water systems

a. The fee for reviewing plans for a water treatment plant utilizing disinfection and all components of conventional filtration treatment shall be $800.

b. The fee for reviewing plans for a water treatment plant utilizing disinfection, but not all components of conventional filtration treatment, shall be $525.

c. The fee for reviewing plans for a water treatment plant utilizing only disinfection shall be $250.

d. The fee for reviewing plans for a change in design capacity of a water treatment plant involving disinfection and all components of conventional filtration treatment shall be $800.

e. The fee for reviewing plans for a change in design capacity of a water treatment plant involving disinfection, but not all components of conventional filtration treatment, shall be $525.

f. The fee for reviewing plans for a change in design capacity of a water treatment plant involving only disinfection shall be $125.

g. The fee for reviewing plans for a change in the structures and appurtenances, except for distribution lines of less than 10,000 feet, of a water supply system shall be $325.

h. The fee for reviewing plans of a water supply system for a change to the distribution lines of 10,000 feet or less shall be $150.

2. Fees for reviewing plans of noncommunity public water systems.

a. The fee for reviewing plans for a water treatment plant utilizing disinfection and all components of conventional filtration treatment shall be $800.

b. The fee for reviewing plans for a water supply system serving more than 100 people that utilizes disinfection, but not all components of conventional filtration treatment, shall be $200.

c. The fee for reviewing plans for a change to a water supply system serving more than 100 people shall be $100

d. The fee for reviewing plans for a water supply system serving 100 people or fewer, which utilizes disinfection, but not all components of conventional filtration treatment, shall be $100.

e. The fee for reviewing plans for a change to a water supply system serving 100 people or fewer shall be fifty (50) dollars.

3. Semipublic water systems. The fee for reviewing plans for a semipublic water system facility or a change to a semipublic water system shall be fifty (50) dollars.

Section 2. Fees for Laboratory Certification. (1) Fees shall be received by December 31[~~February 15~~] of each calendar year prior to the certification period.

(2) A fee received after December 31[~~February 15~~] and before January 15[~~March 14~~] shall incur a surcharge of fifteen (15) percent.

(3) Laboratory certification shall be revoked if fees are not received by January 15 of the certification year[~~March 15~~].

(4) To reinstate a laboratory certification that was revoked pursuant to subsection (3) of this section, the laboratory shall comply with 401 KAR 8:040, Section 2, and shall pay a surcharge of twenty-five (25) percent of the certification fee established in Table A in subsection (5) of this section.

(5) The annual fee for certification by analysis category shall be as established in Table A:

Table A: Annual Certification Fee by Analysis Category	
Analysis Category	Fee
Microbiology Administration and Application	$1,000
Microbiology	$500
Chemistry Administration and Application	$1,000
Disinfection By-Products	$500
Synthetic Organic Chemicals	$500
Volatile Organic Chemicals	$500
All Other Chemical Analysis Categories	$500
Other audits resulting in a certification status change	$500 each

(6) Fees shall apply to in-state and out-of-state laboratories.

(7)(a) A laboratory may request a ten (10) percent discount of the following year's certification fee if it submits compliance data electronically for one (1) calendar year.

(b) To be eligible for the discount:

1. The laboratory's data shall not contain errors;

2. The laboratory shall not err in the electronic-submittal process; and

3. The laboratory shall comply with 401 KAR 8:040, Section 4.

(8) A laboratory certified by the National Environmental Laboratory Association Certification Institute (TNI) or a National Environmental Laboratory Association Program accrediting authority may request a ten (10) percent discount of the total certification fee for which it maintains the TNI certification.[~~Section 3. (1) Fees for certification of water treatment plant and water distribution system operators.~~

~~(a) Certification application fee shall be $100.~~

~~(b) A renewal application fee shall be:~~

~~1. Fifty (50) dollars if renewed through the cabinet Web site; or~~

~~2. $100 if not renewed through the cabinet Web site.~~

~~(c) A renewal late fee shall be $250.~~

~~(d) A reciprocity fee shall be $500.~~

~~(2) Each year the cabinet, in consultation with the board, shall establish fees for operator training conducted by the cabinet.~~

~~(3)(a) The fees established in subsection (1) of this section shall be nonrefundable.~~

~~(b) Fifty (50) percent of the fees established in subsection (2) of this section shall be refundable if registration is canceled at least two (2) business days prior to the beginning of the training event.~~

~~(c) The fees in subsection (2) of this section shall be fully refunded if the training event is cancelled by the cabinet.~~]

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: August 13, 2019

FILED WITH LRC: August 14, 2019 at 10 a.m.

CONTACT PERSON: Carole J. Catalfo, Internal Policy Analyst, RPPS, Division of Water, 3rd Floor, 300 Sower Boulevard, Frankfort, Kentucky 40601, phone (502) 564-3410, fax (502) 564-9003, email water @ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Carole J. Catalfo

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes fees for review of plans and specifications for new and existing public and semipublic water systems, laboratory certification, and drinking water operator certification.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish fees for cabinet review of plans and specifications for new and existing public and semipublic water systems, laboratory certification, and drinking water operator certification.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100(20) authorizes the cabinet to establish, by administrative regulation, a fee or schedule of fees for the cost of processing applications for permits authorized by KRS Chapter 224. KRS 224.10-110 requires the cabinet to enforce cabinet regulations for review, approval, or disapproval of plans for water purification and distribution systems. This administrative regulation establishes fees for reviewing plans and specifications of public water systems, operator certification, and laboratory certification.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes fees for the drinking water program, including laboratory certification fees.

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

(a) How the amendment will change this existing administrative regulation: This amendment is only to correct regulatory language and paragraph numbers to conform with KRS 13A.

(b) The necessity of the amendment to this administrative regulation: This amendment is only to correct regulatory language and paragraph numbers to conform with KRS 13A.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100(20) authorizes the cabinet to establish, by administrative regulation, a fee or schedule of fees for the cost of processing applications for permits authorized by KRS Chapter 224. KRS 224.10-110 requires the cabinet to enforce cabinet regulations for review, approval, or disapproval of plans for water purification and distribution systems. This administrative regulation establishes fees for reviewing plans and specifications of public water systems, operator certification, and laboratory certification.

(d) How the amendment will assist in the effective administration of the statutes: This amendment is only to correct regulatory language and paragraph numbers to conform with KRS 13A.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Certified drinking water treatment plant and distribution system operators, as well as operator candidates, will be affected by this amended regulation. State or local governments that operate drinking water treatment plants or distribution systems will be affected if they pay certification fees for their employees. There are approximately sixty (60) certified microbiology and chemistry laboratories in Kentucky, thirty (30) of which are municipally owned, and approximately twenty-nine (29) laboratories outside Kentucky. These laboratories service 436 public, 52 semipublic, and 5 bottled water systems in Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The regulated entities will not need to take further action. This amendment is only to correct regulatory language and paragraph numbers to conform with KRS 13A.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amendments to this administrative regulation will not result in additional costs. This amendment is only to correct regulatory language and paragraph numbers to conform with KRS 13A.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment is only to correct regulatory language and paragraph numbers to conform with KRS 13A.

(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. This amendment is only to correct regulatory language and paragraph numbers to conform with KRS 13A.

(b) On a continuing basis: The amendment to this administrative regulation will not result in additional costs. This amendment is only to correct regulatory language and paragraph numbers to conform with KRS 13A.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There is no source of funding necessary for implementation of the amendment. This amendment is only to correct regulatory language and paragraph numbers to conform with KRS 13A.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The amendment to this administrative regulation will not require an increase in fees or a change in funding sources. This amendment is only to correct regulatory language and paragraph numbers to conform with KRS 13A.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation establishes fees for the review of plans and specifications for new and existing public and semipublic water systems, certified water operators, and laboratory certification. This amendment is only to correct regulatory language and paragraph numbers to conform with KRS 13A.

(9) TIERING: Is tiering applied? Tiering is applied. Fees vary according to the type and level of application for new and existing public and semipublic water systems and laboratory certification. Fees for operator certification are tiered based on the type of certification application being made.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What 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 certified drinking water operators, laboratories hired by public and semipublic water systems, and review of plans and specifications for new and existing water systems. A public water system is often owned by a city government or is organized under county government.

(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(20) authorizes the cabinet to establish, by administrative regulation, a fee or schedule of fees for the cost of processing applications for permits authorized by KRS Chapter 224. KRS 224.10-110 requires the cabinet to enforce cabinet regulations for review, approval, or disapproval of plans for water purification and distribution systems. This administrative regulation establishes fees for reviewing plans and specifications of public water systems, operator certification, and laboratory certification.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amendment to this administrative regulation will not generate any revenue. This amendment is only to correct regulatory language and paragraph numbers to conform with KRS 13A.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The amendment to this administrative regulation will not generate any revenue. This amendment is only to correct regulatory language and paragraph numbers to conform with KRS 13A.

(c) How much will it cost to administer this program for the first year? The amendment to this administrative regulation will not result in additional costs. This amendment is only to correct regulatory language and paragraph numbers to conform with KRS 13A.

(d) How much will it cost to administer this program for subsequent years? The amendment to this administrative regulation will not result in additional costs. This amendment is only to correct regulatory language and paragraph numbers to conform with KRS 13A.

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

Revenues (+/-): NA

Expenditures (+/-): NA

Other Explanation: The amendment to this administrative regulation will not result in additional costs or generate revenue. This amendment is only to correct regulatory language and paragraph numbers to conform with KRS 13A.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal statute or regulation that addresses operator certification fees or laboratory certification, although 40 C.F.R. 142 requires these activities as a condition of receiving primary responsibility for the federal Safe Drinking Water Act.

2. State compliance standards KRS 224.10-100(20), 224.10-110

3. Minimum or uniform standards contained in the federal mandate. 40 C.F.R. Part 141 and Part 142 establish national Primary Drinking Water regulations and implementation standards for those regulations.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate? No. There is no federal statute or regulation that addresses operator certification fees or laboratory certification, although 40 C.F.R. 142 requires these activities as a condition of receiving primary responsibility for the federal Safe Drinking Water Act. This amendment is only to correct regulatory language and paragraph numbers to conform with KRS 13A.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. KRS 224.10-100(20) authorizes the cabinet to promulgate regulations establishing a fee or schedule of fees for permits authorized by KRS Chapter 224. This amendment is only to correct regulatory language and paragraph numbers to conform with KRS 13A.

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Water
(Amended After Comments)

401 KAR 11:001. Definitions for 401 KAR Chapter 11.

RELATES TO: KRS 223.160 - 223.220[~~223.160-220~~], **224.1-010[~~224.01-010(9)~~]**, 224.73-110[~~, EO 2009-538~~]

STATUTORY AUTHORITY: KRS 223.200, 224.10-100, 224.10-110, 224.73-110[~~, EO 2009538~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-110 authorizes the cabinet to promulgate administrative regulations concerning the certification of wastewater operators. KRS 223.200 requires the cabinet to promulgate administrative regulations concerning the certification of water treatment and distribution system operators. KRS 224.73-110 requires wastewater system operators to be certified by the cabinet[~~EO 2009-538, effective June 12, 2009, establishes the new Energy and Environment Cabinet~~]. This administrative regulation establishes definitions applicable to the certification of wastewater and water operators.

Section 1. Definitions. (1) "Active certificate" means a current and valid certificate that:

(a) Has been renewed for the current period as established in 401 KAR 11:050; and

(b) Authorizes the operator to operate the type of water or wastewater facility indicated on the certificate.

(2) "Applicant" means a person who has submitted an application to take an examination for certification.

(3)[~~(2)~~] "Board" means the:

(a)[~~The~~] Kentucky Board of Certification of Wastewater System Operators; or

(b)[~~The~~] Kentucky Board of Certification of Water Treatment and Distribution System Operators.

(4)[~~(3)~~] "Cabinet" is defined by KRS **224.1-010(8)[~~224.01-010(9)~~]**.

(5)[~~(4)~~] "Certificate" means a certificate of competency issued by the cabinet stating that the operator has met the requirements for the specified operator classification as established by 401 KAR Chapter 11.

(6)[~~(5)~~] **"Certified operator" means an individual that holds an active certified operator's certificate issued in accordance with 401 KAR 11:050.**

(7) "Certified Training Provider" or "CTP" means a continuing education or training provider that has been approved by the cabinet **as established in 401 KAR 11:050**, in consultation with the board, and that offers continuing education or training that:

(a) Is pertinent to the practice of drinking water or wastewater plant operation;

(b) Contributes to operator competency beyond the knowledge obtained in the initial certification preparatory program; and

(c) Is pertinent to specific work requirements.**[~~(7) "Certified operator" means an individual that holds an active certified operator's certificate issued in accordance with 401 KAR 11:050.~~]**

(8)[~~(6)~~] "Core content" means the information identified as essential by the board for purposes of certification examination and continuing education training.

(9)[~~(7)~~] "Direct responsible charge" means personal, first-hand responsibility to conduct or actively oversee and direct procedures and practices necessary to ensure that the drinking water treatment plant or distribution system is operated in accordance with accepted practices and with KRS Chapters 223 and 224 and 401 KAR Chapters 8 and 11.

(10) "Inactive certificate" means a certificate:

(a) For which only the renewal fee has been paid;

(b) For which continuing education required by 401 KAR

11:050 has not been met; and

(c) That shall not give the certificate holder the authority or credentials to operate any type of water or wastewater plant until the certificate has been returned to active status.

(11)[~~(8)~~] "Operator" means a person involved in the operation of a wastewater treatment plant, wastewater collection system, drinking water treatment plant, or drinking water distribution system.

(12)[~~(9)~~] "Primary responsibility" means personal, first-hand responsibility to conduct or actively oversee and direct procedures and practices necessary to ensure that the wastewater treatment plant or wastewater collection system is operated in accordance with accepted practices and with KRS Chapter 224 and 401 KAR Chapters 5 and 11.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: August 13, 2019

FILED WITH LRC: August 14, 2019 at 10 a.m.

CONTACT PERSON: Carole J. Catalfo, Internal Policy Analyst, RPPS, Division of Water, 3rd Floor, 300 Sower Boulevard, Frankfort, Kentucky 40601, phone (502) 564-3410, fax (502) 564-9003, email water @ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Carole J. Catalfo

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes definitions for terms used in 401 KAR Chapter 11.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to define terms used in 401 KAR Chapter 11.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-110 authorizes the cabinet to promulgate administrative regulations concerning the certification of wastewater operators. KRS 223.200 requires the cabinet to promulgate administrative regulations concerning the certification of water treatment and distribution system operators. KRS 224.73-110 requires wastewater system operators to be certified by the cabinet. This administrative regulation establishes definitions applicable to the certification of wastewater and water operators.

(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 11 for proper interpretation and enforcement. This amendment is only to correct regulatory language and paragraph numbers to conform 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: This amendment is only to correct regulatory language and paragraph numbers to conform with KRS 13A.

(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 11. This amendment is only to correct regulatory language and paragraph numbers to conform with KRS 13A.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-110 authorizes the cabinet to promulgate administrative regulations concerning the certification of wastewater operators. KRS 223.200 requires the cabinet to promulgate administrative regulations concerning the certification of water treatment and distribution system operators. KRS 224.73-110 requires wastewater system operators to be certified by the cabinet. This administrative regulation establishes definitions applicable to the certification of wastewater and water operators.

(d) How the amendment will assist in the effective administration of the statutes: This amendment is only to correct regulatory language and paragraph numbers to conform with KRS 13A.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Certified water and wastewater operators, operator-candidates, and state or local governments that operate drinking water or wastewater plants will be affected by the amendment. This amendment is only to correct regulatory language and paragraph numbers to conform with KRS 13A.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the 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. This amendment is only to correct regulatory language and paragraph numbers to conform with KRS 13A.

(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. This amendment is only to correct regulatory language and paragraph numbers to conform with KRS 13A.

(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 11. This amendment is only to correct regulatory language and paragraph numbers to conform with KRS 13A.

(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. This amendment is only to correct regulatory language and paragraph numbers to conform with KRS 13A.

(b) On a continuing basis: This administrative regulation will not result in additional costs. This amendment is only to correct regulatory language and paragraph numbers to conform with KRS 13A.

(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. This amendment is only to correct regulatory language and paragraph numbers to conform with KRS 13A.

(7) Provide an assessment of whether an 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. This amendment is only to correct regulatory language and paragraph numbers to conform with KRS 13A.

(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. This amendment is only to correct regulatory language and paragraph numbers to conform with KRS 13A.

(9) TIERING: Is tiering applied? Tiering is not applied because definitions do not require tiering. This amendment is only to correct regulatory language and paragraph numbers to conform with KRS 13A.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What 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 11 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 224.10-110 authorizes the cabinet to promulgate administrative regulations concerning the certification of wastewater operators. KRS 223.200 requires the cabinet to promulgate administrative regulations concerning the certification

of water treatment and distribution system operators. KRS 224.73-110 requires wastewater system operators to be certified by the cabinet.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 only and will not generate any revenue. This amendment is only to correct regulatory language and paragraph numbers to conform with KRS 13A.

(b) How 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 only and will not generate any revenue. This amendment is only to correct regulatory language and paragraph numbers to conform with KRS 13A.

(c) How much will it cost to administer this program for the first year? This administrative regulation establishes definitions only and will not result in additional costs. This amendment is only to correct regulatory language and paragraph numbers to conform with KRS 13A.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation establishes definitions only and will not result in additional costs. This amendment is only to correct regulatory language and paragraph numbers to conform with KRS 13A.

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 only and will not result in additional revenue or costs. This amendment is only to correct regulatory language and paragraph numbers to conform with KRS 13A.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal mandate regarding the establishment of definitions. This amendment is only to correct regulatory language and paragraph numbers to conform with KRS 13A.

2. State compliance standards. KRS 223.200, 224.10-100, 224.10-110, 224.73-110

3. Minimum or uniform standards contained in the federal mandate. There is no federal mandate regarding the establishment of definitions. This amendment is only to correct regulatory language and paragraph numbers to conform with KRS 13A.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate? No. There is no federal mandate regarding the establishment of definitions. This amendment is only to correct regulatory language and paragraph numbers to conform with KRS 13A.

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. This amendment is only to correct regulatory language and paragraph numbers to conform with KRS 13A.

ENERGY AND ENVIRONMENT CABINET
Department of Environmental Protection
Division of Water
(Amended After Comments)

401 KAR 11:030. Wastewater treatment and collection system operators; classification and qualifications.

RELATES TO: KRS 224.73-110

STATUTORY AUTHORITY: KRS 224.10-100, 224.10-110, 224.73-110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.73-110 requires a person operating a public or private sewage system to **possess[~~possesses~~]** necessary skills, pass an examination, and hold a certificate issued by the cabinet unless the person is operating a sewage system located at the residence where the person lives and the sewage system serves only one (1) residence. KRS 224.10-110 requires the cabinet to establish programs and enforce cabinet **administrative** regulations for the certification of sewage system operators.[~~authorizes the cabinet to promulgate administrative regulations concerning the certification of wastewater.~~] This administrative regulation establishes classifications and qualifications for[~~classification of~~] wastewater treatment and collection operator certifications[~~and establishes the qualifications for certification~~].

Section 1. Classification of Wastewater Operator Certifications. (1) Wastewater treatment certifications.

(a) Limited certification.[~~As provided in KRS 224.73-110(5),~~] An operator issued a limited certificate may have primary responsibility for a school wastewater treatment plant and collection system as established in KRS 224.73-110(5).

(b) Class I Treatment certification. [~~1.~~] A Class I treatment operator:

1. May have primary responsibility for a wastewater treatment plant with a design capacity less than or equal to 50,000 gallons per day; and[~~.~~]

2.[~~A Class I Treatment operator~~] Shall not have primary responsibility for a wastewater treatment plant with a larger design capacity as established in 401 KAR 5:010.

(c) Class II Treatment certification. [~~1.~~] A Class II Treatment operator:

1. May have primary responsibility for a wastewater treatment plant with a design capacity less than or equal to two (2) million gallons per day; and[~~.~~]

2.[~~A Class II Treatment operator~~] Shall not have primary responsibility for a wastewater treatment plant with a larger design capacity as established in 401 KAR 5:010.

(d) Class III Treatment certification. [~~1.~~] A Class III Treatment operator:

1. May have primary responsibility for a wastewater treatment plant with a design capacity less than or equal to seven and one-half (7 1/2) million gallons per day; and[~~.~~]

2.[~~A Class III Treatment operator~~] Shall not have primary responsibility for a wastewater treatment plant with a larger design capacity as established in 401 KAR 5:010.

(e) Class IV Treatment certification. A Class IV Treatment operator may have primary responsibility for a wastewater treatment plant of any design capacity.

(2) Wastewater collection certifications.

(a) Class I Collection certification. [~~1.~~] A Class I Collection operator:

1. May have primary responsibility for a wastewater collection system that transports wastewater to a treatment plant with a design capacity of less than or equal to 50,000 gallons per day; and[.]

2.[~~A Class I Collection operator~~] Shall not have primary responsibility for a wastewater collection system that transports wastewater to a treatment plant with a larger design capacity as established in 401 KAR 5:010.

(b) Class II Collection certification. [~~1.~~] A Class II Collection operator:

1. May have primary responsibility for a wastewater collection system that transports wastewater to a treatment plant with a design capacity of less than or equal to two (2) million gallons per day; and[~~.~~]

2.[~~A Class II Collection operator~~] Shall not have primary responsibility for a wastewater collection system that transports wastewater to a treatment plant with a larger design capacity as established in 401 KAR 5:010.

(c) Class III Collection certification. [~~1.~~] A Class III Collection operator:

1. May have primary responsibility for a wastewater collection system that transports wastewater to a treatment plant with a design capacity of less than or equal to seven and one-half (71/2) million gallons per day; and[.]

2.[~~A Class III Collection operator~~] Shall not have primary responsibility for a wastewater collection system that transports wastewater to a treatment plant with a larger design capacity as established in 401 KAR 5:010.

(d) Class IV Collection certification. A Class IV Collection operator may have primary responsibility for any wastewater collection system.

(3) Operator in Training designations.

(a)[~~Except as provided in paragraphs (c) and (d) of this subsection,~~] A certified operator with an Operator in Training designation shall not have primary responsibility of a wastewater treatment plant or wastewater collection system as established in this subsection and in 401 KAR 5:010.

(b) A Class I Operator In Training shall not have primary responsibility of a wastewater treatment plant or wastewater collection system.

(c) A certified operator with an Operator in Training designation shall work under the direct supervision of a certified operator who:

1. Works at the same facility; and

2. Has obtained a certification level that is equal to or greater than the certification level required to serve in primary responsibility of the facility.[~~(c) A wastewater Class I Treatment operator with an Operator in Training designation who operates a wastewater treatment plant owned by the operator that serves only one (1) residence:~~

~~1. May have primary responsibility for that system; and~~

~~2. Shall be exempt from paragraph (b) of this subsection and 401 KAR 11:050, Section 1(2)(b) and (9)(a)3.~~]

(d) An Operator In Training may have primary responsibility for a wastewater collection system or wastewater treatment plant for which the operator has obtained Class II through Class IV[~~the~~] certification[~~level~~] required by this section[~~If a certified operator also has been issued a wastewater treatment or collection certification without an Operator in Training designation, the operator may have primary responsibility for a wastewater treatment plant or collection system as provided by this section for the certifications that do not have an Operator in Training designation~~].

Section 2. Wastewater Operator Qualifications: Experience, Education, and Equivalencies. An individual desiring to become a certified operator shall meet the[~~following~~] minimum education and experience requirements established in this section[~~qualifications~~] prior to the cabinet approving the individual to take a certification examination as established[~~provided~~] in 401 KAR 11:050. (1) The minimum education and experience requirement for each class of wastewater treatment certification[~~certifications~~] shall be as established in this subsection.[~~follows:~~]

(a) Limited certification. The cabinet may issue a limited certificate as established in KRS 223.73-110(5) if the applicant demonstrates the knowledge and experience required to properly operate the particular sewage system for which the applicant shall be responsible.[~~1. Education. A minimum level of education shall not be required.~~

~~2. Experience. A minimum level of experience shall not be required.~~]

(b) Class I Treatment certification.

1.[~~Education.~~] A high school diploma or general education development (GED) certificate[~~shall be required~~]; and

2.[~~Experience.~~] One (1) year of[~~acceptable~~] operation of a wastewater treatment plant [~~shall be required~~].

(c) Class II Treatment certification.

1.[~~Education.~~] A high school diploma or general education development (GED) certificate[~~shall be required~~]; and

2.[~~Experience.~~] Two (2) years of[~~acceptable~~] operation of a wastewater treatment plant[~~shall be required~~].

(d) Class III Treatment certification.

1.[~~Education.~~] A high school diploma or general education development (GED) certificate[~~shall be required~~]; and

2. [~~Experience.~~] Three (3) years of[~~acceptable~~] operation of a wastewater treatment plant with one (1) year of that experience in a wastewater treatment plant with a design capacity greater than 50,000 gallons per day[~~shall be required~~].

(e) Class IV Treatment certification.

1.[~~Education.~~]A baccalaureate degree **from a regionally accredited college or university** in engineering, or biological, environmental, physical, or chemical science, or equivalent[~~shall be required~~]; and

2.[~~Experience.~~]At least three (3)[~~five (5)~~] years of[~~acceptable~~] operation of a wastewater treatment plant[~~shall be required~~].

a. Two (2)[~~Three (3)~~] years of the required experience shall be in a wastewater treatment plant with a design capacity greater than two (2) million gallons per day[~~shall be required~~]; and

b. At least one (1) year[~~two (2) years~~] of primary responsibility shall be in a wastewater treatment plant with a design capacity greater than two (2) million gallons per day[~~shall be required~~].

(2) The minimum educational and experience requirements[~~qualifications~~] for wastewater collection certifications shall be as established in this subsection.[~~follows:~~]

(a) Class I Collection certification.

1.[~~Education.~~] A high school diploma or general education development (GED) certificate[~~shall be required~~]; and

2.[~~Experience.~~] One (1) year of[~~acceptable~~] operation of a wastewater collection system [~~shall be required~~].

(b) Class II Collection certification.

1.[~~Education.~~] A high school diploma or general education development (GED) certificate[~~shall be required~~]; and

2.[~~Experience.~~] Two (2) years of[~~acceptable~~] operation of a wastewater collection system[~~shall be required~~].

(c) Class III Collection certification.

1.[~~Education.~~] A high school diploma or general education development (GED) certificate[~~shall be required~~]; and

2.[~~Experience.~~] Three (3) years of[~~acceptable~~] operation of a wastewater collection system with one (1) year of that experience in a wastewater collection system that transports wastewater to a treatment plant with a design capacity of greater than 50,000 gallons per day[~~shall be required~~].

(d) Class IV Collection certification.

1.[~~Education.~~] A baccalaureate degree **from a regionally accredited college or university** in engineering,[~~;~~] or biological, environmental, [~~technology; biological,~~] physical, or chemical science[~~sciences~~]; or equivalent[~~shall be required~~]; and

2.[~~Experience.~~] At least three (3)[~~five (5)~~] years of[~~acceptable~~] operation of a wastewater collection system[~~shall be required~~]. [~~a.~~] At least two (2)[~~Three (3)~~] years of the required experience shall be in a wastewater collection system that transports wastewater to a treatment plant with a design capacity of greater than two (2) million gallons per day[~~shall be required; and~~

~~b. At least two (2) years of primary responsibility in a wastewater collection system that transports wastewater to a treatment plant with a design capacity of greater than two (2) million gallons per day shall be required~~].

(3)[~~The educational and experience qualifications for~~] Operator in Training designations. [~~shall be as follows:~~]

(a) Class I Treatment and Class I Collection certifications.

1.[~~Education.~~] A high school diploma or general education development (GED) certificate[~~shall be required~~]; and

2.[~~Experience.~~] Experience shall not be required.

(b) All other applicants for the classifications identified in Section 1(1) and (2) of this administrative regulation:

1. Shall have successfully qualified for and passed the certification exam of the same type classification at one (1) level lower than the Operator in Training designation being pursued; and

2. Shall not have been subject to disciplinary action as **established in[~~provided by~~]** 401 KAR 11:050[~~, Section 4~~].

(4) Substitutions. The cabinet shall allow[~~the following~~] substitutions as established in this subsection for education and experience requirements established[~~the qualifications specified~~] in subsections (1) and (2) of this section.[~~:~~]

(a) Education **from a regionally accredited college or**

university in[~~environmental~~] engineering[~~; environmental technology; and~~] or biological, environmental, physical, or chemical science or equivalent[~~sciences~~] shall be substituted if the substitution does not exceed fifty (50) percent of the required experience.

1. An associate degree may substitute for two (2) years of experience.

2. A baccalaureate degree may substitute for four (4) years of experience.

3. Ten (10) contact hours, one (1) Continuing Education Unit, or one (1) postsecondary education quarter hour in any subject with a grade of C or higher shall substitute for 0.022 years of experience.

4. One (1) postsecondary education semester hour in any subject with a passing grade of C or higher shall substitute for 0.033 years of experience.

(b)[~~3.~~] Education **from a regionally accredited college or university** that did not result in a degree in engineering or biological, environmental, physical, or chemical science may[~~a related field shall~~] be substituted if the substitution does not exceed twenty-five (25) percent of the required experience.[~~for the required experience as follows:~~

~~a.~~] 1. An associate degree may substitute for a maximum of one (1) year of experience.

2. A baccalaureate degree may substitute for a maximum of two (2) years of experience.

3. Ten (10) contact hours, one (1) Continuing Education Unit, or one (1) postsecondary education quarter hour in any subject with a passing grade of C or higher shall substitute for 0.011[~~0.022~~] years of experience.

4.[~~b.~~] One (1) postsecondary education semester hour in any subject with a passing grade of C or higher shall substitute for 0.016[~~0.033~~] years of experience.

5. Ten (10) contact hours, one (1) Continuing Education Unit, or one (1) postsecondary education quarter hour in engineering, mathematics or biological, environmental, physical, or chemical science with a passing grade of C or higher shall substitute for 0.022 years of experience.

6. One (1) postsecondary education semester hour in engineering, mathematics or biological, environmental, physical, or chemical science with a passing grade of C or higher shall substitute for 0.033 years of experience.

(c)[~~4.~~] Education applied to the experience requirements established in subsections (1) and (2) of this section shall not be applied to the education requirement.

(d)[~~(b)~~] Treatment and collection experience may[~~shall~~] be substituted for the educational requirement as established in this paragraph.[~~follows:~~]

1. One (1) year of operational experience at a treatment plant may[~~shall~~] substitute for one (1) year of education.

2. One (1) year of collection system experience may[~~shall~~] substitute for one (1) year of education.

3. a. The cabinet may allow partial substitution of the education requirement with[~~by~~] experience in:

(i)[~~i.~~] Maintenance;[,]

(ii)[~~ii.~~] Laboratory analysis;[~~,~~] or

(iii)[~~iii.~~] Other work related to the collection, treatment, or distribution of drinking water or wastewater.

b. To establish the amount of[~~how much~~] experience that shall be accepted, the cabinet shall determine the degree of:

(i)[~~i.~~] Technical knowledge needed to perform the work; and[~~the degree of~~]

(ii)[~~ii.~~] Responsibility the applicant had in the operation of the system.

4. Experience applied to the education requirement established in subsections (1) and (2) of this section shall not be applied to the experience requirement.

(e)[~~(c)~~] Collection system,[~~and~~] treatment, and distribution experience may be substituted as established in this paragraph.[~~follows:~~]

1.[~~1a.~~] Four (4) years of collection system experience may[~~shall~~] be considered equivalent to one (1) year of treatment experience.[~~b. This substitution shall not account for more than fifty (50) percent of the experience required by subsection (1) of this section.~~]

2. One (1) year of treatment experience may[~~shall~~] be considered equivalent to one (1) year of collection system experience.

3. One (1) year of distribution system experience as established in 401 KAR 11:040 may substitute for one (1) year of collection experience.

4. Substitutions under this paragraph shall not account for more than fifty (50) percent of the experience requirement.

(f) Experience that is not related to water collection, treatment, or distribution may be substituted as established in this paragraph.

1. Two (2) years of experience in laboratory analysis may be considered equivalent to one (1) year of treatment experience or six (6) months of collection experience.

2. Two (2) years of experience in the construction trades, construction management, engineering, plumbing, or electronics may be considered equivalent to one (1) year of collection experience or six (6) months of treatment experience.

3. Work experience in an area or specialty unrelated to those established in this paragraph may be substituted for up to six (6) months of collection or treatment experience.

4. To establish the amount of experience that shall be accepted, the cabinet shall determine the degree of:

a.[~~i.~~] Technical knowledge needed to perform the work; and

b.[~~ii.~~] Responsibility the applicant had in performing the work.

4. Substitutions under this paragraph shall not account for more than fifty (50) percent of the experience required by this administrative regulation.

(5)[~~(6)~~] Apprenticeships. An applicant who completes a state-approved treatment or collection apprenticeship program **as established in 401 KAR 11:050** may be eligible for treatment or collection certification if the applicant also achieves a passing score of seventy **(70)** percent**[~~(70%)~~]** or above on a cabinet-administered examination.

(6)[~~(7)~~] Equivalency. An operator who has received wastewater operator certification in a state, territory, or possession of the United States may be given an equivalent certification in Kentucky based on the:

(a) Level of certification obtained in the state, territory, or possession of the United States;

(b) Number of years of wastewater operator experience obtained while holding valid certification from another state, territory, or possession of the United States; and

(c) Type, size, and capacity of the wastewater plant or plants at which the certified operator obtained experience.

(7)[~~(8)~~] Reciprocity. The cabinet may establish a reciprocal agreement for operator certification with any other state, territory, or possession of the United States if the cabinet determines that operator certification requirements of the other state, territory, or possession of the United States are at least as stringent as those established in this administrative regulation.

CHARLES SNAVELY, Secretary

APPROVED BY AGENCY: August 13, 2019

FILED WITH LRC: August 14, 2019 at 10 a.m.

CONTACT PERSON: Carole J. Catalfo, Internal Policy Analyst, RPPS, Division of Water, 3rd Floor, 300 Sower Boulevard, Frankfort, Kentucky 40601, phone (502) 564-3410, fax (502) 564-9003, email water @ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Carole J. Catalfo

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes qualifications and classifications for wastewater treatment and collection system operators.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to protect public health by ensuring that wastewater treatment and collection system operators obtain and maintain adequate education, experience,

and training.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.73-110 requires any person operating a public or private sewerage system to possesses necessary skills, pass an examination, and hold a certificate issued by the cabinet. KRS 224.10-110 requires the cabinet to establish programs and enforce cabinet regulations for the certification of water and sewage plant operators. This administrative regulation establishes classifications and qualifications for wastewater treatment and collection operator certifications.

(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 establishing specific educational, experience, and training qualifications and criteria for operators of sewage systems 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 corrects regulatory language and paragraph numbers to conform with KRS 13A, and clarifies that education being applied towards operator certification must be obtained at a regionally accredited college or university.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to correct regulatory language and paragraph numbers to conform with KRS 13A, and to clarify that education being applied towards operator certification must be obtained at a regionally accredited college or university.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.73-110 requires any person operating a public or private sewerage system to possesses necessary skills, pass an examination, and hold a certificate issued by the cabinet. KRS 224.10-110 requires the cabinet to establish programs and enforce cabinet regulations for the certification of water and sewage plant operators. This administrative regulation establishes classifications and qualifications for wastewater treatment and collection operator certifications.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation assists in the administration of the statutes by clarifying education and training requirements for operator certification. This amendment corrects regulatory language and paragraph numbers to conform with KRS 13A, and clarifies that education being applied towards operator certification must be obtained at a regionally accredited college or university.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Certified wastewater operators, operator-candidates, and state or local governments that operate wastewater plants will be affected by the amendment.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The regulated entities will not need to take any additional action. This amendment corrects regulatory language and paragraph numbers to conform with KRS 13A, and clarifies that education being applied towards operator certification must be obtained at a regionally accredited college or university.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment will not result in additional costs. This amendment corrects regulatory language and paragraph numbers to conform with KRS 13A, and clarifies that education being applied towards operator certification must be obtained at a regionally accredited college or university.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment corrects regulatory language and paragraph numbers to conform with KRS 13A, and clarifies that education being applied towards operator certification must be obtained at a regionally accredited college or university.

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

(a) Initially: This amendment will not result in additional costs. This amendment corrects regulatory language and paragraph numbers to conform with KRS 13A, and clarifies that education being applied towards operator certification must be obtained at a regionally accredited college or university.

(b) On a continuing basis: This amendment will not result in additional costs. This amendment corrects regulatory language and paragraph numbers to conform with KRS 13A, and clarifies that education being applied towards operator certification must be obtained at a regionally accredited college or university.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Certification fees and state general funds. The amendments to this administrative regulation will not require a change in funding sources. This amendment corrects regulatory language and paragraph numbers to conform with KRS 13A, and clarifies that education being applied towards operator certification must be obtained at a regionally accredited college or university.

(7) Provide an assessment of whether an 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. This amendment corrects regulatory language and paragraph numbers to conform with KRS 13A, and clarifies that education being applied towards operator certification must be obtained at a regionally accredited college or university.

(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. Fees for operator certification are established in 401 KAR 11:060. This amendment corrects regulatory language and paragraph numbers to conform with KRS 13A, and clarifies that education being applied towards operator certification must be obtained at a regionally accredited college or university.

(9) TIERING: Is tiering applied? Yes, tiering is applied in this administrative regulation. Wastewater treatment and collection system operator education, training, and experience requirements differ depending on the classification of certificate the operator seeks, and the type and size of the system the operator is responsible for.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This regulation will impact the Division of Water and Division of Compliance Assistance, both within the cabinet's Department of Environmental Protection, and state or local governments that operate drinking water or wastewater facilities.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.10-110, 224.73-110.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate revenue. This amendment corrects regulatory language and paragraph numbers to conform with KRS 13A, and clarifies that education being applied towards operator certification must be obtained at a regionally accredited college or university.

(b) How 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. This amendment corrects regulatory language and paragraph

numbers to conform with KRS 13A, and clarifies that education being applied towards operator certification must be obtained at a regionally accredited college or university.

(c) How much will it cost to administer this program for the first year? This administrative regulation will not result in additional costs. This amendment corrects regulatory language and paragraph numbers to conform with KRS 13A, and clarifies that education being applied towards operator certification must be obtained at a regionally accredited college or university.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation will not result in additional costs. This amendment corrects regulatory language and paragraph numbers to conform with KRS 13A, and clarifies that education being applied towards operator certification must be obtained at a regionally accredited college or university.

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

Revenues (+/-): NA

Expenditures (+/-): NA

Other Explanation: This administrative regulation will not result in additional costs or generate revenue. This amendment corrects regulatory language and paragraph numbers to conform with KRS 13A, and clarifies that education being applied towards operator certification must be obtained at a regionally accredited college or university.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal statute or regulation addressing certified wastewater operators.

2. State compliance standards. KRS 224.10-100, 224.10-110, and 224.73-110

3. Minimum or uniform standards contained in the federal mandate. There are no federal standards for certified wastewater operators.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate? No. There is no federal mandate for certified wastewater operators.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There are no federal standards for certified wastewater operators.

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Water
(Amended After Comments)

401 KAR 11:040. Water treatment and distribution system operators; classification and qualifications.

RELATES TO: KRS 223.160 **-[through]** 223.220[~~223.160-220~~], 224.10-100, 224.10-110[~~, EO 2009-538~~]
STATUTORY AUTHORITY: KRS 223.160 **-[through]** 223.220[~~223.160-220~~], 224.10-100, 224.10-110[~~,EO 2009-538~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 authorizes[~~and 224.10-110 authorize~~] the cabinet to promulgate administrative regulations concerning the certification of water operators. KRS 224.10-110 requires the cabinet to establish programs and enforce cabinet **administrative** regulations for the certification of water plant operators. KRS 223.160 through 223.220 authorizes the cabinet to establish qualifications and examinations, and issue certificates for, water plant operators[~~EO 2009-538, effective June 12, 2009, establishes the new Energy and Environment Cabinet~~]. This administrative regulation establishes classification of water treatment and distribution operator certifications and establishes the qualifications for certification.

Section 1. Classification of Water Operator Certifications.

(1) Water treatment certifications.

(a) Limited certification.[~~As provided in KRS 223.160(2),~~] An operator issued a limited certificate may have primary responsibility for a water treatment facility for a school and for a semipublic water supply as established in KRS 223.160.

(b) Class IA-D treatment certification.[~~1.~~] A Class IA-D treatment operator:

1. May be in direct responsible charge for a Class IA-D or Class IB-D water treatment plant as established in 401 KAR 8:030; and[~~, Section 2.~~]

2.[~~A Class IA-D treatment operator~~] Shall not be in direct responsible charge for a water treatment plant with a larger design capacity.

(c) Class IB-D treatment certification.[~~1.~~] A Class IB-D treatment operator:

1. May be in direct responsible charge for a Class IB-D water treatment plant[~~,~~] as established in 401 KAR 8:030; and[~~, Section 2.~~]

2.[~~A Class IB-D treatment operator~~] Shall not be in direct responsible charge for a water treatment plant with a larger design capacity.

(d) Class IIA treatment certification.[~~1.~~] A Class IIA treatment operator:

1. May be in direct responsible charge for a Class IIA water treatment plant or a Subclass A or B water treatment plant of an equal to or smaller design capacity[~~,~~] as established in 401 KAR 8:030; and[~~, Section 2.~~]

2.[~~A Class IIA treatment operator~~] Shall not be in direct responsible charge for a water treatment plant with a larger design capacity.

(e) Class IIB-D treatment certification.[~~1.~~] A Class IIB-D treatment operator:

1. May be in direct responsible charge for a Class IIB-D water treatment plant or a Subclass B water treatment plant of a smaller design capacity[~~,~~] as established in 401 KAR 8:030; and[~~, Section 2.~~]

2.[~~A Class IIB-D treatment operator~~] Shall not be in direct responsible charge for a water treatment plant with a larger design capacity.

(f) Class IIIA treatment certification.[~~1.~~] A Class IIIA treatment operator:

1. May be in direct responsible charge for a Class IIIA water treatment plant or a Subclass A or B water treatment plant of an equal to or smaller design capacity[~~,~~] as established in 401 KAR 8:030; and[~~, Section 2.~~]

2.[~~A Class IIIA treatment operator~~] Shall not be in direct responsible charge for a water treatment plant with a larger design capacity.

(g) Class IIIB treatment certification.[~~1.~~] A Class IIIB treatment operator:

1. May be in direct responsible charge for a Class IIIB water treatment plant or a Subclass B water treatment plant of a smaller design capacity[~~,~~] as established in 401 KAR 8:030; and[~~, Section 2.~~]

2.[~~A Class IIIB treatment operator~~] Shall not be in direct responsible charge for a water treatment plant with a larger design capacity.

(h) Class IVA treatment certification. [~~1.~~]A Class IVA treatment operator may be in direct responsible charge of any Subclass A or B water treatment plant[~~,~~] as established in 401 KAR 8:030[~~, Section 2~~].

(i) Class IVB treatment certification. A Class IVB treatment operator may be in direct responsible charge of any Subclass B water treatment plant, as established in 401 KAR 8:030[~~, Section 2~~].

(2) Water distribution certifications.

(a) Class ID distribution certification.[~~1.~~] A Class ID distribution operator:

1. May be in direct responsible charge for a Class ID water distribution system[~~,~~] as established in 401 KAR 8:030; and[~~, Section 2.~~]

2.[~~A Class ID distribution operator~~] Shall not be in direct responsible charge for a water distribution system serving a larger

population.

(b) Class IID distribution certification.[~~1.~~] A Class IID distribution operator:

1. May be in direct responsible charge for a Class IID[~~IIID~~] water distribution system[~~,~~] as established in 401 KAR 8:030; and[~~, Section 2.~~]

2.[~~A Class IID distribution operator~~] Shall not be in direct responsible charge for a water distribution system serving a larger population.

(c) Class IIID distribution certification.[~~1.~~] A Class IIID distribution operator:

1. May be in direct responsible charge for a Class IIID water distribution system[~~,~~] as established in 401 KAR 8:030; and[~~, Section 2.~~]

2.[~~A Class IIID distribution operator~~] Shall not be in direct responsible charge for a water distribution system serving a larger population.

(d) Class IVD distribution certification.[~~1.~~] A Class IVD distribution operator may be in direct responsible charge of any water distribution system.

(3) Bottled water certification. A bottled water operator may be in direct responsible charge for a bottled water system that bottles water for sale.

(4) Operator in Training **designations[~~certifications~~]**.

(a)[~~Except as provided in paragraph (c) of this subsection,~~] A certified operator with an Operator in Training designation shall not be in direct responsible charge of a water treatment plant or distribution system as established in this subsection and in 401 KAR 8:030.

(b) A Class I Operator In Training shall not be in direct responsible charge of a water treatment, distribution, or bottled water system except as established in 401 KAR 8:030 and paragraph (d) of this section.

(c) A certified operator with an Operator in Training designation shall work under the direct supervision of a certified operator who:

1. Works at the same facility; and

2. Has obtained a certification level that is equal to or greater than the certification level required to serve in direct responsible charge of the facility.

(d) An Operator In Training may have direct responsible charge for a water treatment or distribution system for which the operator holds an active Class II through Class IV certification required for the system as established in 401 KAR 8:030[~~(c) If a certified operator also has been issued a water treatment, distribution, or bottled water certification without an Operator in Training designation, the operator may serve in direct responsible charge a water treatment plant, distribution system or bottled water system as provided by this Section for the certifications that do not have an Operator in Training designation~~].

Section 2. Water Operator Qualifications: Experience, Education, and Equivalencies. An individual desiring to become a certified operator shall meet the[~~following~~] minimum education and experience requirements established in this section[~~qualifications~~] prior to the cabinet approving the individual to take a certification examination as established in 401 KAR 11:050.

(1) The minimum education and experience requirement for each class of water treatment certification[~~certifications~~] shall be as established in this subsection.[~~follows:~~]

(a) Limited certification The cabinet may issue a limited certificate as established in KRS 223.160 if the applicant demonstrates the knowledge and experience required to properly operate the particular water treatment facility for which the applicant is responsible.[~~:~~

~~1. Education. A minimum level of education shall not be required.~~

~~2. Experience. A minimum level of experience shall not be required~~].

(b) Class IA-D treatment certification.[~~:~~]

1.[~~Education.~~] A high school diploma or general education development (GED) certificate[~~shall be required~~]; and

2.[~~Experience.~~] One (1) year of[~~acceptable~~] operation of a Subclass A public water system with any design capacity[~~,~~] as established in 401 KAR 8:030[~~, Section 2, with any design capacity~~].

(c) Class IB-D treatment certification.[~~:~~]

1.[~~Education.~~] A high school diploma or general education development (GED) certificate[~~shall be required~~]; and

2.[~~Experience.~~] One (1) year of[~~acceptable~~] operation of a Subclass A or B public water system with any design capacity[~~,~~] as established in 401 KAR 8:030[~~, Section 2, with any design capacity shall be required~~].

(d) Class IIA treatment certification.[~~:~~]

1.[~~Education.~~] A high school diploma or general education development (GED) certificate[~~shall be required~~]; and

2.[~~Experience.~~] Two (2) years of[~~acceptable~~] operation of a water treatment plant, with six (6) months in a Class IIA, IIIA, or IVA water treatment plant, as established in 401 KAR 8:030[~~, Section 2, shall be required~~].

(e) Class IIB-D treatment certification.[~~:~~]

1.[~~Education.~~] A high school diploma or general education development (GED) certificate[~~shall be required~~]; and

2.[~~Experience.~~] Two (2) years of[~~acceptable~~] operation of a public water system, with six (6) months in a Class IA-D, II B-D, or higher water treatment plant[~~plan~~], as established in 401 KAR 8:030[~~, Section 2, shall be required~~].

(f) Class IIIA treatment certification.[~~:~~]

1.[~~Education.~~] A high school diploma or general education development (GED) certificate[~~shall be required~~]; and

2.[~~Experience.~~] Three (3) years of[~~acceptable~~] operation of a public water treatment plant with one (1) year in a Class IIA, IIIA, or IVA water treatment plant, as established in 401 KAR 8:030, Section 2[~~, shall be required~~].

(g) Class IIIB treatment certification.[~~:~~]

1.[~~Education.~~] A high school diploma or general education development (GED) certificate[~~shall be required~~]; and

2.[~~Experience.~~] Three (3) years of[~~acceptable~~] operation of a public water treatment plant with one (1) year in a Class IIA, IIB-D, IIIA, IIIB, IVA, or IVB water treatment plant, as established in 401 KAR 8:030, Section 2[~~, shall be required~~].

(h) Class IVA treatment certification.[~~:~~]

1.[~~Education.~~] A baccalaureate degree **from a regionally accredited college or university** in engineering, or biological, environmental, physical, or chemical science, or equivalent[~~shall be required~~]; and

2.[~~Experience.~~] One (1) year of[~~acceptable~~] operation of a Class IIIA or IVA public water treatment plant[~~,~~] as established in 401 KAR 8:030, Section 2[~~, shall be required~~].

(i) Class IVB treatment certification.[~~:~~]

1.[~~Education.~~] A baccalaureate degree **from a regionally accredited college or university** in engineering, or biological, environmental, physical or chemical science, or equivalent[~~shall be required~~]; and

2.[~~Experience.~~] One (1) year of[~~acceptable~~] operation of a Class IIIA, IIIB, IVA, or IVB[~~IV~~] public water treatment plant[~~shall be required~~].

(2) The educational and experience requirements[~~qualifications~~] for water distribution certifications shall be as established in this subsection.[~~as follows:~~]

(a) Class ID distribution certification.[~~:~~]

1.[~~Education.~~] A high school diploma or general education development (GED) certificate[~~shall be required~~]; and

2.[~~Experience.~~] One (1) year of[~~acceptable~~] operation of a water distribution system[~~shall be required~~].

(b) Class IID distribution certification.[~~:~~]

1.[~~Education.~~] A high school diploma or general education development (GED) certificate[~~shall be required~~]; and

2. a.[~~Experience.~~]Two (2) years of[~~acceptable~~] operation of a water distribution system; and[~~shall be required.~~]

b. Six (6) months of the required experience shall be in a water distribution system serving a population greater than or equal to 1,500.

(c) Class IIID distribution certification.[~~:~~]

1.[~~Education.~~] A high school diploma or general education development (GED) certificate[~~shall be required~~]; and

2. a.[~~Experience.~~] Three (3) years of[~~acceptable~~] operation of a

water distribution system; and[~~shall be required~~].

b. One (1) year of the required experience shall be in a water distribution system serving a population greater than or equal to 1,500.

(d) Class IVD distribution certification.[:]

1.[~~Education.~~] A baccalaureate degree **from a regionally accredited college or university** in engineering, or biological, environmental, physical, or chemical science, or equivalent[~~shall be required~~]; and

2.[~~Experience.~~] One (1) year of[~~acceptable~~] operation of a water distribution system serving a population greater than or equal to 15,000[~~shall be required~~].

(3) Bottled water certification. The educational and experience requirements[~~qualifications~~] for bottled water certifications shall be[~~as follows~~]:

(a)[~~Education.~~] A high school diploma or general education development (GED) certificate[~~shall be required~~]; and

(b)[~~Experience.~~] One (1) year of[~~acceptable~~] operation of a bottled water system[~~shall be required~~].

(4) The educational and experience requirements[~~qualifications~~] for Operator in Training designations shall be as established in this subsection.[~~as follows~~]:

(a) Class IA-D Treatment, Class IB-D Treatment, Class ID Distribution, and Bottled Water certifications.

1.[~~Education.~~] A high school diploma or general education development (GED) certificate[~~shall be required~~]; and

2.[~~Experience.~~] Experience shall not be required.

(b) All other applicants for the classifications **established[~~identified~~]** in subsections 1(1) and 1(2) of this administrative regulation:[;]

1. Shall have successfully qualified for and passed the certification exam of the same type classification at one (1) level lower than the Operator in Training designation being pursued; and

2. Shall not have been subject to disciplinary action as **established in[~~provided by~~]** 401 KAR 11:050, Section 4.

(5) Substitutions. The cabinet shall allow[~~the following~~] substitutions as established in this subsection for education and experience requirements as[~~the qualifications~~] established in subsections (1), (2), and (3) of this section.[:]

(a) Education **from a regionally accredited college or university** in[~~environmental~~] engineering,[~~; environmental technology; and~~] or biological, environmental, physical, or chemical science[~~sciences~~], or equivalent shall be substituted if the substitution does not exceed fifty (50) percent of the required experience.

1. An associate degree shall be considered equivalent to two (2) years of experience.

2. A baccalaureate degree shall be considered equivalent to four (4) years of experience.

3. Ten (10) contact hours, one (1) Continuing Education Unit, or one (1) postsecondary education quarter hour in any subject with a passing grade of C or higher shall substitute for 0.022 years of experience.

4. One (1) postsecondary education semester hour in any subject with a passing grade of C or higher shall substitute for 0.033 years of experience.

(b)[~~3.~~] Education **from a regionally accredited college or university** that did not result in a degree in engineering or biological, environmental, physical, or chemical science, or equivalent[~~a related field~~] may be substituted if the substitution does not exceed twenty-five (25) percent of the required experience.[~~for the required experience as follows:~~

~~a.~~]1. An associate degree may substitute for a maximum of one (1) year of experience.

2. A baccalaureate degree may substitute for a maximum of two (2) years of experience.

3. Ten (10) contact hours, one (1) Continuing Education Unit, or one (1) post-secondary education quarter hour in any subject with a passing grade of C or higher shall be considered equivalent to 0.011[~~0.022~~] years of experience.

4.[~~b.~~] One (1) postsecondary education semester hour with a passing grade of C or higher in any subject shall be considered equivalent to 0.016[~~0.033~~] years of experience.

5. Ten (10) contact hours, one (1) Continuing Education Unit, or one (1) postsecondary education quarter hour in engineering, mathematics, or biological, environmental, physical, or chemical science with a passing grade of C or higher shall substitute for 0.022 years of experience.

6. One (1) postsecondary education semester hour in engineering, mathematics or biological, environmental, physical, or chemical science with a passing grade of C or higher shall substitute for 0.033 years of experience.

(c)[~~4.~~] Education applied to the experience requirements established[~~specified~~] in subsections (1) and (2) of this section shall not be applied to the education requirement.

(d)[~~(b)~~] Treatment and distribution experience may be substituted for the educational requirement as established in this paragraph.[~~follows:~~]

1. One (1) year of operational experience at a water system may substitute for one (1) year of education.

2. a. The cabinet may allow partial substitution of the education requirement by experience in:

(i)[~~i.~~] Maintenance;[,]

(ii)[~~ii.~~] Laboratory analysis;[,] or

(iii)[~~iii.~~] Other work related to the collection, treatment, or distribution of drinking water or wastewater.

b. To establish the amount of[~~how much~~] experience that shall be accepted, the cabinet shall determine the degree of:

(i)[~~i.~~] Technical knowledge needed to perform the work; and[~~the degree of~~]

(ii)[~~ii.~~] Responsibility the applicant had in the operation of the system.

3. Experience applied to the education requirement **established[~~specified~~]** in subsections (1) and (2) of this section shall not be applied to the experience requirement.

(e)[~~(c)~~] Water treatment,[~~and~~] distribution and collection experience may be substituted as established in this paragraph.[~~follows:~~]

1. Two (2) years of distribution system experience may[~~shall~~] be considered equivalent to one (1) year of treatment experience.

2. One (1) year of treatment experience may[~~shall~~] be considered equivalent to one (1) year of distribution system experience.

3. One (1) year of collection experience may be considered equivalent to six (6) months of distribution experience.

4. Substitutions under this paragraph shall not account for more than fifty (50) percent of the experience requirement.

(f) Experience that is not related to water collection, treatment, or distribution may be substituted as established in this paragraph.

1. Two (2) years of experience in laboratory analysis may be considered equivalent to one (1) year of treatment experience or six (6) months of distribution experience.

2. Two (2) years of experience in the construction trades, construction management, engineering, plumbing, or electronics may be considered equivalent to one (1) year of distribution experience or six (6) months of treatment experience.

3. Work experience in an area or specialty unrelated to those established in this paragraph may be substituted for up to six (6) months of collection or treatment experience.

4. To establish the amount of experience that shall be accepted, the cabinet shall determine the degree of:

(i)[~~i.~~] Technical knowledge needed to perform the work; and

(ii)[~~ii.~~] Responsibility the applicant had in performing the work.

4. Substitutions under this paragraph shall not account for more than fifty (50) percent of the experience required by this administrative regulation.

(6) Apprenticeships. An applicant who completes a state-approved treatment or distribution apprenticeship program **as established in 401 KAR 11:050** may be eligible for treatment or distribution certification if the applicant also achieves a passing score of seventy **(70)** percent[**~~(70%)~~**] or above on a cabinet-administered examination.

(7) Equivalency. An operator who has received water operator certification in a state, territory, or possession of the United States may be given an equivalent certification in Kentucky based on the:

1. Level of certification obtained in the other state, territory, or

possession of the United States;

2. Number of years of water operator experience obtained while holding valid certification from another state, territory, or possession of the United States; and

3. Type, size, and capacity of the water plant or plants at which the certified operator obtained experience.

(8) Reciprocity. The cabinet may establish a reciprocal agreement for operator certification with any other state, territory, or possession of the United States if the cabinet determines that operator certification requirements of the other state are at least as stringent as those established in this administrative regulation.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: August 13, 2019

FILED WITH LRC: August 14, 2019 at 10 a.m.

CONTACT PERSON: Carole J. Catalfo, Internal Policy Analyst, RPPS, Division of Water, 3rd Floor, 300 Sower Boulevard, Frankfort, Kentucky 40601, phone (502) 564-3410, fax (502) 564-9003, email water@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Carole J. Catalfo

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes qualifications and classifications for water treatment and distribution system operators.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to protect public health by ensuring that water treatment and distribution system operators have and maintain adequate education, experience, and training.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100 authorizes the cabinet to promulgate administrative regulations concerning the certification of water operators. KRS 224.10-110 requires the cabinet to establish programs and enforce cabinet regulations for the certification of water plant operators. KRS 223.160 through 223.220 authorizes the cabinet to establish qualifications and examinations, and issue certificates for, water plant operators.

(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 establishing specific education, experience, and training qualifications and criteria for operators of water treatment and distribution systems 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: This amendment corrects regulatory language and paragraph numbers to conform with KRS 13A, clarifies Operator In Training "designations" rather than "certifications", and clarifies that education being applied towards operator certification must be obtained at a regionally accredited college or university.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to clarify education and training requirements for drinking water operators.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100 authorizes the cabinet to promulgate administrative regulations concerning the certification of water operators. KRS 224.10-110 requires the cabinet to establish programs and enforce cabinet regulations for the certification of water plant operators. KRS 223.160 through 223.220 authorizes the cabinet to establish qualifications and examinations, and issue certificates for, water plant operators.

(d) How the amendment will assist in the effective administration of the statutes: This amendment corrects regulatory language and paragraph numbers to conform with KRS 13A, clarifies Operator In Training "designations" rather than "certifications", and clarifies that education being applied towards operator certification must be obtained at a regionally accredited college or university.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Certified drinking water operators, operator-candidates, and state or local governments that operate drinking water plants will be affected by the amendment.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Regulated entities will not need to take additional actions. This amendment corrects regulatory language and paragraph numbers to conform with KRS 13A, clarifies Operator In Training "designations" rather than "certifications", and clarifies that education being applied towards operator certification must be obtained at a regionally accredited college or university.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This administrative regulation will not result in additional costs. This amendment corrects regulatory language and paragraph numbers to conform with KRS 13A, clarifies Operator In Training "designations" rather than "certifications", and clarifies that education being applied towards operator certification must be obtained at a regionally accredited college or university.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment corrects regulatory language and paragraph numbers to conform with KRS 13A, clarifies Operator In Training "designations" rather than "certifications", and clarifies that education being applied towards operator certification must be obtained at a regionally accredited college or university.

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

(a) Initially: This amendment will not result in additional costs. This amendment corrects regulatory language and paragraph numbers to conform with KRS 13A, clarifies Operator In Training "designations" rather than "certifications", and clarifies that education being applied towards operator certification must be obtained at a regionally accredited college or university.

(b) On a continuing basis: This amendment will not result in additional costs. This amendment corrects regulatory language and paragraph numbers to conform with KRS 13A, clarifies Operator In Training "designations" rather than "certifications", and clarifies that education being applied towards operator certification must be obtained at a regionally accredited college or university.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Certification fees and state general funds. The amendments to this administrative regulation will not require a change in funding sources. This amendment corrects regulatory language and paragraph numbers to conform with KRS 13A, clarifies Operator In Training "designations" rather than "certifications", and clarifies that education being applied towards operator certification must be obtained at a regionally accredited college or university.

(7) Provide an assessment of whether an 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. This amendment corrects regulatory language and paragraph numbers to conform with KRS 13A, clarifies Operator In Training "designations" rather than "certifications", and clarifies that education being applied towards operator certification must be obtained at a regionally accredited college or university.

(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. Fees for operator certification are established in 401 KAR 11:060. This amendment corrects regulatory language and paragraph numbers to conform with KRS 13A, clarifies Operator In Training "designations" rather than "certifications", and clarifies that education being applied towards operator certification must be obtained at a regionally accredited college or university.

(9) TIERING: Is tiering applied? Yes, tiering is applied in this administrative regulation. Drinking water operator education, training, and experience differ depending on the type and size of the system the operator is responsible for. Larger systems require a more extensive combination of education, training, and experience.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This regulation will impact the Division of Water and Division of Compliance Assistance, both within the cabinet's Department of Environmental Protection, and state or local governments that operate drinking water or wastewater facilities.

(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, 224.10-110, 224.73-110.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not result in increased revenue. This amendment corrects regulatory language and paragraph numbers to conform with KRS 13A, clarifies Operator In Training "designations" rather than "certifications", and clarifies that education being applied towards operator certification must be obtained at a regionally accredited college or university.

(b) How 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 result in additional revenue. This amendment corrects regulatory language and paragraph numbers to conform with KRS 13A, clarifies Operator In Training "designations" rather than "certifications", and clarifies that education being applied towards operator certification must be obtained at a regionally accredited college or university.

(c) How much will it cost to administer this program for the first year? This administrative regulation will not result in additional costs. This amendment corrects regulatory language and paragraph numbers to conform with KRS 13A, clarifies Operator In Training "designations" rather than "certifications", and clarifies that education being applied towards operator certification must be obtained at a regionally accredited college or university.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation will not result in additional costs. This amendment corrects regulatory language and paragraph numbers to conform with KRS 13A, clarifies Operator In Training "designations" rather than "certifications", and clarifies that education being applied towards operator certification must be obtained at a regionally accredited college or university.

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

Revenues (+/-): NA

Expenditures (+/-): NA

Other Explanation: This administrative regulation will not result in additional revenue or increased costs. This amendment corrects regulatory language and paragraph numbers to conform with KRS 13A, clarifies Operator In Training "designations" rather than "certifications", and clarifies that education being applied towards operator certification must be obtained at a regionally accredited college or university.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal statute or regulation that mandates certified operators, however, state drinking water revolving funds can be withheld by the federal government if the state does not have an acceptable certified operator program.

2. State compliance standards. KRS 224.10-100, 224.10-110, 224.73-110

3. Minimum or uniform standards contained in the federal mandate. There are federal guidelines, but no minimum or uniform federal standards, for certified operators.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate? No. There is no federal mandate for certified operators.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There is no federal mandate for certified operators.

ENERGY AND ENVIRONMENT CABINET
Department of Environmental Protection
Division of Water
(Amended After Comments)

401 KAR 11:050. Operator and training provider certification.

RELATES TO: KRS 223.160 **-[through]** 223.220[~~223.160-220~~], 224.10-420(2), 224.73-110[~~, EO 2009-538~~]

STATUTORY AUTHORITY: KRS 223.160 **– 223.220[~~through 220~~]**[~~223.160-220~~], 224.10-100, 224.10-110, 224.73-110[~~, EO 2009-538~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-110 authorizes the cabinet to promulgate administrative regulations concerning the certification of water and wastewater operators. KRS 223.160 through 223.220 authorizes the cabinet to establish qualifications and examinations and establish fees for certification of water plant operators. KRS 224.73-110 authorizes the cabinet to promulgate administrative regulations for the certification of wastewater operators.[~~EO 2009-538, effective June 12, 2009, establishes the new Energy and Environment Cabinet.~~] This administrative regulation establishes application and examination procedures, [~~;~~] provisions relating to certificate issuance, renewal, and termination; reciprocity; equivalency; training; and disciplinary actions for water and wastewater operators. This administrative regulation also establishes requirements for the certification of operator training providers.

Section 1. Application and Examination for Certification.

(1) An individual desiring to become a certified operator shall**:**

(a)[~~first~~] Meet the education and experience requirements[~~qualifications~~] established in 401 KAR 11:030 or 11:040; and

(b) Achieve a minimum passing score of seventy **(70)** percent**[~~(70%)~~]** on[~~then pass~~] an examination administered by the cabinet.

(2)(a) An applicant for certification shall submit to the cabinet:[~~complete the~~]

1. A completed Registration Form for Exams and Training;[~~and~~]

2. A completed Education and Experience Documentation Form; and[~~shall submit them and~~]

3. The certification application fee as established in 401 KAR 11:060[~~to the cabinet~~].

(b) In addition to the requirements established in[~~of~~] paragraph (a) of this subsection, an applicant desiring to obtain an Operator in Training designation shall submit a signed letter from[~~for~~] a certified operator located at the facility where the applicant will work. The letter shall include:

1. A statement from the certified operator indicating that the certified operator shall oversee the work of the applicant seeking an Operator in Training designation;

2. A commitment that the certified operator shall serve as a mentor to the applicant seeking an Operator in Training designation **if[~~as long as~~]** the applicant is under the certified operator's direct responsible charge; and

3.[~~Verification that the certified operator is not currently the mentor for any other individuals with an Operator in Training designation; and~~

~~4.~~] Confirmation that the certified operator has obtained a certification level that is equal to or greater than the certification level required to serve in primary responsibility or in direct responsible charge of the facility.

(c) An application shall not be submitted to the cabinet unless the applicant has met the requirements[~~qualifications~~] for examination.

(3)(a) After receipt of the application items for Class IV operators established in subsection (2) of this section, the cabinet, considering the recommendation of the board, shall determine if the applicant meets the requirements[~~qualifications~~] established in 401 KAR 11:030 or 11:040.

(b) After receipt of the application items established in subsection (2) of this section, the cabinet shall determine if the applicant meets the requirements established in 401 KAR 11:030 or 11:040.

(c) If the applicant meets the requirements established in 401 KAR 11:030 or 11:040[~~qualifications~~], the cabinet shall approve the application and notify the applicant of the scheduled exam date.

(4)(a) Upon the applicant's completion of the examination, the cabinet shall notify the applicant of the applicant's examination score.

(b) A score of at least seventy (70) percent shall be required to pass the examination.

(5)(a) The cabinet shall issue a certificate and a wallet card to an applicant who successfully passes the certification examination.

(b) The certificate and wallet card shall designate the certification classification for which the operator has demonstrated competency.

(6) An applicant who fails to pass an examination may apply to take the examination again by resubmitting the Registration Form for Exams and Training and the application fee to the cabinet.

(7)(a) An examination shall not be returned to the applicant, but results may be reviewed by the applicant with a member of the cabinet.

(b) A request for a review shall be submitted to the cabinet in writing.

(8)(a) An equivalent certification may[~~A certificate shall~~] be issued[~~in a comparable classification~~], without examination, to a person who holds a valid certificate in a state, territory, or possession of the U.S. as established in 401 KAR 11:030 and 11:040.[~~if:~~

~~(a) The requirements for certification under which the certificate was issued are not less stringent than the requirements for certification established in KRS 223.160-220, 224.73-110, and 401 KAR Chapter 11; and~~]

(b) The applicant shall submit[~~submits~~] an Application for Reciprocity and Equivalency form and the reciprocity or equivalency fee as established in 401 KAR 11:060 to the cabinet.

(9)(a) A certified operator who holds an Operator in Training designation may upgrade the certification by removing the Operator in Training designation without examination if the operator:

1. Has satisfied the requirements established in[~~of~~] Section 3(1)(a) and (b) of this administrative regulation;

2. Has acquired the minimum experience required for the certification being pursued as established in[~~required by~~] 401 KAR 11:030 or 11:040; and

3. Submits a letter from the certified operator who has served as the applicant's mentor during the Operator in Training period that recommends the removal of the Operator in Training designation.

(b) A certified operator with an Operator in Training designation who is unable to comply with the requirements established in paragraph (a) of this subsection shall apply for and retake the certification exam to upgrade the operator's certification.

Section 2. Duration of Certification.

(1)(a) Wastewater certifications shall expire on June 30 of an odd-numbered year unless suspended, revoked, or replaced by a higher classification certificate before that date.

(b) Wastewater[~~and~~] certifications issued on or after January 1 and on or before June 30 of an odd-numbered year shall expire on June 30 of the next odd-numbered year.

(2)(a) Water certifications shall expire on June 30 of an even-numbered year unless suspended, revoked, or replaced by a higher classification certificate before that date.

(b) Water certifications issued on or after January 1 and on or before June 30 of an even-numbered year shall expire on June 30 of the next even-numbered year.

(3)(a) An expired certification shall continue in force pending the administrative processing of a renewal if the certified operator has complied with the renewal requirements established in[~~of~~] Section 3 of this administrative regulation.

(b) A certification continued in accordance with this subsection shall remain fully effective and enforceable.

(4) A certification shall terminate if not renewed on or before December 31 of the year the certification expired.

Section 3. Continuing Education and Certification Renewal.

(1) A certified operator who is not designated an Operator in Training may renew a certification without examination if the operator has:

(a) Accumulated the training hours required in subsection (5) of this section; and

(b) Submitted a completed Application for Certification Renewal form and the renewal fee to the cabinet or has renewed the certification electronically on the cabinet's Web site **https://eec.ky.gov/Environmental-Protection/Compliance-Assistance/operator-certification-program/Pages/default.aspx**.

(2)(a) A certified operator seeking to renew a certification with an Operator in Training **designation[~~certification~~]**[~~designation~~] shall submit a:[~~apply for and retake the certification exam as provided in Section 1 of this administrative regulation~~]

1. Completed Application for Certification Renewal form;

2. Letter of mentorship; and

3. Completed Education and Experience Documentation form.

(b) The cabinet shall not approve an operator to[~~take an exam to~~] renew a certification with Operator in Training designation unless the applicant has accumulated the required training hours established[~~required~~] in subsection (5) of this section.

(3) If the Application for Certification Renewal form and the renewal fee are not received by the cabinet or submitted electronically by June 30 of the year the certification expires, a late renewal fee as established in 401 KAR[~~8:050, Section 3 or~~] 11:060[~~, Section 1~~] shall be paid.

(4)(a) A terminated certification shall not be renewed.

(b) An operator whose certification is terminated and who wishes to become recertified shall reapply for and pass an examination as established in[~~accordance with~~] Section 1 of this administrative regulation.

(5)(a) Prior to applying for certification renewal or to return a certificate to active status, a certified operator shall complete the required number of cabinet-approved training hours **as established in Sections 4 and 5 of this administrative regulation**.

(b) A certified operator holding multiple wastewater certifications issued in accordance with this administrative regulation shall complete the required number of cabinet-approved training hours for the highest certificate held in lieu of completing the required number of continuing education hours required for each certificate.

(c) A certified operator holding multiple water certifications issued in accordance with this administrative regulation shall complete the required number of cabinet-approved training hours for the highest certificate held in lieu of completing the required number of continuing education hours required for each certificate.

(d) Hours earned prior to initial certification shall not count toward certification renewal.

(e) Water and wastewater training hours shall[~~expire two (2) years from the date earned.~~

~~(f) Water training hours shall~~] be completed for each renewal during the two (2) year period immediately prior to the certificate

expiration date.

1. Certified operators with a Bottled Water, Limited, Class I or II Treatment, Collection, or Distribution certification shall complete twelve (12) hours of approved training.[; or]

2. Certified operators with a Class III or IV Treatment, Collection, or Distribution certification shall complete twenty-four (24) hours of approved training.

Section 4. Certified Training Provider Program.[(6)(a)]

(1) A training provider applicant shall have provided cabinet-approved continuing education courses as established in Section 5 of this administrative regulation for a minimum of two (2) consecutive years prior to the application for certification.

(2) A training provider applicant shall submit to the cabinet:

(a) A completed Application for Certified Training Provider form; and

(b) The fee as established in 401 KAR 11:060.

(3) The cabinet shall:

(a) Notify a training provider applicant of **the cabinet's[its]** decision within ninety (90) days of receiving the items established in subsection **(2)[2]**of this section; and

(b) Issue a provider identification number that shall be written on all training materials and documentation.

(4) Training provider certification shall be valid for one (1) calendar year from the date of certification.

(5) The principal officers and **core** trainers of a certified training provider shall attend a cabinet training session prior to offering continuing education courses after certification has been approved.

(6) Continuing education courses offered by a certified training provider shall be based on core content**[determined by the cabinet in consultation with the appropriate board]**.

(7) For each continuing education course:

(a) The certified training provider shall submit to the cabinet a Certified Training Provider Course Submittal form.

(b) The cabinet shall assign a course number.

(c) The certified training provider shall submit a Continuing Education Activity Report form at the completion of the course.

(d) The certified training provider shall retain for five (5) years:

1.[(a)] A completed Application for Approval of Courses for Continuing Education Credit form;

2.[(b)] Course learning objectives;

3.[(c)] Criteria for successful completion by course attendees;

4.[(d)] Agenda that establishes:

a.[1.] Course instruction and break times; and

b.[2.] Brief description of each topic;

5.[(e)] The instructor's name and credentials;

6.[(f)] Evaluation methods;

7.[(g)] The completed Continuing Education Activity Report form;

8.[(h)] A summary of participant evaluations; and

9.[(i)] Instructional materials and references.

(8) Compliance.

(a) The cabinet and board may review the continuing education activities of a certified training provider at any time.

(b) A certified training provider shall be subject to its certification being limited, denied, or revoked if the cabinet, in consultation with the board, determines that the certified training operator has failed to comply with this administrative regulation.

(c) The certified training provider shall appear before the board if requested by the board.

(d) The board shall make a recommendation to the cabinet regarding the limitation, denial, or revocation of training provider certification if**[the board determines that]** the certified training provider has failed to comply with this administrative regulation.

(e) Upon receiving a recommendation from the board, the cabinet shall review the available evidence.

(f) After completing the review, the cabinet shall initiate the recommended action or notify the board as to why an alternative action was taken.

(g) A certified training provider that is aggrieved by a certification limitation, denial, or revocation action may file a petition for hearing with the cabinet as established in KRS 224.10-420 through 224.10-470.

Section 5. Training Approval of Non-Certified Training Providers.

(1) A training provider seeking approval of certified operator training shall submit to the cabinet a completed Application for Approval of Courses for Continuing Education Credit form.

(2)[(b)] Upon completion of the approved training, the provider shall submit to the cabinet a completed Continuing Education Activity Report form.

(3)[(c)] A certified operator who has attended training that has not been submitted to the cabinet for approval may apply for training approval as established in subsection **(1)[1]**[paragraph (a)] of this section[subsection].

(4)[(d)] A certified operator who provides approved training shall receive hour-for-hour credit for actual instruction time.

(5)(a)[(7)(a)] Cabinet approval of training shall expire two (2) years following the date of approval.

(b) The cabinet, in consultation with the board, shall extend the approval expiration date if:

1. The provider requests the extension on the Extension Request for Approved Continuing Education Courses form[in writing]; and

2. The training has not changed from the previous approval.

Section 6.[Section 4.] Operator Disciplinary Action.

(1) A certified operator shall be subject to disciplinary action if[**the cabinet, in consultation with the board, determines that]** the certified operator has not satisfactorily performed the operator's duties as established in[accordance with] 401 KAR 11:020.

(2)(a) A written complaint received by the board or cabinet regarding a certified operator, unless duplicitous or frivolous, and violations of 401 KAR 11:020 that are identified by the cabinet shall be evaluated by the board.

(b) The certified operator shall appear before the board if requested by the board.

(3) The board shall make a recommendation to the cabinet regarding disciplinary action. The board may recommend that disciplinary action not be taken or recommend that a disciplinary action be taken if the board determines that the certified operator has not satisfactorily performed operator duties in compliance with 401 KAR 11:020.

(4)(a) Upon receiving a recommendation from the board, the cabinet shall review the available evidence.

(b) After completing the review, the cabinet shall initiate the recommended disciplinary action or notify the board as to why an alternative disciplinary action was taken.

(5) A disciplinary action shall be commensurate with the severity, duration, and number of the violations. Disciplinary actions may include:

(a) Probation of the operator's certification for a specified period of time, not to exceed one (1) year;

(b) Suspension of the operator's certification for a specified period of time, not to exceed four (4) years, during which the certification shall be considered void;

(c) Revocation of the operator's certification;

(d) Civil or criminal penalties; or

(e) A combination of the disciplinary actions established in paragraphs (a) through (d) of this subsection.

(6) If disciplinary action is taken, the cabinet shall notify the certified operator and the operator's employer by certified mail of the action, the reasons outlined for the action, and the length of time for which the disciplinary action shall apply.

(7)(a) A certified operator whose certification has been suspended shall not have primary responsibility or be in in direct responsible charge during the period that the suspension remains in effect.

(b) Experience gained during a suspension shall not be included toward meeting the requirements established in[of] 401 KAR 11:030 or 11:040.

(8) If a certification is revoked, the operator shall be ineligible for future certification.

(9) A certified operator who is aggrieved by a disciplinary action may file a petition for hearing with the cabinet as established

in[~~pursuant to~~] KRS 224.10-420(2).

Section 7[~~5~~]. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Registration Form for Exams and Training", Form DCA1100, May 2019[~~August 2~~009];

(b) "Education and Experience Documentation Form", Form DCA1110, May 2019[~~July 2~~009];

(c) "Application for Certification Renewal", Form DCA1120, May 2019[~~August 2~~009];

(d) "Application for Approval of Courses for Continuing Education Credit", Form DCA1130, May 2019[~~August 2~~009];

(e) "Continuing Education Activity Report", Form DCA1140, May 2019[~~August 2~~009]; and

(f) "Application for Reciprocity and Equivalency", Form DCA1150, May 2019[~~July 2~~009].

(g) "Extension Request For Approved Continuing Education Courses", Form DCA1180, May 2019;

(h) "Application for Certified Training Provider", Form DCA1160, May 2019; and

(i) "Certified Training Provider Course Submittal", Form DCA1170, May 2019.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Compliance Assistance, 300 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the cabinet's website at https://eec.ky.gov/Environmental-Protection/Compliance-Assistance/operator-certification-program/Pages/forms.aspx.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: August 13, 2019

FILED WITH LRC: August 14, 2019 at 10 a.m.

CONTACT PERSON: Carole J. Catalfo, Internal Policy Analyst, RPPS, Division of Water, 3rd Floor, 300 Sower Boulevard, Frankfort, Kentucky 40601, phone (502) 564-3410, fax (502) 564-9003, email water @ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Carole J. Catalfo

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements for water and wastewater operator and training provider certification.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish requirements for water and wastewater operator and training provider certification.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100 authorizes the cabinet to promulgate administrative regulations concerning the certification of water operators. KRS 224.10-110 requires the cabinet to establish programs and enforce cabinet regulations for the certification of water and wastewater operators. KRS 223.160 through 223.220 authorizes the cabinet to establish qualifications and examinations, and issue certificates for, water plant operators.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This amendment corrects regulatory language and paragraph numbers to conform with KRS 13A, inserts a website address for clarification, clarifies Operator In Training designation rather than certification, and clarifies that principal officers and core trainers of a certified training provider shall attend a cabinet training session.

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

(a) How the amendment will change this existing administrative regulation: This amendment corrects regulatory language and paragraph numbers to conform with KRS 13A, inserts a website address for clarification, clarifies Operator In Training designation rather than certification, removes language regarding consultation with the Board because the governing statutes already contain that language, and clarifies that principal officers and core trainers of a certified training provider shall attend a cabinet training session.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to correct regulatory language and paragraph numbers to conform with KRS 13A, insert a website address for clarification, clarify Operator In Training designation rather than certification, remove language regarding consultation with the Board because the governing statutes already contain that language, and clarify that principal officers and core trainers of a certified training provider shall attend a cabinet training session.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100 authorizes the cabinet to promulgate administrative regulations concerning the certification of water operators. KRS 224.10-110 requires the cabinet to establish programs and enforce cabinet regulations for the certification of water plant operators. KRS 223.160 through 223.220 authorizes the cabinet to establish qualifications and examinations, and issue certificates for, water plant operators.

(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 correcting regulatory language and paragraph numbers to conform with KRS 13A, inserting a website address for clarification, remove language regarding consultation with the Board because the governing statutes already contain that language, clarifying Operator In Training designation rather than certification, and clarifying that principal officers and core trainers of a certified training provider shall attend a cabinet training session..

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Certified water and wastewater operators, operator-candidates, training providers, and state or local governments that operate drinking water or wastewater plants will be affected by the amendment.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Regulated entities will not need to take additional actions. This amendment corrects regulatory language and paragraph numbers to conform with KRS 13A, inserts a website address for clarification, removes language regarding consultation with the Board because the governing statutes already contain that language, clarifies Operator In Training designation rather than certification, and clarifies that principal officers and core trainers of a certified training provider shall attend a cabinet training session.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This administrative regulation will not result in additional costs. This amendment corrects regulatory language and paragraph numbers to conform with KRS 13A, inserts a website address for clarification, removes language regarding consultation with the Board because the governing statutes already contain that language, clarifies Operator In Training designation rather than certification, and clarifies that principal officers and core trainers of a certified training provider shall attend a cabinet training session.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The regulated community will have a streamlined regulation clarifying operator and training provider certification requirements. This amendment corrects regulatory language and paragraph numbers to conform with KRS 13A, inserts a website address for clarification, removes language regarding consultation with the Board because the governing statutes already contain that language, clarifies Operator In Training designation rather than certification, and clarifies that principal officers and core trainers of a certified training provider shall attend a cabinet training session.

(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. This amendment corrects regulatory language and paragraph numbers to conform with KRS 13A, inserts a website address for clarification, removes language regarding consultation with the Board because the governing statutes already contain that language, clarifies Operator In Training designation rather than certification, and clarifies that principal officers and core trainers of a certified training provider shall attend a cabinet training session.

(b) On a continuing basis: This administrative regulation will not result in additional costs. This amendment corrects regulatory language and paragraph numbers to conform with KRS 13A, inserts a website address for clarification, removes language regarding consultation with the Board because the governing statutes already contain that language, clarifies Operator In Training designation rather than certification, and clarifies that principal officers and core trainers of a certified training provider shall attend a cabinet training session.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Certification fees and state general funds. The amendments to this administrative regulation will not require a change in funding sources. This amendment corrects regulatory language and paragraph numbers to conform with KRS 13A, inserts a website address for clarification, removes language regarding consultation with the Board because the governing statutes already contain that language, clarifies Operator In Training designation rather than certification, and clarifies that principal officers and core trainers of a certified training provider shall attend a cabinet training session.

(7) Provide an assessment of whether an 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. This amendment corrects regulatory language and paragraph numbers to conform with KRS 13A, inserts a website address for clarification, removes language regarding consultation with the Board because the governing statutes already contain that language, clarifies Operator In Training designation rather than certification, and clarifies that principal officers and core trainers of a certified training provider shall attend a cabinet training session.

(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. Fees for operator certification are established in 401 KAR 11:060. This amendment corrects regulatory language and paragraph numbers to conform with KRS 13A, inserts a website address for clarification, removes language regarding consultation with the Board because the governing statutes already contain that language, clarifies Operator In Training designation rather than certification, and clarifies that principal officers and core trainers of a certified training provider shall attend a cabinet training session.

(9) TIERING: Is tiering applied? No. This administrative regulation establishes certification procedures. This amendment corrects regulatory language and paragraph numbers to conform with KRS 13A, inserts a website address for clarification, removes language regarding consultation with the Board because the governing statutes already contain that language, clarifies Operator In Training designation rather than certification, and clarifies that principal officers and core trainers of a certified training provider shall attend a cabinet training session.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This regulation will impact the Division of Water and Division of Compliance Assistance, both within the cabinet's Department of Environmental Protection, and state or local governments that operate drinking water or wastewater facilities.

(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, 224.10-110, and 224.73-110.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not result in increased revenue. This amendment corrects regulatory language and paragraph numbers to conform with KRS 13A, inserts a website address for clarification, removes language regarding consultation with the Board because the governing statutes already contain that language, clarifies Operator In Training designation rather than certification, and clarifies that principal officers and core trainers of a certified training provider shall attend a cabinet training session.

(b) How 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 result in additional revenue. This amendment corrects regulatory language and paragraph numbers to conform with KRS 13A, inserts a website address for clarification, removes language regarding consultation with the Board because the governing statutes already contain that language, clarifies Operator In Training designation rather than certification, and clarifies that principal officers and core trainers of a certified training provider shall attend a cabinet training session.

(c) How much will it cost to administer this program for the first year? This administrative regulation will not result in additional costs. This amendment corrects regulatory language and paragraph numbers to conform with KRS 13A, inserts a website address for clarification, removes language regarding consultation with the Board because the governing statutes already contain that language, clarifies Operator In Training designation rather than certification, and clarifies that principal officers and core trainers of a certified training provider shall attend a cabinet training session.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation will not result in additional costs. This amendment corrects regulatory language and paragraph numbers to conform with KRS 13A, inserts a website address for clarification, removes language regarding consultation with the Board because the governing statutes already contain that language, clarifies Operator In Training designation rather than certification, and clarifies that principal officers and core trainers of a certified training provider shall attend a cabinet training session.

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

Revenues (+/-): NA

Expenditures (+/-): NA

Other Explanation: This administrative regulation will not result in additional revenue or increased costs. This amendment corrects regulatory language and paragraph numbers to conform with KRS 13A, inserts a website address for clarification, removes language regarding consultation with the Board because the governing statutes already contain that language, clarifies Operator In Training designation rather than certification, and clarifies that principal officers and core trainers of a certified training provider shall attend a cabinet training session.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal statute or regulation addressing certified operators or training providers.

2. State compliance standards. KRS 224.10-100, 224.10-110, and 224.73-110

3. Minimum or uniform standards contained in the federal mandate. There are no federal standards for certified operators or training providers.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate? No.

There is no federal mandate for certified operators.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Water
(Amended After Comments)

401 KAR 11:060. Operator and training provider certification fees.

RELATES TO: KRS 223.160 -**[through]** 223.220, 224.10-110, 224.73-110

STATUTORY AUTHORITY: KRS 224.10-100, 224.10-110, 224.73-110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 223.160 through 223.220 authorizes the cabinet to promulgate administrative regulations and establish fees for the certification of water operators. KRS 224.73-110[224.10-110] authorizes the cabinet to promulgate administrative regulations and establish fees for[concerning] the certification of wastewater operators. This administrative regulation establishes a fee schedule for water and wastewater operator certification and for training of[wastewater] operators that is provided or approved by the cabinet.

Section 1. Operator Certification Fees.

(1) Fees for certification of water and wastewater operators shall be as established in this subsection.[:]

(a) Certification application fee: $250[$100].

(b) Renewal application fee: $200[1. Fifty (50) dollars if renewed through the cabinet Web site.

2. $100 if not renewed through the cabinet Web site].

(c) Renewal late fee: $250.

(d) Reciprocity and equivalency fee: $500.

(e) Inactive fee: $100.

(2) Initial, renewal, equivalency, inactive, and reciprocal certification application fees that are not submitted through the cabinet's **Web site[website]** shall incur a surcharge of fifty (50) dollars in addition to the fees established in subsection **(1)[1]** of this section.

(3) Fees established in this section **shall be[are]** nonrefundable.

Section 2. Training Fees.

(1)[(2)] Each year the cabinet, in consultation with the board, shall set fees for operator training conducted by the cabinet.[(3)(a) The fees in subsection (1) of this section of this administrative regulation are nonrefundable.]

(2) If an operator cancels registration at least two (2) business days prior to the beginning of a training event, the operator shall:

1. Have one (1) calendar year to reschedule attendance at another training event without being required to submit an additional fee; and

2. Not receive a fee refund for canceled registration.

(3) The fees established in this section shall be fully refunded only if the training event is canceled by the cabinet.[(b) Fifty (50) percent of the fees in subsection (2) of this section are refundable if registration is canceled at least two (2) business days prior to the beginning of the training event.

(c) The fees in subsection (2) of this section shall be fully refunded if the training event is canceled by the cabinet.]

Section 3. Training Provider and Continuing Education Approval Fees.

(1) Certified training provider annual fee: $2000.

(2) Cabinet approval of individual continuing education credit hours for non-certified training providers:

(a) Fifty (50) dollars for the first six (6) continuing education credit hours; and

(b) Twenty-five (25) dollars for each additional six (6) continuing education credit hours.

(3)**[Continuing Education Activity Report entry fee: Fifty (50) dollars.**

(4)] Extension Request for Approved Continuing Education: Fifteen (15) dollars.

(4)[(5)] Continuing education and training provider **documents and** fees that are not submitted through the cabinet's **Web site[website]** shall incur a surcharge of fifty (50) dollars in addition to the fees established in this section.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: August 13, 2019

FILED WITH LRC: August 14, 2019 at 10 a.m.

CONTACT PERSON: Carole J. Catalfo, Internal Policy Analyst, RPPS, Division of Water, 3rd Floor, 300 Sower Boulevard, Frankfort, Kentucky 40601, phone (502) 564-3410, fax (502) 564-9003, email water @ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Carole J. Catalfo

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes fees for operator and training provider certification.

(b) The necessity of this administrative regulation: This regulation is necessary to establish fees for operator and training provider certification.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 223.160 through 223.220 authorizes the cabinet to promulgate administrative regulations and establish fees for the certification of water operators. KRS 224.73-110 authorizes the cabinet to promulgate administrative regulations and establish fees for the certification of wastewater operators. This administrative regulation establishes a fee schedule for water and wastewater operator certification and for training of operators that is provided or approved by the cabinet.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This amendment corrects regulatory language and paragraph numbers to conform with KRS 13A, and clarifies that continuing education and training provider documents that are sent to the cabinet for manual entry shall incur a charge of fifty (50) dollars.

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

(a) How the amendment will change this existing administrative regulation: This amendment corrects regulatory language and paragraph numbers to conform with KRS 13A, and clarifies that continuing education and training provider documents that are sent to the cabinet for manual entry shall incur a charge of fifty (50) dollars.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to correct regulatory language and paragraph numbers to conform with KRS 13A, and clarify that continuing education and training provider documents that are sent to the cabinet for manual entry shall incur a charge of fifty (50) dollars.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 223.160 through 223.220 authorizes the cabinet to promulgate administrative regulations and establish fees for the certification of water operators. KRS 224.73-110 authorizes the cabinet to promulgate administrative regulations and establish fees for the certification of wastewater operators. This administrative regulation establishes a fee schedule for water and wastewater operator and training provider certification, and for operator training offered by non-certified providers.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation corrects regulatory language and paragraph numbers to conform with KRS 13A, and clarifies that continuing education and training provider documents that are sent to the cabinet for manual entry shall incur a charge of fifty (50) dollars.

(3) List the type and number of individuals, businesses,

organizations, or state and local governments affected by this administrative regulation: Certified water and wastewater operators, operator-candidates, training providers, and state and local governments that operate drinking water or wastewater facilities if they pay employee certification fees, will be affected by the amendment to this administrative regulation. There are approximately 4,234 operators currently certified by the program.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment**:** Regulated entities will not need to take further action to comply with this amendment. This amendment corrects regulatory language and paragraph numbers to conform with KRS 13A, and clarifies that continuing education and training provider documents that are sent to the cabinet for manual entry shall incur a charge of fifty (50) dollars.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment will not result in additional costs. This amendment corrects regulatory language and paragraph numbers to conform with KRS 13A, and clarifies that continuing education and training provider documents that are sent to the cabinet for manual entry shall incur a charge of fifty (50) dollars.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment corrects regulatory language and paragraph numbers to conform with KRS 13A, and clarifies that continuing education and training provider documents that are sent to the cabinet for manual entry shall incur a charge of fifty (50) dollars.

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

(a) Initially: This amendment will not result in additional costs. This amendment corrects regulatory language and paragraph numbers to conform with KRS 13A, and clarifies that continuing education and training provider documents that are sent to the cabinet for manual entry shall incur a charge of fifty (50) dollars.

(b) On a continuing basis: This amendment corrects regulatory language and paragraph numbers to conform with KRS 13A, and clarifies that continuing education and training provider documents that are sent to the cabinet for manual entry shall incur a charge of fifty (50) dollars.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Certification, training provider, and exam fees and Division of Water State Revolving Funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This amendment will not result in additional fees other than those proposed in the original amended regulation. This amendment corrects regulatory language and paragraph numbers to conform with KRS 13A, and clarifies that continuing education and training provider documents that are sent to the cabinet for manual entry shall incur a charge of fifty (50) dollars.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This amendment establishes fees for water and wastewater operator and training provider certification, and for approval of continuing education courses offered by non-certified training providers. This amendment corrects regulatory language and paragraph numbers to conform with KRS 13A, and clarifies that continuing education and training provider documents that are sent to the cabinet for manual entry shall incur a charge of fifty (50) dollars.

(9) TIERING: Is tiering applied? Yes, tiering is applied. Fees are dependent on the type of operator certification requested. Fees for cabinet approval of continuing education units offered by non-certified training providers fees are tiered based on the number of hours submitted for approval. This amendment corrects regulatory language and paragraph numbers to conform with KRS 13A, and clarifies that continuing education and training provider documents that are sent to the cabinet for manual entry shall incur a charge of fifty (50) dollars.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This regulation will impact the Division of Water and Division of Compliance Assistance, both within the cabinet's Department of Environmental Protection, and state or local governments that operate drinking water or wastewater facilities.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 223.160 through 223.220, and 224.73-110.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amendment will not generate additional revenue apart from the original proposed amendment. This amendment corrects regulatory language and paragraph numbers to conform with KRS 13A, and clarifies that continuing education and training provider documents that are sent to the cabinet for manual entry shall incur a charge of fifty (50) dollars.

(b) How 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 additional revenue apart from the original proposed amendment. This amendment corrects regulatory language and paragraph numbers to conform with KRS 13A, and clarifies that continuing education and training provider documents that are sent to the cabinet for manual entry shall incur a charge of fifty (50) dollars.

(c) How much will it cost to administer this program for the first year? The cost of administering the program is approximately $847,700 annually. This amendment will not generate additional revenue apart from the original proposed amendment. This amendment corrects regulatory language and paragraph numbers to conform with KRS 13A, and clarifies that continuing education and training provider documents that are sent to the cabinet for manual entry shall incur a charge of fifty (50) dollars.

(d) How much will it cost to administer this program for subsequent years? The cost of administering the program is approximately $847,700 annually. This amendment will not generate additional revenue apart from the original proposed amendment. This amendment corrects regulatory language and paragraph numbers to conform with KRS 13A, and clarifies that continuing education and training provider documents that are sent to the cabinet for manual entry shall incur a charge of fifty (50) dollars.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: This amendment will not result in additional revenues or expenditures other than those included in the original proposed amendment. This amendment will not generate additional revenue apart from the original proposed amendment. This amendment corrects regulatory language and paragraph numbers to conform with KRS 13A, and clarifies that continuing education and training provider documents that are sent to the cabinet for manual entry shall incur a charge of fifty (50) dollars.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal mandate for operator certification

fees, although 40 C.F.R. 142 requires these activities to occur as a condition of primacy to implement the federal Safe Drinking Water Act.

2. State compliance standards. KRS 223.160 through 223.220, and 224.73-110.

3. Minimum or uniform standards contained in the federal mandate. 40 C.F.R. Part 141 and 142.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate? No. This amendment will not generate additional revenue apart from the original proposed amendment. This amendment corrects regulatory language and paragraph numbers to conform with KRS 13A, and clarifies that continuing education and training provider documents that are sent to the cabinet for manual entry shall incur a charge of fifty (50) dollars.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. KRS 223.160 through 223, and 224.73-110. The cabinet uses the fees to partially recover the cost of providing operator certification programs. This amendment will not generate additional revenue apart from the original proposed amendment. This amendment corrects regulatory language and paragraph numbers to conform with KRS 13A, and clarifies that continuing education and training provider documents that are sent to the cabinet for manual entry shall incur a charge of fifty (50) dollars.

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(Amended After Comments)

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", **August 15[~~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[~~8/4/16~~])
RCC 09-31-01 Firewood Cutting and Firewood Sales (Amended 6/14/19[~~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 **8/15/19[~~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 **8/15/19[~~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 **8/15/19[~~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~~])
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[~~5/28/17~~])
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 M. KENNEY, Commissioner

APPROVED BY AGENCY: August 14, 2019

FILED WITH LRC: August 15, 2019 at 9 a.m.

CONTACT PERSON: Amy V. Barker, Assistant General Counsel, Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686, email Justice.RegsContact@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 statues 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 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

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Kentucky Board of Education
Department of Education
(Amended After Comments)

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 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 **a board of education placing a teacher or superintendent[~~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 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[~~To be a member of~~] the pool of potential teacher or administrator tribunal members[~~who is~~] designated to serve as a teacher or administrator tribunal member on an ongoing basis[~~, a person~~] shall complete[~~receive~~] 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)[~~(g)~~] The deliberative process.

(5)[~~(2)~~] For attending training approved by the Kentucky Department of Education required to be[~~come~~] 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)[~~Section 6. (1)~~] 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 (5)[~~(2)~~] of this section.

(5)[~~(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 and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(5).

WAYNE D. LEWIS, Commissioner
HAL HEINER, Chairperson

APPROVED BY AGENCY: August 11, 2019

FILED WITH LRC: August 14, 2019 at 9 a.m.

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
Apprenticeship Standards
(Amended After Comments)

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)[~~(10)~~] "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)[~~(11)~~] "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)[~~(13)~~] "Related instruction" is defined by KRS 343.010(11).

(15)[~~(14)~~] "Sponsor" is defined by KRS 343.010(9).

(16)[~~(15)~~] "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)[~~(16)~~] "Supervisor" is defined by KRS 343.010(5).

(18)[~~(17)~~] "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)[~~(18)~~] "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 ad-dress 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 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) **Except as otherwise provided herein, the ratio of apprentices to journeyworkers shall be 1:1. For each apprentice who completes 2,000 hours of on-the-job training, a second apprentice may be added. The ratio shall not exceed two (2) apprentices for each journeyworker unless a modification to the ratio is approved as set forth herein[~~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. **Nothing in this administrative regulation shall be construed as prohibiting a sponsor or employer from establishing a ratio that permits or requires more than one (1) journeyworker for each apprentice or as invalidating a collective bargaining agreement that permits or requires more than one (1) journeyworker for each apprentice**[~~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 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: August 15, 2019

FILED WITH LRC: August 15, 2019 at 11 a.m.

CONTACT PERSON: Lana Gordon, Commissioner, 275 E. Main Street, 2nd Floor, Frankfort, Kentucky 40621, phone 502-782-3320, fax 502-564-7459, email lana.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 administrative regulation is not being amended in response to a federal mandate. This amendment names the Commissioner of the Department of Workforce Investment as Chair of the Apprenticeship Council, and modifies the apprentice-to-journeyworker ratio in line with national standards, as well as safety standards following OSHA. After comments, the amendment removes language (1) referencing occupations under consideration by the Office of Apprenticeship as a new occupation in Section 2(1)(a); (2) referencing business standards for on-the-job learning in Section 3(2)(b); and (3) that stated an apprentice may be permitted to work alone after completion of 2,000 hours of on-the-job training in Section 3(2)(g). The amendment after comments clarifies the apprentice-to-journeyworker ratio and adds language in Section 3(2)(g) providing that nothing in the administrative regulation shall be construed as prohibiting an employer or sponsor from establishing a ratio that permits or requires more than one journeyworker per each apprentice or as invalidating a collective bargaining agreement that permits or requires more than one journeyperson per each apprentice.

(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 requirements under 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 apprentice-to-journeyworker ratios for safety and training purposes. Businesses and the Registered Apprenticeship Program Coordinators must assess ratios for compliance. If a business exceeds the ratio, it must be willing to either hire additional journeyworkers, or limit the number of apprentices working at a site until it conforms 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
(Amended After Comments)

806 KAR 9:110. Agent's rights after contract termination.

RELATES TO: KRS 304.9-290

STATUTORY AUTHORITY: KRS 304.2-110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 provides that the Commissioner[~~Executive Director of the Office~~] of Insurance may make reasonable rules and administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. This administrative regulation sets forth the rights of a property or[~~a~~] casualty agent who is an independent contractor after termination of an agency contract.

Section 1. Prohibitions. **Except as provided in Section 2 of this administrative regulation,** no agency contract with a property or casualty agent who is an **independent agent** independent contractor[~~agent~~] compensated on a commission basis shall:

(1)[~~, except as provided in Section 2 of this administrative regulation,~~] Infringe upon the right of the agent, while licensed, to service runoff business after termination of the agency contract; or

(2)[~~nor shall it contain~~] Contain any provision which prevents the agent from being licensed with another insurer in order to avoid policy lapses which would otherwise occur after[~~such~~] termination.

Section 2. Permitted Provisions. An agency[~~Nothing herein in intended to infringe upon a company's~~] contract with a property or casualty agent who is an independent contractor compensated on a commission basis may provide that the following are[~~an agent or agency which provides that ownership of renewals and records, manuals, documents, and right of renewals is~~] the property of the company and shall[~~is to~~] be returned to the company upon cancellation or[~~and/or~~] termination of the contract:

(1) Renewals;

(2) Records;

(3) Manuals;

(4) Documents; and

(5) Right of renewals.

Section 3. Incorporation by Reference.

(1) "Termination of Producer Appointment", Form #8302-TE, May, 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 W. Main St., Frankfort, Kentucky, Monday through Friday, 8:00 a.m. to 4:30 p.m.

NANCY G. ATKINS, Commissioner
K. GAIL RUSSELL, Secretary

APPROVED BY AGENCY: August 15, 2019

FILED WITH LRC: August 15, 2019 at 11 a.m.

CONTACT PERSON: Patrick O'Connor II, Deputy Commissioner, 215 W. Main St., Frankfort, Kentucky 40601, phone 502-564-6026, fax 502-564-2269, 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 sets forth the rights of a property or casualty agent who is an independent contractor after termination of an agency contract.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to clarify the rights of a property or casualty agent who is an independent contractor after termination of an agency contract.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110 provides that the Commissioner of Insurance may make reasonable rules and administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:
KRS 304.9-290 establishes the rights of a licensed insurance agent following the termination of an appointment by an insurer.

(2) If 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 title of the Commissioner of insurance and clarifies by clear delineation the prohibited and permitted language in contracts between insurance agencies and licensed agents who are independent contractors.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to update the title of the Commissioner and clarify specific prohibitions and permissions in contract language.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 304.2-110 provides that the Commissioner of Insurance may make reasonable rules and administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code.

(d) How the amendment will assist in the effective administration of the statutes: This amendment simplifies and clarifies requirements for ease of use by insurance licensees.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment will affect all insurance agencies who employ independent contractors.

(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 need to ensure that their contracts do not contain the terms prohibited by this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: No costs are anticipated for regulated entities to comply with this amendment because the prohibitions are already in place; this amendment updates and clarifies prohibited and permitted terms.

(c) As a result of compliance, what benefits will accrue to the entities: Insurance licensees will find the amended simplified and clarified language easier to comply with.

(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 for implementation of this amendment.

(b) On a continuing basis: There is no cost anticipated for implementation of this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding 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 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 any fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied because similarly situated licensees are 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 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

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 subsequent years.

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

Revenues (+/-): Neutral.

Expenditures (+/-): Neutral.

Other Explanation: None.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Public Health Protection and Safety
(Amended After Comments)

902 KAR 7:010. Hotel and motel code.

RELATES TO: KRS 194A.050, 219.011-219.041**, 219.111**[~~-219.081~~], 219.991(1)

STATUTORY AUTHORITY: KRS 194A.050(1),(3), 219.021, 219.041[~~Chapter 13B, 194.050, 211.090, EO 96-862~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) authorizes the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet. KRS 194A.050(3) allows the secretary of the cabinet to establish a schedule of reasonable fees for permitting and inspection to ensure compliance with program standards administered by the cabinet. KRS 219.021 authorizes the cabinet to issue permits to operate a hotel, and to establish a fee for an annual permit and permit renewal[~~219.011 to 219.081 and 219.991(1) directs the Health Services Cabinet to regulate hotels~~]. KRS 219.041(3) authorizes[~~directs~~] the [~~Health Services~~] cabinet to adopt a State Hotel Code, which includes the[~~, among other things,~~] requirements for the issuance, suspension**,** and revocation of permits to operate; submission of plans for construction and equipment layout; plumbing; lighting; ventilation; water supply; sewage disposal; sanitary standards for operation; and other matters deemed necessary to ensure[~~insure~~] a safe and sanitary operation of a hotel.[~~Executive Order 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources and places the Department for Public Health and its programs under the Cabinet for Health Services.~~]

Section 1.[~~Citation of Administrative Regulation. This administrative regulation may be cited as the "State Hotel Code."~~

~~Section 2.~~] Definitions.[~~As used in this administrative regulation:~~]

(1) "Employee" means any person working in a hotel**[~~,~~ ~~including janitors, maids, porters, and other persons whose duties include the cleaning of rooms, toilets, or other parts of the building or the carrying of ice or ice water to guests~~]**.

(2) "Ice dispensing machine" means any self-service or semi self-service machine operated by a mechanism **that[~~which~~]**, upon insertion of a coin, coins, or tokens, or by other devices such as levers or switches, dispenses ice either in bulk or in package form.

(3) "Public **restroom[~~rest room~~]**" means any facility that provides toilet and hand-washing facilities for the general public.

(4) "Self-service ice storage bin" means a self-service machine or storage bin in which ice is manufactured or stored in bulk form and the ice removed by the hotel guest through use of an ice scoop or other similar device.

(5) "**Tempered water" means a water temperature of at least ninety (90) degrees Fahrenheit to a maximum temperature of 110 degrees Fahrenheit.**

(6) "Transient" means occupancy of a dwelling unit or a sleeping unit for not more than thirty (30) days.

Section 2. Applicability. For the purposes of this administrative regulation, a hotel shall primarily be transient in nature and shall not include apartments, dormitories, hostels, single or multi-family

homes, or vacation rental cabins and shall consist of three (3) or more rentable units within one (1) location.

Section 3. Application for a Permit.

(1) A person desiring to operate a hotel shall complete and submit form DFS-200, Application for Permit **or[/]** License, as incorporated by reference in 902 KAR **45:065[~~10:040~~]**, to the local or district health department serving the county where the hotel is located[~~Application for a permit required by KRS 219.021 shall be made on forms provided by the cabinet and include:~~

~~(a) Applicant's full name and address and indicate whether the applicant is an individual, firm or corporation;~~

~~(b) If a partnership, the names of the partners, with their addresses;~~

~~(c) The location of the hotel; and~~

~~(d) The signature of the applicant or applicants~~].

(2)(a) Upon receipt of an application, the cabinet shall inspect[~~make an inspection of~~] the hotel to determine compliance with the provisions of this administrative regulation.

(b) If the[~~When~~] inspection reveals that the applicable requirements of this administrative regulation have been met, a permit shall be issued to the applicant by the cabinet.

(3) A permit to operate a hotel shall be renewed annually pursuant to KRS 219.021.

(4)(a) An application for an annual permit to operate a hotel shall be accompanied by a fee of $100.

(b) A late **renewal[~~penalty~~]** fee of fifty (50) dollars shall be assessed on all annual permit renewals that are postmarked beyond thirty (30) days of the expiration date.

(5) The fee assessed for the inspection of a hotel shall be assessed according to the total number of rooms of the establishment:

(a) One (1) to twenty-five (25) rooms – $150;

(b) Twenty-six (26) to fifty (50) rooms - $175;

(c) Fifty-one (51) to 100 rooms - $200;

(d) 101 to 200 rooms - $225;

(e) 201 to 300 rooms - $250;

(f) 301 to 400 rooms – $275; **[~~or~~]**

(g) 401 **to 500[~~or more~~]** rooms - $300**;**

(h) 501 to 600 rooms - $325; or

(i) 601 or more rooms - $350.

(6) Payment of Fees. Fees shall be paid to the local health department having juris-diction. Fees received by local health departments shall be deposited in the Kentucky State Treasury. Inspection fees shall be submitted with the application for a permit to operate.

Section 4. Hotel Water Supply and Ice.

(1)(a) The water supply shall be potable, adequate, and from an approved public supply of a municipality or water district, if available.

(b) If[~~In the event~~] a public water supply of a municipality or a water district is not available, the supply for a hotel shall be developed and approved in accordance with applicable requirements of 401 KAR Chapter 8.

(c)[~~the Natural Resources and Environmental Protection Cabinet; provided, however,~~] If a public water supply of a municipality or water district subsequently becomes available, connections shall be made thereto and the hotel supply shall be discontinued.

(2) Hot and cold or tempered**[~~running~~]** water under pressure shall be provided in all bathrooms and toilet rooms.

(3) Ice used for any purpose shall be:

(a) Made from water **that[~~which~~]** comes from an approved source;[~~,~~] and

(b)[~~shall be~~] Used only if it has been manufactured, stored, transported, and handled in a sanitary manner in accordance with the requirements of 401 KAR Chapter 8 and 902 KAR 45:005.

(4)(a) Self-service ice provided for the hotel guest shall be dispensed through use of ice dispensing machines or prepackaged for individual hotel guests from an approved source in all [~~new~~] hotels.

(b)[~~constructed after the effective date of this administrative regulation; provided, however, that~~] Ice making equipment located in individual rooms shall not be prohibited.

(c) Self-service ice storage bins shall be prohibited**.**

(5) Ice machines shall be:

(a) Constructed of sanitary, durable, corrosion-resistant material that is easily cleanable;

(b) Located, installed, and operated to prevent contamination of the ice;

(c) Kept clean, free of any mold, rust, debris, or other contaminants;

(d) Maintained in good repair in accordance with the manufacturer's instructions; and

(e) Drained through an air gap[~~presently being used may be continued in use provided that the machines are maintained in good repair and capable of being properly cleaned. In all cases where the replacement of a self-service ice storage bin becomes necessary, or additional machines added, an ice dispensing machine shall be installed~~].

Section 5. Hotel Sewage and Waste Disposal.

(1) All sewage and waste matter shall be disposed of into a public sewerage system, if available.

(2) If[~~In the event~~] a public sewerage system is not available, disposal shall be made into a private system designed, constructed, and operated in accordance with the requirements of 902 KAR 10:085.

(3)[~~the cabinet; provided, however,~~] If a public sewerage system subsequently becomes available, connections shall be made thereto and the hotel sewerage system shall be discontinued.

Section 6. Toilet and Bathing Facilities.

(1) Each hotel shall be provided with adequate and conveniently located toilet and bathing facilities.

(2)[~~Except as provided by KRS 219.021(3) for existing hotels,~~] Toilet and bathing facilities shall be provided for each sleeping room in accordance with 815 KAR **20:191[~~7:120~~]**[~~the requirements of the State Building Code~~].

(3) Toilet and bathing fixtures shall be of a sanitary design and readily cleanable.

(4) Toilets and bathing facilities, including rooms and fixtures, shall be kept in a clean condition and in good repair.

(5) Toilet tissue shall be provided.

(6) Easily cleanable receptacles shall be provided for waste materials, and such receptacles in public toilet rooms for women shall be covered.

(7) Public **restroom[~~rest room~~]** facilities for both sexes shall be provided when required by 815 KAR **20:191[~~7:120~~]**[~~the State Building Code, in all new hotels constructed after the effective date of this administrative regulation~~].

(8) The doors of all public **restrooms[~~rest rooms~~]** shall be self-closing.

(9)[~~(2)~~] Each hotel shall provide adequate, conveniently located hand-washing facilities at each toilet and bathroom and include[~~including a lavatory or lavatories equipped with hot and cold or tempered running water,~~] hand-cleansing soap and approved sanitary towels or other approved hand-drying devices. Such facilities shall be kept clean and in good repair.

(10)[~~(3)~~] All plumbing in hotels shall comply with 815 KAR Chapter 20[~~the state plumbing code~~].

Section 7. Storage, Collection and Disposal of Hotel Refuse.

(1) All containers used in guest rooms, lobbies, hallways, and public assembly rooms for storage of refuse [~~and rubbish containing food waste~~] shall be constructed [~~of durable metal or other approved types~~] of materials that[~~, which~~] do not leak and do not absorb liquids. Such containers shall be thoroughly cleaned on the inside and outside each time they are emptied unless liners are used.

(2) All outside storage containers shall be:

(a) Constructed [~~of durable metal or other approved types~~] of materials that[~~, which~~] do not leak and do not absorb liquids;

(b)[~~, and shall be~~] Provided with tight fitting lids or covers; and

(c)[~~shall, unless kept in a special vermin- proof room or enclosure, be~~] Kept covered [~~when stored. Each storage container shall be cleaned at such frequency as to prevent a nuisance~~].

(3) Refuse[~~The rooms, enclosures, areas and~~] containers shall be adequate for storage of all refuse accumulating on the premises.[~~Adequate cleaning facilities shall be provided and each storage room or area shall be thoroughly cleaned after the emptying or removal of refuse.~~]

(4) All refuse and waste collected at a hotel shall be disposed of in a safe and sanitary manner.[~~In the event a permitted site or facility approved by the Natural Resources and Environmental Protection Cabinet is available, disposal shall be at such site or facility.~~]

Section 8. **General[~~Room~~]** Construction and **Room** Layout.

(1) All structures used as hotels shall be of permanent, weatherproof construction with sound floors, walls, and ceilings.

(2) **All walking, driving, and parking surfaces shall be graded to prevent the pooling of water.**

(3) All habitable rooms, bathrooms, and halls shall have adequate lighting, ventilation, and heating.

(a) The heating system shall be capable of maintaining a temperature of sixty-eight (68) degrees Fahrenheit.

(b) Natural and artificial lighting for general cleaning purposes and safety of guests shall be at least five (5) foot-candles in guest rooms, stairways, and hallways.

(c) Lighting in reading areas of guest rooms and public meeting rooms shall be thirty (30) foot-candles.

(d) Lighting at bathroom mirrors shall be forty (40) foot-candles.

(4)[~~(3)~~] Sleeping rooms shall have at least one (1) window to the outside air which can be easily opened unless other openings or mechanical devices are used for room ventilation.

(5) Windows that open to the outside air shall have screens to prevent the entry of insects and other vermin, and be maintained in good repair.

(6)[~~(4)~~] All sleeping rooms shall have a door opening directly to the outside or into a hallway leading to the outside.

(7) All sleeping rooms shall be in compliance with KRS 219.111.

Section 9. Soap, Towels, Washcloths, Drinking Glasses, and Ice Containers.

(1) Rooms used for sleeping purposes shall be provided with soap, towels, washcloths, and drinking glasses.

(a) Two (2) clean towels and one (1) clean washcloth of adequate size shall be provided for each occupant.

(b) One (1) multiuse drinking glass or individual single-service cup shall be provided for each occupant.

(2) Ice storage containers, scoops, and drinking glasses, unless they are of the single-service type, shall be smooth, impervious material and designed to facilitate cleaning, and shall be stored, handled, and dispensed in a sanitary manner.

(3) Multiuse drinking glasses and ice containers shall be washed and sanitized according to procedures as set forth in 902 KAR 45:005[~~the state food service code~~].

(4) Hotels which do not have adequate and effective facilities for cleaning and sanitizing multiuse drinking glasses and ice containers shall use single-service articles. All single-service articles shall be stored, handled, and dispensed in a sanitary manner and shall be used only once. Single-service articles shall be made from nontoxic materials.

(5) Multiuse drinking glasses or single-service containers placed in sleeping rooms shall be individually wrapped or stored on a clean surface in an inverted position.

Section 10. Hotel Beds and Bedding Accessories.

(1) Mattress pads or covers shall be used on all mattresses.

(2) Beds, mattresses, springs, slats, mattress pads, and covers shall be clean and free from vermin.

(3) Each bed shall be provided with two (2) sheets; and one (1) pillow and one (1) pillow case for each occupant.

(4) Sheets and pillow cases shall be kept clean and changed at least once per week or more often if necessary or when there is a new occupant.

(5) All beds shall be supplied with sufficient blankets or coverings to keep the occupant warm.

Section 11. Maintenance of Rooms, Furniture and Accessories. All sleeping rooms, hallways, lobbies, and other facilities shall be kept clean and in good repair. Furniture, drapes, curtains, and shades shall be kept clean and in good repair.

Section 12. Linen Storage. Adequate storage areas, rooms, or cabinets shall be provided for all supplies, linens, and equipment, and shall be kept neat, orderly,[~~and~~] clean, and stored away from soiled linens.[~~Clean linens shall be stored in cabinets or on shelves in a linen storage room. Soiled linens shall be so handled and stored as not to come in contact with clean linens.~~]

Section 13. Vermin Control.

(1) Effective measures shall be taken to control vermin and other pests including their entrance into the hotel.

(2) All exterior areas shall be kept clean and free of debris that could provide rodent harborage or breeding places for flies, mosquitoes, or other pests.

(3) Guest rooms shall not be rented if infested with insects, rodents, or other pests, until the infestation is eliminated.

302 KAR Chapter 29.

Section 14. Poisonous and Toxic Materials. Only**[~~such~~]** poisonous and toxic materials as are required to maintain sanitary conditions and for sanitization purposes may be used or stored in hotels. **The[~~Such~~]** materials shall be properly stored and identified and shall be used only in **a[~~such~~]** manner and under**[~~such~~]** conditions as will not constitute a hazard to employees or customers.

Section 15. Hotel Swimming Facilities. Any swimming or bathing facility provided for use by hotel occupants shall be constructed and operated in accordance with 815 KAR 7:120 and 902 KAR 10:120[~~the State Building Code and the Kentucky public swimming and bathing facilities administrative regulation~~].

Section 16. Hotel Personnel.

(1) A[~~No~~] person shall not work in any area of a hotel in any capacity while:

(a) Affected with, or a carrier of, any disease in a communicable form;

(b)[~~, or while a carrier of such disease, or while~~] Afflicted with boils, infected wounds, or sores; or

(c) Diagnosed with an acute respiratory infection.

(2) If[~~, shall work in any area of a hotel in any capacity in which~~] there is a likelihood of such a person contaminating bedding, and other surfaces with pathogenic organisms, or transmitting disease to other individuals, the hotel manager or person in charge shall follow the procedures established in Section 17 of this administrative regulation[~~and no person known or suspected of being affected with any such disease or condition shall be employed in such an area or capacity. If the manager or person in charge of the hotel has reason to suspect that any employee has contracted any disease in communicable form or has become a carrier of such a disease, he shall notify the cabinet immediately~~].

(3)[~~(2)~~] All employees shall:

(a) Wear clean outer garments;

(b)[~~,~~] Maintain a high degree of personal cleanliness;

(c)[~~, and~~] Conform to hygienic practices while on duty; and

(d)[~~. They shall~~] Wash their hands thoroughly in an approved hand-washing facility before starting work, and as often as may be necessary to remove soil and contamination.

(4) All employees[~~No employee~~] shall wash their hands[~~resume work~~] after visiting the toilet, smoking, or eating before returning to work[~~without first washing his hands~~].

Section 17. Procedure when Infection is Suspected.

(1) If the hotel manager or person in charge has reason to suspect that any employee has contracted any disease in communicable form or has become a carrier of such a disease, the cabinet shall be notified immediately.

(2) When the cabinet has reasonable cause to suspect the possibility of disease transmission from any hotel employee, the cabinet shall secure a morbidity history of the suspected employee, or make such other investigation as may be indicated and take appropriate action.

(3) The cabinet may require [~~any or all of~~] the following measures:

(a)[(~~1~~)] The immediate exclusion of the employee from the hotel;

(b)[(~~2~~)] Restriction of the employee's services to an[~~some~~] area of the establishment where there would be no danger of transmitting disease; or

(c)[~~and (3)~~] Require adequate medical and laboratory examinations of the employee, or of other employees[~~, and of his and their body discharges~~].

Section 18. Plan Review of Future Construction. A[~~No~~] person shall not construct or[~~extensively~~] alter a hotel, or convert an existing structure for use as a hotel, until properly prepared plans and specifications for such construction or alteration, showing layout,[~~arrangements,~~] and construction materials,[~~and the location, size and type of~~] fixed equipment and[~~facilities and~~] a plumbing riser diagram, have been submitted to and approved by the cabinet[~~before such work is begun. If the construction plans are not acceptable, the cabinet shall give the reason therefor in writing to the person submitting the construction plans and, if the objection can be corrected, the plans can be resubmitted for another review~~].

Section 19. Inspection of Hotels.

(1) At least once every twelve (12) months, the cabinet shall inspect each hotel and shall make additional inspections and reinspections as are necessary for the enforcement of this administrative regulation.

(2) When[~~Whenever~~] an agent of the cabinet makes an inspection of a hotel, the findings [~~he~~] shall be recorded[~~record his findings~~] on an official cabinet inspection report form, DFS-314, Hotel - Motel Inspection Form, and a copy provided to[~~provide~~] the permit holder or operator[~~with a copy~~]. The inspection report shall:

(a) Set forth the specific violations[~~violations(s)~~] found;

(b) Establish a specific[~~and reasonable~~] period of time for the correction of the violations[~~violation(s)~~] found; and

(c) State that failure to comply with any notice issued in accordance with the provisions of this administrative regulation can[~~may~~] result in suspension of the permit.

(3) If the cabinet or its agent is on notice that a hotel is in violation of another agency's lawful requirement, the permit shall not be renewed until the permit holder demonstrates to the cabinet or its agent that the violation has been corrected.

Section 20. Suspension of Permit.

(1) A hotel permit shall be suspended immediately upon notice to the permit holder if:

(a)[~~Whenever~~] The cabinet has reason to believe that an imminent public health hazard exists;[~~,~~] or

(b)[~~whenever~~] The permit holder has interfered with [~~the authorized~~] agents of the cabinet in the performance of their duties.

(2)[~~, the permit may be suspended immediately upon notice to the permit holder without a hearing. In such event~~] The permit holder whose permit has been suspended may request an administrative[~~a~~] hearing[~~which shall be conducted~~] in accordance with 902 KAR 1:400.

(3)[~~(2) In all other instances of violation of the provisions of this administrative regulation the cabinet shall serve upon the holder of the permit a written notice specifying the violation(s) in question and afford the holder a reasonable opportunity to correct same. Whenever~~] A permit holder or operator who has failed to comply with any written notice issued under the provisions of this administrative regulation[~~, the permit holder or operator~~] shall be notified in writing that the permit shall be suspended at the end of ten (10) days following service of such notice, unless a written request for a hearing is filed in accordance with 902 KAR 1:400[~~with the cabinet, by the permit holder within such ten (10) day period.~~

~~(3) All administrative hearings shall be conducted in accordance with 902 KAR 1:400~~].

Section 21. Reinstatement of Suspended Permits. Any person whose permit has been suspended may, at any time, make application for a reinspection for the purpose of reinstatement of the permit. [~~Within ten (10) days following receipt of a written request, including a statement signed by the applicant that in his opinion the conditions causing suspension of the permit have been corrected, the cabinet shall make a reinspection. If the applicant is found to be in compliance with the requirements of this administrative regulation, the permit shall be reinstated.~~]

Section 22. Revocation of Permits.

(1) For serious or repeated violations of any of the requirements of this administrative regulation or for interference with the agents of the cabinet in the performance of their duties, the permit may be permanently revoked.

(2)[~~after an opportunity for a hearing has been provided by the cabinet.~~] Prior to such action, the cabinet shall notify the permit holder in writing, stating the reasons for which the permit is subject to revocation and advising that the permit shall be permanently revoked at the end of ten (10) days following service of such notice, unless a request for an appeal[~~a hearing~~] is filed in accordance with 902 KAR 1:400.

(3) A permit may be suspended for cause pending revocation[~~with the cabinet, by the permit holder, within such ten (10) day period~~].

Section 23. Incorporation by Reference.

(1) The "DFS-314, Hotel – Motel Inspection Form", **7/19**[**~~10/18~~**], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Environmental Management Branch, Division of Public Health Protection and Safety, Department for Public Health, 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: August 12, 2019

FILED WITH LRC: August 14, 2019 at 1 p.m.

CONTACT PERSON: Chase Coffey, Executive Administrative Assistant, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746; fax 502-564-7091; CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Agency Contacts: Julie Brooks, (502) 564-3970, julied.brooks@ky.gov or Chase Coffey

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for issuing a permit to operate a hotel or motel and the standards necessary for safe and sanitary operation of a permitted hotel or motel.

(b) The necessity of this administrative regulation: KRS 219.041 authorizes the secretary to adopt a state hotel code which includes the requirements for the issuance, suspension, and revocation of permits to operate; submission of plan for construction and equipment layout; plumbing; lighting; ventilation; water supply; sewage disposal; and sanitary operation of a hotel. KRS 219.021 authorizes the cabinet to establish a fee not to exceed administrative cost of the program that shall be paid with each application for an annual permit and permit renewal to operate a hotel.

(c) How this administrative regulation conforms to the content

of the authorizing statutes: This administrative regulation outlines the requirements for operating a hotel in a safe and sanitary manner; establishes the initial application and permit renewal process; and establishes the fee structure for the inspection of a hotel.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation ensures all hotel establishments are following a uniform code and inspection process.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation clarifies that hotels are transient in nature and the applicability of this regulation; adds the fee structure for hotel permits and inspections; and makes other changes to conform to KRS Chapter 13A drafting rules.

The Amended After Comments version of this administrative regulation updates the definition of hotel employee, corrects the term restroom to a single word throughout the administrative regulation for consistency with the state building and plumbing codes, adds the definition of tempered water, corrects citations to other administrative regulations, updates the fee structure to accommodate hotels that are larger than 601 rooms and clarifies the late fee is for late renewal and not a penalty, adds requirements for hotel ice machines, adds general construction requirements for walking, driving and parking surfaces, adds the requirement that windows that open to outside air shall be screened to prevent the entry of insects and other vermin, adds the requirement that all sleeping rooms be in compliance with KRS 219.111, updates the effective measures to control vermin and other pests, and updates the material incorporated by reference.

(b) The necessity of the amendment to this administrative regulation: House Bill 327, passed during the 2018 regular session, removed the existing hotel permitting and inspection fee from KRS 219.021 and authorized the cabinet to establish a reasonable fee structure through the promulgation of administrative regulations. This amendment is necessary to establish the fee structure for permitting and inspection of hotels.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 219.021 authorizes the cabinet to establish a reasonable fee structure for permitting and inspection of hotels that does not exceed the cost to the cabinet. While the fee structure established in this administrative regulation does increase the costs to the regulated community it does not exceed the total costs to the program for permitting and inspecting hotels.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will help the cabinet to recoup a small portion of the costs associated with operating a state hotel code.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will impact the 950 permitted hotels and motels in the Commonwealth. This regulation will also impact 120 local health departments and sixty-one (61) district health departments.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, 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: All individuals or companies operating a hotel in Kentucky will pay a standard permitting fee. The owner of a hotel establishment will need to pay attention to the expiration date of the current permit and ensure the renewal is submitted timely to avoid being assessed a late payment penalty fee. The proposed inspection fee structure will be based on the size of the establishment and individuals and companies operating a hotel will need to be aware of this change in order to comply with this administrative regulation and the authorizing statutes. Individuals or companies wishing to build a hotel or convert an existing building to a hotel will need to be aware of the plan review process in order to receive a permit for the construction or modifications. All entities will need to be aware of the transient nature of a hotel to ensure they are in full compliance with this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the identities identified in question (3): It is difficult to determine how much costs the permitted hotels and motels will incur as a result of this amendment. While the amendment does increase the permitting and inspection fees the overall requirements for operating a hotel or motel are not being significantly modified in this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Hotel and motel establishments will continue to operate in a safe and sanitary manner, and be in full compliance with the state hotel code as a result of complying with this administrative regulation.

(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 initially.

(b) On a continuing basis: There are no additional costs on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency funds and revenue received from permitting and inspection fees continue to be used to implement and enforce this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change, if it is an amendment: This amendment does result in an increase in fees paid by individuals or companies operating a hotel. There is no increase in funding necessary for this regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. This amendment does increase the fees associated with operating a permitted hotel. The administrative cost to the cabinet is approximately $150 per hour for inspectors of hotel establishments. This cost includes the salary of the inspector, fiscal year 2018 Kentucky Employee Retirement System (KERS) and Federal Insurance Contributions Act (FICA) contributions, and health and life insurance cost. The number of rooms has an impact on the length of time required to conduct an inspection. The table below outlines the proposed change in the fee structure for hotels.

Inspection fee	One (1) to twenty-five (25) rooms	Twenty-six (26) to fifty (50) rooms	Fifty-one (51) to 100 rooms	101 to 200 rooms	201 to 300 rooms	301 to 400 rooms	401 to 500 rooms	501 to 600 rooms	600 or more rooms
Avg. Hourly Rate (including FY-18 KERS, FICA, health & life, indirect)	$150	$150	$150	$150	$150	$150	$150	$150	$150

Number of hours/inspection including travel time (based on minimum of 10% of rooms inspected along with common areas, public bathrooms, laundry rooms and feeding and concession areas excluding food preparation areas)	2.5	3	3.5	4	4.5	5	6	7	8
Minimum number of routine inspections/year.	1	1	1	1	1	1	1	1	1
Current Fee Established in 902 KAR 45:120	$100	$125	$150	$175	$200	$225	$250	N/A	N/A
Proposed Revised Fees (based on no reinspection or enforcement action follow-up)	$150	$175	$200	$225	$250	$275	$300	$325	$350
Number of permitted facilities	212	155	398	159	12	8	6	5	
Proposed fee total	$31800	$27125	$79600	$35775	$3000	$2200	$1800	$1625	
Actual expenditure	$79500	$69750	$208950	$95400	$8100	$6000	$5400	$5250	
Application fee									
Current fee	$25	$25	$25	$25	$25	$25	$25	$25	$25
Proposed fee	$100	$100	$100	$100	$100	$100	$100	$100	$100

The hours required for inspection does not include travel time to and from the establishment. The inspection fee is based on a routine inspection only. It does not include the costs associated with doing follow-up inspections for the correction of identified noncompliance or for complaint investigations. On average, one (1) re-inspection is required for every twenty (20) inspections due to identified noncompliance issues. In addition to the time required for inspection, there is staff time dedicated to processing the applications for registration and following up on registrations that were not renewed timely and expired. The addition of the late payment penalty fee will help to offset some of the staff time costs associated with these follow-up activities.

(9) TIERING: Is tiering applied? Tiering is applied. While the permitting fee is the same for all hotels, the fee structure for inspection is staggered and based on the number of rooms in the hotel. Hotels with fewer number of rooms take less time to inspect and therefore those establishments will be assessed a lower inspection fee than a hotel will a larger number of rooms.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What 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 Environmental Management Branch within the Department for Public Health as well as local, district and independent health departments throughout 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 is authorized by KRS 194A.050(1), (3), 219.021, 219.031, 219.041.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The estimated revenue generated from the change in fee structure is $179,320 in the first year. The application fee change will result in $47,500 in the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The continued revenue in subsequent years should continue to be $179,320. The application fee change will result in $47,500 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 Environmental Management Branch within the Division of Public Health Protection and Safety is $1,980,301.00. There is no anticipated increase in costs to administer the hotel and motel permitting and inspection program this first year.

(d) How much will it cost to administer this program for subsequent years? There is not anticipated increase in costs to administer in subsequent years.

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

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Aging and Independent Living
Division of Guardianship
(Amended After Comments)

910 KAR 2:040. Service provisions for adult guardianship.

RELATES TO: KRS 17.500 - 17.540, 202A, 202B, 209.990, 210.290(3), (4), 311.6225, 367.97501, 367.97524, 367.97527, 387.500-387.990, 389A.010, 389.015, 20 C.F.R. 416.212, 42

U.S.C. 1382(e)(1)(G)

STATUTORY AUTHORITY: KRS 194A.050(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary of the cabinet to promulgate administrative regulations necessary under applicable state laws to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the commonwealth. This administrative regulation establishes service provisions for adult guardianship.

Section 1. Definitions.

(1)[~~"Adult" is defined by KRS 209.020(4).~~

~~(2)~~] "Best interest" means a course of action that maximizes what is best for a ward and that includes consideration of the least intrusive, most normalizing, and least restrictive course of action possible given the needs of a ward.

(2) "Comorbid condition" means the presence of one (1) or more additional disorders or diseases co-occurring with a primary disease or disorder, or the effect of an additional disorder or disease.

(3) "Conservator" is defined by KRS 387.510(1).

(4) "Court" means a court of competent jurisdiction.

(5)[~~"DBHDID" means the Department for Behavioral Health, Developmental and Intellectual Disabilities.~~

~~(6) "Department" or~~] "DAIL" means the Department for Aging and Independent Living.

(6)[~~(7)~~] "Division" means the Division of Guardianship.

(7)[~~(8) "Fiduciary Services Branch" means a central office branch under the Division of Operations and Support.~~

~~(9) "Field Services Branch" means a central office branch under the Division of Guardianship.~~

~~(10)~~] "Guardian" is defined by KRS 387.510(3).

(8)[~~(11)~~] "Guardian ad Litem" means an attorney[~~a guardian~~] appointed to represent the interests of a person with respect to a single action in litigation**[~~pursuant to KRS 387.305~~]**.

(9)[~~(12) "Guardianship advisory committee" means a review panel of at least two (2) cabinet medical directors to review records to assist in decision making regarding end of life decisions.~~

~~(13)~~] "Informed consent" means a person's agreement to a particular course of action based on a full disclosure of facts needed to make the decision intelligently.

(10)[~~(14)~~] "Interested party" means interested parties as[~~is~~] defined by KRS 387.860(5).

(11)[~~(15)~~] "Least restrictive alternative[~~alternatives~~]" means an alternative to[~~the~~] guardianship that **has been[~~shall be~~]**[~~options that have been~~] exhausted prior to becoming eligible for state appointment, including[~~such as~~]:

(a) Power of attorney;

(b) Living wills;

(c) Advance[~~Advanced~~] directives;

(d) Case management;

(e) Representative payee;

(f) Curator;

(g) Trustee;

(h) Health care surrogate;

(i) Ex-parte order;

(j) Emergency protective services;

(k) Adult protective ongoing services;[~~or~~]

(l) Informal network of support; or

(m) Supported decision making.

(12)[~~(16)~~] "Limited conservator" is defined by KRS 387.510(2).

(13)[~~(17)~~] "Limited guardian" is defined by KRS 387.510(4).

(14)[~~(18)~~] "Nurse consultant" means a nurse consultant[~~,~~] inspector employed by the Cabinet for Health and Family Services.

(15)[~~(19)~~] "Provider" means a facility or entity providing services for a ward such as:

(a) Self;

(b) Caretaker;

(c) Relative;

(d) Group home placement;

(e) Hospital;

(f) Psychiatric hospital;

(g) Personal care home; or

(h) Medicaid waivers[~~Supports for Community Living facility~~].

(16)[~~(20)~~] "Quitclaim[~~Quit claim~~] Deed" means a document by which an individual disclaims an interest in a piece of real property and passes that claim to another person.

(17)[~~(21)~~] "Substituted judgment" means a principle of decision-making made by the division that[~~Field Services Branch which~~] comports with the individual ward or beneficiary's known wishes expressed prior to the appointment of a guardian, if the individual was once capable of developing views relevant to the matter at issue and reliable evidence of these views remains.

(18)[~~(22)~~] "Successor guardian" means an individual, agency, or corporation who is appointed to succeed a current guardian removed by the court.

(19) "Terminal condition" is defined by KRS 311.621(17).

(20)[~~(23)~~] "Ward" is defined by KRS 387.510(15).

Section 2. Annual Court Report.

(1) Within thirty (30) calendar days of the anniversary date of the guardianship appointment, the division[~~Field Services Branch~~] shall submit to the court an annual report on the ward's personal status.

(2) In order to complete the annual report, the division[~~Field Services Branch~~] shall:

(a) Report the[~~Visit the ward and use an Initial Field Visit Report to assess~~] current physical condition and needs;

(b) Review the ward's records[~~at the ward's place of residence~~];

(c) Consult with the provider concerning the ward's care; and

(d) Verify the names, addresses, and telephone numbers of the ward's relatives, if known[~~; and~~

~~(e) Verify with Fiduciary Services Branch the ward's burial arrangements in accordance with 910 KAR 2:030, Section 12~~].

(3) The division[~~Field Services Branch~~] shall:

(a) Review, sign, and notarize an annual report; and

(b) Maintain a scheduling system that ensures the timely filing of annual reports in court for each guardianship ward.

Section 3. Renewal of Limited Appointments.

(1) A limited guardian or limited conservator shall not be appointed for more than five (5) years pursuant to KRS 387.590(7).

(2) The division[~~Field Services Branch~~] shall be responsible for initiating procedures for continued guardianship or conservatorship, if appropriate.

(3) To make this determination, the division[~~Field Services Branch~~] shall review the last annual court report to determine if continued guardianship was recommended.

(4) The division[~~Field Services Branch~~] shall secure a verified affidavit from a physician, psychiatrist, or social worker, not serving in the division, verifying the [~~ward's~~] petition to continue guardianship if required by the court.

(5) At least sixty (60) calendar days prior to the date of the expiration of the limited guardianship, the division[~~Field Services Branch~~] shall file with the court the following:

(a) Petition for Relief Modification or Termination (AOC-795) issued by the Administrative Office of the Courts and available at https://courts.ky.gov/resources/legalforms/LegalForms/795.pdf; and [~~www.courts.ky.gov;~~]

(b)[~~Application for Appointment for Fiduciary (AOC-745) issued by the Administrative Office of the Courts and available at www.courts.ky.gov; and~~

~~(c)~~] A verified affidavit as specified in subsection (4) of this section, if required.

(6) If the request for modification involves the removal of additional rights, the division[~~Field Services Branch~~] shall request a bench or jury trial.

(7) If required by the court, the division[~~Field Services Branch~~] shall attend the renewal hearing and testify.

(8) Once a court order is issued, the division[~~Field Services Branch~~] shall obtain a copy of the court documents.

Section 4. Restoration,[~~or~~] Modification of Rights, or Successor Guardian or Conservator.

(1) The division[~~Field Services Branch~~] shall inform the ward of

the restoration or modification of rights process.

(2) If a ward requests the restoration of his or her rights, the division[~~Field Services Branch~~] shall assess and assist the ward's request.

(3) The division[~~Field Services Branch~~] shall assess[~~complete an assessment of~~] the ward for the following[~~using the Initial Field Visit Report that includes~~]:

(a) Community supports available to assist the ward;

(b) **Least[~~Less~~]** restrictive **alternatives[~~interventions~~]** that are available to the ward;

(c) Improvements in the ward's ability to manage personal or financial affairs;

(d) Risks and benefits of restoration or modification of rights; and

(e) A recommendation of what rights could be appropriately restored, including voting rights.

(4) If the assessment supports restoration or modification, the division[~~Field Services Branch~~] shall assist the ward in preparation of the Petition for Relief Modification or Termination (AOC-795), [~~issued by the Administrative Office of the Courts and available at www.courts.ky.gov,~~] for submittal to the court.

(5) If the assessment does not support restoration or modification, the division[~~Field Services Branch~~] shall inform[~~advise~~] the ward or other interested party and advise[~~after the assessment is complete~~] that he or she may call or write the court to request restoration.

(6) If it is in the ward's best interest, the division[~~Field Services Branch~~] shall work with the ward towards the goal of restoration or modification by developing a plan and setting attainable and measurable goals.

(7) The division[~~Field Services Branch~~] shall involve community partners in formulating the plan to ensure focus on comprehensive services.

(8) The division[~~Field Services Branch~~] shall agree on a time frame for evaluating the ward's progress.

(9) If the ward has some or all rights restored, a successor is appointed, or the cabinet no longer serves in any capacity and the cabinet's appointment is modified, the division[~~Field Services Branch~~] shall:

(a) Obtain a copy of the[~~cabinet's~~] new court order[~~appointment~~];[~~and~~]

(b) Update KYGFIS by attaching the appointment papers to an event; and

(c) Update the appointment type in KYGFIS if partial restoration of rights were obtained by the ward[~~Email notification of the change to the Fiduciary Services Branch.~~

~~(10) If the ward's rights are restored and the cabinet no longer serves in any capacity, the Field Services Branch shall:~~

~~(a) Obtain a copy of the court order indicating restoration;~~

~~(b) Notify Fiduciary Services Branch by email of the resignation and the mailing address of the ward;~~

~~(c) Review the ward's records and hard copy file to determine if any original information or documentation should be sent to the Fiduciary Services Branch and, if so, forward the same to the Fiduciary Services Branch within ten (10) working days of the review;~~

~~(d) Inform the restored ward about procedures to apply for benefits; and~~

~~(e) Direct the restored ward to the Fiduciary Services Branch regarding additional financial questions.~~

~~Section 5. Securing Successor Guardian or Conservator. (1) The Field Services Branch shall advise or assist an interested party, if appropriate.~~

~~(2) The Field Services Branch shall discuss with the interested party:~~

~~(a) The possibility of he or she becoming guardian; and~~

~~(b) The following information:~~

~~1. Prior history and involvement of the interested party;~~

~~2. Willingness of the interested party to assist the ward; and~~

~~3. A criminal background check on the interested party with the county attorney.~~

~~(3) If the Field Services Branch determines the appointment of the interested party as successor guardian or conservator is in the best interest of the ward, the Field Services Branch shall assist the interested party with the completion and filing of:~~

~~(a) The Petition for Relief, Modification or Termination (AOC-795) issued by the Administrative Office of the Courts and available at www.courts.ky.gov; and~~

~~(b) An Application for Appointment for Fiduciary (AOC-745) issued by the Administrative Office of the Courts and available at www.courts.ky.gov, with the court.~~

~~(4) The Field Services Branch shall submit to the court a letter supporting appointment of the applicant for successor guardian or conservator.~~

~~(5) If the Field Services Branch does not agree that successor guardian or conservator appointment is in the best interest of the ward, the Field Services Branch shall:~~

~~(a) Advise the interested party that he or she may contact the court and make appropriate application; and~~

~~(b) Submit a letter to the court specifying the concerns regarding the application of appointment for successor guardian or conservator.~~

~~(6) The Field Services Branch shall be available to testify at the hearing to determine if a successor guardian or conservator is appointed by the court.~~

~~(7) If a successor guardian or conservator is appointed and the cabinet retains no responsibility, the Field Services Branch shall:~~

~~(a) Obtain a copy of the court order showing change in guardianship and verification that bond has been posted if surety has been ordered by the court;~~

~~(b) Notify Fiduciary Services Branch by email of the resignation;~~

~~(c) 1. review the ward's records and hard copy file to determine if any original information or documentation should be sent to Fiduciary Services Branch for submission to the successor guardian or conservator; and~~

~~2. If so, forward the information or documentation to the Fiduciary Services Branch within ten (10) working days of the review;~~

~~(d) Inform the successor guardian or conservator about procedures to apply for benefits; and~~

~~(e) Direct the successor guardian or conservator to the Fiduciary Services Branch regarding additional financial questions.~~

~~(8) If the successor guardian or conservator is appointed in some capacity and the cabinet retains some level of responsibility, the Field Services Branch shall:~~

~~(a) Obtain a copy of the court order showing the change in guardianship and verification that bond has been posted if surety was required by the court;~~

~~(b) Notify the Fiduciary Services Branch by email of the change in the cabinet's responsibility;~~

~~(c) Inform the successor guardian or conservator about procedures to apply for relevant benefits; and~~

~~(d) Direct the successor guardian or conservator to the Fiduciary Services Branch regarding financial questions~~].

Section 5[6]. Inappropriate Appointments.

(1) If an individual is appointed to the state guardianship program in any capacity and does not meet the requirements of KRS 210.290, the cabinet shall file an appeal.

(2) The cabinet shall seek relief of any powers appointed:

(a) Pursuant to KRS 387.740 that exceed six (6) months; or

(b) If an interdisciplinary evaluation report indicates the individual does not need a guardian.

Section 6. Sale of Real [~~of~~] Estate and Personal Property.

(1) If a ward of the cabinet has real property, the DAIL[~~Field Services Branch and the Fiduciary Services Branch staff~~] shall explore options for management of property and determine what is in the best interest of the ward.

(2) Information concerning the property valuation for tax purposes, the real estate or personal property, or offers to purchase the ward's property shall only be disclosed for cabinet business purposes to the following authorized persons:

(a) Other staff employed by the cabinet's division such as:

1. Office of the Inspector General (OIG);
2. Office of Legal Services (OLS);
3. Ombudsman;
4. Adult Protective Services (APS); or
5. Child Protective Services (CPS);

(b) The insurance agent or claims representative of the insurance company that wrote the insurance policy on the property;

(c) The real estate agent or[~~and~~] attorney with an[~~a provider~~] agreement to manage property and legal matters for the service region; or

(d) The Guardian ad Litem appointed for the sale of the ward's property.

(3) In[~~If~~] disposing of the ward's assets, the DAIL[~~Field Services Branch~~] shall make a reasonable effort to preserve the estate as designated in the[~~a~~] ward's will or other estate planning device[~~devices~~] executed by the[~~a~~] ward prior to the finding of disability in accordance with KRS 387.700(1).

(4) The DAIL[~~Field Services Branch~~] shall review court appointment papers to ensure that the cabinet has the authority to handle real estate and personal property matters.

(5) If necessary, or if mandated by the court, the DAIL[~~Field Services Branch~~] shall secure a title search or an independent appraisal of real and personal property.

(6) The DAIL[~~Field Services Branch~~] shall secure an attorney to handle the sale of property pursuant to KRS 389A.010 and 389A.015.

(7)(a) The DAIL[~~Field Services Branch~~] shall ensure the cabinet only passes title by means of a Quitclaim[~~Quit Claim~~] Deed on behalf of the ward.

(b) A Quitclaim[~~Quit Claim~~] Deed passes only the interest held by the ward.

(c) Warranties shall not be expressed in a Quitclaim[~~Quit Claim~~] Deed.

(8)[~~The Field Services Branch shall determine~~] If a relative or other interested party is interested in purchasing real property, they may purchase the[~~and, if so, offer the~~] property at fair market value as appraised by a realtor or licensed appraiser[~~to the relative or other interested party~~].

(9) If the division determines it is in the ward's best interest to sell real and personal property, a public forum for sale shall include a:

(a) Public auction;
(b) Dealer consignment;
(c) Yard sale; or
(d) Realtor.

(10) The DAIL ~~Field Services Branch~~] shall dispose of remaining items that did not sell, if applicable, through donation.

(11) The DAIL may[~~Field Services Branch shall~~] seek eviction through the court if a person residing in the ward's property:

(a) Refuses to vacate the property;
(b) Is not paying rent; or
(c) Is causing damage to the property.

(12) The DAIL[~~Field Services Branch~~] shall attend a closing on the ward's real property and shall sign documents such as a:

(a) Quitclaim[~~Quit Claim~~] Deed;
(b) Settlement Statement; or
(c) Tax form.

Section 7. Guardianship Ongoing Service Provision.

(1) The division[~~Field Services Branch~~]:

(a) Shall have someone on call twenty-four (24) hours a day; and

(b) May have duties such as:

1. Managing assets, which[~~that~~] may include managing or liquidating real and personal property;

2. Providing[~~Securing and giving~~] consent for social services, medical services, and[~~living arrangements; or~~

~~3. Securing and granting permission for~~] other needed support services necessary for the well-being of the ward; or

3. Providing consent or denial for temporary or permanent living arrangements recommended and found by the case manager, family, service provider, discharge planner, or other interested person involved with the ward.

(2) Pursuant to KRS 387.640(1), the cabinet as guardian shall have the general duty to assure that the personal, civil, and human rights of the ward are preserved and protected.

(3) The division shall not:

(a) Assume physical custody of the ward;

(b) Become the caregiver or custodian of the ward;

(c) Be personally liable for the ward's expenses, placement, or actions; or

(d) Provide transportation of the ward in a state or personal vehicle, but may assist in arranging transportation through a third party willing to transport if the ward has funds available to cover the cost.

Section 8. Decision Making on Behalf of a Ward. (1) A decision made on behalf of a ward by the division[~~Field Services Branch~~]shall be based on the principles of:

(a) Informed consent;
(b) Substituted judgment;
(c) Best interest; or
(d) Least restrictive alternative.

(2) The division[~~Field Services Branch~~] shall use the following guidelines if making a decision on behalf of a ward:

(a) The exact request of the ward;
(b) Conditions identified necessitating action;
(c) Identify and determine alternatives that best meets the individual needs of the ward while placing the least restrictions on the ward's:

1. Freedom;
2. Rights; and
3. Ability to control the ward's own environment;

(d) Based on available information, determine whether the ward has previously stated preferences prior to the cabinet being made the ward's guardian;

(e) Communication of decisions with the ward;

(f) A determination of risks and benefits:

1. While balancing the ward's maximum self-determination; and

2. Maintaining the safety of the ward; and

(g) Directions from the court.

(3) The division[~~Field Services Branch~~] shall make each decision [~~by an informed decision~~] based on the principle of informed consent.

(4) The division[~~Field Services Branch~~] shall not use substituted judgment if:

(a) Following the ward's wishes causes substantial harm to the ward; or

(b) The division[~~Field Services Branch~~] is unable to establish the ward's prior wishes.

(5) The division[~~Field Services Branch~~] shall consider the least intrusive, best interest, and least restrictive alternative course of action possible to provide for the needs of the ward.

Section 9. Visiting the Ward[~~at the Current Residence~~].

(1) The division[~~Field Services Branch~~] shall visit the ward[~~at least annually every ninety (90) days with a minimum of two (2) visits being~~] in the home environment at least once annually unless the ward resides in another state that is not within 100 miles of the closest guardianship field office[~~to:~~

~~(a) Assess the suitability of the placement and ascertain a ward's needs;~~

~~(b) Consult with facility personnel regarding the cabinet's expectations; and~~

~~(c) Participate in the ward's care plan~~].

(2) If the visit identifies a concern,**[about the health, safety, or welfare]**[~~Field Services Branch visits a facility and concerns are identified, and if the issue does not require intervention by regulatory or certifying agencies,~~] the division[~~Field Services Branch~~] shall:

(a) Report known or suspected incidents of abuse, neglect, or exploitation in accordance with KRS 209.030;

(b) Report immediately to the appropriate regulatory or certifying agency; or

(c) If the issue is not related to health, safety, or welfare, bring

it to the attention of the provider's[~~facility's~~] administrator or designee[;] and[~~(b)~~] develop an agreement for corrective action with the provider's[~~facility~~] administrator.[~~(3) If the issue is a regulatory issue related to health or safety, the Field Services Branch shall report immediately to the appropriate regulatory or certifying agency such as:~~

~~(a) OIG;~~

~~(b) DBHDID; or~~

~~(c) The department.~~

~~(4) The Field Services Branch shall report known or suspected incidents of abuse, neglect, or exploitation to:~~

~~(a) The Department for Community Based Services (DCBS) office;~~

~~(b) The Division of Protection and Advocacy (P&A) if the Field Services Branch is aware the ward is a client of the P&A; or~~

~~(c) Other appropriate state agency.~~

~~(5) The designated Field Services Branch shall complete the following duties:~~

~~(a) Explain reporting requirements to the ward;~~

~~(b) Explain the investigative process of abuse, neglect, or exploitation that will ensue; and~~

~~(c) Offer the alleged victim appropriate assistance or referral as specified in subsection (4) of this section.~~]

Section 10. Out of State Travel. (1) If a request is made for a ward to travel out of the state of Kentucky, the division **using a person-centered approach**[~~Field Services Branch~~] shall consider the following:

(a) Risk of or prior Absence Without Leave (AWOL);

(b) Medical issues of the ward that may require attention while out of state that shall be:

1. Paid through the ward's insurance;

2. Paid with the ward's own funds if insurance does not cover the expenses; or

3. Eligible for indigent care if neither insurance or personal funds are available to cover the medical expenses;[~~and~~]

(c) The ward's [~~physical~~] ability to handle the trip; and

(d) The ward's financial ability to afford the trip.

(2) If a request includes travel out of the United States, the division[~~Field Services Branch~~] shall inform the court of jurisdiction and allow the court to express any concerns[~~inform the provider of the provider's financial responsibility for any emergency medical treatment not covered by the ward's medical insurance or Kentucky Medicaid from the time the ward leaves the state of Kentucky until the ward is once again within the legal boundaries of the Commonwealth of Kentucky~~].

(3) The division[~~Field Services Branch~~] shall request a signed memorandum or letter from the provider detailing the following information:

(a) The potential for AWOL risk and if measures will be taken to lessen the risk;

(b) Acceptance of the involved responsibilities of the ward; and

(c) Proposed dates of travel.

(4) If the division[~~Field Services Branch~~] determines that the provider has been responsible and agrees travel is in the best interest of the ward, the division[~~Field Services Branch~~] shall share all necessary emergency contact numbers with the provider and request the provider to:

(a) Make contact upon return home[~~to the state of Kentucky~~]; and

(b) Carry a copy of the current court order appointing the cabinet as guardian in case of an emergency.

Section 11. Signing Documents on Behalf of a Ward or Signing Reports to Courts. (1) The division[~~Field Services Branch~~] shall review each provider contract[~~facility contracts~~] to ensure a ward's rights are preserved.

(2) The division shall not sign a contract for arbitration on behalf of a ward.

(3)**[~~A division employee shall use proper signature designation by~~]**[as follows:

~~(a) If~~]**[signing on behalf of a ward, with the wording as follows:"]**[shall be]**[name of ward by name of cabinet ~~guardianship employee on behalf of the cabinet as court appointed (type of appointment) for name of ward"~~]**[~~; or~~

~~(b) If signing a court document on behalf of the cabinet, the wording shall be name of guardianship employee on behalf of the Cabinet for Health and Family Services as court appointed (type of appointment) for name of ward~~]**[~~.~~**

~~(4)~~] A division employee shall use the term:

(a) "Conservator" or "limited conservator" if the cabinet has been appointed for the sole purpose of performing the duties of a full or limited conservatorship; or

(b) "Guardian" or "limited guardian" in all other designations or combinations thereof.

Section 12.[~~Client~~] Placement and Movement of Wards. (1) To ensure a ward is receiving the least restrictive and highest quality services from the most appropriate provider, the division[~~Field Services Branch~~] shall develop and maintain a working knowledge of:

(a) Services;

(b) Providers; and

(c) Facilities in the community.

(2) The division[~~Field Services Branch~~] shall consider various ancillary and support services and approve[~~select~~] a provider that best meets the needs of the individual ward, with consideration given to the ward's preference.

(3) If the cabinet has been appointed to facilitate and approve[~~responsibility for~~] living arrangements of the ward, the division[~~Field Services Branch~~] shall provide consent for[~~ensure that the ward is living in~~] the most appropriate, least restrictive environment taking into consideration the ward's financial abilities, wishes, and needs.

(4) Consent to[~~A~~] move to a new environment, including an intermediate[~~intensive~~] care facility for individuals with intellectual disabilities, nursing facility, or psychiatric hospital, may only be made after the division[~~Field Services Branch~~]:

(a) Evaluates physical and mental health needs by reviewing recommendations of treating professionals;[~~and~~]

(b) Receives acceptance from the placement as meeting the level of care; and

(c) Determines care options.

(5) The division[~~Field Services Branch~~] shall, upon the move to a new environment:

(a) Participate in the[~~Attend an~~] initial care plan meeting; and

(b) Visit the ward[~~:~~

~~1.~~] within thirty (30) days of the move[~~; and~~

~~2. Within ninety (90) days of the move for a follow-up visit~~].

(6) [~~The Field Services Branch shall consider:~~

~~(a) Any involuntary or long-term institutional placement of a ward to:~~

~~1. Minimize the risk of substantial harm to the ward; and~~

~~2. Obtain the most appropriate care; and~~

~~(b) The ward benefits and entitlements driven by level of care in the placement.~~

~~(7)~~] The division[~~Field Services Branch~~] shall, if known, notify the provider[~~facility~~] where the ward resides if the ward is listed on the Sex Offender Registry, has committed a sex crime or a crime against a minor, or is otherwise required to be on the registry pursuant to KRS 17.500 through 17.540.

Section 13.[~~Supports for Community Living (SCL). (1) Unless a ward has been previously referred, the Field Services Branch shall refer a ward with an intellectual disability or developmental disability to DBHDID for determination of Supports for Community Living (SCL) services in accordance with 907 KAR 1:145.~~

~~(2) The division shall monitor and access care in which a ward receives through SCL services.~~

~~Section 14. Bed Holds. (1)If the Field Services Branch receives notification that a ward is leaving a Medicaid nursing level of care or Medicaid Waiver program or has left a facility or placement may:~~

~~(a) Give verbal authorization for the bed to be reserved; and~~

~~(b) Authorize bed hold days in excess of the period covered by Medicaid, or other funding source, only if the availability of the~~

~~ward's funds has been verified with the Fiduciary Services Branch.~~

~~(2) If authorizing a bed hold, the Field Services Branch shall:~~

~~(a) Verify the verbal authorization of a bed hold with:~~

~~1. The facility holding the bed; and~~

~~2. Written verification including the:~~

~~a. Client's name;~~

~~b. Date phone call was placed;~~

~~c. Date reservation begins;~~

~~d. Date reservation ends; and~~

~~e. Rate per day; and~~

~~(b) Email the Fiduciary Services Branch that a bed hold has been completed.~~

~~(3) If a ward is in a public assistance eligible facility such as a licensed personal care home or family care home, and moves to a temporary stay at a hospital, psychiatric hospital-state and private, or nursing facility, the ward may be entitled to retain the public assistance for three (3) months in accordance with 42 U.S.C. 1382(e)(1)(G) and 20 C.F.R. 416.212.~~

~~(4) In order to continue public assistance the following requirements shall be met:~~

~~(a) A bed hold has been approved;~~

~~(b) A physician certifies in writing within ten (10) calendar days of admission that the non Supplemental Security Income (SSI) recipient is unlikely to be confined for longer than ninety (90) full, consecutive days; and~~

~~(c) Fiduciary Services Branch provides the DCBS with the following:~~

~~1. Notification of the temporary admission; and~~

~~2. The physician statement as specified in paragraph (b) of this subsection.~~

~~(5) If the bed hold is not verified or a physician statement is not received within ten (10) calendar days, the ward shall lose eligibility for public assistance and all public assistance shall be returned by the Fiduciary Services Branch to the Kentucky State Treasury from the date of admission.~~

~~(6)(a) The Field Services Branch may only authorize a bed hold for a ward residing in other levels of care by verifying and documenting the availability of the ward's funds with the Fiduciary Services Branch.~~

~~(b) If funds are verified by the Fiduciary Services Branch, the Field Services Branch shall verify the verbal authorization of a bed hold as specified in subsection (2) of this section.~~

~~Section 15. Moving to a New Region. (1) If a ward is being considered for placement from one (1) service region to another, the sending region's Field Services Branch shall consult with the receiving service region's Field Services Branch to determine if the proposed placement meets the needs of the ward.~~

~~(2) If placement is appropriate, the Field Services Branch shall request that the receiving region's Field Services Branch visit and assess the ward within forty-five (45) calendar days of placement to ensure the ward is adjusting to the placement.~~

~~(3) Within seven (7) working days of the visit, the receiving region's Field Services Branch shall make a recommendation for case file transfer to the sending region as to the ward's adjustment to the placement.~~

~~(4) If the ward is not adjusting to placement in the receiving service region:~~

~~(a) The sending service region shall consult with the receiving service region for direction and possible resolution; and~~

~~(b) The receiving service region may revisit the ward to monitor the placement.~~

~~(5) If the ward is adjusting and placement is appropriate, the Field Services Branch shall request a transfer of the ward's case to the receiving region with the receiving region's approval.~~

~~(6) If the transfer of the case is considered appropriate, the Field Services Branch in the sending region shall:~~

~~(a) Review the ward's file;~~

~~(b) Ensure the annual report is current; and~~

~~(c) Forward the ward's records and notification of transfer date to the Field Services Branch of the receiving region.~~

~~(7) The Field Services Branch in the receiving region shall:~~

~~(a) Notify the court of new place of residence and transfer;~~

~~(b) Assign a Field Services Worker in the new region; and~~

~~(c) Ensure health insurance and Medicare Part D are in place and available.~~

~~(8) If any of the following apply, the ward shall not be transferred:~~

~~(a) Limited appointment that expires within the next sixty (60) days of transfer;~~

~~(b) Legal actions pending in the current service region including the sale of real or personal property;~~

~~(c) A relative or other interested party is petitioning to be appointed successor guardian or conservator;~~

~~(d) The ward is in a psychiatric hospital voluntarily or by commitment for a period of less than 360 days; or~~

~~(e) The ward has been approved for SCL funding and is awaiting a permanent placement.~~

~~(9) If the ward is still in an emergency appointment, the case shall not be transferred without the sending region's Field Services Branch reviewing the facts and making a determination if the transfer will be accepted by the court in the receiving service region.~~

~~Section 16. Personal Belongings. (1) If a ward is moved from one (1) facility to another, the Field Services Branch shall ensure that all personal belongings are safely moved with the ward within thirty (30) calendar days of the move.~~

~~(2) If a ward is moved from a facility to a psychiatric hospital and the ward's personal belongings cannot be moved with the ward, the Field Services Branch shall:~~

~~(a) Determine:~~

~~1. If the prior facility charges a fee for storage; and~~

~~2. Through completion of a budget with the Fiduciary Services Branch, the availability of the ward's funds to cover the expense; and~~

~~(b)1. Store the belongings; or~~

~~2. Dispose of the belongings as specified in Section 6(10) of this administrative regulation.~~

~~Section 17.~~] Physical and Mental Health Care Needs of a Ward.

(1) The division[~~Field Services Branch~~] may approve health care, treatment, or services of a ward as authorized by a court.

(2)[~~The Field Services Branch may approve birth control measures for the ward and authorize intrusive measures such as insertion of intrauterine devices or birth control implants if:~~

~~(a) A medical opinion indicates that there is minimal risk for the ward; and~~

~~(b) The procedure is considered to be the least invasive and most appropriate method available.~~

~~(3)~~](a) The division[~~Field Services Branch~~] may discuss with the ward or the ward's relative or other interested party, if appropriate, the need for surgery or treatment if:

1. The surgery or treatment[~~It~~] is in the best interest of the ward; and

2. a. The ward is capable of understanding the information; or

b. The ward's relative or other interested party has been involved with the ward's case.

(b) Discussion may include the possibility of the ward's relative or other interested party petitioning the court to be appointed as full guardian, guardian for personal affairs, or as limited guardian for medical affairs only.

(3)[~~(4) Unless emergency surgery or treatment is necessary to preserve the ward's life or to prevent serious impairment of the ward's physical health,~~] The division:

(a)[~~Field Services Branch~~] Shall comply with[~~seek, pursuant to~~] KRS 387.660(3) and KRS Chapters 202A and 202B; and

(b)[~~, the approval of a court for the:~~

~~(a) Removal of a bodily organ;~~

~~(b) Amputation of a limb; or~~

~~(c) Abortion or sterilization.~~

~~(5) The Field Services Branch shall document the health care services provided in the ward's case record including:~~

~~(a) Procedure to be performed;~~

~~(b) Name of the physician performing the procedure;~~

~~(c) Location where the procedure will be performed;~~
~~(d) Reason the procedure is needed;~~
~~(e) Less intrusive measures that have been tried, if applicable; and~~
~~(f) Date the procedure is to be performed.~~

~~Section 18. Mental Health Care Needs of the Ward. (1) The Field Services Branch shall seek court approval for the following procedures:~~
~~(a) Electro-Convulsive Therapy (ECT); or~~
~~(b) Psychosurgery pursuant to KRS 387.660(3) and.~~
~~(2) The Field Services Branch~~] May[~~co~~-]sign a provider's voluntary admission form if:
1. A ward meets criteria for admission[~~is admitted~~] to a mental health or intellectual disability provider;[~~facility~~]**[and]**
2. The **ward agrees with voluntary admission; and**
3. The[~~if the:~~
~~(a) Ward voluntarily signs the provider's voluntary admission form;~~
~~(b) Admitting physician deems the ward to be capable of voluntarily consenting to the treatment; and~~
~~(c)~~] cabinet is authorized by the court to make medical decisions for the ward.
(4) If the medical opinion recommends nonemergency removal of a bodily organ, amputation of a limb, sterilization, abortion, electro-convulsive therapy, or psychosurgery,[~~(3) If there is no other person willing to petition the court for the ward to be involuntarily admitted, and the ward meets criteria for involuntary admission to a mental health facility or intellectual disability facility, the Field Services Branch shall follow the procedures and may initiate the Administrative Office of the Court's Petition for Involuntary Hospitalization:~~
~~(a) In accordance with KRS Chapters 202A and 202B; and~~
~~(b) If the Field Service Branch determines it is in the best interest of the ward.~~

~~Section 19. Nonemergency Removal of a Bodily Organ, Amputation of a Limb, Sterilization or Abortion. (1)(a) Unless emergency surgery or treatment is necessary to preserve the ward's life or prevent serious impairment of the ward's physical health, the Field Services Branch shall seek the approval of the court for the nonemergency removal of a bodily organ and the nonemergency amputation of a limb, sterilization, or abortion pursuant to KRS 387.660(3).~~
~~(b) The nonemergency removal of a bodily organ may include an organ such as the:~~
~~1. Eye;~~
~~2. Kidney;~~
~~3. Liver;~~
~~4. Lung; or~~
~~5. Reproductive organs.~~
~~(c) The nonemergency amputation of a limb may include:~~
~~1. Arm;~~
~~2. Foot;~~
~~3. Hand; or~~
~~4. Leg.~~
~~(2) The Field Services Branch may discuss with the ward, ward's relative or other interested party:~~
~~(a) The disposition of an amputated limb; or~~
~~(b) Keeping the amputated limb for burial in accordance with 910 KAR 2:030, Section 12(6).~~
~~(3) In order to obtain approval of the court,~~] the division[~~Field Services Branch~~] shall obtain and submit to the CHFS Office of Legal Services:
(a) A written request for legal assistance in anticipation of a motion and order to provide the medical procedure; and
(b) A statement[~~statements~~] from two (2) physicians, who have evaluated the ward providing their[~~and who are not in practice together to include the following:~~
~~(a) Ward's name;~~
~~(b) Date when the statement was written;~~
~~(c) Physician's name, area of practice, address, telephone number, and signature;~~
~~(d) Date the physician last evaluated the ward's condition;~~
~~(e) Procedure to be performed;~~
~~(f) Person who will perform the procedure;~~
~~(g) Location where the procedure will be performed;~~
~~(h) Date of the procedure;~~
~~(i) Ward's prognosis if the procedure is performed;~~
~~(j) Ward's prognosis if the procedure is not performed;~~
~~(k) Risks of performing the procedure;~~
~~(l) Physician's~~] professional opinion as to why the benefits of having the procedure outweighs the risks involved.
(5) [~~; and~~
~~(m) Alternative and less intrusive procedures that have been performed.~~
~~(4) The Field Services Branch shall prepare a written request for legal assistance with the OLS in anticipation of a motion and order that includes the~~
~~(a) Ward's name;~~
~~(b) Date of adjudication;~~
~~(c) Date the cabinet was appointed;~~
~~(d) Type of appointment and any limitations;~~
~~(e) County having current jurisdiction over the case;~~
~~(f) Court's case number;~~
~~(g) Procedure to be performed;~~
~~(h) Reason the procedure needs to be performed;~~
~~(i) Person who will perform the procedure;~~
~~(j) Location where the procedure will be performed;~~
~~(k) Date of the procedure;~~
~~(l) Reference to the two (2) physicians who support the need for the procedure, who have evaluated the ward [and who are not in practice together;~~
~~(m) Names, relationships, and mailing addresses of relatives to be notified of the court hearing; and~~
~~(n) Disposition of the amputated limb, if applicable.~~
~~(5) The Field Services Branch shall forward to the OLS the following:~~
~~(a) The request for legal assistance;~~
~~(b) A copy of the district court's AOC-785, Disability Judgment;~~
~~(c) A copy of the district court's AOC-775, Order of Appointment of Guardian; and~~
~~(d) The two (2) physicians' statements.~~
~~(6)~~] If the motion and order have been received, the division[~~Field Services Branch~~] shall file the following information with the court in the case:
(a) The motion and order prepared by OLS;
(b) The two (2) physicians' statements;
(c) An AOC-775, Order of Appointment of Guardian, available at the court of a ward's disability case; and
(d) An AOC-785, Disability Judgment, available at the court of a ward's disability case.
(6)[~~(7)~~] If required by the court, the division[~~Field Services Branch~~] shall attend the hearing on the motion and order.
(7) [~~(8)~~] The division[~~Field Services Branch~~] shall provide a[~~certified~~] copy of the signed order, signed consent, or denial to the:
(a) Hospital or provider where the surgery or treatment is recommended to be performed; or
(b) Provider[~~Facility~~] where the ward is residing so that the order can be sent with the ward to the hospital or provider.[~~(9) The Field Services Branch shall grant permission for the procedure that has been approved by the court.~~
~~(10) The Field Services Branch shall arrange disposition of the amputated limb as specified in subsection (2)(a) of this section.~~
~~(11) The Field Services Branch shall include an affidavit and other documentation of surgery in the next annual report to the court.~~]

Section 14[~~20~~]. Emergency Removal of a Bodily Organ, Amputation of a Limb, Sterilization, Abortion, Electro-convulsive Therapy, or Psychosurgery.
(1) If an emergency procedure needs to be performed within twenty-four (24) hours of notification of need from a physician to preserve the life or prevent serious impairment of the physical health of a ward, the division[~~Field Services Branch~~] shall not seek court approval.

(2) The division staff[~~Field Services Branch~~] shall notify the division director or designee of the need for an emergency procedure.

(3)(a) The division[~~Field Services Branch~~] shall document the emergency need and time table for the procedure and request a signed statement[~~an affidavit~~] of emergency need from the physician.

(b) The division[~~Field Services Branch~~] may request a second opinion and a signed statement[~~an affidavit~~] from the second physician to verify the need for surgery or that treatment is an emergency. [~~(c)The Field Services Branch shall review the affidavit if the affidavit is received and authorized as an emergency procedure as appropriate.~~

~~(d) The Field Services Branch may discuss with the ward, ward's relative, or other interested party:~~

~~1. The disposition of an amputated limb; or~~

~~2. Keeping the amputated limb for burial in accordance with 910 KAR 2:030, Section 12(6).~~

~~(e) The Field Services Branch shall include the affidavit and other documentation to the event in the next annual report to the court.~~

~~Section 21. Involuntary Mental Health Treatment for Wards. (1)(a) If it is determined that a ward is in need of mental health hospitalization, the Field Services Branch shall suggest to the ward that he or she voluntarily seek treatment from a mental health professional or hospital.~~

~~(b) If the ward refuses to seek mental health services, and no other person is willing or able to file the petition, the Field Services Branch may:~~

~~1. Counsel community partners to petition; or~~

~~2. Initiate a petition for involuntary hospitalization if the ward meets the following criteria for involuntary admission for mental health treatment:~~

~~a. The ward has a mental health diagnosis;~~

~~b. The ward can benefit from mental health treatment;~~

~~c. The involuntary admission is the least restrictive form of treatment; and~~

~~d. The ward presents a danger or threat of danger to self or others.~~

~~(2) If the cabinet is the petitioner, the Field Services Branch shall:~~

~~(a) Attend the mental inquest hearing; and~~

~~(b) Testify at the request of the county attorney.~~

~~Section 22. Involuntary Intellectual Disability Treatment for a Ward. (1) If it is determined that a ward is in need of intellectual disability treatment, the Field Services Branch shall suggest to the ward that he or she voluntarily seek treatment from an intellectual disabilities professional.~~

~~(2) If the ward refuses to seek intellectual disabilities treatment, and there is no other person willing or able to file the petition, the Field Services Branch may file a petition if the ward meets the following criteria for involuntary admission for intellectual disabilities treatment:~~

~~(a) The ward has an intellectual disability diagnosis;~~

~~(b) The involuntary admission is the least restrictive form of treatment; and~~

~~(c) The ward presents a danger or threat of danger to self or others if not admitted to an intermediate care facility for intellectual disability (ICF/IID).~~

~~(3) In the case of an involuntary admission to an intellectual disabilities facility, the Field Services Branch shall:~~

~~(a) Request approval from the Commissioner of the Department for Behavioral Health, Developmental and Intellectual Disabilities for the ward's admission to the facility; and~~

~~(b) Notify the Division of Protection and Advocacy.~~

~~(4) If the involuntary admission is granted, the Field Services Branch shall follow procedures as set out in KRS 387.660(1) for notification to the court.~~

~~(5) If the cabinet is the petitioner, the Field Services Branch shall:~~

~~(a) Attend the mental inquest hearing; and~~

~~(b) Testify at the request of the county attorney.~~

~~Section 23. Electro-convulsive Therapy and Psychosurgery. (1) Unless it is a necessary emergency medical procedure to preserve life or prevent serious impairment of the physical health of the ward, the Field Services Branch shall, for all forms of psychosurgery, seek approval from the court pursuant to KRS 387.660(3).~~

~~(2) The Field Services Branch shall inform the division of the requested procedure.~~

~~(3)(a) The Field Services Branch shall obtain written statements from two (2) psychiatrists who have evaluated the ward and who are not in practice together.~~

~~(b) The written statements shall include the following:~~

~~1. Ward's name;~~

~~2. Date when the statement was written;~~

~~3. Psychiatrist's name, area of practice, address, telephone number, and signature;~~

~~4. Last date the psychiatrist evaluated the ward's condition face-to-face;~~

~~5. Procedure to be performed;~~

~~6. Person who will perform the procedure;~~

~~7. Location where the procedure will be performed;~~

~~8. Date of the procedure;~~

~~9. Ward's prognosis if the procedure is performed;~~

~~10. Ward's prognosis if the procedure is not performed;~~

~~11. Risks of performing the procedure;~~

~~12. Psychiatrist's professional opinion as to why the benefits of having the procedure outweigh the risks involved; and~~

~~13. Alternative and less intrusive measures that have been performed.~~

~~(4) The Field Services Branch shall prepare A written request for legal assistance to the OLS that includes the:~~

~~(a) Ward's name;~~

~~(b) Date of adjudication;~~

~~(c) Date the cabinet was appointed;~~

~~(d) Type of appointment and any limitations;~~

~~(e) County having current jurisdiction over the case;~~

~~(f) Court's case number;~~

~~(g) Procedure to be performed;~~

~~(h) Reason the procedure needs to be performed;~~

~~(i) Person who will perform the procedure;~~

~~(j) Location where the procedure will be performed;~~

~~(k) Date of the procedure;~~

~~(l) Reference to the two (2) psychiatrists who support the need for the procedure; and~~

~~(m) Names, relationships, and mailing addresses of relatives to be notified of the hearing.~~

~~(5) Upon the completion of the written request, the Field Services Branch shall send to OLS the following and request that OLS prepare a motion and order requesting the consent for treatment:~~

~~(a) Request for legal assistance;~~

~~(b) A copy of the district court's AOC-785, Disability Judgment;~~

~~(c) A copy of the district court's AOC-775, Order of Appointment of Guardian; and~~

~~(d) Two (2) psychiatrists' statements.~~

~~(6) Once the motion and order requesting the consent for treatment have been received by the guardianship local office, the Field Services Branch shall file the following information with the court in the case:~~

~~(a) Motion and order prepared by OLS;~~

~~(b) Two (2) psychiatrists' statements;~~

~~(c) A copy of the district court's AOC-775, Order of Appointment of Guardian; and~~

~~(d) A copy of the district court's AOC-785, Disability Judgment.~~

~~(7) If required by the court, the Field Services Branch shall attend the hearing on the motion and order.~~

~~(8) The Field Services Branch shall provide a certified copy of the signed order by the court to the Hospital where the procedure is to be performed or to the Facility where the ward is residing so that the order can be sent with the ward to the hospital.~~

~~(9) The Field Services Branch shall provide consent for the~~

~~procedure that has been approved by the court include the following in the next annual report to the court:~~

~~(a) The requests for consent for treatment;~~

~~(b) Action taken by the court; and~~

~~(c) Treatment provided and resulting outcomes.~~]

Section 15[~~24~~]. Life Saving Measures. (1) A decision made prior to appointment shall be honored pursuant to KRS 311.6231, if:

(a) The ward's decision was made prior to the disability adjudication;

(b) The prior guardian or health care surrogate established end of life decisions; and

(c) There are no concerns that the decision was made for the purpose of abuse, neglect, or exploitation.

(2) The division may provide for end of life decisions by **consulting with the ward, if appropriate, and if no objection,** initiating:

(a) The Medical Order For Scope Of Treatment (MOST) form pursuant to KRS 311.6225 and available at https://kbml.ky.gov/board/Documents/MOST%20Form.pdf; or

(b) The Do Not Resuscitate (DNR) form.

(3) The procedure for the division[~~Field Services Branch~~] to request a change in code status from Full Code (FC) to Do Not Resuscitate (DNR) for a ward for whom the cabinet has the authority to make health care decisions shall include:

(a)[~~1.~~] Being advised by an attending physician, after clinical examination, that the ward:

1.[~~a.~~] Has a terminal condition;

2.[~~b.~~] Is permanently unconscious; or

3.[~~c.~~] Has a comorbid condition, in which two (2) or more coexisting medical conditions compromise the ward's chance of recovery or of benefiting from active treatment;

(b)[~~and~~

~~2.~~] The physician requests[~~physician's request~~] that the ward's code status be changed to DNR; [~~(b) Sending the DNR Request Form to be completed and signed by two (2) physicians, one (1) of whom shall be the attending physician;~~] and

(c) Notifying and sending the signed DAIL-DNR-01 State Guardianship DNR Request Form and diagnostic documentation or testing completed within the last twelve (12) months that documents the ward's condition[~~is terminal or permanently unconscious~~] to one (1) of the nurse consultants.

(4)[~~(2)~~] The nurse consultant shall determine if the ward meets criteria[~~according to the cabinet's protocol~~] or defer the request to change the ward's code status to DNR to the commissioner of the department[~~Guardianship Advisory Committee~~].

(5)[~~(3)~~] The nurse consultant shall notify the division[~~Field Services Branch~~] of the determination that was made on the ward's code status.

(6)[~~(4)~~] Upon reaching [~~receiving~~] the determination to change [~~for DNR, in support of changing~~] the ward's code status to DNR, the nurse consultant [~~Field Services Branch~~] shall notify all involved facilities verbally and in writing by forwarding a copy of the approval.

(7)[~~complete a hospital's or Emergency Medical Services' (EMS) Kentucky Emergency Medical Services Do Not Resuscitate Order~~.

~~(5) The Field Services Branch shall forward a copy of the approval and the DNR Order to all involved facilities.~~

~~(6) The Field Services Branch shall notify all involved facilities verbally of the DNR Order.~~

~~(7)~~] If the ward's medical condition improves significantly, any party involved, including the division[~~Field Services Branch~~], may review and make a request to change the code status.

Section 16[~~25~~]. End of Life Determination.

(1) Each ward shall be full code status at the time of appointment unless an advance directive was in place prior to appointment.

(2) If the cabinet has the authority to make health care decisions and a health care professional has requested end of life consideration, the division**, after consulting with the ward regarding their wishes,** may request end of life care, including:

(a) Comfort care;

(b) Hospice care;

(c) Withholding of care; or

(d) Termination of life prolonging treatment.

(3) The decision for end of life care shall follow the procedures established in this subsection.

(a) The division shall be advised by two (2) physicians, after clinical examination, that:

1.a. The ward has an irreversible terminal condition;

b. The ward is permanently unconscious;

c. The ward is in a persistent vegetative state; or

d. Inevitable death is expected by reasonable medical judgment within a few days; and

2. The physicians request that the ward's treatment be altered.

(b) The nurse consultant shall obtain a signed statement from each of the two (2) physicians documenting the physician's professional opinion as to why it is in the best interest of the ward to change the course of treatment.

(c) The nurse consultant shall:

1. Obtain the medical records supporting the diagnosis and each physician's opinion;

2. Review the statements and documentation submitted to determine if the ward meets the criteria of paragraph (a)1. of this subsection; and

3. Assemble an electronic outline concerning the ward's health status including recommendation for end of life care and submit the outline to the division designee.

(d) The division designee shall:

1. Review the request and make a recommendation to approve or not approve the request for end of life care; and

2. Submit the electronic outline, the nurse consultant's recommendation, and the division designee's recommendation to the DAIL commissioner or appointed designee for final determination of the request.

(e) Upon approval by the commissioner, or the appointed designee, of a request for comfort care, hospice, or termination of life support or withholding of life support measures, the division shall give verbal approval to all involved facilities and follow-up with written notification.

Section 17. Death of a Ward.

(1) If a ward dies, the division[~~Field Services Branch~~] shall update[~~contact~~] the data system maintained by Guardianship by changing the ward's status to "deceased"[~~Fiduciary Services Branch~~] within one (1) working day upon notification of the death.

(2)[~~and provide the:~~

~~(a) Name of the ward;~~

~~(b) Date of death;~~

~~(c) Place of death;~~

~~(d) Last residence;~~

~~(e) Name, address, and telephone number of the funeral home; and~~

~~(f) Assets held by the field office or current placement.~~

~~(2) The Field Services Branch may contact the preferred funeral home and inform them of:~~

~~(a) The ward's death and location of the body;~~

~~(b) Any known relative or other interested party;~~

~~(c) Any known prepaid burial assets; and~~

~~(d) The fact that the cabinet shall not be held responsible for any burial arrangements or funeral expenses.~~

~~(3)~~] The division[~~Field Services Branch~~] shall ensure that a relative or other interested party, if known, is notified of the ward's death and the selected funeral home.

(3)[~~(4)~~] If there are no funds available for burial, the division[~~Field Services Branch~~] shall attempt to contact a known relative or other interested party to inform them of the ward's inability to pay for burial expenses and provide information on possible resources for assistance[~~determine their interest and ability to assist with burial expenses~~].

(4)[~~(5) The Field Services Branch may also seek assistance from the county Fiscal Court or local funeral homes.~~

~~(6) As the cabinet's decision-making authority ceases when the~~

~~ward dies,~~] The division[~~Field Services Branch~~] shall not grant permission for:

(a) An autopsy;[~~Autopsies; or~~]

(b) Organ or tissue donation; or[~~donations~~]

(c) Release of the body.

(5)[~~(7)~~] If a ward dies in an unusual or unknown circumstance[~~circumstances~~], the division[~~Field Services Branch~~] shall[~~:~~

~~(a)~~] make a referral to the Department for Community Based Services, Adult Protective Services[~~:~~

~~1. APS; and~~

~~2. County coroner, relative, or other interested party who may order an autopsy; and~~

~~(b) Complete and submit to the department a Notice of Adult Fatality.~~

~~(8) If the Field Services Branch determines the ward's hard copy file is complete or no later than six (6) months from date of death, the file shall be forwarded by person or mail to the Fiduciary Services Branch~~.

~~Section 26. Cremations. (1) Pursuant to KRS 367.97524 and 40 KAR 2:150, a cremation authorization form shall be signed by an authorizing agent clearly stating the disposition of the cremated remains.~~

~~(2) Pursuant to KRS 367.97527, a ward may have established a prepaid cremation account prior to being determined to be disabled in order to specify how personal remains shall be handled.~~

~~(3) Other persons legally entitled to order the cremation and disposition of the adult's human remains shall be as listed in KRS 367.97501(1).~~

~~(4)(a) The Field Services Branch shall not sign a cremation authorization, or be allowed to establish a prepaid cremation account for a ward.~~

~~(b) If the ward funded a pre-paid cremation account prior to being adjudicated disabled, the ward's desire to be cremated shall be honored.~~

~~(c) If the ward has not signed a preneed authorization and there are no adult relatives who are willing to serve as the authorizing agent, the coroner may seek an order in district court authorizing the ward's cremation~~].

Section 18[~~27~~]. Incorporation by Reference.

(1) The[~~following material is incorporated by reference:~~
~~(a) "Initial Field Visit Report", 3/09;~~
~~(b)~~] "DAIL-DNR-01 State Guardianship DNR Request Form", 7/2018 edition, is incorporated by reference[~~3/09; and~~
~~(c) "Notice of Adult Fatality", 3/09~~].

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

SHANNON GADD, Commissioner
ADAM MEIER, Secretary

APPROVED BY AGENCY: August 12, 2019

FILED WITH LRC: August 14, 2019 at 1 p.m.

CONTACT PERSON: Chase Coffey, Executive Administrative Assistant, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746; fax 502-564-7091; CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Phyllis W. Sosa, email: Phyllis.sosa@ky.gov, Phone: (502) 564-6930; and Chase Coffey

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the service provisions for adult guardianship. This administrative regulation includes requirements for the department for: 1, Completing annual court reports; 2. Renewal of limited appointments; 3. Restoration, or modification of rights; 4. Appealing inappropriate appointments; 5. Sale of real estate and personal property; 6. Providing on-going service provisions; 7. Making decision on behalf of a ward; 8. Visiting wards; 9. Approving out of state travel for a ward; 10. Signing documents on behalf of a ward; 11. Making placement decisions on behalf of a ward; 12. Making decisions related to the physical and mental health care of a ward; 13. Emergency removal or a bodily organ, amputation of a limb, sterilization, abortion, electro-convulsive therapy, or psychosurgery; 14. Life saving measures; 15. End of life determination; and 16. Death of a ward.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to administer services to adults the Cabinet has been appointed as guardian.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 387.600(1) authorizes the courts to appoint the Cabinet for Health and Family Services as guardian to individuals who have been determined to have a disability and are unable to make their own decisions. KRS 194A.050(1) authorizes the Cabinet to adopt regulations as necessary to implement programs. This administrative regulation establishes standards of service provision to individuals who have been appointed to the Cabinet as a ward of the state.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will provide guidance to the Cabinet and Department on the provision of services and staff requirements in providing for the needs of individuals appointed to the 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: The amendment to 910 KAR 2:040 updates definitions, the website for required court forms, allows for a bench or jury trail pursuant to KRS 387.570(7)(a)-(c), technical amendments to update the name of the divisions within the Department, allows the Department to assist an interested party in obtaining guardianship of a ward when appropriate. This amendment clarifies that appointments to the Cabinet that are not in compliance with KRS 210.290 shall be appealed and clarifies when the appointment of guardianship is not appropriate. Clarifies the sale of real or personal property and that relatives or other interested parties may purchase the property at fair market value as appraised. Clarifies that the guardianship program provides consent or denial for services but is not responsible for providing for the direct services or care. Clarifies that guardianship does not take custody of the ward, is not the caregiver, that staff are not personally liable for the ward's expenses, placement or actions and does not provide transportation of the ward in a state or personal vehicle but may assist in arranging transportation through a third party when the ward has available funds to cover the cost. Reduces the number of home visits required but will allow a more person centered approach. Rather than every ward having a set time period for a visit the visit will be based upon the needs of the individual. This amendment also clarifies the reporting of conditions that may jeopardize and individuals health, safety or welfare or issues within the placement that need to be resolved. Clarifies a ward's ability to travel out of state. Clarifies the Departments signature authority for wards. Removes specific requirement to apply for the Supports for Community Living Waiver as the Department applies for all benefits that a ward may be eligible, not just the SCL Waiver. Removes the provisions for Bed Holds, this is provided for in 910 KAR 2:030, removes language of internal procedure to move a ward from one region to another, and removes language regarding personal belongings to allow decisions to be made on a case by case basis. Removes language related to Physical and Mental Health and adds language to comply with KRS 387.660(3) and KRS Chapters 202A and 202B. Life Saving Measures is amended to allow for decisions made prior to the adjudication of disability and appointment to guardianship to be honored pursuant to KRS 311.6231 when there are no concerns that the decision was made for the purpose of abuse, neglect or exploitation. Updates the end of life determination requirements and how to process the death of a ward. Establishes the DAIL-DNR-01 State Guardianship DNR Request form and eliminates the Initial Field Visit Report and Notice of Adult Fatality Forms.

The Amended After Comments version makes the following changes: Removes the citation to KRS 387.305 related to Guardian ad Litem that was cited in error, restores the original language regarding least restrictive alternatives as "has been exhausted" rather than "shall be". The language related to inappropriate appointments now includes seeking relief of powers appointed on an emergency basis when a hearing has not been conducted and the emergency appointment exceeds six (6) months or the interdisciplinary evaluation report indicates the individual does not need a guardian. The Amended After Comments version clarifies that any concerns found during a visit will be reported to the appropriate authority and removes the cumbersome signature requirements to allow a state guardian to sign a form as the guardian or legal representative in the designated area of a form and to allow the use of e-signatures. Clarifies that the ward's wishes are considered in making decisions on their behalf including services, health care, and end of life decisions and only when they agree with admission to a mental health or intellectual disability provider will the guardian sign the voluntary admission, and specifies that any involuntary admission requires compliance with KRS Chapter 202A or 202B.

(b) The necessity of the amendment to this administrative regulation: The amendment to 910 KAR 2:040 is necessary for the Cabinet to remain in compliance with revised statues, to maintain operations and meet the needs of the wards. The program is currently growing at an alarming rate without the ability to add additional staffing to meet the current self-imposed requirements. The amendments bring the regulation in line with the statutes. The regulation without the amendments make the work demands with the high caseloads and inability to stop new appointments into guardianship unmanageable and difficult to recruit and retain an experienced workforce. The amendment to this administrative regulation will allow for a more person centered approach to allow staff to work from the plan of care established by the multi-disciplinary treatment team rather than being tied to arbitrary timelines within the regulation.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment clarifies and establishes standards for the provision of services to individuals appointed to the Cabinet. This amendment provides alignment with the statues including clarification of amendments made through HB 5 of the 2018 regular session.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will provide guidance to the Cabinet staff to implement the requirements of the KRS.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Cabinet for Health and Family Services, Department for Aging and Independent Living, Department for Community Based Services, Office of Legal Services, over 4800 wards of the state, hospitals, doctors and health care providers requesting DNR's on patients that are wards of the state.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The Department will implement the DNR review process and obtain guidance from other Cabinet entities as needed to expedite a decision regarding a DNR. Hospitals, doctors and health care providers will have to utilize the new form and process. DCBS will have to determine acceptance or not of reports made regarding suspected abuse, neglect or exploitation. The Office of Legal Services will be responsible for appealing those appointments that are determined to be inappropriate on behalf of the Department for Aging and Independent Living.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Department staff will be able to review documentation submitted and make a determination in a more efficient manner. Wards will be able to take trips outside of the state of Kentucky when feasible and staff will have more flexibility in scheduling appointments and meeting the statutory requirements of the program and to provide the needed consent and guidance in meeting the needs of the wards. The medical community will have a clear process and more user friendly form to make requests for needed procedures or status changes.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: Initially there are no additional costs to implement this amended regulation.

(b) On a continuing basis: There are no additional costs to implement this amended 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 Guardianship program is funded 100% through state general funds for the provision of staffing. No funding is provided for services to wards other than their own funds or benefits for which they are eligible.

(7) Provide an assessment of whether an 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 funding is necessary to implement this regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: There are no fees established or increased by this regulation.

(9) TIERING: Is tiering applied? Tiering is not applied since policy is administered the same statewide.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 387.600(1), KRS 202A, 202B, 209.990, 210.290(3), (4), 387.97524, 367.97527, 387.500-387.990, 389A.010, 389.015, 20 C.F.R., 416.212, 42 U.S.C. 1382(e)(1)(G)

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 additional revenue in the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate additional revenue in subsequent years.

(c) How much will it cost to administer this program for the first year? For FY 2019, the program will cost $8,000,000.00 in state general funds.

(d) How much will it cost to administer this program for subsequent years? In subsequent years, $8,000,000.00 in state general funds will be required 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 (+/-):
Expenditures (+/-):
Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Protection and Permanency
(Amended After Comments)

922 KAR 1:470. Central registry.

RELATES TO: KRS 17.165(6), 61.876, 160.151, 160.380, 194A.050(1), 194A.380-194A.383, 199.466, 199.896(19), 199.8982(1)(a), 211.684(1)(a), 403.352, 600.020(1), (40), (61), (62), 605.130(7), 605.150(1), 620.050, 620.051, 625.050-625.120, 42 U.S.C. 671(a)(20), 5106a(b), 9858f

STATUTORY AUTHORITY: KRS 194A.050(1), 605.130(7) [~~605.130(4)~~], 605.150(1), 620.051(2)[~~2006 Ky. Acts ch. 252 Part 1, H.10(3)~~]

NECESSITY, FUNCTION, and CONFORMITY: KRS 194A.050(1) requires the Secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate the programs and fulfill the responsibilities vested in the cabinet. KRS 605.150(1) authorizes[~~permits~~] the cabinet to promulgate administrative regulations to implement the provisions of KRS Chapter 605, including KRS 605.130(7)[~~605.130(4)~~], which authorizes the cabinet to perform services necessary for the protection of children. KRS 620.051(2) requires the cabinet to promulgate administrative regulations to establish the central registry and the process for a background check of the cabinet's child abuse and neglect records[~~2006 Ky. Acts ch. 252 Part 1, H.10(3) authorizes the secretary to promulgate administrative regulations necessary to prescribe criminal background investigation fee amounts~~]. This administrative regulation establishes the procedure by which the cabinet shall conduct a child abuse or neglect check using information in the central registry.

Section 1. Definitions. (1) "Abused or neglected child" is defined by KRS 600.020(1).

(2) "Administrative review" means that the status of the individual subject to the central registry check is pending the outcome of an:

(a) Investigation or assessment in accordance with 922 KAR 1:330; or

(b) Appeal concerning a cabinet substantiated finding of child abuse or neglect.

(3) "Child fatality" is defined by KRS 211.684(1)(a).

(4) "Near fatality" is defined by KRS 600.020(40) and 42 U.S.C. 5106a(b)(4)(A).

(5) "Sexual abuse" is defined by KRS 600.020(61).

(6) "Sexual exploitation" is defined by KRS 600.020(62).

Section 2. Central Registry. (1) The central registry shall include the name of each individual:

(a) Who has been found by the cabinet to have abused or neglected a child on or after October 1, 1998; and

(b)1. Who waived the right to appeal a substantiated finding of child abuse or neglect in accordance with:

a. 922 KAR 1:480;

b. 922 KAR 1:320; or

c. 922 KAR 1:330, Section 11; or

2. Whose substantiated incident was upheld upon appeal.

(2) Each name shall:

(a) Remain on the central registry for a period of at least seven (7) years; and

(b) Be removed from the central registry after a period of seven (7) years if:

1. No additional incident of child abuse or neglect has been substantiated by the cabinet since the time of the incident for which the individual's name was placed on the registry; and

2. Cabinet records indicate that the incident for which the individual's name was placed on the registry did not relate to:

a. Sexual abuse or sexual exploitation of a child;

b. A child fatality related to abuse or neglect;

c. A near fatality related to abuse or neglect; or

d. Involuntary termination of parental rights in accordance with KRS 625.050 through 625.120.

(3) This administrative regulation shall not apply to cabinet background checks required by 922 KAR 1:490.

(4) This administrative regulation shall not limit the cabinet's ability to disclose information in accordance with KRS 620.050 and 42 U.S.C. 5106a(b)(2)(B)(viii), (ix), or (x).

Section 3. Procedure for Requesting a Central Registry Check. (1) If information from the central registry is required by law, a request for a central registry check may be made by an:

(a) Individual;

(b) Organization; or

(c) Other entity.

(2) The cabinet shall conduct a check of the central registry for each individual who:

(a) Submits a request for a check of the central registry in accordance with subsection (4) of this section; and

(b)1. Applies for initial licensure;

2. Is hired by, or volunteers with, an entity required by law to obtain information contained in the central registry; or

3. Is hired by, or volunteers with, an entity that may require a central registry check as a condition for working with children on a regular basis.

(3) An individual who is not required by law to obtain information contained in the central registry shall submit an open records request in accordance with 922 KAR 1:510.

(4) A request for a central registry check shall be made:

(a) By electronically submitting to the cabinet through the Kentucky Online Gateway:

1.a. A completed DCC-374, Child Care Central Registry Check, for an individual in child care as specified by 42 U.S.C. 9858f, KRS 199.466, or[~~Title~~] 922 KAR 2:280[~~Chapter 2~~]; or

b. A completed DPP-156, Central Registry Check, for an individual required by a law not specified in clause a. of this subparagraph no later than five (5) working days after:

(i) The date of employment of an individual required by law to submit to a central registry check; or

(ii) A volunteer's first day, if the volunteer is required by law to submit to a central registry check; and

2. A nonrefundable fee of ten (10) dollars paid by credit or debit card[~~:~~

~~a.(i) Submitted by check or money order; and~~

~~(ii) Made payable to the Kentucky State Treasurer; or~~

~~b. Made available through A prepaid account established with the cabinet~~]; or

(b) Through another cabinet system, including[~~such as~~] the Kentucky National Background Check Program established by[~~in accordance with~~] 906 KAR 1:190.

(5) A state requesting a child abuse or neglect check from the cabinet as required by 42 U.S.C. 671(a)(20) shall follow the procedures described in 922 KAR 1:490, Section 4.

Section 4. Administrative Review. (1) The cabinet shall indicate on a central registry check if the individual is pending administrative review by the cabinet.

(2) An individual subject to administrative review in accordance with this section may submit a request for the disclosure of[~~an open~~] records[~~request~~] in accordance with 922 KAR 1:510 **to be fulfilled** once the administrative review process is complete.

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

(a) "DPP-156, Central Registry Check," **8/2019[~~5/2019~~]**[~~1/18~~]; and

(b) "DCC-374, Child Care Central Registry Check," **8/2019[~~5/2019~~]**[~~11/13/17~~].

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

ERIC T. CLARK, Commissioner
ADAM M. MEIER, Secretary

APPROVED BY AGENCY: August 12, 2019
FILED WITH LRC: August 14, 2019 at 1 p.m.
CONTACT PERSON: Chase Coffey, Executive Administrative Assistant, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746; fax 502-564-7091; CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Agency Contacts: Laura Begin, Phone: (502) 564-3703, Email: Laura.Begin@ky.gov.; and Chase Coffey

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures by which the cabinet shall conduct a child abuse and neglect check using information in the central registry.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish cabinet procedures for child abuse and neglect checks of the central registry.

(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 cabinet procedures for conducting child abuse and neglect checks of the central registry, as required by KRS 620.051(2).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation currently assists in the effective administration of the statutes through its establishment of cabinet procedures for child abuse and neglect checks of the central registry.

(2) If 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 reflects the move of the child abuse and neglect (CA/N) registry database to an electronic format.

(b) The necessity of the amendment to this administrative regulation: The cabinet's CA/N registry database is being moved from a paper-based process to an online database in order to improve background check efficiency. In calendar year 2017, 25,689 central registry checks were processed. Due to the passage of legislation requiring background checks, in calendar year 2018, 69,293 central registry checks were processed. Over 43,000 were processed from July 1 through December 31st. From January 1, 2019, to April 9, 2019, the cabinet had already processed 32,319 checks. For a period of time in 2018, the department experienced a backlog of a few months in completing these checks. In early 2019, the department achieved same-week processing thanks to intensive and concerted efforts of existing, newly recruited, and volunteer staff across DCBS. DCBS and the Office of Administrative and Technology Services have developed a technology solution that will provide some automation of manual functions and support timeliness of these checks. This regulatory amendment reflects this technology solution.
The administrative regulation is being further amended in response to comment received to clarify that an individual is not limited as to when they can request the disclosure of records, but that the request will not be fulfilled until the administrative review process is complete.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes through its update of cabinet procedures for child abuse and neglect checks of the central registry. KRS 620.051(2) requires the cabinet to promulgate administrative regulations to establish the central registry and the process for a background check of the cabinet's child abuse and neglect records

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes through its enhancement of the cabinet's child abuse and neglect check procedures to provide a more efficient process.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Individuals who are subject to statutory and regulatory requirements involving a child abuse and neglect check conducted by the cabinet are impacted by this administrative regulation. In 2018, the cabinet processed 69,293 central registry checks. From January 1, 2019, to April 9, 2019, the cabinet had already processed 32,319 checks.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the 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 central registry system will be electronic and users will have to pay the required fee by credit or debit card or through another cabinet system including the Kentucky National Background Check Program established by 906 KAR 1:190. With this electronic format, the checks should be completed much quicker, which will assist in employment and volunteer opportunities.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): With this electronic format, the CA/N checks should be completed much quicker, which will assist in employment and volunteer opportunities.

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

(a) Initially: The cost to build the electronic platform is approximately $45,000.

(b) On a continuing basis: The electronic system will speed the process and save money on office supplies and postage, which is approximately $8,000 per year. This program currently has a personnel cost of approximately $1.2M per year, but the electronic platform could also realize a savings in personnel costs, to be foreseen.

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

(7) Provide an assessment of whether an 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 fee charged by the cabinet for a child abuse and neglect check is unchanged and is consistent with KRS 620.051(1). The fees collected support cabinet programing.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The administrative regulation enforces a fee established by the General Assembly and codified in KRS 620.051(1). The fee is unchanged through this amendment.

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

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.
42 U.S.C. 671(a)(20), 5106a(b), 9858f

2. State compliance standards. KRS 194A.050(1), 605.130(7), 605.150(1), 620.051(2)

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 671(a)(20), 5106a(b), 9858f

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 requirements, or additional or different responsibilities of requirements, than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The

administrative regulation does not impose stricter requirements, or additional or different responsibilities of requirements, than those required by the federal mandate.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Cabinet for Health and Family Services is impacted by this administrative regulation. Public school districts are impacted by this administrative regulation through the statutory mandate for personnel and others on the grounds of a public school or on the student based decision making council to undergo a child abuse and neglect check conducted by the cabinet. Other governmental organizational units that require staff or providers to undergo child abuse and neglect central registry checks, such as the Department of Juvenile Justice or the Department for Medicaid Services, are impacted by this administrative regulation and the amendment to make this process electronic. With this electronic format, the checks should be completed much quicker, which will assist in employment and filling vacancies.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 605.130(7), 605.150(1), 620.051(2), 42 U.S.C. 671(a)(20), 5106a(b), 9858f

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 d (b) How 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 enforces the fee codified in KRS 620.051(1) for child abuse and neglect background checks. The fees collected support cabinet programing. This amendment does not change the fee.

(c) How much will it cost to administer this program for the first year? The cost to build the electronic platform is approximately $45,000. The electronic system will speed the process and save money on office supplies and postage, which is approximately $8,000 per year. This program currently has a personnel cost of approximately $1.2M per year, but the electronic platform could also realize a savings in personnel costs, to be foreseen.

(d) How much will it cost to administer this program for subsequent years? This program may have minimal maintenance costs, but this cost will be offset by savings in office supplies, postage, and possibly personnel. This amendment will reduce administrative burdens on Records Management staff, allowing more time to perform additional CA/N checks and provide results more efficiently.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

PROPOSED AMENDMENTS

AUDITOR OF PUBLIC ACCOUNTS
(Amendment)

45 KAR 1:050. Audits of fiscal courts.

RELATES TO: KRS 43.070, 43.075, 64.810, 68.210, 31 U.S.C. 7501-7507

STATUTORY AUTHORITY: KRS 43.075

NECESSITY, FUNCTION, AND CONFORMITY: KRS 43.075 requires the Auditor of Public Accounts to promulgate administrative regulations developing uniform standards and procedures for conducting, and uniform formats for reporting, audits of the funds contained in county budgets (fiscal courts). This administrative regulation establishes the auditing standards, procedures, and formats for fiscal court audits.

Section 1. Definition. "Generally accepted government auditing standards" means the "Government Auditing Standards" issued by the Comptroller General of the United States.

Section 2. Auditing Standards, Procedures, and Formats. The financial and compliance audit of the funds contained in each county's budget shall be conducted in accordance with:

(1) Auditing standards generally accepted in the United States of America, referenced in 201 KAR 1:300, Section 5(1)(a);

(2) Generally accepted government auditing standards, referenced in 201 KAR 1:300, Section 5(1)(b); and

(3) Fiscal Court Audit Guide, issued by the Auditor of Public Accounts, August 9, 2019[~~July 20, 2018~~].

Section 3. Auditor's Independent Judgement. The requirements of this administrative regulation shall not be interpreted in a manner that restricts the independent judgment of a certified public accountant or the Auditor of Public Accounts.

Section 4. Audit Objective. (1) The primary objective of an audit of a fiscal court shall be an audit report that provides an opinion on whether the financial statements of a fiscal court are presented fairly, in all material respects, in accordance with a basis of accounting prescribed or permitted by the Department for Local Government, which is the regulatory basis of accounting or Generally Accepted Accounting Principles (GAAP).

(2) Any audit report of a fiscal court that is required to comply with the requirements of the Single Audit Act Amendments of 1996 and Title 2 U.S. Code of Federal Regulations (C.F.R.) Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance), shall include a statement concerning whether:

(a) The Schedule of Expenditure of Federal Awards is fairly stated, in all material respects, in relation to the financial statements taken as a whole; and

(b) The fiscal court has complied, in all material respects, with the requirements applicable to each of its major federal programs.

(3) An auditor shall make tests sufficient to determine whether:

(a) The fiscal court has complied with the requirements of the uniform system of accounts adopted under KRS 68.210;

(b) Receipts have been accurately recorded by source;

(c) Expenditures have been accurately recorded by payee; and

(d) The county has complied with all other legal requirements relating to the management of public funds.

Section 5. Allowance of Audit Fees; Acceptance of Report. (1) Fees for county fiscal court audits shall be allowable as reasonable and necessary expenses of a county if the independent accountant's examination has been performed and reported in compliance with the standards, procedures, and formats promulgated by this administrative regulation.

(2) A county shall obtain written approval of an audit report from the Auditor of Public Accounts prior to the:

(a) Release of an audit report; and

(b) Payment of fees for a fiscal court audit.

(3) Failure by an independent certified public accountant to comply with the Fiscal Court Audit Guide and this administrative regulation shall disqualify him from conducting fiscal court audits.

Section 6. Incorporation by Reference. (1) The "Fiscal Court Audit Guide," Auditor of Public Accounts, August 9, 2019[~~July 20, 2018~~] is incorporated by reference.

(2) This document may be inspected, copied, or obtained, subject to applicable copyright law, at the office of the Auditor of Public Accounts, 209 Saint Clair Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 5:00 p.m.

ANDREW G. ENGLISH, Executive Director

For MIKE HARMON, Auditor of Public Accounts

APPROVED BY AGENCY: August 7, 2019

FILED WITH LRC: August 12, 2019 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 23, 2019 at 9:00 a.m. at the office of the Auditor of Public Accounts, 209 St. Clair Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through October 31, 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: Andrew G. English, General Counsel, Auditor of Public Accounts, 209 St. Clair Street, Frankfort, Kentucky 40601; phone 502-209-2863; fax 502-564-2912; email: Andrew.English@ky.gov.

REGULATORY IMPACT ANALYSIS AND IMPACT STATEMENT

Contact Person: Andrew G. English

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation promulgates uniform standards and procedures for conducting, and uniform formats for reporting, all audits of fiscal courts performed under KRS 43.070 or KRS 64.810.

(b) The necessity of this administrative regulation: KRS 43.075 requires the Auditor of Public Accounts to promulgate this administrative regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by promulgating uniform standards and procedures for conducting, and uniform formats for reporting, all audits of fiscal courts performed under KRS 43.070 or KRS 64.810.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation currently assists or will assist in the effective administration of the statute by promulgating uniform standards and procedures for conducting, and uniform formats for reporting, all audits of fiscal courts performed under KRS 43.070 or KRS 64.810.

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

(a) How the amendment will change this existing administrative regulation: The amendment will change the existing administrative regulation by replacing the "Fiscal Court Audit Guide," issued by the Auditor of Public Accounts, July 20, 2018, with "Fiscal Court Audit Guide," issued by the Auditor of Public Accounts, August 9,

2019 which is incorporated by reference, to make auditing procedures and report formats conform to the regulatory basis of accounting and applicable auditing standards.

(b) The necessity of the amendment to this administrative regulation: Amending this administrative regulation by incorporating the updated "Fiscal Court Audit Guide" is necessary to conform this administrative regulation to current fiscal court practices and procedures.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statute, KRS 43.075, by updating current standards and procedures for conducting, and formats for reporting, fiscal court audits performed under KRS 43.070 or KRS 64.810.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statute, KRS 43.075, by updating current standards and procedures for conducting, and uniform formats for reporting, all fiscal court audits performed under KRS 43.070 or KRS 64.810.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All Kentucky counties, certified public accountants licensed in Kentucky who perform audits of fiscal courts, and the Auditor of Public Accounts, are affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The regulated entities identified in question (3) will not be impacted by the change to this administrative regulation that this amendment effectuates; the groups identified will continue to audit and be audited using uniform standards and procedures for conducting, and uniform formats for reporting, fiscal court audits.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities identified in question (3) will all benefit by having an updated "Fiscal Court Audit Guide" to follow in completing all audits of fiscal courts conducted pursuant to KRS 43.070 or KRS 64.810, consistent with the regulatory basis of accounting or Generally Accepted Accounting Principles (GAAP).

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

(a) Initially: No cost.

(b) On a continuing basis: No Cost.

(6) What is the source of funding to be used for implementation and enforcement of this administrative regulation: Agency receipts of payments by the fiscal courts for the expense of the audits per KRS 43.070.

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

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

(9) TIERING: Is tiering applied? No, tiering was not applied. Tiering is not applicable to this amendment to this administrative regulation. Neither the amendment nor the administrative regulation disproportionately impact certain classes of regulated entities, as all fiscal courts are audited using the same uniform standards and procedures for conducting, and uniform formats for reporting, audits.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? All 120 Kentucky counties, certified public accountants licensed in Kentucky that perform fiscal court audits, and the Auditor of Public Accounts, are affected by this administrative regulation.

(2) Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. The state statute that requires or authorizes the action taken by the administrative regulation is KRS 43.075.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. The effect of this amended administrative regulation on the expenditures and revenues of fiscal courts is neutral, resulting in no increase or decrease in expenditures or revenues.

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

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate any revenue for fiscal courts for subsequent years.

(c) How much will it cost to administer this program for the first year? There will be no cost to administer this program for the first year, other than the expenses provided for under KRS 43.070.

(d) How much will it cost to administer this program for subsequent years? There will be no cost to administer this program for subsequent years, other than the expenses provided for under KRS 43.070.

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

Revenues (+/-): The fiscal impact of this amendment to this administrative regulation on the revenues of fiscal courts is neutral, resulting in no increase or decrease in revenues.

Expenditures (+/-): The fiscal impact of this amendment to this administrative regulation on the expenditures of fiscal courts is neutral, resulting in no increase or decrease in expenditures.

Other explanation: None.

FINANCE AND ADMINISTRATION CABINET
Office of the Secretary
(Amendment)

200 KAR 6:015. Real property inventories.

RELATES TO: KRS 45A.045(5)

STATUTORY AUTHORITY: KRS 45A.045

NECESSITY, FUNCTION, AND CONFORMITY: KRS 45A.045 authorizes the Finance and Administration Cabinet to promulgate administrative regulations as necessary to serve as the central procurement and contracting agency for the Commonwealth. KRS 45A.045(5) authorizes the cabinet to promulgate an administrative regulation for the sale, transfer, or disposal of state property. This administrative regulation provides for taking of inventories of real property and buildings and the filing of inventories with the Division of Real Properties, Finance and Administration Cabinet.[~~These amendments make several revisions to clarify the inventory reporting requirements of state-owned land and buildings by state agencies.~~]

Section 1. The Division of Real Properties of the Finance and Administration Cabinet shall be responsible for maintenance of inventory records for all state-owned land and buildings.

Section 2. The inventory shall be supplied to the Division of Real Properties by each agency. The report will be as of June 30th and received by the Division of Real Properties no later than September 30th. All inventory records shall be kept current.

Section 3. Forms for reporting the inventory of both land and buildings shall be supplied by the Division of Real Properties. (1) Land: each installation shall require a separate inventory report Form B 117-6/FTR-10[~~B 117-6~~]. For purposes of inventory reporting, an installation shall be state-owned land that completely encloses a definable area of land that is administered by a single state agency. If a tract of land is completely separated by privately owned land, then each tract of land shall be reported by the agency as a separate installation. Contiguous tracts of state-owned land administered by different state agencies shall be reported by these agencies as separate installations.

(2) Buildings.

(a) Each individual building valued at more than $5,000 shall be reported on a separate inventory report Form B 117-6/FTR-10[~~B 117-6~~].

(b) If acquisition costs are not known for the land or buildings, the current appraisal price as established by the Department of Insurance shall be used for the cost.

Section 4. Periodic inspections may[~~shall~~] be made by the Division of Real Properties to determine accuracy of reports. When changes in the state agency's inventory become necessary because of sales, purchases, demolitions, and modifications to the state-owned buildings, the state agency shall adjust their inventory records accordingly and shall provide a copy of the adjusted inventory record to the Division of Real Properties on Form B 117-6/FTR-10[~~B 117-6~~].

WILLIAM M. LANDRUM III, Secretary

APPROVED BY AGENCY: July 17, 2019

FILED WITH LRC: July 23, 2019 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 24, 2019, at 10:00 a.m. in Room 382 of the Capitol Annex Building, 701 Capital Avenue, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through October 31, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Scott Aubrey, Division Director, Finance and Administration Cabinet, Department of Facilities and Support Services, 403 Wapping Street, Frankfort, Kentucky 40601. (502)564-8108 fax, (502) 564-2014 phone, Scott.Aubrey@ky.gov, email.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Scott Aubrey

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation updates 200 KAR 6:015 with the new form number and contact information to be used when filing an inventory report for state property.

(b) The necessity of this administrative regulation: This regulation is necessary to provide state agencies with the most up to date information for filing inventory reports.

(c) How this administrative regulation conforms to the content of the authorizing statutes: By providing the necessary instruction for the sale, trade, or disposal of state property.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It will assist agencies looking to this administrative regulation for the most up to date guidance.

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

(a) How the amendment will change this existing administrative regulation: See (1)(a).

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This change will affect all state agencies that oversee and maintain property on behalf of the Commonwealth.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: The impact to the agencies is minimal. The agencies will fill out one form that is used by Real Properties for inventory purposes and State Risk for insurance purposes instead of two forms with a lot of the same information required on both.

(a) List 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, other than using the updated form.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No new costs associated with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Staff time in completing only one form instead of two in order to update the Commonwealth's real property inventory and provide insurance for any new real property asset.

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

(a) Initially: None.

(b) On a continuing basis: None.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current agency 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 change in funding will be needed to implement this change.

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

(9) TIERING: Is tiering applied? Tiering is not applied, as all parties impacted by this administrative regulation will be treated the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The facilities offices of state agencies that oversee and maintain Commonwealth owned property.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS Chapters 45A.045

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

the first full year the administrative regulation is to be in effect.

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

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

(c) How much will it cost to administer this program for the first year? None.

(d) How much will it cost to administer this program for subsequent years? None.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT
Kentucky State Board of Accountancy
(Amendment)

201 KAR 1:100. Continuing professional education requirements.

RELATES TO: KRS 325.330

STATUTORY AUTHORITY: KRS 325.240(2), 325.330(4)(a), (7)(b)1.

NECESSITY, FUNCTION, AND CONFORMITY: KRS 325.240(2) authorizes the Kentucky
State Board of Accountancy to promulgate administrative regulations for the administration of KRS Chapter 325. KRS 325.330(4) and (7)(b)1. require the board to promulgate administrative regulations to establish the continuing professional education requirements for certified public accountants. This administrative regulation establishes the continuing professional education requirements a certified public accountant shall satisfy to renew a license.

Section 1. Definitions. (1) "Continuing professional education hour" or "CPE hour" means a fifty (50) minute period excluding meals, breaks and business sessions.

(2) "Technical standards courses" means continuing education courses where the subject matter area of the courses are accounting, auditing, business law, economics, finance, information technology, management services, professional ethics, statistics, securities, tax, and specialized areas of industry all of which shall contribute directly to the professional competence of a licensee.

(3) "Worked" means hours devoted by a licensee that are documented as billable and non-billable hours to a public accounting firm or client.

Section 2. Requirements for Continuing Professional Education Credit. (1) Each licensee who worked 3,000 hours or more in a public accounting firm licensed with the board during the two (2) calendar years prior to the renewal date of his or her license shall complete eighty (80) CPE hours. The eighty (80) hours shall be completed during the preceding two (2) calendar years. All other licensees shall complete sixty (60) CPE hours.

(a) Beginning January 1, 2021, fifty (50) per cent of the eighty (80) hours and sixty (60) hours shall include technical standards courses.

(b) Beginning January 1, 2021, licensees who prepare audits, reviews, compilations, or the preparation of financial statements shall complete eight (8) hours of CPE in the subject matter area of auditing or accounting each calendar year for a total of sixteen (16) hours per reporting period.

(c) Beginning January 1, 2021, licensees required to obtain eighty (80) hours of CPE may include eight (8) hours of personal development courses toward the required hours and licensees required to obtain sixty (60) hours of CPE may include up to twelve (12) hours of personal development courses in the required hours. These hours shall be professionally enhancing to their career to be acceptable.

(2) Each licensee shall complete two (2) CPE hours in professional ethics. These two (2) hours shall be included as part of the eighty (80) or sixty (60) CPE hours a licensee is required to complete to renew his or her license.

(3)(a) A certified public accountant who, for the two (2) calendar years prior to renewal of his or her license, did not operate or work in an office in this state shall satisfy the requirements of this section by complying with the continuing professional education requirements for renewal of his or her license:

1. In the state in which the licensee's principal office is located; or

2. In the state in which the office is located where the licensee worked a majority of the time.

(b) If the state designated by paragraph (a) of this subsection does not have continuing professional education requirements for renewal of a license, the licensee shall comply with all continuing professional education requirements for renewal of a license in this state.

Section 3. Each licensee who held a license for less than a full two (2) calendar year period shall obtain two (2) CPE hours for each full month a license was held not to exceed the total number of required hours for the reporting period. The two (2) hours in professional ethics shall not be required to be part of the CPE hours completed in this time period.

Section 4. Waivers from Continuing Professional Education. (1) A reduction or waiver may be granted by the board if the licensee:

(a) Establishes that he or she is temporarily physically or psychologically unable to complete the continuing professional education requirements. The licensee shall submit an Initial Request for Waiver of CPE Requirements form with each request and a written statement:

1. From a licensed physician or other appropriate licensed health care provider that substantiates the physical or psychological claim of the licensee; and

2. That describes the licensee's working status during the time the licensee was unable to complete the continuing education, the licensee's current working status, and if the licensee plans to return to work;

(b) Has encountered a temporary extreme hardship, which was so severe that it was extremely difficult or impossible to meet the continuing professional education requirements. The licensee shall submit an Initial Request for Waiver of CPE Requirements form and a written statement with each request:

1. That describes in detail the facts associated with the extreme hardship; and

2. Documentation to substantiate the extreme hardship; or

(c) Is completely retired from practice and is fifty-five (55) years of age or older. To be considered completely retired, the licensee shall not perform accounting services in the practice of public accounting (which includes the preparation of tax returns), education, government or industry except for management of personal assets or investments.

(2) The board shall advise a licensee in writing whether the request is approved or denied.

(3) A licensee granted a waiver shall reaffirm the basis of the waiver when the license is next renewed by completing the:

(a) License Renewal - CPE Waiver Due to Medical or Extreme Personal Hardship form; or

(b) License Renewal - CPE Retirement Waiver form.

(4) A licensee completing the License Renewal - CPE Waiver Due to Medical or Extreme Personal Hardship form shall submit with the form updated medical documentation to support that the basis of the waiver continues to limit the licensee's ability to meet the CPE requirements.

(5) If the circumstances which form the basis of the waiver change, the licensee shall notify the board within thirty (30) days from the date of the change and resume compliance with the continuing professional education requirements from the date of the change.

(6) If the waiver request is granted, the licensee shall pay the license renewal fee listed in 201 KAR 1:065 on or before August 1.

Section 5. Courses that Qualify. (1) The overriding consideration in determining whether a specific course qualifies as acceptable continuing professional education shall be whether it is a formal program of learning which contributes directly to the professional competence of an individual licensed to practice as a certified public accountant in this state.

(2) Continuing professional education courses may qualify only if:

(a) An outline of the course is prepared in advance and preserved;

(b) The course is at least one (1) CPE hour in length. Credit shall be awarded for a course less than fifty (50) minutes in length if it is part of a continuing professional education program where at least one (1) fifty (50) minute course is also being offered;

(c) The course is conducted by a qualified instructor. A qualified instructor or discussion leader shall be anyone whose background training, education or experience makes it appropriate for him or her to lead a discussion on the subject matter of the particular course;

(d) A record of registration or attendance is maintained;

(e) A course completion document is given to each attendee; and

(f) The course topic is an acceptable field of study.

(3) Acceptable fields of study.

(a) The following fields of study shall be considered acceptable if the courses satisfy all of the criteria established in subsections (1), (2), and (5) of this section:

1. Any of the courses defined in Section 1(2) of this administrative regulation[~~Accounting and finance~~];

2.[~~Auditing;~~

~~3. Taxation;~~

~~4. Business management services;~~

~~5. Information technology;~~

~~6.~~] Business communications; and[~~7. Statistics;~~

~~8. Ethics;~~

~~9. Economics;~~

~~10. Business law;~~

~~11. Securities;~~]

3. [~~12.~~] Marketing.[~~; and~~

~~13. Specialized areas of industry that contribute directly to the professional competence of a licensee.~~]

(b) The responsibility for substantiating that a particular course is acceptable and meets the requirements of this administrative regulation shall be the obligation of the licensee.

(4) Acceptable programs. The following programs qualify for credit if they meet the standards specified in subsections (1), (2), (3), and (6) of this section:

(a) Professional education and development programs of national, state and local accounting organizations;

(b) University or college courses.

1. Credit and not for credit courses completed at or through a university or college that is accredited by one (1) of the (6) six regional accrediting associations listed in 201 KAR 1:190, Section 4;

2. Documentation to verify completion of a course shall be issued by the appropriate representative of the university or college.

3. Each unit of credit for a university or college course shall be equal to the following CPE hours:

a. One (1) semester hour equals fifteen (15) CPE hours; and

b. One (1) quarter hour equals ten (10) CPE hours; and

(c) Formal in-firm education programs. Portions of a program devoted to firm administrative, financial, and operating matters shall not qualify.

(5) Formal individual study courses, Web casts, and online learning courses.

(a) The amount of credit allowed for any individual study course shall be recommended by the course sponsor.

(b) A licensee claiming credit for an individual study course shall obtain evidence of satisfactory completion of the course from the course sponsor.

(c) Credit shall be assigned to the reporting period in which the provider indicates the course was completed.

(6) Service as lecturer, discussion leader, or speaker.

(a) Instructors, discussion leaders, and speakers may claim continuing professional education credit for both preparation and presentation time.

(b) Credit may be claimed for actual preparation time up to two (2) times the class contact hours.

(c) Credit as an instructor, discussion leader, or speaker may be claimed if the presentation is one which would meet the requirements of this section.

(d) Credit shall not be granted for repetitious presentations of courses unless it can be demonstrated that the course content was substantially changed and the change required significant additional study or research.

(e) Maximum credit for preparation and teaching shall not exceed sixty (60) percent of the renewal period requirement.

(7) Published articles and books.

(a) A licensee may be awarded credit for articles or books the licensee writes if:

1. The subject matter of the article or book contributes directly to the professional competence of the licensee; and

2. Prior to publication, the licensee submits a final draft of the article or book to the board to review and determine the amount of credit to be awarded.

(b) Credit for preparation of the article or book shall not exceed twenty-five (25) percent of the total CPE hours required.

(c) The board shall make the final determination of the amount of credit to be granted.

(8) Certifications and licenses. Licensees who receive a certification or license from a nationally organized business organization or a federal governmental entity following successful completion of an exam in one (1) of the fields of study listed in subsection (3) of this section shall receive credit only for the length of time assigned by the organization or governmental entity to complete the examination.

Section 6. Programs that deal with the following subject areas shall not be considered acceptable continuing education:

(1)[~~Personal growth or development;~~]

~~(2)~~] Self-realization;

(2)[~~(3)~~] Spirituality;

(3)[~~(4)~~] Personal health or fitness;

(4)[~~(5)~~] Sports and recreation;

(5)[~~(6)~~] Foreign languages or cultures; and

(6)[~~(7)~~] Any other subjects that do not contribute directly to the professional competence of the licensee.

Section 7. Reporting and Controls. (1) Each licensee shall obtain the appropriate documentation to establish that he or she completed the continuing professional education requirements.

(2) This documentation shall be retained by each licensee for a period of five (5) years.

(3) The board shall conduct annually a random audit to verify a certain percentage of licensees completed the amount of continuing professional education hours required to renew his or her license. A licensee who misrepresented that he or she completed the sixty (60) or eighty (80) CPE hours at the time the licensee renewed his or her license shall not be eligible for a retirement, medical, or extreme personal hardship waiver after being selected to participate in an audit.

(4) Course completion evidence shall consist of a document prepared by the course sponsor indicating the licensee completed a formal program of learning. A document shall include the:

(a) Names of the licensee and program sponsor;

(b) Title and field of study;

(c) Dates attended; and

(d) Number of CPE hours awarded.

(5) A licensee who completed continuing professional education courses that complied with the requirements of this administrative regulation and were presented by or on behalf of his or her employer may submit to the board a list of the courses completed if the list contains the:

(a) Information described in subsection (4) of this section; and

(b) Signature of the person at the licensee's place of employment who verifies the accuracy of the information for a third party.

Section 8. Continuing Professional Education Sponsors. (1) Sponsors shall not be required to be preapproved by the board.

(a)[~~(2)~~] Detailed records of each program shall be kept by the sponsor and shall include:

(b)[~~(a)~~] The date of the program presentation;

(c)[~~(b)~~] The name of each instructor or discussion leader;

(d)[~~(c)~~] A listing of licensees attending each program presentation; and

(e)[~~(d)~~] A written agenda of the program presentation.

(3) Records shall be kept by the sponsor for a period of five (5) years following the date each program is presented.

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

(a) "Initial Request for Waiver of CPE Requirements", September 2016;

(b) "License Renewal-CPE Waiver Due to Medical or Extreme Personal Hardship", September 2016; and

(c) "License Renewal-CPE Retirement Waiver", September 2016.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the State Board of Accountancy, 332 W. Broadway, Suite 310, Louisville, Kentucky 40202, Monday through Friday, 8 a.m. to 4:30 p.m.

ROBERT PATTERSON, CPA President

APPROVED BY AGENCY: August 12, 2019

FILED WITH LRC: August 14, 2019 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 21, 2019 at 1 p.m., EST at the office of the Board located at 332 W. Broadway, Suite 310 Louisville, Kentucky 40202. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until the end of the day (11:59 p.m.) October 31, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Richard C. Carroll, Executive Director, Kentucky State Board of Accountancy, 332 W. Broadway, Suite 310, Louisville, Kentucky 40202, phone (502) 595-3037, fax (502) 595-4281, email dick.carroll@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Richard Carroll

(1) Provide a brief summary of:

(a) What this administrative regulation does: Describes the standards related to satisfying the CPE requirements.

(b) The necessity of this administrative regulation: To insure that CPAs are aware of the requirements related to CPE.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 325.330(7)(b)(1) authorizes the Board to establish regulations regarding continuing education.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Notifies CPAs of the CPE requirements.

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

(a) How the amendment will change this existing administrative regulation: Will allow for some hours gained through personal development courses to receive CPE credit, requires CPAs who perform specific public accounting services to take some specific courses, and establishes a minimum amount of hours to be completed in technical standards courses.

(b) The necessity of the amendment to this administrative regulation: To allow for some personal development courses to qualify as CPE, and require CPAs who perform specific public accounting services to complete certain courses in the areas of accounting and auditing.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 325.330(7)(b)(1) authorizes the Board to establish standards related to CPE.

(d) How the amendment will assist in the effective administration of the statutes: Will allow for some personal development courses to qualify as CPE and require specific subject matter areas if a CPA is performing an audit, review, compilation, or preparation of financial statements.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 200 individuals every two years.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Will be able to use some personal development courses to qualify as CPE and will be required to complete courses in certain subject matter areas if they are performing a service in one of those areas.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Nothing in addition to what they already have been paying to complete CPE.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Expand the type of courses that a CPA may use to satisfy the CPE requirement.

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

(a) Initially: No increase in current expenses.

(b) On a continuing basis: No increase in expenses.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Board operates solely on the funds contained in its trust and agency account.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: There is no fee imposed by this regulation.

(9) TIERING: Is tiering applied? Tiering is not applied since all CPAs seeking to practice public accounting must comply with these standards.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The State Board of Accountancy.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 325.330(7(b)(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? Nothing.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Nothing.

(c) How much will it cost to administer this program for the first year? No increase in current costs.

(d) How much will it cost to administer this program for subsequent years? No increase in current expenses or for future years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT
Kentucky State Board of Accountancy
(Amendment)

201 KAR 1:190. Examination sections, applications, and procedures.

RELATES TO: KRS 325.270, 325.261(4)

STATUTORY AUTHORITY: KRS 325.240(2), 325.270(1), (2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 325.240(2) authorizes the board to promulgate administrative regulations to administer KRS Chapter 325. KRS 325.270(1) and (2) require the board to authorize examinations for individuals seeking to become certified public accountants, and permit the board to, by administrative regulation, adopt standards and fees governing all examination policies and procedures. KRS 325.261(4) requires passage of an examination prior to a person becoming licensed as a certified public accountant and for the board to determine the subjects to be included on the examination. This administrative regulation establishes the subjects, also referred to as sections, to be included on the examination, the procedures, and fees associated with the administration of the examination.

Section 1. Definitions. (1) "Accounting course" means the subject matter contained in the course description or catalog issued by a college or university includes auditing, tax, accounting standards, principles, or processes.

(2) "AICPA" means the American Institute of Certified Public Accountants, the entity that prepares and grades the Uniform CPA Examination.

(3) "Business-related subjects" means courses that contain in the course prefix or title an indication that the course subject matter is one (1) of the following: business, finance, marketing, management, economics, computers, statistics, or accounting.

(4) "CLEP credit" means credit granted by a university or college to a prospective student who obtains a passing score on an exam administered through the College Level Examination Program.

(5) "DSST credit" means credit granted by a university or college to a prospective student who obtains a passing score on an exam administered through the Dantes Subject Standardized Testing program.

(6) "Life assessment course" means a course where a student earns credit at a university or college based upon the student's personal life and work experiences.

(7) "Major or concentration in accounting" means a minimum of thirty-nine (39) semester hours in business-related subjects of which twenty-seven (27) semester hours shall consist of accounting courses.

(8) "NASBA" means the National Association of State Boards of Accountancy, which operates a nationwide computer data bank for candidates applying to sit for the Uniform CPA Examination.

(9) "Official transcript" means an official document issued by a college or university that specifies the college course work completed, degrees awarded, the date the degree was awarded, and contains an authorizing signature or seal.

(10) "Prometric or its successor" means the testing service in charge of administering the Uniform CPA Examination.

(11) "Quarter hour" means 66/100ths of a semester hour.

(12) "Testing window" means the two (2) months out of each three (3) month period during a calendar year when an exam candidate may sit for the Uniform CPA Examination.

(13) "Uniform CPA Examination" means the computer-based version of the licensure examination administered by the AICPA.

Section 2. Examination Sections. The board has adopted the Uniform CPA Examination prepared by the AICPA as the examination every candidate seeking to receive a license shall sit for and obtain a passing grade. The sections included on this examination shall be:

(1) Auditing and Attestation;

(2) Financial Accounting and Reporting;

(3) Regulation; and

(4) Business Environment and Concepts.

Section 3. Grading Procedures and Acquiring Credit for Obtaining a Passing Score. (1) An exam candidate shall receive a passing score on all sections of the examination to be eligible to receive a license.

(2) The passing score shall be seventy-five (75) on each section. An exam candidate may retain a passing score on any section even though the candidate may have sat for and failed other sections of the examination at the same sitting.

(3) Subject to the exception contained in subsection (4) of this section, an exam candidate may sit for one (1) or any number of the four (4) sections of the examination at a time during a testing window.

(4) An exam candidate shall not sit more than once for the same section of the examination during a testing window. Beginning July 1, 2020 an exam candidate shall not sit for the same section of the examination until after they receive a score for that section.

(5) When an exam candidate initially receives a passing score on a section of the Uniform CPA Examination, the candidate shall have eighteen (18) months following the last day of the month of the administration of that examination section to obtain a passing score on the remaining sections of the examination.

(a) Failure to receive a passing score on the remaining sections of the examination within the eighteen (18) months shall result in the expiration of the initial passing score but not other sections passed during that eighteen (18) month period.

(b) All sections of the examination shall be passed during an eighteen (18) month time period for the candidate to be considered to have passed the examination.

(6) One (1) request to extend the time to retain passing scores beyond the time restrictions contained in this section shall be granted to a candidate who has sat for one (1) section of the exam during the same testing window when the passing score was to expire. The time extension shall expire on the last day of the testing window that immediately follows the month in which the score was scheduled to expire. Beginning July 1, 2020, an extension shall expire the last day of the calendar quarter from the date the candidate sat for the exam section.

Section 4. Beginning July 1, 2020, testing windows as defined in Section 1(12) shall cease to exist.

Section 5. Initial Examination Applicants. (1) Initial examination application process.

(a) An initial examination applicant shall submit a complete,

notarized Application for the Uniform CPA Examination.

(b) The applicant shall:

1. Indicate whether the applicant has been convicted, plead guilty, entered an Alford plea, or a plea of no contest to a felony or misdemeanor, other than a minor traffic violation, and if so, submit with the application:

a. A copy of the judgment or sentence of conviction;

b. A criminal record check report from the Kentucky Administrative Office of the Courts, Courtnet Disposition System that is dated within six (6) months of the date of the application, or a similar document from the out of state agency where the conviction was entered; and

c. A letter of explanation;

2. Indicate whether the applicant has been denied admission to the Uniform CPA Examination, and if so, attach to the application a letter explaining the reason, date, and jurisdiction of the denial;

3. Indicate whether the applicant has had disciplinary action taken against any professional license, and if so, attach to the application:

a. A letter indicating the jurisdiction and date of action;

b. A copy of all records associated with the action; and

c. An explanation of the circumstances; and

4. Submit an official transcript from each college or university that evidences completion of the educational requirements established in KRS 325.261, which includes a major or concentration in accounting. Course credit hours that are based upon a quarter hour system shall be converted to semester hours.

(c) An applicant requesting reasonable accommodations in testing due to a disability shall complete an Exam Applicant Special Accommodations Request Form supported by documentation no more than three (3) years old from a qualified examiner that shall include:

1. A diagnosis of the disability; and

2. Recommendation for the specific accommodations.

(d) The board shall not be responsible for the costs associated with obtaining the required documentation, but shall be responsible for the costs of reasonable accommodations that are provided to the applicant.

(e) The applicant shall submit a fee with the Application for the Uniform CPA Examination in the amount of:

1. Thirty (30) dollars for the application; and

2. Thirty (30) dollars for each section of the examination the applicant intends to take.

(f) Fees shall be nonrefundable and payment shall be in the form of a check or money order made payable to the Kentucky State Board of Accountancy. If the institution the check or money order is drawn on does not honor the check or money order, the application shall be incomplete and returned.

(2) Educational requirements.

(a) Educational requirements shall be[~~have been~~] completed at:

1. A college or university within the United States that was accredited by one (1) of the following accrediting associations when the degree was granted:

a. Middle States Association of Colleges and Schools;

b. North Central Association of Colleges and Schools;

c. New England Association of Schools and Colleges;

d. Northwest Association of Schools, Colleges and Universities;

e. Southern Association of Colleges and Schools; [~~or~~]

f. Western Association of Schools and Colleges; or

2. The board shall accept course credit hours awarded by a college or university after January 1, 2020 that is not accredited by one (1) of the associations listed in Section 4(2)(a) of this administrative regulation, if those course credit hours receive credit from a college or university accredited by one (1) of the associations specified in Section 4(2)(a) of this administrative regulation following the enrollment of the student in the accredited college or university. This exception does not apply to the course credits listed in Section 4 Subsection 3(a) and (b) (c) of this administrative regulation; or

3. A postsecondary educational institution outside the United States with course credits certified by a credentialing agency that is a member of the National Association of Credential Evaluation Services, Inc., or NASBA.

(b) The certification required by paragraph (a)3.[~~2.~~] of this subsection shall indicate:

1. That the foreign degree is equivalent to a baccalaureate or master's degree earned in an accredited United States college or university as described in KRS 325.261 and this administrative regulation;

2. That the applicant had a major or concentration in accounting;

3. The title of all courses completed by the applicant outside of the United States; and

4. The amount of credit awarded to the applicant for each course.

(c) The board may consult with a Kentucky state-funded four (4) year institution of higher education for assistance in evaluating the hours earned and the accreditation of an educational institution under this subsection.

(3)(a) Effective January 1, 2015, an applicant shall not receive credit toward satisfying the education requirements in KRS 325.261 and this administrative regulation for any credit hours awarded through a life assessment course or for DSST credit.

(b) Effective January 1, 2015, an applicant who received CLEP credit, or credit hours from a college or university for completing an internship or co-op program may use a maximum of six (6) of those hours from each program for a total of twelve (12) hours solely toward satisfying the 150 hour requirement in KRS 325.261(5).

Section 5. (1)(a) The executive director of the board shall review all applications.

(b) If the executive director determines the application satisfies the requirements of this administrative regulation, the application shall be approved.

(c) If the executive director refuses to approve the application, it shall be submitted to the board for its review and consideration at its next regularly scheduled meeting.

(2) Applications approved by the executive director or the board shall be entered into the data bank operated by NASBA. NASBA shall then issue a payment coupon to the applicant that specifies the fees to be paid to NASBA, the AICPA, and Prometric to sit for the exam.

(3) Following payment of the required fees, NASBA shall issue a notice to schedule to the candidate which states the candidate is eligible to contact Prometric or its successor to schedule a date and time to sit for the examination.

(4)(a) A candidate shall have six (6) months from the date of issuance by NASBA of a notice to schedule to sit for the sections of the examination approved by the executive director or the board.

(b) The notice to schedule shall expire when the candidate has sat for the sections approved by the executive director or the board or at the conclusion of the six (6) month period whichever comes first.

(c) A notice to schedule that is not expired may be extended if a candidate describes in writing that the extension is necessary due to an emergency or a serious illness that will prohibit the candidate from sitting for a section of the exam prior to the conclusion of the six (6) month time period.

(d) To obtain approval to sit for additional sections of the examination, a candidate shall submit a reexam application as described in Section 9 of this administrative regulation.

(5)(a) The exam candidate shall pay all costs associated with sitting for the Uniform CPA Examination charged by NASBA, Prometric or its successor, and the AICPA.

(b) The costs shall be paid no later than ninety (90) days following the date of issuance of the payment coupon from NASBA.

(c) Failure to pay these fees prior to the end of the ninety (90) day time period shall result in the cancellation of the payment coupon and require the candidate to submit a reexam application accompanied by the appropriate fees.

Section 6. Examination Rules of Conduct. (1) An examination candidate shall present two (2) forms of current and valid

identification at the Prometric or its successor examination center. One (1) of these forms of identification shall be a state driver's license, a picture identification card issued by a state motor vehicle licensing agency, or a passport.

(2) The license or picture identification card shall be currently in effect and shall contain a photograph and signature.

(3) Failure to bring this identification to the examination center shall result in the candidate being prohibited from sitting for the examination.

(4) An examination candidate shall comply with all directives of the staff at the Prometric or its successor testing center and the rules of conduct in effect at the testing center.

(5) An examination candidate shall not:

(a) Use written materials or mechanical aids inside or outside the examination room during the course of the examination;

(b) Communicate with any person, other than the testing center staff, inside or outside the examination room, during the course of the examination;

(c) Copy answers or allows his or her answers to be copied;

(d) Substitute an individual in his or her place;

(e) Disclose in any manner any information concerning the examination questions or content;

(f) Falsify or misrepresent educational credentials or other information required for admission to the examination; or

(g) Fail to follow written or announced examination administration procedures.

Section 7. Examination Misconduct Penalties. An examination candidate who violates any of the provisions of this administrative regulation may be prohibited from:

(1) Further participation in that particular examination section;

(2) Receiving grades after sitting for any examination; or

(3) Sitting for subsequent examinations.

Section 8. An exam applicant shall immediately notify the board of a change in his or her mailing address.

Section 9. Reexam Applicants. (1) Upon request the board shall mail a Reexam Application for the Uniform CPA Exam to every candidate who fails to pass the Uniform CPA Examination.

(2) The reexam application shall be mailed to the most recent address provided by the candidate.

(3) The board shall not be responsible if the reexam application is not delivered by the United States Postal Service.

(4)(a) The applicant shall:

1. Indicate since the approval of the applicant's initial application whether the applicant has been convicted, plead guilty, entered an Alford plea, or a plea of no contest to a felony or misdemeanor, other than a minor traffic violation, and if so, submit with the reexam application:

a. A copy of the judgment or sentence of conviction;

b. A criminal record check report from the Kentucky Administrative Office of the Courts, Courtnet Disposition System that is within six (6) months of the date of the application, or a similar document from the out of state agency where the conviction was entered; and

c. A letter of explanation; and

2. If not previously submitted, and if the applicant is requesting reasonable accommodations in testing due to a disability, complete an Exam Applicant Special Accommodations Request Form supported by documentation no more than three (3) years old from a qualified examiner that shall include:

a. A diagnosis of the disability; and

b. Recommendation for the specific accommodations.

(b) The reexam application shall be received in the board's office prior to the reexam candidate being considered eligible to sit for any section of the exam.

(5)(a) The candidate shall return the completed reexam application with the reexam fee.

(b) The reexam fee shall be thirty (30) dollars per section. The reexam fee shall be nonrefundable and paid by check or money order made payable to the Kentucky State Board of Accountancy. If the institution the check or money order is drawn on does not honor the check or money order, the application shall be incomplete and returned.

(6) A reexam candidate who fails to comply with the requirements of this section shall not be permitted to sit for reexam.

(7) The procedures and policies in Section 5 of this administrative regulation shall be applicable to a reexam application.

(8) The reexam candidate shall comply with the requirements of Sections 6, 7, and 8 of this administrative regulation.

Section 10. Examination grades received from NASBA shall be:

(1) Posted on the board's Web site; and

(2) A copy mailed to each affected candidate.

Section 11. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for the Uniform CPA Examination", October 2014;

(b) "Reexam Application for the Uniform CPA Examination", 2014; and

(c) "Exam Applicant Special Accommodations Request Form", October 2014.

[~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the State Board of Accountancy, 332 W. Broadway, Suite 310, Louisville, Kentucky 40202, Monday through Friday, 8 a.m. to 4:30 p.m.~~]

ROBERT PATTERSON, CPA, President

APPROVED BY AGENCY: August 12, 2019

FILED WITH LRC: August 14, 2019 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 21, 2019 at 1 p.m., EST at the office of the Board located at 332 W. Broadway, Suite 310 Louisville, Kentucky 40202. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until the end of the day (11:59 p.m.) October 31, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Richard C. Carroll, Executive Director, Kentucky State Board of Accountancy, 332 W. Broadway, Suite 310, Louisville, Kentucky 40202, phone (502) 595-3037, fax (502) 595-4281, email dick.carroll@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Richard Carroll

(1) Provide a brief summary of:

(a) What this administrative regulation does: Describes the procedures related to the CPA Exam.

(b) The necessity of this administrative regulation: To insure that candidates for the exam are aware of the exam procedures.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 325.270(2) authorizes the Board to establish regulations regarding the standards and fees related to the exam process.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Notifies exam candidates of the exam procedures.

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

(a) How the amendment will change this existing administrative regulation: Eliminates testing windows and expands the definition

of acceptable college courses to sit for the exam.

(b) The necessity of the amendment to this administrative regulation: To allow for additional college credit and update the current regulation as to elimination of testing windows.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 325.270(2) authorizes the Board to establish fees and procedures related to the CPA exam.

(d) How the amendment will assist in the effective administration of the statutes: Eliminates the concept of testing windows and expands the definition of acceptable college credit.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 300 each year.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Eliminates the testing window limitation and expands the definition of acceptable college credit.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Nothing in addition to what they already have been paying to sit for the exam.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Expand the opportunities for candidates to sit for the exam and expands the type of college courses considered acceptable to sit for the exam. .

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

(a) Initially: No increase in current expenses.

(b) On a continuing basis: No increase in expenses.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Board operates solely on the funds contained in its trust and agency account.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: There is no fee imposed by this regulation.

(9) TIERING: Is tiering applied? Tiering is not applied since all CPAs seeking to practice public accounting must comply with these standards.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The State Board of Accountancy.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 325.270(2).

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Nothing.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Nothing.

(c) How much will it cost to administer this program for the first year? No increase in current costs to sit for the CPA exam.

(d) How much will it cost to administer this program for subsequent years? No increase in current expenses or for future years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

BOARDS AND COMMISSIONS
Board of Respiratory Care
(Amendment)

201 KAR 29:015. Fees.

RELATES TO: KRS [~~164.772,~~] 314A.110, 314A.112, 314A.215, 314A.220

STATUTORY AUTHORITY: KRS 314A.205, 314A.220

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314A.205(3) requires the board to promulgate administrative regulations to carry out the provisions of KRS Chapter 314A. KRS 314A.205(6) and 314A.220(2) require the board to establish appropriate and reasonable fees for mandatory certification and to periodically review and modify those fees. This administrative regulation establishes all fees charged by the board.

Section 1. Application and Certification Fees Schedule. (1) The application and certification fee for mandatory certification shall be $150.

(2) The application and certification fee for temporary mandatory certification shall be $102.

(3) The application and certification fee for limited mandatory certification shall be sixty (60) dollars.

Section 2. Renewal Fees[~~and Penalties~~]. (1) A person holding a mandatory certificate wishing to renew the mandatory certificate shall submit:

(a) A completed Application for Renewal; and

(b) The appropriate renewal fee:

1. For mandatory certification, $135.

2. For inactive mandatory certification, fifty (50) dollars[~~shall not practice in this state after January 30 of the year in which the certificate is to be renewed unless the certification has been renewed as established by KRS 314A.220 and 201 KAR Chapter 29 and payment of the established renewal fee has been made~~].

(2)[~~(1)~~] All mandatory certificates not renewed by January 30 shall be deemed expired.

(3)[~~(2) A person holding an expired mandatory certificate shall not engage in the practice of respiratory care.~~

~~(3) The fees established in this subsection shall be paid in connection with mandatory certification renewals.~~

~~(a) The renewal fee for mandatory certification shall be ninety (90) dollars.~~

~~(b) The reinstatement fee for mandatory certification after January 30 shall be $180.~~

~~(c) The renewal fee for inactive mandatory certification shall be thirty (30) dollars.~~

~~(4)~~] Temporary mandatory certificates and limited mandatory certificates shall[~~not~~] be ineligible for renewal[~~renewed~~].

Section 3. Reactivation and Reinstatement[~~and Reactivation~~]. (1) A certificate holder wishing to reactivate an inactive certificate shall submit:

(a) A completed Application for Reactivation; and

(b) The $135[~~ninety (90) dollar~~] reactivation fee.

(2) A certificate holder wishing to reinstate an expired certificate shall submit:

(a) A completed Application for Reinstatement; and

(b) The $200[~~$180~~] reinstatement fee.

Section 4. All fees shall be nonrefundable.

Section 5. Incorporation by Reference. (1) The following

material is incorporated by reference:

(a) "Application for Reactivation", August 2019[~~February 2016~~]; and

(b) "Application for Reinstatement", August 2019[~~February 2016~~].

(c) "Application for Renewal", August 2019.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Board of Respiratory Care, Southcreek Park, 2365 Harrodsburg Road, B350, Lexington, Kentucky 40504-3335, Monday through Friday, 8:30 a.m. to 4:30 p.m. EST.

THOMAS D. BAXTER, RRT, Chair

APPROVED BY AGENCY: June 20, 2019

FILED WITH LRC: August 14, 2019 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 22, 2019 at 10:00 a.m. 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 October 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, Department of Professional Licensing, 911 Leawood Drive, Frankfort, Kentucky 40601, phone (502) 782-8823, fax (502) 564-3926, 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 for the various licenses administered by the Board of Respiratory Care.

(b) The necessity of this administrative regulation: This administrative regulation is necessary because licensure fees constitute the sole source of funding for the Board of Respiratory Care. The Board has already engaged in several budget reduction measures, including relocating to a less expensive office building, sharing office space with another licensing board, and switching legal services from the Attorney General's office to the Public Protection Cabinet. While these measures have resulted in savings, those savings are insufficient to make up for the deficit the Board faces as a result of mandatory retirement contributions in the future. The proposed fee modification in this amendment is designed to continue necessary funding levels for the Board in light of increasing expenses, most notably the required pension contribution for the board staff. The Board has had two (2) full time staff employees since 2006, whose combined salaries total $90,203.38 annually. The increase in the required retirement contribution percentage from 38.77% to 83.43% has caused the Board's expenditures to approach and soon exceed its budget. Since 2015, the Board has faced a 119% increase in required retirement contributions, going from $32,309 to over $70,988. In the absence of a fee increase, the Board anticipates a budget shortfall of $38,000 in 2020 and a shortfall of $6,000 in 2021. With the proposed fee increases, the Board can continue its public protection and licensure operations. The proposed fee increase will also permit the Board to absorb future increases in required retirement contributions of up to 130%.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 314A.205 and 314A.220 require the Board to establish fees for licensure and to periodically review and modify those fees.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This proposed amendment increases fees as necessary to sustain Board operations despite the dramatic increase in required pension contributions for board staff.

(2) If 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 makes grammatical corrections in addition to substantive changes to increase specified license renewal, reinstatement, and reactivation fees. The amendment further incorporates updated forms to reflect the changes in fees. The amendment raises license renewal and reactivation fees by $45 per two-year renewal period, which is anticipated to generate an average of $78,500 per year. The amendment raises reinstatement fees by $20, which is anticipated to generate an average of $500 per year.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation amendment is necessary because licensure fees constitute the sole source of funding for the Board of Respiratory Care. The Board has already engaged in several budget reduction measures, including relocating to a less expensive office building, sharing office space with another licensing board, and switching legal services from the Attorney General's office to the Public Protection Cabinet. While these measures have resulted in savings, those savings are insufficient to make up for the deficit the Board faces as a result of mandatory retirement contributions in the future. The proposed fee modification in this amendment is designed to continue necessary funding levels for the Board in light of increasing expenses, most notably the required pension contribution for the board staff. The Board has had two (2) full time staff employees since 2006, whose combined salaries total $90,203.38 annually. The increase in the required retirement contribution percentage from 38.77% to 83.43% has caused the Board's expenditures to approach and soon exceed its budget. Since 2015, the Board has faced a 119% increase in required retirement contributions, going from $32,309 to over $70,988. In the absence of a fee increase, the Board anticipates a budget shortfall of $38,000 in 2020 and a shortfall of $6,000 in 2021. With the proposed fee increases, the Board can continue its public protection and licensure operations. The proposed fee increase will also permit the Board to absorb future increases in required retirement contributions of up to 130%.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 314A.205 and 314A.220 require the Board to establish fees for licensure and to periodically review and modify those fees. The proposed amendment comports with those statutes and the KRS 13A process.

(d) How the amendment will assist in the effective administration of the statutes: The proposed fee modification is designed to continue necessary funding levels for the Board in light of increasing expenses, most notably the required pension contribution for the board staff. In the absence of the proposed fee increase, the Board would not be able to sustain itself financially and would not be capable of performing any of its statutorily assigned duties.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment will affect current licensees in the area of respiratory care, of which there are approximately 3,500 who renew every two years. This amendment will also affect licensees who let their licenses expire and who subsequently seek reinstatement. This amendment does not propose to increase fees on new licensees.

(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: Licensees will now be obligated to pay a higher fee to renew, reactivate, or reinstate their license from the Board of Respiratory Care. This amendment

does not propose to increase fees on new licensees.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: It will cost an additional $45 every two years for renewal or reactivation of a license, and an additional $20 for licensees who let their certification expire and subsequently apply for reinstatement.

(c) As a result of compliance, what benefits will accrue to the entities: Regulated entities will benefit from the Board's continued operation.

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

(a) Initially: No cost is anticipated to the administrative body to implement this administrative regulation amendment.

(b) On a continuing basis: No cost is anticipated to the administrative body 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: The Board's funding is solely provided by licensure fees; no additional fees or funding are necessary for the implementation or 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: The increases in fees are the substantive modifications in the proposed amendment. These increases are necessitated by the Board's required pension contribution for the board staff.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This amendment directly increases fees, necessitated by the Board's required pension contribution for the board staff.

(9) TIERING: Is tiering applied? Tiering is not applied because this administrative regulation treats similarly situated licensees 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? The Kentucky Board of Respiratory Care will be affected by this amendment.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 314A. 205 and 314A.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? This amendment will generate an additional $45 per license renewal or reactivation over the two-year licensure period. The amendment will also generate an additional $20 when a licensee allows their certification to expire and has to apply for reinstatement. This increase is anticipated to generate revenue of $72,000 in odd numbered years and $85,000 in even numbered years. This amendment will not generate revenue for the 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 will generate an additional $45 per license renewal or reactivation over the two-year licensure period. The amendment will also generate an additional $20 when a licensee allows their certification to expire and has to apply for reinstatement. This increase is anticipated to generate revenue of $72,000 in odd numbered years and $85,000 in even numbered years. This amendment will not generate revenue for the local government.

(c) How much will it cost to administer this program for the first year? No cost is anticipated to the board to administer this amendment.

(d) How much will it cost to administer this program for subsequent years? No cost is anticipated to the board to administer this amendment.

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

Revenues (+/-): Increase of $72,000 in even years and $85,000 in odd years.

Expenditures (+/-): Neutral.

Other Explanation: This amendment is expenditure neutral, but the rationale for increasing fees is the required increased pension contribution for board staff. The Board has made efforts to lower expenses, but has faced a greater than 119% increase in required pension contributions. In the absence of the proposed fee increase, the board would be unable to sustain itself financially.

BOARDS AND COMMISSIONS
Board of Licensed Professional Counselors
(Amendment)

201 KAR 36:060. Qualifying experience under supervision.

RELATES TO: KRS 335.500(4), 335.505(4), 335.525(1)(e)

STATUTORY AUTHORITY: KRS 335.515(1), (3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.505(4) allows a student intern or trainee in professional counseling to use the title of "professional counselor intern" or "student in training" if the activities are performed under the supervision or direction of an approved supervisor and the activities are a part of a supervised program of study. KRS 335.525(1)(e) provides that the board shall issue[~~an applicant for~~] a "professional clinical counselor" license to an applicant who has completed a minimum of[~~shall have acquired~~] 4,000 hours of experience in the practice of counseling under approved supervision. KRS 335.515(3) requires the board to promulgate administrative regulations to implement KRS 335.500 to 335.599, relating to licensed professional counselors. This administrative regulation establishes the requirements relating to supervision and[~~the requirements for~~] experience under supervision.

Section 1. Requirements for the Practice of Professional Counseling. (1) The practice of professional counseling shall be based on knowledge of areas including interpersonal, cognitive, cognitive behavioral, psychodynamics, human relations, crisis intervention, psychopathology, group dynamics, and effective methods and strategies necessary to help the client achieve mental, vocational, emotional, physical, social, moral, and spiritual development and adjustment throughout the client's life span.

(2) In providing counseling services, a licensee shall possess and utilize skills in the following areas:

(a) The helping relationship, including counseling theory and practice;

(b) Human growth and development;

(c) Lifestyle and career development;

(d) Group dynamics, process, counseling, and consulting;

(e) Assessment, appraisal, and testing of individuals;

(f) Social and cultural foundation, including multicultural issues;

(g) Principles of etiology, diagnosis, treatment planning, and prevention of mental and emotional disorders and dysfunctional behavior;

(h) Research and evaluation; and

(i) Professional orientation and ethics.

Section 2. Supervision.[~~(1)~~] A supervisor of record shall be licensed by the board as a licensed professional clinical counselor supervisor[~~, except as established in this section.~~

~~(2) An LPCA Supervision Agreement that has been approved prior to the effective date of this administrative regulation may continue to be in effect until termination.~~

~~(3)(a) An applicant may submit a hardship request for the ability to utilize one (1) of the licensees listed in paragraph (b) of this subsection if the nature of the circumstances shows that the ability to obtain supervision from a licensed professional clinical counselor is prohibited by the difficulty to do so. Circumstances showing difficulty in obtaining supervision may include engaging in the practice of counseling in a rural area where there is not a licensed professional clinical counselor within a fifty (50) mile radius, or active-duty military deployment. The submittal for a hardship exemption shall be accompanied by the LPCA Supervision Agreement.~~

~~(b) An applicant who demonstrates a hardship may request a supervisor who is properly credentialed under Kentucky law as a member of one (1) of the following professions:~~

~~1. A licensed professional clinical counselor that does not qualify as a supervisor under 201 KAR 36:065;~~

~~2. A licensed psychologist, licensed psychological practitioner, or a certified psychologist with autonomous functioning;~~

~~3. A licensed clinical social worker; or~~

~~4. A licensed marriage and family therapist~~].

Section 3. LPCA Supervision Agreement. (1) A supervisee shall enter into a written supervision agreement with an approved supervisor. The supervision agreement shall contain:

(a) The name and address of the supervisee;

(b) The name, address, license or certification number, and number of years of practice of the supervisor of record;

(c) The name, address, license or certification number, and number of years of practice of other supervisors;

(d) The agency, institution, or organization where the experience will be received;

(e) A detailed description of the nature of the practice including the type of:

1. Clients that will be seen;

2. Therapies and treatment modalities that will be used including the prospective length of treatment; and

3. Problems that will be treated;

(f) The nature, duration, and frequency of the supervision, including the:

1. Number of hours of supervision per week;

2. Number of hours of individual supervision;

3. Methodology for transmission of case information; and

4. Number of hours of face-to-face supervision that meet the requirements of KRS 335.525(1)(e);

(g) A statement that supervision:

1. Shall occur a minimum of:

a. Three (3) times per month and one (1) hour per meeting for a full time practice that consists of twenty-five (25) clock hours or greater per week; or

b. One (1) hour for every thirty (30) hours of client contact for a part time practice that consists of less than twenty-five (25) clock hours per week; and

2. May include interactive, simultaneous video and audio media that meet applicable legal requirements for information required to be kept confidential[~~with a minimum of one (1) direct meeting per month that is in person where the supervisor and supervisee are physically present in the same room~~];

(h) The conditions or procedures for termination of the supervision;

(i) A statement that:

1. The supervisor of record understands that the supervisor shall be held accountable to the board for the care given to the supervisee's clients; and

2. The supervisor of record meets the criteria established in Section 2 of this administrative regulation; and

(j) The signatures of both the supervisor and the supervisee.

(2) If a supervisee changes his or her supervisor of record as identified in the supervision agreement, the supervisee shall submit a new supervision agreement, which sets forth the information required by this section.

(3) The[~~subsection and identifies the new supervisor of record.~~

~~(2) The supervision agreement shall be approved by the board before the~~] licensed professional counselor associate may begin[~~begins~~] the practice of professional counseling upon the board's approval of the agreement.

Section 4. Multiple Supervisors. The board may approve more than one (1) supervisor of record if an applicant or licensee submits a written request. The board may require the applicant and any supervisors to appear before the board to present a plan for the supervision.

Section 5[4]. Experience Under Supervision. (1) Experience under supervision shall consist of:

(a) Direct responsibility for a specific individual or group of clients; and

(b) Broad exposure and opportunity for skill enhancement with a variety of developmental issues, dysfunctions, diagnoses, acuity levels, and population groups.

(2) The board may[~~, for extenuating circumstances beyond the supervisor's or supervisee's control, grant a limited waiver from the requirement of one (1) monthly direct in person meeting to satisfy the face-to-face supervision requirements upon written request by the supervisor and supervisee. Extenuating circumstances include situations such as death or serious illness of the board-approved supervisor, a leave of absence by the supervisor, or the termination of the supervisor's employment.~~

~~(3) The board may~~] approve an applicant's hours of experience under supervision[~~supervision hours~~] obtained in another jurisdiction if[~~:~~

~~(a)~~] the jurisdiction's regulatory board issuing professional clinical counselor licenses certifies that:

(a) It approved the hours;

(b) It[~~supervision hours were approved by the jurisdiction's regulatory board who issued a license to be a licensed professional clinical counselor or its equivalent;~~

~~(b) The regulatory board for the jurisdiction who issued a license to be a licensed professional clinical counselor or its equivalent shall have approved the supervisor to supervise the applicant prior to the applicant obtaining supervision hours;~~

~~(c) The regulatory board for the jurisdiction where the supervision hours were obtained shall certify that the supervision hours were~~] approved[~~and~~] the supervisor[~~of the applicant was board approved~~]; and

(c)[~~(d)~~] The hours were[~~supervision hours shall be~~] obtained after the applicant received a master's, specialist, or doctoral degree in counseling or a related field[~~used to satisfy KRS 335.025(1)(c)~~].

Section 6[~~5~~]. Supervision Requirements. (1) Supervision shall relate specifically to the qualifying experience and shall focus on:

(a) The appropriate diagnosis of a client problem leading to proficiency in applying professionally recognized clinical nomenclature;

(b) The development and modification of the treatment plan;

(c) The development of treatment skills suitable to each phase of the therapeutic process;

(d) Ethical problems in the practice of professional counseling; and

(e) The development and use of the professional self in the therapeutic process.

(2) A supervisee shall not continue to practice professional counseling if:

(a) The conditions for supervision set forth in the LPCA Supervision Agreement required by Section 3 of this administrative regulation are not followed; or

(b) The supervision agreement is terminated for any reason other than the extenuating circumstances that allow temporary supervision in Section 8[~~7~~] of this administrative regulation.

(3) If the terms of the supervision agreement are not being met by the supervisee, the supervisor shall immediately notify this board in writing.

Section 7[~~6~~]. Evaluation by Board. The board shall evaluate the period of supervised experience required by KRS 335.525(1)(e) [~~shall be evaluated by the board~~] according to one (1) of the

following methods:

(1) A candidate who seeks to obtain experience in the Commonwealth of Kentucky shall submit the supervision agreement required by Section 3 of this administrative regulation for the experience prior to beginning to accrue the required experience; or

(2) A candidate who obtained the experience in another state shall submit:

(a) Documentation of the hours of supervision with the Application for Licensed Professional Clinical Counselor required by 201 KAR 36:070;[.]

(b)[~~The documentation shall also:~~

~~(a) Provide~~] Information that verifies:

1. That the requirements for the license or certificate of the supervisor from the state in which the license or certificate was held are substantially equivalent to the requirements for that license or certificate in Kentucky;

2. That[~~(b) Provide information that verifies that~~] the supervisor is in good standing with the certifying or licensing state; and

3.[~~(c) Demonstrate~~] That the practice and supervision requirements in the state from which the candidate is applying are substantially equivalent to the requirements established under this administrative regulation.

Section 8[~~7~~]. Temporary Supervision. (1) In extenuating circumstances, if a licensed professional counselor associate is without supervision, the associate may continue working up to sixty (60) calendar days under the temporary supervision of a qualified mental health provider as defined by KRS 202A.011(12) while an appropriate board-approved supervisor is sought and a new supervision agreement is submitted to the board. Extenuating circumstances include situations such as death or serious illness of the board-approved supervisor, a leave of absence by the supervisor, or the termination of the supervisor's employment.

(2)(a) Within ten (10) days of the occurrence causing the extenuating circumstance, the supervisee shall notify the board of the need for temporary supervision.

(b)[~~, the supervisee shall notify the board of the extenuating circumstances that have caused the supervisee to require temporary supervision.~~

~~(b) The supervisee shall submit, in writing, a plan for resolution of the situation~~] Within thirty (30) calendar days of the change in status of board-approved supervision,[~~.~~

~~(c)~~] the supervisee shall submit, in writing, a plan for resolution of the situation. The written plan shall include:

1. The name of the temporary supervisor;

2. Verification of the credential held by the temporary supervisor;

3. An email address and a postal address for the temporary supervisor and the supervisee; and

4. A telephone number for the temporary supervisor.

(d) The temporary supervision arrangement shall expire after sixty (60) days of the establishment of the temporary supervision arrangement with a qualified mental health provider. The temporary supervision arrangement shall not be extended beyond the sixty (60) days.

Section 9[~~8~~]. Incorporation by Reference. (1) The "LPCA Supervision Agreement", September, 2016, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Licensed Professional Counselors, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

MARK HAMM, Chair

APPROVED BY AGENCY: May 17, 2019

FILED WITH LRC: August 14, 2019 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 28, 2019 at 10:00 a.m. at 911 Leawood Dr., 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 October 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: Bryan D. Morrow, Board Attorney, 656 Chamberlain Ave., Suite B, phone (502) 564-7760, fax (502) 564-3969, email bryan.morrow@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Bryan D. Morrow

(1) Provide a brief summary of:

(a) What this administrative regulation does:

KRS 335.525(1)(e) provides that an applicant for a professional clinical counselor license shall have acquired 4,000 hours of experience in the practice of counseling under approved supervision. KRS 335.515(3) requires the board to promulgate administrative regulations to implement KRS 335.500 to 335.599, relating to licensed professional counselors. This administrative regulation establishes the requirements relating to supervision and the requirements for experience under supervision.

(b) The necessity of this administrative regulation: This regulation is necessary to comply with KRS 335.525(1)(e) and to establish permissible ways to obtain board-approved supervision.

(c) How this administrative regulation conforms to the content of the authorizing statutes:

KRS 335.525(1)(e) provides that an applicant for a professional clinical counselor license shall have acquired 4,000 hours of experience in the practice of counseling under approved supervision.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the process for supervisees to obtain required supervision prior to licensure as professional counselors.

(2) If 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 processes and procedures for obtaining required supervised hours prior to licensure as a professional counselor. The amendment expands access to supervision for supervisees required to perform specified hours under supervision prior to licensure; this will facilitate the process for would-be licensees, particularly those in remote areas or without easy access to supervision. The amendment further eliminates hardship requests by licensees to be supervised by other health care professionals, which are no longer necessary because of additional permitted online supervision by board-approved supervisors. The amendment also allows for more than one board-approved supervisor.

(b) The necessity of the amendment to this administrative regulation: This amendment is needed to increase access to supervision for supervisees, who are required to perform specified hours under supervision prior to licensure.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment clarifies the methods by which a supervisee may complete the requirements of KRS 335.525(1)(e).

(d) How the amendment will assist in the effective administration of the statutes: This amendments allows for additional supervision by licensees to be conducted by online rather than in-person.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment will affect 1169

supervisees and their supervisors and all future applicants and supervisors.

(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 supervisee currently supervised by another health care professional under the hardship exception will be required to make arrangements with an LPCC-S to supervise them. Other regulated entities will have to take no 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: There is no additional cost to regulated entities from complying with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities: Supervisees will benefit from the option of additional online supervision, particularly in situations that previously would have required a hardship exemption and supervision by other healthcare professionals.

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

(a) Initially: No additional cost to the Board is anticipated to implement and enforce this amendment.

(b) On a continuing basis: No additional cost to the Board is anticipated to implement and enforce this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No additional funding is required for 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 is necessary to implement this amendment in the administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering is not applied because similarly situated persons are 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? The Board of Licensed Professional Counselors will be affected by this amendment.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 335.515(1), (3)

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

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

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

301 KAR 2:049. Small game and furbearer hunting and trapping on public areas.

RELATES TO: KRS 150.010, 150.092, 150.170, 150.370, 150.399, 150.990, 150.995

STATUTORY AUTHORITY: KRS 150.025(1), 150.175(7), (9), 150.360, 150.400, 150.410, 150.620

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife, to regulate bag limits and methods of take, and to make these requirements apply statewide or to a limited area. KRS 150.175(7) and (9) authorize the department to issue licenses, permits, and tags for hunting and trapping. KRS 150.360 requires restrictions on the taking of wildlife and authorizes the department to promulgate administrative regulations establishing the requirements for hunting coyotes at night. KRS 150.400 authorizes the department to establish the types of traps that can legally be used by trappers. KRS 150.410 authorizes the department to regulate trap tags, trap visitation, and trap placement to protect domestic animals. KRS 150.620 authorizes the department to promulgate administrative regulations for the maintenance and operation of the lands the department has acquired for public recreation. This administrative regulation establishes exceptions to statewide small game and furbearer requirements on public areas.

Section 1. Definitions. (1) "Adult" means a person who is at least eighteen (18) years of age.

(2) "Body-gripping trap" means a commercially manufactured spring-loaded trap designed to kill an animal upon capture.

(3) "Dry land set" means a trap that is set so that no portion of the trap touches the water of a stream, river, pond, lake, wetland, or other water course.

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

(5) "Pheasant hunt unit" means a portion of a WMA that is designated by the department for the purposes of a pheasant quota hunt.

(6)[~~(5)~~] "Wildlife Management Area" or "WMA" means a tract of land:

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

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

(7)[~~(6)~~] "Youth" means a person under the age of sixteen (16) by the date of the hunt or the trapping date.

Section 2. This administrative regulation shall establish exceptions to the statewide requirements established in 301 KAR 2:122, 2:251, and 3:010.

Section 3. General Requirements on a Wildlife Management Area or Outdoor Recreation Area. (1) Except as established in subsection (2) of this section, a person hunting any species during daylight hours, and any person accompanying that hunter, shall comply with hunter orange requirements as established in 301 KAR 2:132, 2:172, and 2:300.

(2) The hunter orange clothing requirement in subsection (1) of this section shall not apply to a person:

(a) Hunting waterfowl or doves as established in 301 KAR 2:225; or

(b) Hunting waterfowl as established in 301 KAR 2:221, 2:222, or 2:226.

(3) There shall be a free youth small game hunting week for seven (7) consecutive days beginning on the Saturday after Christmas, in which a youth may take small game without a hunting license.

(4) There shall be a free youth trapping week for seven (7) consecutive days beginning on the Saturday after Christmas, in which a youth may trap without a trapping license.

(5) A body-gripping trap used as a dry land set shall have a maximum inside jaw spread of five and one-quarter (5 1/4) inches measured:

(a) In the center of the trap; and

(b) In the unset position.

(6) Dry land sets shall not be placed closer than ten (10) feet apart.

(7) Prior to trapping on a WMA or Outdoor Recreation Area, a person shall complete for each area a KDFWR Public Area Trapping Registration Form obtained from a department office or the department's Web site at fw.ky.gov[*/*].

Section 4. Exceptions on Wildlife Management Areas and Outdoor Recreation Areas. (1) Barren River Wildlife Management Area.

(a) The WMA shall be considered to be entirely within the Eastern Zone, as established in 301 KAR 2:122.

(b) Northern bobwhite and rabbit seasons shall be closed after December 31.

(c) On the Peninsula Unit, including Narrows, Goose, and Grass Islands, a person shall not hunt with a breech-loading firearm.

(2) Beaver Creek WMA, including private inholdings.

(a) Ruffed grouse season shall be open from October 1 through December 31.

(b) Northern bobwhite and rabbit seasons shall be closed after December 31.

(c) A person shall hunt coyotes during daylight hours only.

(3) Cane Creek WMA, including private inholdings.

(a) Ruffed grouse season shall be open from October 1 through December 31.

(b) Northern bobwhite and rabbit seasons shall be closed after December 31.

(c) A person shall hunt coyotes during daylight hours only.

(4) Cedar Creek Lake WMA.

(a) Rabbit season shall be closed after December 31.

(b) With the exception of the statewide squirrel season, the area shall be closed to all other small game and furbearer hunting.

(5) Clay WMA.

(a) The pheasant hunt unit[~~area~~] shall be closed for four (4) consecutive days beginning on the first Friday in December to all hunting except archery deer hunting, muzzleloader deer hunting, as established in 301 KAR 2:178, and the pheasant quota hunt, as established in Section 5 of this administrative regulation.

(b) Rabbit season shall be closed after December 31.

(c) Any person hunting rabbits shall:

1. Check in and check out at a self-service kiosk; and

2. Clearly display a department-provided hang-tag in a vehicle.

(d) Northern bobwhite and ruffed grouse hunting shall be open from November 1 through December 31 on Tuesday and Saturday except:

1. After 3:00 p.m.;

2. During a quota deer hunt as established in 301 KAR 2:178;

3. During opening weekend of modern gun deer season as established in 301 KAR 2:172; and

4. During a pheasant quota hunt in the pheasant hunt unit, as established in Section 5 of this administrative regulation.

(e) The daily bag limit shall be:

1. Four (4) northern bobwhite; and

2. Two (2) ruffed grouse.

(f) A northern bobwhite or ruffed grouse hunter shall:

1. Check in and check out at a self-service kiosk; and

2. Clearly display a department-provided hang-tag in a vehicle.

(g) Pheasants may be taken beginning on the Tuesday following the pheasant quota hunt through December 31.

1. Any person with a valid hunting license may take a pheasant.

2. The daily limit per hunter shall be three (3) pheasants of either sex.

(h) Quota fox hunting field trials.

1. There shall be a maximum of three (3)[~~two (2)~~] four (4) day events per calendar year which shall begin:

a. The Wednesday preceding the last Saturday in February;

b. The second Wednesday in September; and

c. The fourth Wednesday in September.

2. Each event shall be limited to 250 participants.

3. The area shall be closed to nonparticipants.

4. A participant shall:

a. Wear a laminated identification badge issued[~~approved~~] by the department during the event; and

b. Return the laminated badge at the close of the event.

(6) Curtis Gates Lloyd WMA.

(a) Northern bobwhite and rabbit seasons shall be closed after December 31.

(b) A person shall not allow a dog to be unleashed from April 1 until the third Saturday in August, except if squirrel hunting.

(7) Dix River WMA.

(a) Northern bobwhite and rabbit seasons shall be closed after December 31.

(b) Ruffed grouse season shall be open from October 1 through December 31.

(8) Fleming WMA.

(a) Northern bobwhite and rabbit seasons shall be closed after December 31.

(b) Ruffed grouse season shall be open from October 1 through December 31.

(9) Green River Lake WMA.

(a) The pheasant hunt units[~~area~~] shall be closed to all hunting for four (4) consecutive days beginning on the third Friday in November, except for archery deer hunting and the pheasant quota hunt established in Section 5 of this administrative regulation.

(b) Northern bobwhite and rabbit seasons shall be closed after December 31.

(c) Pheasant.

1. Beginning on the Tuesday following the pheasant quota hunt through December 31, any person with a valid hunting license may take a pheasant.

2. The daily limit per hunter shall be three (3) pheasants of either sex.

(d) The area shall be closed to ruffed grouse hunting and trapping.

(10) Higginson-Henry WMA. Northern bobwhite and rabbit seasons shall be closed after December 31.

(11) Kleber WMA. Northern bobwhite and rabbit seasons shall be closed after December 31.

(12) Lake Cumberland WMA.

(a) Ruffed grouse season shall be open from October 1 through December 31.

(b) Northern bobwhite and rabbit seasons shall be closed after December 31.

(13) Mill Creek WMA.

(a) Northern bobwhite and rabbit seasons shall be closed after December 31.

(b) A person shall hunt coyotes during daylight hours only.

(14) Miller-Welch Central Kentucky WMA.

(a) Small game and furbearer hunting seasons shall be closed, except that squirrel season shall be open.

(b) A person shall not allow a dog to be unleashed:

1. From April 1 until the third Saturday in August; or

2. On a Monday, Wednesday, or Friday during the remainder of the year, except:

a. If a person is hunting squirrels during an open season; or

b. If a person is participating in an authorized field trial.

(15) Mullins WMA. Northern bobwhite and rabbit seasons shall be closed after December 31.

(16) Nolin Lake WMA. Northern bobwhite and rabbit seasons shall be closed after December 31.

(17) Otter Creek Outdoor Recreation Area.

(a) Except as authorized by the department, a person shall not enter the area during a deer quota hunt without a valid quota hunt confirmation number.

(b) Northern bobwhite season shall be closed.

(c) Rabbit hunting season shall be from December 1 through December 31.

(d) Trapping season shall be from January 1 through the last day in February.

(e) A person who traps on the area shall:

1. First obtain prior authorization from the area manager; and

2. Only trap in department designated areas.

(f) Except during deer quota hunts, a person shall not use the following to take furbearers:

1. A rifle;

2. Ball ammunition; or

3. Slug ammunition.

(g) A person shall not use a rimfire gun to take small game, except during a deer quota hunt.

(18) Paul Van Booven WMA. The area shall be closed to vehicle access from one (1) hour after sunset until one (1) hour before sunrise.

(19) Peabody WMA.

(a) A person hunting northern bobwhite on the Sinclair Unit shall:

1. Only hunt between 7:30 a.m. and 3:00 p.m.;

2. Only hunt on Thursday and Sunday; and

3. Not take more than four (4) northern bobwhite daily.

(b) A person hunting northern bobwhite on the Ken Unit shall:

1. Only hunt between 7:30 a.m. and 3:00 p.m.;

2. Only hunt on Wednesday and Saturday; and

3. Not take more than four (4) northern bobwhite daily.

(c) A northern bobwhite or rabbit hunter on the Sinclair Unit or Ken Unit shall:

1. Check in and check out at a self-service kiosk; and

2. Clearly display a department-provided hang-tag in a vehicle.

(20) Pennyrile Forest WMA.

(a) Ruffed grouse season shall be open from December 1 through December 31.

(b) The daily limit shall be two (2) ruffed grouse.

(21) Pioneer Weapons WMA.

(a) A person shall not hunt with a breech-loading firearm.

(b) A person shall hunt coyotes during daylight hours only.

(22) Redbird WMA. A person shall hunt coyotes during daylight hours only.

(23) Robinson Forest WMA.

(a) Hunting shall not be permitted on the Main Block.

(b) The remainder of the WMA shall be open under statewide requirements.

(24) Rockcastle WMA.

(a) Rabbit season shall be closed after December 31.

(b) A rabbit hunter shall:

1. Check in and check out at a self-service kiosk; and

2. Clearly display a department-provided hang-tag in a vehicle.

(c) Northern bobwhite and ruffed grouse hunting shall be open on Tuesday and Saturday until 3:00 p.m. from November 1 through December 31, except it shall be closed during:

1. A deer quota hunt as established in 301 KAR 2:178; and

2. Opening weekend of modern gun deer season, as established in 301 KAR 2:172.

(d) The daily bag limit shall be:

1. Four (4) northern bobwhite; and

2. Two (2) ruffed grouse daily.

(e) A northern bobwhite or ruffed grouse hunter shall:

1. Check in and check out at a self-service kiosk; and

2. Clearly display a department-provided hang-tag in a vehicle.

(25) Taylorsville Lake WMA. Northern bobwhite and rabbit seasons shall be closed after December 31.

(26) Tradewater WMA.

(a) Ruffed grouse season shall be open from December 1 through December 31.

(b) The daily limit shall be two (2) ruffed grouse.

(27) West Kentucky WMA.

(a) A person shall check in daily at a designated check station prior to using an "A" tract.

(b) Northern bobwhite and rabbit seasons shall be closed after December 31 on Tracts 2, 3, 6, and 7.

(c) Northern bobwhite and rabbit seasons shall be open on Tracts 1, 4, 5, and "A" beginning one-half (1/2) hour before sunrise until 1:00 p.m. local time from January 1 through January 10, except if harvest limits are reached prior to January 10.

1. A hunter shall report harvest numbers and total hours hunted to the area supervisor on a daily basis.

2. If a tract is closed prior to January 10, a sign indicating closure shall be posted at the hunter check station at least twenty-four (24) hours prior to the closure.

(d) A person shall not:

1. Use a rifle, ball, or slug ammunition;

2. Operate a vehicle on Tract 6 from February 1 through April 16; or

3. Allow a dog to be unleashed from April 1 until the third Saturday in August, except while squirrel hunting.

(28) Yellowbank WMA.

(a) Northern bobwhite and rabbit seasons shall be closed after December 31.

(b) The pheasant hunt units[~~area~~] shall be closed for four (4) consecutive days beginning on the first Friday in December to all hunting except archery deer hunting, muzzleloader deer hunting, and the pheasant quota hunt as established in Section 5 of this administrative regulation.

(c) A person shall:

1. Possess a valid hunting license to take pheasant, unless exempt pursuant to KRS 150.170; and

2. Not take more than three (3) pheasants of either sex.

Section 5. Pheasant Quota Hunts. (1) There shall be a pheasant quota hunt on:

(a) Green River Wildlife Management Area for three (3) consecutive days beginning the third Friday in November;

(b) Clay Wildlife Management Area for three (3) consecutive days beginning the first Friday in December; and

(c) Yellowbank Wildlife Management Area for three (3) consecutive days beginning on the first Friday in December.

(2) There shall be a one (1) day clean-up hunt immediately following each of the hunts for pheasant quota hunters drawn for that particular WMA.

(3) Hunt hours for each day shall be from 9:00 a.m. to 4:00 p.m.:

(a) Eastern time for the Green River Wildlife Management Area and Clay Wildlife Management Area hunts; and

(b) Central time for the Yellowbank Wildlife Management Area hunt.

(4) During a quota hunt or clean-up hunt, a person shall wear hunter orange clothing as established in 301 KAR 2:172.

(5) The daily bag limit per hunter shall be two (2) pheasants of either sex, except there shall be a daily bag limit of three (3) pheasants of either sex during the one (1) day clean-up hunt.

(6) Pheasant quota hunt procedures.

(a) A person selected for a pheasant quota hunt may hunt on the one (1) day clean-up hunt for that area.

(b) A person applying for a pheasant quota hunt shall not apply:

1. More than one (1) time for each hunt and shall not be drawn for more than one (1) hunt; and

2. As a group of more than five (5) people.

(c) A person who is drawn to hunt shall pay the pheasant quota hunt permit fee established in 301 KAR 3:022 prior to the hunt.

Section 6. Pheasant Quota Hunt Requirements. (1) A person applying for a pheasant quota hunt shall:

(a) Complete the pheasant quota hunt application process on

the department's Web site at fw.ky.gov between September 1 and September 30; and

(b) Pay a non-refundable three (3) dollar application fee for each applicant.

(2) A person, prior to participating in a quota hunt, shall be required to show a:

(a) Department-issued quota hunt permit;

(b) Valid Kentucky hunting license or proof of exemption; and

(c) Hunter education card, if required pursuant to 301 KAR 2:185.

(3) A youth-mentor quota hunt party shall have a minimum of one (1) youth as a member of the party.

(4) A person shall comply with all quota hunt requirements or be ineligible to apply for any other quota hunt during the following year, except for an elk quota hunt.

(5) A person who is ineligible to apply for a quota hunt pursuant to subsection (5) of this section shall maintain all preference points that were accrued in other quota hunts.

(6) A youth shall only apply as part of a party that has at least one (1) adult.

(7) The department shall extend the application deadline if technical difficulties with the automated application system prevent applications from being accepted for one (1) or more days during the application period.

(8) A quota hunt applicant who is not selected and who applies to hunt the following year shall be given one (1) preference point for each year the applicant was not selected.

(9) A random selection of hunters with preference points shall be made for each year's quota hunts before those without preference points are chosen.

(10) A person shall forfeit all accumulated points if, in a given year, the person does not apply for the hunt in which points were earned, except as established in subsection (6) of this section.

Section 7. Dog Training Areas on Wildlife Management Areas. (1) A group or club may request that a dedicated dog training area be authorized by the department on a specific WMA.

(2) The department shall authorize a dog training area if:

(a) The department approves a suitable location for the dog training area; and

(b) A signed memorandum of understanding is entered into with the club or group.

(3) The conditions established in this subsection shall apply for each dog training area on a WMA.

(a) All northern bobwhite to be used in training shall be banded with aluminum leg bands and individually placed in the dog training area.

(b) Dog training areas shall remain open to all other legal WMA uses.

(c) A person shall comply with all dog training area requirements pursuant to 301 KAR 2:041, unless otherwise stated in the memorandum of understanding.

(d) Unleashed dogs shall be allowed within the boundaries of the dog training area year-round, except for:

1. May 15 through August 15;

2. The youth statewide turkey season; and

3. The statewide turkey season.

(e) Released northern bobwhite with aluminum leg bands, chukars, pheasants, or pigeons may be harvested on legal dog training days.

(f) Immediately prior to dog training, a person shall:

1. Walk and examine the entire dog training area to ensure that no wild northern bobwhite are present; and

2. Then place released birds in the training area.

Section 8. General Requirements on Federally Owned Areas. (1) Season dates, bag limits, and other requirements of 301 KAR 2:251 and 2:050 shall apply, except as otherwise established in this administrative regulation.

(2) Hunter orange requirements established in Section 3 of this administrative regulation shall apply to a person hunting or trapping on federal areas referenced in this section.

(3) A person shall:

(a) Obtain permission from the landowner before hunting;

(b) Not hunt except on assigned dates and in assigned areas; and

(c) Comply with all requirements established by the agency controlling the area.

Section 9. Exceptions on Specific Federally Owned Areas. (1) If hunting is not prohibited by other area priorities, Fort Campbell, Fort Knox, Land Between the Lakes National Recreation Area, Bluegrass Army Depot, and Reelfoot National Wildlife Refuge may allow hunting if in compliance with 301 KAR 2:122 and 2:251 for:

(a) Squirrels, from June 1 through June 14;

(b) Northern bobwhite and rabbit, no earlier than November 1 nor later than the last day of February;

(c) Furbearers, no earlier than October 1 nor later than the last day of February;

(d) Frogs, year round; or

(e) Crows, for a maximum of 124 days between September 1 and the last day of February.

(2) A person shall hunt coyotes during daylight hours only on lands managed by:

(a) Daniel Boone National Forest;

(b) George Washington and Jefferson National Forests;

(c) Land Between the Lakes National Recreation Area;

(d) Clarks River National Wildlife Refuge; and

(e) Reelfoot National Wildlife Refuge.

(3) Fort Knox shall not allow more than thirty (30) days of ruffed grouse hunting between October 1 and the last day of February.

(4) On Land Between the Lakes National Recreation Area, a person hunting the species listed in this administrative regulation shall not use:

(a) Crossbows;

(b) Shotgun slugs or shot larger than BB; or

(c) Center-fire rifles or center-fire handguns, except during designated groundhog or coyote hunts.

(5) Big South Fork National River and Recreation Area.

(a) Ruffed grouse season shall be open from October 1 through December 31.

(b) Northern bobwhite and rabbit seasons shall be closed after December 31.

(c) A person hunting coyotes shall comply with any federal requirements established by the National Park Service.

Section 10. Incorporation by Reference. (1) "KDFWR Public Area Trapping Registration Form", 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. Eastern Time.

RICH STORM, Commissioner
DON PARKINSON, Secretary

APPROVED BY AGENCY: August 14, 2019

FILED WITH LRC: August 15, 2019 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 28, 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 October 31, 2018. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact

person.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jessica Tyler

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes exceptions to statewide hunting and trapping regulations for small game and furbearers on public land and other federally owned areas.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to properly manage small game and furbearer populations, and to provide reasonable hunting and trapping opportunity on public lands.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025(1) authorizes the Department to promulgate administrative regulations establishing open seasons for the taking of wildlife, to regulate bag limits, and to make these requirements apply to a limited area. KRS 150.175 (7) and (9) authorize the department to issues licenses, permits, and tags for hunting and trapping. KRS 150.360 requires restrictions on the taking of wildlife and authorizes the department to promulgate administrative regulations establishing the requirements for hunting coyotes at night. KRS 150.400 authorizes the department to establish the types of traps that can legally be used by trappers. KRS 150.410 authorizes the department to regulate trap tags, trap visitation, and trap placement to protect domestic animals. KRS 150.620 authorizes the department to promulgate administrative regulations for the maintenance and operation of lands it has acquired for public recreation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in administering the above statutes by defining exceptions to the statewide seasons, bag limits, and methods used to hunt and trap small game and furbearers on public lands 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: These amendments allow other small game hunters to hunt on Clay, Green and Yellowbank WMAs outside of the pheasant hunt units during the pheasant quota hunt. It will also add a third quota fox hunting field trial on Clay WMA.

(b) The necessity of the amendment to this administrative regulation: This amendment will provide maximum opportunity and access to public hunting grounds on Clay, Green River, and Yellowbank WMAs.

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All those who participate in small game hunting on Clay, Green River, and Yellowbank WMAs 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: Small game hunters will be required to not participate in small game hunting in the pheasant hunt units during the pheasant quota hunt.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no direct cost to hunters as a result of this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Small game hunters will benefit from expanded hunting opportunity on Clay, Green River, and Yellowbank WMAs.

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

(a) Initially: There will be no administrative cost to the department to implement this administrative regulation.

(b) On a continuing basis: There will be no 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. It will not be necessary to increase any other fees or to increase funding to implement this administrative regulation.

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

(9) TIERING: Is tiering applied? No. Tiering was not applied as all small game hunting participants must comply with the same requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 150.025(1), 150.175(7), (9), 150.360, 150.400, 150.410, 150.620.

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

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

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

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

(d) How much will it cost to administer this program for subsequent years? There will be no administrative costs 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 (+/-): None.

Expenditures (+/-): None.

Other Explanation:

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

301 KAR 2:090. Means by which migratory game birds may be taken.

RELATES TO: KRS 150.010, 150.025(1), 150.305(3), (4), 150.330, 150.360(2)

STATUTORY AUTHORITY: [~~KRS 13A.350,~~] 150.025(1),

150.305(3), (4), 150.360(2), 150.600, 50 C.F.R. 20, 21

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife and to regulate bag limits. KRS 150.305(3) and (4) authorize the department to regulate the possession of harvested migratory birds and facilitates the inspection of commercial preservation facilities. KRS 150.360(2) authorizes the department to restrict methods of taking wildlife. KRS 150.600 authorizes the department to regulate the taking of waterfowl on public and private land. This administrative regulation establishes requirements for the taking of waterfowl within the frameworks established by 50 C.F.R. Parts 20 and 21[~~This administrative regulation pertains to the means by which migratory game birds, doves, woodcock and snipe, and migratory waterfowl, ducks, geese, coots, gallinules and Virginia and Sora rails, may be taken. This administrative regulation is necessary for the continued protection and conservation of the migratory birds listed herein, and to insure a permanent and continued supply of the wildlife resource for the purpose of furnishing sport and recreation for present and future residents of the state. The methods and means listed are in compliance with, and dictated by, federal regulations promulgated by the United States Fish and Wildlife Service. The function of this administrative regulation is to provide for the prudent taking of migratory birds within reasonable limitations based upon an adequate supply~~].

Section 1. Definitions. (1) "Baited area" means any area where shelled, shucked, or unshucked corn, wheat or other grain, salt, or other feed whatsoever capable of luring, attracting, or enticing such birds is directly or indirectly, placed, exposed, deposited, distributed, or scattered, and such area shall remain a baited area for ten (10) days following complete removal of all such corn, wheat or other grain, salt, or other feed.

(2) "Baiting" means the placing, exposing, depositing, distributing, or scattering of shelled, shucked, or unshucked corn, wheat or other grain, salt, or other feed so as to constitute for such birds a lure, attraction or enticement to, on or over any areas where hunters are attempting to take them.

Section 2. Prohibited Hunting Methods. (1) Migratory birds on which open seasons are prescribed may be taken by any method except those prohibited in this section.[~~:~~]

(2)[~~Prohibited hunting methods.~~] Migratory game birds and migratory waterfowl may not be taken:

(a) With a trap, snare, net, crossbow, rifle, pistol, swivel gun, shotgun larger than ten (10) gauge, punt gun, battery gun, machine gun, fish hook, poison, drug, explosive, or stupefying substance;

(b) With a shotgun of any description capable of holding more than three (3) shells, unless it is plugged with a one (1) piece filler, incapable of removal without disassembling the gun, so its total capacity does not exceed three (3) shells, except that this restriction does not apply during the light geese conservation order season;

(c) From or by means, aid, or use of a sinkbox or any other type of low floating device, having a depression affording the hunter a means of concealment beneath the surface of the water;

(d) From or by means, aid, or use of any motor vehicle, motor-driven land conveyance, or aircraft of any kind;

(e) From or by means of any motorboat or other craft having a motor attached, or any sailboat, unless the motor has been completely shut off [~~and/~~]or the sails furled, and its progress therefrom has ceased; provided, that a craft under power may be used to retrieve dead or crippled birds; however, crippled birds may not be shot from such craft under power;

(f) By the use or aid of live birds as decoys;[~~although not limited to,~~] it shall be a violation of this paragraph for any person to take migratory waterfowl on an area where tame or captive live ducks or geese are present, unless such birds are and have been for a period of ten (10) consecutive days prior to such taking, confined within an enclosure which substantially reduces the audibility of their calls and totally conceals such birds from the sight of wild migratory waterfowl;

(g) By the use or aid of recorded or electrically amplified bird calls or sounds, or recorded or electrically amplified imitations of bird calls or sounds, except that this restriction does not apply during the light geese conservation order season;

(h) By the means or aid of any motor-driven land, water, or air conveyance or any sailboat used for the purpose of or resulting in the concentration, driving, rallying, or stirring up of any migratory bird; or

(i) By the aid of baiting, or on or over any baited area, except that[~~. As used in this paragraph, "baiting" shall mean the placing, exposing, depositing, distributing, or scattering of shelled, shucked, or unshucked corn, wheat or other grain, salt, or other feed so as to constitute for such birds a lure, attraction or enticement to, on or over any areas where hunters are attempting to take them; and "baited area" means any area where shelled, shucked, or unshucked corn, wheat or other grain, salt, or other feed whatsoever capable of luring, attracting, or enticing such birds is directly or indirectly, placed, exposed, deposited, distributed, or scattered; and such area shall remain a baited area for ten (10) days following complete removal of all such corn, wheat or other grain, salt, or other feed. However,~~] nothing in this paragraph shall prohibit:

1. The taking of all migratory game birds, including waterfowl, on or over standing crops, flooded standing crops, including aquatics, flooded harvested croplands, grain crops properly shocked on the field where grown, or grains found scattered solely as the result of normal agricultural planting or harvesting; and

2. The taking of all migratory game birds, except waterfowl, on or over any lands where baiting has occurred[~~shelled, shucked, or unshucked corn, wheat or other grain, salt, or other feed has been distributed or scattered~~] as the result of:

a. Bona[~~bona~~] fide agricultural operations or procedures; or[~~, or as a result of~~]

b. Manipulation[~~manipulation~~] of a crop or other feed on the land where grown for wildlife management purposes; provided, that manipulation for wildlife management purposes does not include the distribution or scattering of grain or other feed once it has been removed from or stored on the field where grown[~~;~~

~~(j) Except from a pit or blind in Ballard County only, as prescribed in 301 KAR 2:055. This method of taking applies only to waterfowl~~].

Section 3[~~2~~]. Transporting, Importing and Exporting. (1) Migratory game birds lawfully killed and possessed in accordance with the hunting laws and regulations of any foreign country or any state in the United States or subdivision thereof, must be imported, exported, or transported in accordance with the provisions specified in Title 50, Chapter 1, Subchapter B, Part 20 of the Code of Federal Regulations.

(2) No person shall transport within the United States any migratory game birds, except doves, unless the head or one (1) fully feathered wing remains attached to each such bird at all times while being transported from the place where taken until they have arrived at the personal abode of the possessor or a commercial preservation facility.

Section 4[~~3~~]. Tagging and Recordkeeping Requirements. (1) No person shall put or leave any migratory game birds at any place, other than at his personal abode, or in the custody of another person for picking, cleaning, processing, shipping, transportation, or storage, including temporary storage, or for the purpose of having taxidermy services performed, unless such birds have a tag attached, signed by the hunter, stating his:

1. Address;[~~,~~]

2. The total number and species of birds;[~~,~~] and

3. The date such birds were killed.

(2) Migratory game birds being transported in any vehicle as the personal baggage of the possessor shall not be considered as being in storage or temporary storage.

(3)[~~(2)~~] No person shall receive, or have in custody, any migratory game birds belonging to another person unless such birds are tagged as required under subsection (1) of this section.

(4)[~~(3)~~] No person shall transport migratory game birds belonging to another person unless such birds are tagged as

required under subsection (1) of this section.

Section 5[4]. Commercial Preservation Facilities. (1) No commercial preservation facility shall receive or have in custody any migratory game birds unless such birds are tagged as required in Section 4[3](1) of this administrative regulation.

(2) No commercial preservation facilities shall:

(a) Receive or have in custody any migratory game birds unless accurate records are maintained showing:

1. The number of each species;

2. The date such birds were received;

3. The name and address of the person from whom such birds were received;

4. The date such birds were disposed of; and

5. The name and address of the person to whom such birds were delivered.

(b) Destroy any records required to be maintained under this section for a period of one (1) year following the last entry on the record.

(c) Prevent any person authorized to enforce this administrative regulation from entering such facilities at all reasonable hours and inspecting the records and the premises where such operations are being carried on.

Section 6[5]. Wanton Waste Law. No person shall kill or cripple any migratory game bird pursuant to this administrative regulation without making a reasonable effort to retrieve the bird and include it in his daily bag limit.

RICH STORM, Commissioner
DON PARKINSON, Secretary

APPROVED BY AGENCY: August 14, 2019

FILED WITH LRC: August 15, 2019 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 28, 2019 at 9:00 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation through October 31, 2019. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jessica Tyler

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes means by which migratory game birds may be taken. These means are consistent with federal migratory bird hunting frameworks established in 50 C.F.R. Parts 20 and 21 according to the U.S. Fish and Wildlife Service (USFWS). In addition, it establishes requirements for the possession, transportation, importation, exportation, tagging and commercial handling of legally taken migratory game birds. It prohibits the wanton waste of harvested migratory game birds.

(b) The necessity of this administrative regulation: The necessity of this administrative regulation is to establish the means by which migratory birds may be harvested in accordance with the USFWS.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife and to regulate bag limits. KRS 150.360(2) authorizes the department to restrict methods for the taking of wildlife. KRS 150.305(3) and (4) authorize the department to regulate the possession of harvested migratory birds and facilitates the inspection of commercial preservation facilities. KRS 150.600 authorizes the department to regulate the taking of waterfowl on public and private land. This administrative regulation establishes procedures for the taking of migratory game birds within reasonable limits and within the frameworks established by 50 C.F.R. Parts 20 and 21.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing the means by which migratory bird harvest may occur and how harvested birds are handled consistent with state, national, and international management goals.

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

(a) How the amendment will change this existing administrative regulation: This amendment will remove the restrictions on the number of shells a shotgun may hold during the light goose conservation order season. This amendment will also remove the restrictions on the use of electronic calling devices when hunting light geese during the light goose conservation order season. This amendment also removes the requirement to hunt from a pit or blind in Ballard County.

(b) The necessity of the amendment to this administrative regulation: This amendment increases opportunity for light goose hunters. Federal laws which prohibit the use of a gun capable of holding more than three (3) shotshells and the use of electronic calls during regular waterfowl seasons, have been removed for the light goose conservation order season. Light geese (snow and Ross's geese) are continentally overabundant and the conservation order season was established to increase harvest on these species. Light goose populations are damaging fragile arctic habitats where they nest. Removing the requirement to hunt from blinds or pits makes Ballard County similar to all other counties. Hunting from blinds is no longer necessary to meet management objectives.

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

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

(3) List the type and number of individuals, businesses, organizations or state and local governments affected by this administrative regulation: There are approximately 40,000 migratory bird hunters in Kentucky who are 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: Migratory bird hunters will now have the opportunity to hunt light geese during the Conservation order with guns capable of holding more than three (3) shotshells and to use electronic calling devices. Migratory bird hunters in Ballard County would have the opportunity to hunt outside of established blinds or pits.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Goose hunters will have the opportunity to harvest more light geese during the Conservation order and overabundant goose populations can be lowered to meet continental population management objectives.

(5) Provide an estimate of how much it will cost the

administrative body to implement this administrative regulation:

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

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

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

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

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025(1), 150.360(2), 150.305(3) and (4), 150.600, and 50 C.F.R. Parts 20 and 21.

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

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

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

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

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The federal mandate defines the regulatory frameworks that a state may allow. States are permitted to be more restrictive but not more liberal in their respective regulations. State management objectives necessitate more restrictive regulations to protect local, regional and/or state populations of birds important to Kentucky's waterfowl hunters.

ENERGY AND ENVIRONMENT CABINET
Office of the Secretary
(Amendment)

400 KAR 1:110. Administrative hearings relating to matters brought under KRS Chapter 350 or KRS 351.310 through 351.375.

RELATES TO: KRS 224.10-410, 350.010, 350.028, 350.0301, 350.070, 350.090, 350.093, 350.130, 350.255, 350.465, 350.990, 351.315, 351.345, 351.350, 30 C.F.R. Parts 730, 731, 732, 733, 735, 917, 30 U.S.C. 1253, 1255

STATUTORY AUTHORITY: KRS 350.020, 350.028, 350.0301, 350.255, 350.465, 350.610, 351.315, 351.345, 351.350, 30 C.F.R. Parts 730, 731, 732, 733, 735, 917, 30 U.S.C. 1253, 1255

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 350 requires the cabinet to promulgate rules and administrative regulations pertaining to surface coal mining and reclamation operations and coal exploration operations. KRS Chapter 351 authorizes the cabinet to promulgate rules and administrative regulations pertaining to explosives and blasting operations. This administrative regulation establishes hearing, conference, notice, penalty assessment, and other procedural and due process provisions for the permanent regulatory program under KRS Chapter 350, and the hearing procedures pursuant to KRS Chapter 351.

Section 1. Definitions. (1) "Applicant" is defined by 405 KAR 7:001.

(2) "Application" is defined by 405 KAR 7:001.

(3) "Cessation order" is defined by 405 KAR 7:001.

(4) "Coal" is defined by 405 KAR 7:001.

(5) "Coal exploration" is defined by 405 KAR 7:001.

(6) "Department" is defined by KRS 351.310.

(7) "Knowingly" is defined by 405 KAR 7:001.

(8) "Notice of noncompliance and order for remedial measures" is defined by 405 KAR 7:001.

(9) "Operations" is defined by KRS 350.010(6).

(10) "Operator" is defined by KRS 350.010(8).

(11) "Permit" is defined by 405 KAR 7:001.

(12) "Permit area" is defined by 405 KAR 7:001.

(13) "Permittee" is defined by KRS 350.010(21).

(14) "Reclamation" is defined by KRS 350.010(12).

(15) "Secretary" is defined by KRS 350.010(11).

(16) "Significant, imminent environmental harm" is defined by 405 KAR 7:001.

(17) "Surface coal mining and reclamation operations" is defined by KRS 350.010(1).

(18) "Transfer, assignment, or sale of permit rights" is defined by 405 KAR 7:001.

(19) "Willfully" and "willful violation" is defined by 405 KAR 7:001.

Section 2. Applicability. This administrative regulation shall govern the conduct by the cabinet of all administrative hearings:

(1) And conferences arising under KRS Chapter 350 relating to surface coal mining and reclamation operations and coal

exploration operations, including those matters initiated by a petition for hearing filed on or before August 4, 2017; and

(2) Authorized by KRS Chapter 351 relating to explosives and blasting operations.

Section 3. Proposed Penalty Assessment and Request for Assessment Conference and Administrative Hearing. (1) Notification. The cabinet shall notify a person issued a notice of noncompliance and order for remedial measures or a cessation order in writing of the cabinet's proposed penalty assessment. The proposed penalty assessment shall be made by authorized personnel of the department.

(2) Criteria. The department, in determining the amount of the proposed penalty assessment, shall give consideration to:

(a) History of previous violations of the permittee or operator at the particular surface coal mining and reclamation operation;

(b) The seriousness of the violation, including any irreparable harm to the environment and any hazard to the health or safety of the public;

(c) Whether or not the permittee, operator, or person was negligent; and

(d) The demonstrated good faith of the permittee, operator, or person in attempting to achieve rapid compliance after notification of the violation, except that good faith consideration shall not be applicable to any violation determined not to be correctable.

(3) Service method; time.

(a) The department shall serve the notice of proposed penalty assessment along with copies of applicable worksheets, to the person to whom the notice or order was issued within fifteen (15) working days after issuance of the final notice of inspection of noncompliance or final notice of inspection of cessation order.

(b) The department shall serve the notice of proposed penalty assessment by utilizing one (1) of the following:

1. A service method established in 400 KAR 1:090, Section 5(3) and (4); or

2. Electronic mail pursuant to KRS 350.130.

(c) Service shall be deemed effective pursuant to 400 KAR 1:090, Section 5(5) or upon delivery of the notice of proposed penalty assessment with copies of worksheets to the recipient's inbox by electronic mail as electronically communicated to the department by an electronic registered receipt.

(d) Failure to serve the proposed penalty assessment within fifteen (15) working days after issuance of the final notice of inspection of noncompliance or final notice of inspection of cessation order shall not be grounds for dismissal of all or part of the assessment unless:

1. The person against whom the proposed penalty has been assessed proves actual and substantial prejudice as a result of the delay; and

2. The person makes a timely written objection to the delay on or before the last date to request an assessment conference under subsection (4)(b) of this section.

(4) Options of person issued notice of proposed penalty assessment.

(a) Waiver of rights to challenge proposed penalty assessment if no petition was filed challenging the fact of the violation.

1. The person shall notify the department that the person elects not to contest the proposed penalty assessment.

2. If the person did not file a timely petition requesting an administrative hearing as to the fact of the violation pursuant to Section 7 of this administrative regulation, then the secretary shall issue a final order finding that:

a. The person to whom the notice of noncompliance and order for remedial measures or cessation order was issued has waived all rights to an administrative hearing on the amount of the proposed assessment;

b. The fact of the violation is deemed admitted; and

c. The proposed penalty is due and payable within thirty (30) days after the entry of the final order.

(b) Waiver of rights to challenge penalty assessment and the person filed a petition challenging the fact of the violation.

1. The person shall notify the department that the person elects not to contest the proposed penalty assessment.

2. If the person filed a timely petition requesting an administrative hearing as to the fact of the violation pursuant to Section 7 of this administrative regulation, then the secretary shall issue a final order finding that:

a. The person to whom the notice of noncompliance and order for remedial measures or cessation order was issued has waived all rights to an administrative hearing on the amount of the proposed assessment; and

b. The proposed penalty is due and payable within thirty (30) days of the mailing of a final order affirming the fact of the violation.

(c) Request for an assessment conference. The person shall request in writing an assessment conference within thirty (30) days:

1. Of receipt of the notice of proposed penalty assessment; or

2. From the date the notice of proposed penalty assessment is returned to the department as undeliverable, unclaimed or refused.

(d) Petition for administrative hearing.

1. The person shall contest the proposed penalty assessment or the fact of the violation by submitting a petition for an administrative hearing in accordance with Section 6 or 7 of this administrative regulation, or contest both by filing a petition for an administrative hearing in accordance with Sections 6 and 7.

2. The fact of the violation shall not be contested if it has been adjudicated by a final order of the secretary pursuant to an administrative hearing commenced under Section 7 of this administrative regulation.

(5) Failure to Request a Penalty Assessment Conference. If a person issued a proposed penalty assessment fails to request in writing an assessment conference in a timely manner as set forth in subsection (4)(c) of this section or has not filed a timely petition in accordance with Section 6 of this administrative regulation, then the cabinet shall consider the failure to request an assessment conference a waiver of the person's right to a conference. The secretary shall enter a final order pursuant to paragraph (a) or (b) of this subsection.

(a) If the person did not file a timely petition requesting an administrative hearing as to the fact of the violation pursuant to Section 7 of this administrative regulation, then the secretary shall issue a final order finding that:

1. The person to whom the notice of noncompliance and order for remedial measures or cessation order was issued has waived all rights to an administrative hearing on the amount of the proposed assessment;

2. The fact of the violation shall be deemed admitted; and

3. The proposed penalty shall be due and payable within thirty (30) days after the entry of the final order.

(b) If the person filed a timely petition requesting an administrative hearing as to the fact of the violation pursuant to Section 7 of this administrative regulation, then the secretary shall issue a final order finding that:

1. The person to whom the notice of noncompliance and order for remedial measures or cessation order was issued has waived all rights to an administrative hearing on the amount of the proposed assessment; and

2. The proposed penalty shall be due and payable within thirty (30) days of the mailing of a final order affirming the fact of the violation.

Section 4. Procedures for Assessment Conference. (1) Date and location of conference; failure to timely schedule; substantial prejudice.

(a) If an assessment conference is requested, the cabinet shall schedule the assessment conference within sixty (60) days after the cabinet's receipt of the request, unless all parties agree otherwise.

(b) An assessment conference shall be held in the department's regional office of the mine site subject to the proposed penalty assessment unless the parties agree otherwise.

1. If all the parties or their counsel request to participate by telephone or other electronic means, then the conference officer may hold the assessment conference telephonically or by any other electronic means agreed to by the parties.

2. Any person who attends the assessment conference in

person at the department's regional office shall have access to the telephonic conference line or the electronic means utilized during the assessment conference.

(c) Failure by the cabinet to timely schedule an assessment conference shall not be grounds for dismissal of all or part of an assessment unless the person against whom the proposed penalty has been assessed makes a timely objection on or before the date of the assessment conference and proves actual and substantial prejudice as a result of the delay.

(d) The scheduling of the assessment conference shall not operate as a stay of any notice of noncompliance and order for remedial measures or cessation order.

(2) Service; public participation.

(a) The cabinet shall serve notice of the assessment conference by mail, postage prepaid[~~pursuant to 400 KAR 1:090, Section 5~~].

(b) The cabinet shall also send a copy of the notice of the assessment conference to any person who filed a report that led to the issuance of the notice of noncompliance and order for remedial measures or cessation order being contested.

(c) The cabinet shall post notice of the assessment conference at the department's regional office of the mine site subject to the proposed penalty assessment at least five (5) days before the assessment conference.

(d) Any person shall have the right to attend and participate in the assessment conference.

(3) Conference officer; requirements for administrative hearings not applicable. The office shall assign a conference officer to hold the assessment conference. The assessment conference shall not be governed by the requirements for administrative hearings in 401 KAR 1:090 or by the provisions of 400 KAR 1:040.

(4) Report of conference officer. The conference officer shall consider all relevant information pertaining to the proposed penalty assessment. Within thirty (30) days after the assessment conference is held, the conference officer shall issue a report recommending to the secretary to either affirm, raise, lower, or dismiss the proposed penalty assessment.

(5) Service of report; documentation. The conference officer's report shall be served by mail, postage prepaid, and shall include a worksheet if the penalty has been raised or lowered. The reasons underlying the conference officer's report shall be fully documented.

(6) Failure to attend; report to issue. If the person requesting an assessment conference fails to attend the scheduled assessment conference, the assessment officer shall within thirty (30) days of the date of the scheduled assessment conference issue a report to the secretary recommending that the proposed penalty assessment be affirmed.

(7) Statements not to be introduced at an administrative hearing. In any administrative hearing commenced under Section 6 or 7 of this administrative regulation, evidence as to statements made by a party at an assessment conference shall not be introduced by another party as evidence or to impeach a witness.

(8) Challenge to conference officer's report.

(a) Any person issued a proposed penalty assessment may file a petition requesting an administrative hearing to contest the conference officer's recommended penalty. A petition shall comply with Section 6 of this administrative regulation.

(b) The cabinet may file a petition to request under Section 5 of this administrative regulation an administrative hearing to contest the conference officer's recommended penalty.

(9) Failure to timely file a petition challenging the conference report. If a person issued a proposed penalty assessment fails to timely file a petition in accordance with Section 6 of this administrative regulation challenging the conference report, the secretary shall issue a final order pursuant to paragraph (a) or (b) of this subsection.

(a) If the person also did not file a timely petition requesting an administrative hearing as to the fact of the violation pursuant to Section 7 of the administrative regulation, then the secretary shall issue a final order finding that:

1. The person to whom the notice of noncompliance and order for remedial measures or cessation order was issued has waived all rights to an administrative hearing on the amount of the proposed assessment;

2. The fact of the violation shall be deemed admitted; and

3. The proposed penalty shall be due and payable within thirty (30) days after the entry of the final order.

(b) If the person filed a timely petition requesting an administrative hearing as to the fact of the violation pursuant to Section 7 of the administrative regulation, then the secretary shall issue a final order finding that:

1. The person to whom the notice of noncompliance and order for remedial measures or cessation order was issued has waived all rights to an administrative hearing on the amount of the proposed assessment; and

2. The proposed penalty shall be due and payable within thirty (30) days of the mailing of a final order affirming the fact of the violation.

Section 5. Administrative Hearing Initiated by the Cabinet. (1) Criteria for filing.

(a) The cabinet may initiate an administrative hearing if:

1. The cabinet has reason to believe that a violation of KRS Chapter 350 or 405 KAR Chapters 7 through 24 has occurred or is occurring;

2. A violation of a permit condition has occurred or is occurring;

3. A permittee, operator, or person has failed to:

a. Pay a civil penalty assessed by the cabinet;

b. Undertake remedial measures mandated by an order of the cabinet; or

c. Abate violations the permittee, operator, or person was determined to have committed by an order of the cabinet;

4. The provisions of KRS 350.990(9) apply;

5. The cabinet has reason to believe additional remedies should be sought or an order should be entered against a person to protect the environment or the health and safety of the public;

6. The criteria of 405 KAR 10:050, Section 3(2) or (3) apply;

7. The cabinet has determined that revocation of a license under KRS 351.345 is warranted; or

8. An explosive user or seller notified the cabinet pursuant to KRS 351.350 that they intend to challenge a citation issued under KRS 351.315 to 351.375.

(b) The cabinet may initiate an administrative hearing to contest a conference officer's recommended penalty and seek any combination of the relief set forth in subsection (2) of this section.

(c) The cabinet shall initiate an administrative hearing and shall seek revocation of the permit and forfeiture of the bond or suspension of the permit pursuant to KRS Chapter 350 if:

1. The permittee, operator, or person has willfully failed to comply with a cessation order; or

2. The criteria of 405 KAR 10:050, Section 3(1) apply.

(2) Remedies.

(a) In an administrative hearing pursuant to KRS Chapter 350 initiated by the cabinet or in a counter claim filed in response to a petition filed in accordance with Section 6, 7, 8, or 9, the cabinet may seek one (1) or a combination of the following:

1. Permit suspension or revocation;

2. Bond forfeiture;

3. Civil penalty;

4. A determination, pursuant to KRS 350.060, 350.085, and 350.130, that a person shall not be eligible to receive another permit or conduct future operations;

5. A determination, pursuant to KRS 350.990(9), that any director, officer, or agent of a corporation willfully and knowingly authorized, ordered, or carried out a violation or failed or refused to comply with any final order; or

6. Any other relief to which the cabinet may be entitled by KRS Chapter 350.

(b) In an administrative hearing pursuant to KRS Chapter 351 initiated by the cabinet, the cabinet may seek one (1) or a combination of the following:

1. Revocation of license or permit pursuant to KRS 351.345 or KRS 351.315;

2. Civil penalty pursuant to KRS 351.350; or

3. Any other relief to which the cabinet may be entitled by KRS 351.315 to 351.375.

(3) Procedure for an administrative hearing initiated by the cabinet.

(a) Filing of administrative complaint. The cabinet shall initiate an administrative hearing by filing an administrative complaint with the office incorporating the following for each claim for relief:

1. A statement of facts entitling the cabinet to administrative relief;

2. A request for specific relief;

3. A copy of any notice, order, citation, or determination upon which relief is sought; and

4. In a bond forfeiture action, the cabinet shall attach documentation to the petition that the cabinet contacted the bonding company or financial institution providing the bond, to determine if it wanted the right to perform the measures necessary to secure bond release in accordance with KRS 350.130.

(b) Answer or responsive pleading.

1. The respondent shall file with the office an answer or responsive pleading within thirty (30) days of service of the administrative complaint.

2. The answer shall contain:

a.(i) A statement specifically admitting or denying the alleged facts stated in the administrative complaint or amended administrative complaint; or

(ii) If the person is without knowledge or information sufficient to form a belief as to the truth of an allegation, then the person shall so state and it shall have the effect of a denial;

b. Any defense to each claim for relief; and

c. Any other matter to be considered on review.

3. Failure to plead any available administrative affirmative defense in a required answer or responsive pleading may constitute a waiver of the defense, except that lack of jurisdiction over the subject matter and failure to state a claim upon which relief can be granted shall not be waived by failure to assert them in a responsive pleading.

4. An allegation in a pleading to which an answer or responsive pleading is not required or permitted shall be taken as denied or avoided.

5. An allegation in a pleading to which an answer or responsive pleading is required may be deemed admitted if not denied in the answer or responsive pleading.

(c) Amendment.

1. An administrative complaint may be amended once as a matter of right prior to the filing of an answer and thereafter by leave of the hearing officer upon proper motion.

2. The respondent shall have ten (10) days from the filing of an amended administrative complaint or the time remaining for filing an answer to the original complaint, whichever is longer, to file an answer or responsive pleading to the amended administrative complaint.

3. If the hearing officer grants a motion to amend the administrative complaint, the hearing officer shall set the time for an answer to be filed in the order granting the motion.

(4) Burden of proof.

(a) The cabinet shall have the ultimate burden of persuasion.

(b) A respondent shall have the burden of persuasion to establish an affirmative defense.

(c) A respondent claiming an exemption shall have the burden of persuasion to establish the qualification for the exemption.

(5) Default.

(a) If the person against whom the administrative complaint is filed fails to timely comply with a prehearing order of a hearing officer, the hearing officer may on his or her own initiative or upon motion, issue an order to show cause why the person should not be deemed to have waived the right to an administrative hearing and why a report and recommended order adverse to the person shall not be referred to the secretary.

(b) If the order to show cause is not satisfied as required, the hearing officer shall recommend to the secretary the entry of a final order in conformity with the relief requested by the cabinet in its administrative complaint.

(c) If the person against whom the administrative complaint is filed fails to appear at an administrative hearing, the person shall be deemed to have waived the right to a hearing and the hearing officer shall recommend to the secretary the entry of a final order in conformity with the relief requested by the cabinet in its administrative complaint.

Section 6. Administrative Hearing for Review of Proposed Assessment. (1) Who may file. Any person issued a proposed penalty assessment may file with the office a petition for an administrative hearing to review the penalty.

(2) Filing petition; waiver.

(a) A person filing a petition for review of a proposed penalty assessment who did not make a request for a Penalty Assessment Conference pursuant to Section 4 of this administrative regulation shall file the petition in the office within thirty (30) days of:

1. Receipt of the proposed penalty assessment; or

2. The return receipt date in the department of the notice of proposed penalty assessment, if the proposed penalty assessment is returned undeliverable, unclaimed, or refused.

(b) If the person made a timely request for an assessment conference pursuant to Section 4 of this administrative regulation, the person shall file a petition for review in the office within thirty (30) days of:

1. Receipt of the conference officer's report; or

2. The return receipt date in the office of the conference officer’s report, if the conference officer’s report is returned undeliverable, unclaimed, or refused;

(c) The hearing officer shall not grant an extension of time for filing a petition for review of a proposed penalty assessment.

(d) If the hearing officer, upon motion or his or her own initiative, finds that the person failed to timely file the petition for review in accordance with this section, the hearing officer shall issue a report recommending dismissal of the petition. The secretary shall enter an order in accordance with Section 4(9)(a) or (b) of this administrative regulation.

(3) Content of the petition. The petition shall include:

(a) A short and plain statement indicating the reasons why the amount of the penalty is being contested;

(b) If the amount of penalty is being contested based upon a misapplication of the penalty formula, a statement indicating how the penalty formula contained in 405 KAR 7:095 was misapplied, along with a proposed penalty utilizing the penalty formula; and

(c) Identification by reference to the number for the notice of noncompliance and order for remedial measures or cessation order number.

(4) Answer or responsive pleading.

(a) The respondent shall file with the office an answer or responsive pleading within thirty (30) days of service of the petition.

(b) The answer shall contain:

1.a. A statement specifically admitting or denying the facts stated in the petition or amended petition; or

b. If the person is without knowledge or information sufficient to form a belief as to the truth of an allegation, then the person shall so state and it shall have the effect of a denial;

2. Any defense to each claim for relief; and

3. Any other matter to be considered on review.

(c) Failure to plead any available administrative affirmative defense in a required answer or responsive pleading may constitute a waiver of that defense, except that lack of jurisdiction over the subject matter and failure to state a claim upon which relief can be granted shall not be waived by failure to assert them in an answer or responsive pleading.

(d) An allegation in the petition to which no answer or responsive pleading is required or permitted shall be taken as denied or avoided.

(e) An allegation in the petition to which an answer or responsive pleading is required may be deemed admitted if not denied in the answer or responsive pleading.

(5) Amended petition.

(a) A petition may be amended once as a matter of right prior to the filing of an answer and thereafter by leave of the hearing officer upon proper motion.

(b) The respondent shall have ten (10) days from the filing of

an amended petition or the time remaining for filing an answer to the original petition, whichever is longer, to file an answer or responsive pleading to the amended petition.

(c) If the hearing officer grants a motion to amend a petition, the hearing officer shall set the time for an answer to be filed, which shall be set forth in the order granting the motion.

(6) Burden of proof. The cabinet shall have the burden of going forward to establish a prima facie case as to the amount of the penalty assessment and the ultimate burden of persuasion as to the amount of the penalty assessment.

(7) Default.

(a) If the petitioner fails to timely comply with a prehearing order of a hearing officer, the hearing officer, may at his or her discretion or upon motion, issue an order to show cause why the person should not be deemed to have waived the right to an administrative hearing and why the petition should not be dismissed.

(b) If the order to show cause is not satisfied as required, the hearing officer shall recommend to the secretary the entry of a final order in conformity with Section 4(9)(a) or (b) of this administrative regulation.

(c) If the person against whom the proposed penalty is assessed fails to appear at an administrative hearing, the person shall be deemed to have waived the right to a hearing and the hearing officer shall recommend to the secretary the entry of a final order in conformity with Section 4(9)(a) or (b) of this administrative regulation.

(8) Hearing officer report; contents. If an administrative hearing is conducted, the hearing officer shall incorporate in the report and recommended order concerning a civil penalty, findings of fact on each of the four (4) criteria set forth in 405 KAR 7:095, Section 3 and conclusions of law.

Section 7. Administrative Review of a Notice of Noncompliance and Order for Remedial Measures and a Cessation Order. (1) Who may file. A person who considers himself aggrieved by the issuance of a notice of noncompliance and order for remedial measures or cessation order by the cabinet pursuant to the provisions of KRS Chapter 350 or administrative regulations may file a petition for review with the office.

(2) Time for filing.

(a) A person filing a petition for review under this section shall file in the office a petition within:

1. Thirty (30) days of the receipt of a notice of noncompliance and order for remedial measures or cessation order;

2. Thirty (30) days of receipt of notice of modification, vacation, or termination of the notice of noncompliance and order for remedial measures or cessation order; or

3. Thirty (30) days of the return receipt date in the department of the notice of noncompliance and order for remedial measures or cessation order if the notice of noncompliance and order for remedial measures or cessation order is returned as undeliverable, unclaimed, or refused.

4. Thirty (30) days of:

a. Receipt of the proposed penalty assessment; or

b. The return receipt date in the department of the notice of proposed penalty assessment, if the proposed penalty assessment is returned undeliverable, unclaimed, or refused.

5. Thirty (30) days of:

a. Receipt of the penalty assessment conference officer's report; or

b. The return receipt date in the office of the penalty assessment conference officer's report, if the conference officer's report is returned undeliverable, unclaimed, or refused.

(b) The hearing officer shall not grant an extension of time for filing a petition for review.

(c) If the hearing officer, upon motion or his or her own initiative, finds that the person failed to timely file the petition for review in accordance with this section, the hearing officer shall issue a report recommending dismissal of the petition. The secretary shall dismiss a petition that is not filed in accordance with subsection (2)(a) of this section finding that the person waived the right to an administrative hearing and affirming the notice of noncompliance and order for remedial measures or cessation order.

(3) Content of the petition. A person filing a petition for review shall incorporate in the petition regarding each claim for relief:

(a) A statement of facts entitling that person to administrative relief;

(b) A request for specific relief;

(c) An explanation of each specific alleged error in the cabinet's determination;

(d) A copy of the notice of noncompliance and order for remedial measures or cessation order sought to be reviewed; and

(e) A statement as to whether or not the person waives the opportunity for an evidentiary hearing;

(4) Answer or responsive pleading.

(a) The respondent shall file with the office an answer or responsive pleading within thirty (30) days of service of the petition.

(b) The answer shall contain:

1.a. A statement specifically admitting or denying the facts stated in the petition or amended petition; or

b. If the person is without knowledge or information sufficient to form a belief as to the truth of an allegation, then the person shall so state and it shall have the effect of a denial;

2. Any defense to each claim for relief; and

3. Any other matter to be considered on review.

(c) Failure to plead any available administrative affirmative defense in a required answer or responsive pleading may constitute a waiver of the defense, except that lack of jurisdiction over the subject matter and failure to state a claim upon which relief can be granted shall not be waived by failure to assert those defenses in an answer or responsive pleading.

(d) An allegation in the petition to which no answer or responsive pleading is required or permitted shall be taken as denied or avoided.

(e) An allegation in the petition to which an answer or responsive pleading is required may be deemed admitted if not denied in the answer or responsive pleading.

(5) Amended petition.

(a) A petition may be amended once as a matter of right prior to the filing of an answer and thereafter by leave of the hearing officer upon proper motion.

(b) The respondent shall have ten (10) days from the filing of a petition amended as a matter of right or the time remaining for filing an answer to the original petition, whichever is longer, to file an answer or responsive pleading to the amended petition.

(c) If the hearing officer grants a motion to amend a petition, the time for an answer to be filed shall be set forth in the order granting the motion.

(6) Requirement to file subsequent notice of noncompliance and order for remedial measures or cessation order.

(a) Within ten (10) days of receipt, a petitioner shall file a copy of any subsequent notice of noncompliance and order for remedial measures or cessation order that modifies, vacates, or terminates the notice of noncompliance and order for remedial measures or cessation order sought to be reviewed.

(b) Within ten (10) days of receipt, a petitioner shall file a copy of any subsequent cessation order for failure to timely abate the violation that is the subject to the notice sought to be reviewed.

(c) If a petitioner desires to challenge a subsequent notice of noncompliance and order for remedial measures or cessation order, the petitioner shall file:

1. A separate petition for review in accordance with this section; or

2. A motion to amend a pending petition with the amended petition attached in accordance with this section and within the time requirements of subsection (2) of this section.

(d) A petition for review of a related notice of noncompliance and order for remedial measures or cessation order shall be subject to consolidation.

(7) Default.

(a) If the petitioner fails to timely comply with a prehearing order of a hearing officer, the hearing officer may, at his or her discretion or upon motion, issue an order to show cause why the petitioner should not be deemed to have waived the right to an

administrative hearing and why the petition should not be dismissed.

(b) If the order to show cause is not satisfied as required, the hearing officer shall recommend to the secretary the entry of a final order affirming the notice of noncompliance and order for remedial measures or cessation order and dismissing the petition.

(c) If the petitioner fails to appear at an administrative hearing, the person shall be deemed to have waived the right to an administrative hearing and the hearing officer shall recommend to the secretary the entry of a final order affirming the notice of noncompliance and order for remedial measures or cessation order and dismissing the petition.

(8) Burden of proof. In review of a notice of noncompliance and order for remedial measures or cessation order or the modification, vacation, or termination thereof under this section, the cabinet shall have the burden of going forward to establish a prima facie case as to the propriety of the notice of noncompliance and order for remedial measures or cessation order, or modification, vacation, or termination thereof. The ultimate burden of persuasion shall rest with the petitioner.

Section 8. Request for Review of Permit Determinations Pursuant to KRS Chapter 350. (1) Who may file. The permit applicant, permittee, or person having an interest that is or may be adversely affected by a permit determination of the cabinet may file a petition for review of the following:

(a) Application for a new permit;

(b) Application for a permit revision and amendment, permit renewal, and the transfer, assignment, or sale of rights granted under permit;

(c) Permit revision and amendment ordered by the cabinet, except challenges of permit revision ordered as a remedial measure in a notice of noncompliance shall be reviewed in an administrative hearing pursuant to Section 7 of this administrative regulation; and

(d) Application for a coal exploration permit.

(2) Time to file; waiver.

(a) The permit applicant, permittee, or person having an interest that is or may be adversely affected by a permit determination of the cabinet shall file a petition for review with the office within thirty (30) days from the date the permit applicant, permittee, or person had actual notice of the determination or could reasonably have had notice.

(b) If the hearing officer, upon motion or his or her own initiative, finds that the permit applicant, permittee, or person failed to timely file the petition for review in accordance with this section, the hearing officer shall issue a report recommending dismissal of the petition. The secretary shall enter an order stating that the permit applicant, permittee, or person waived the right to an administrative hearing.

(3) Content of the petition. The petition for review shall include:

(a) A clear statement of the facts entitling the person requesting review to administrative relief;

(b) An explanation of each specific alleged error in the cabinet's decision, including reference to the statutory and regulatory provisions allegedly violated;

(c) A request for specific relief; and

(d) A statement whether or not the person requests or waives the opportunity for an evidentiary hearing.

(4) Answer or responsive pleading.

(a) The respondent shall file with the office an answer or responsive pleading within thirty (30) days of service of the petition.

(b) The answer shall contain:

1.a. A statement specifically admitting or denying the facts stated in the petition or amended petition; or

b. If the person is without knowledge or information sufficient to form a belief as to the truth of an allegation, then the person shall so state and it shall have the effect of a denial;

2. Any defense to each claim for relief; and

3. Any other matter to be considered on review.

(c) Failure to plead any available administrative affirmative defense in a required answer or responsive pleading may constitute a waiver of that defense, except that lack of jurisdiction over the subject matter and failure to state a claim upon which relief can be granted shall not be waived by failure to assert them in an answer or a responsive pleading.

(d) An allegation in the petition to which no answer or responsive pleading is required or permitted shall be taken as denied or avoided.

(e) An allegation in the petition to which an answer or responsive pleading is required may be deemed admitted if not denied in the answer or responsive pleading.

(5) Amended petition.

(a) A petition may be amended once as a matter of right prior to the filing of an answer and thereafter by leave of the hearing officer upon proper motion.

(b) The respondent shall have ten (10) days from the filing of an amended petition or the time remaining for filing an answer to the original petition, whichever is longer, to file an answer or responsive pleading to the amended petition.

(c) If the hearing officer grants a motion to amend a petition, the hearing officer shall set the time for an answer to be filed in the order granting the motion.

(6) Effect of filing. The filing of a petition for review shall not stay the effectiveness of the cabinet's determination pending completion of administrative review.

(7) Default.

(a) If the petitioner fails to timely comply with a prehearing order of a hearing officer, the hearing officer may, at his or her discretion or upon motion, issue an order to show cause why the person should not be deemed to have waived the right to an administrative hearing and why the petition should not be dismissed.

(b) If the order to show cause is not satisfied as required, the hearing officer shall recommend to the secretary the entry of a final order finding that the petitioner has waived the right to an administrative hearing and dismissing the petition.

(c) If the person requesting the administrative hearing fails to appear at a hearing, the hearing officer shall recommend to the secretary the entry of a final order finding that the petitioner has waived the right to an administrative hearing and dismissing the petition.

(8) Burden of proof.

(a) Petition to review application for a new permit.

1. If the permit applicant is seeking review, he or she shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion that:

a. The permit application complies with the requirements of KRS Chapter 350 and administrative regulations; or

b. The permit terms or conditions are improper.

2. If a person other than the permit applicant is seeking review, the person shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion that:

a. The permit application fails to comply with the requirements of KRS Chapter 350 or the administrative regulations; or

b. The cabinet should have imposed certain terms or conditions on the permit that were not imposed.

(b) Petition to review the approval or disapproval of an application for a permit renewal.

1. A party opposing the renewal of a permit shall have the burden of going forward to establish a prima facie case; and

2. The ultimate burden of persuasion that the permit renewal application should be disapproved or that the cabinet should have imposed certain terms or conditions on the renewal permit that were not imposed.

(c) Petition to review the approval or disapproval of an application for a permit revision or amendment, or an application for the transfer, assignment, or sale of rights granted under permit.

1. If the permit applicant is seeking review, the permit applicant shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion that the permit application complies with the requirements of KRS Chapter 350 and administrative regulations.

2. If a person other than the permit applicant is seeking review, the person shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion that the

application fails to comply with the requirements of KRS Chapter 350 or the administrative regulations.

(d) Petition to review a permit revision or amendment ordered by the cabinet.

1.The cabinet shall have the burden of going forward to establish a prima facie case that the permit should be revised or amended; and

2. The permittee shall have the ultimate burden of persuasion that the revision or amendment is not appropriate.

(e) Petition to review a decision on an application for a coal exploration permit.

1. If the permit applicant is seeking review, he or she shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion that the permit application complies with the requirements of KRS Chapter 350 and administrative regulations.

2. If a person other than the permit applicant is seeking review, the person shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion that the application fails to comply with the requirements of KRS Chapter 350 or the administrative regulations.

Section 9. Review of a Cabinet Determination. (1) Who may file. A person who considers himself or herself aggrieved by a determination of the cabinet made under KRS Chapter 350 for which an administrative hearing is not specifically provided in any other section of this administrative regulation may file a petition for review of the determination pursuant to this section.

(2) Time to file; waiver.

(a) A person filing a petition for review under this section shall file in the office a petition within thirty (30) days after the person has had actual notice of the determination complained of, or could reasonably have had notice.

(b) The hearing officer shall not grant an extension of time for filing a petition for review pursuant to this section.

(c) If the hearing officer, upon motion or his or her own initiative, finds that the person failed to timely file the petition for review in accordance with this section, the hearing officer shall issue a report recommending dismissal of the petition. The secretary shall enter an order stating that the person waived his right to an administrative hearing.

(3) Content of the petition. The petition for review shall contain:

(a) A statement of the facts entitling the person to administrative relief;

(b) An explanation of each specific alleged error in the cabinet's determination;

(c) A copy of the written determination to be reviewed if applicable; and

(d) A request for specific relief.

(4) Answer or responsive pleading.

(a) The respondent shall file with the office an answer or other responsive pleading within thirty (30) days of service of the petition.

(b) The answer shall contain:

1.a. A statement specifically admitting or denying the facts stated in the petition or amended petition; or

b. If the person is without knowledge or information sufficient to form a belief as to the truth of an allegation, then the person shall so state and it shall have the effect of a denial;

2. Any defense to each claim for relief; and

3. Any other matter to be considered on review.

(c) Failure to plead any available administrative affirmative defense in a required answer or responsive pleading may constitute a waiver of that defense, except that lack of jurisdiction over the subject matter and failure to state a claim upon which relief can be granted shall not be waived by failure to assert them in an answer or responsive pleading.

(d) An allegation in the petition to which no answer or responsive pleading is required or permitted shall be taken as denied or avoided.

(e) An allegation in the petition to which an answer or responsive pleading is required may be deemed admitted if not denied in the answer or responsive pleading.

(5) Amended petition.

(a) A petition may be amended once as a matter of right prior to the filing of an answer and thereafter by leave of the hearing officer upon proper motion.

(b) The respondent shall have ten (10) days from the filing of an amended petition or the time remaining for filing an answer to the original petition, whichever is longer, to file an answer or responsive pleading to the amended petition.

(c) If the hearing officer grants a motion to amend a petition, the hearing officer shall set the time for an answer to be filed in the order granting the motion.

(6) Effect of filing. The filing of a petition for review shall not stay the effectiveness of the cabinet's determination pending completion of administrative review.

(7) Default.

(a) If the petitioner fails to timely comply with a prehearing order of a hearing officer, the hearing officer may, at his or her discretion or upon motion, issue an order to show cause why that person should not be deemed to have waived the right to an administrative hearing and why the petition should not be dismissed.

(b) If the order to show cause is not satisfied as required, the hearing officer shall recommend to the secretary the entry of a final order finding that the petitioner has waived the right to an administrative hearing and dismissing the petition.

(c) If the petitioner fails to appear at an administrative hearing, the petitioner shall be deemed to have waived the right to a hearing and the hearing officer shall recommend to the secretary the entry of a final order finding that he or she has waived the right to an administrative hearing and dismissing the petition.

(8) Burden of proof. The petitioner shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion as to the requested relief.

Section 10. Proceeding for the Suspension or Revocation of a Permit Pursuant to KRS Chapter 350 Because of a Pattern of Violations. (1) Initiation of the proceeding.

(a) A proceeding on a show cause order issued by the cabinet pursuant to KRS 350.028(4), 350.465(3)(f), and 405 KAR 12:020, Section 8, shall be initiated by the filing of a copy of the show cause order by the cabinet with the office at the same time the order is issued to the permittee.

(b) A show cause order shall set forth:

1. A list of the unwarranted or willful violations that contribute to a pattern of violations;

2. A copy of each order or notice that contains the violations listed as contributing to a pattern of violations;

3. The basis for determining the existence of a pattern of violations; and

4. A recommendation whether or not the permit should be suspended or revoked, including the length and terms of a suspension.

(2) Answer. The permittee shall have thirty (30) days from service of the show cause order within which to file an answer with the office, which shall state:

(a) The reasons in detail why a pattern of violations, as established in 405 KAR 12:020, Section 8, does not exist or has not existed including all reasons for contesting:

1. The fact of the violations alleged by the cabinet as constituting a pattern of violations;

2. The willfulness of the violations; or

3. Whether or not the violations were caused by the unwarranted failure of the permittee;

(b) Mitigating factors the permittee believes exist in determining the terms of the revocation or the length and terms of the suspension;

(c) Other alleged relevant facts; and

(d) Whether or not an evidentiary hearing on the show cause order is desired.

(3) Burden of proof. In a show cause proceeding, the cabinet shall have the burden of going forward to establish a prima facie case for suspension or revocation of the permit. The ultimate burden of persuasion that the permit should not be suspended or revoked shall rest with the permittee.

(4) Determination by the hearing officer.

(a) Upon a determination by the hearing officer pursuant to 405 KAR 12:020, Section 8, that a pattern of violations exists or has existed, the hearing officer shall recommend the permit either be suspended or revoked and the permittee be directed to complete necessary remedial measures and reclamation operations. In making the recommendation, the hearing officer need not find that all the violations listed in the show cause order occurred, but only that sufficient violations occurred to establish a pattern.

(b) If the permit is suspended, the hearing officer may recommend preconditions to be satisfied prior to the suspension being lifted.

(5) Default. If the permittee fails to timely file an answer or appear at the administrative hearing, the permittee shall be deemed to have waived the right to an administrative hearing and the hearing officer shall recommend to the secretary the entry of a final order containing the following:

(a) That each violation listed in the show cause order occurred;

(b) That the violations were caused by the permittee's unwarranted failure or were willfully caused;

(c) That a pattern of violations exists; and

(d) That the permit shall be suspended or revoked in accordance with the recommendation contained in the show cause order.

Section 11. Temporary Relief. (1) Temporary relief available. Except as established in subsection (2) of this section and pending the completion of the investigation and hearing provided for in this administrative regulation, a hearing officer may, subject to review by the secretary, grant temporary relief from:

(a) Notice of noncompliance and order for remedial measures or a cessation order issued pursuant to KRS Chapter 350 or administrative regulations;

(b) A permit or bond release decision of the cabinet; or

(c) Any action taken by the cabinet pursuant to KRS Chapter 351.

(2) Temporary relief not available. A hearing officer shall not grant temporary relief for:

(a) The issuance of a permit if the cabinet made a determination to deny a permit in whole or in part; or

(b) The release of a bond if the cabinet made a determination to deny a bond release request.

(3) A hearing officer shall grant or deny temporary relief from a cessation order issued pursuant to KRS 350.130(1) or (4), or from a bond release decision within five (5) working days of receipt by the office of a temporary relief request, unless waived by the petitioner.

(4) Contents of the petition. A person shall file a written petition for relief with the office. The petition shall contain:

(a) The permit number, the name of the permittee, the date and number of the notice of noncompliance and order for remedial measures or cessation order from which relief is requested, if applicable, and the name and telephone number of the petitioner;

(b) A detailed statement setting forth reasons why relief should be granted;

(c) Facts supporting a substantial likelihood that the person requesting the relief will prevail on the merits of the final determination of the proceeding;

(d) A statement that the relief sought will not adversely affect the health or safety of the public or cause significant, imminent environmental harm to land, air, or water resources;

(e) If the petition relates to a cessation order issued pursuant to KRS 350.130(1) or (4) or a decision to release a bond, a statement of whether or not the person waives the requirement for the hearing officer to grant or deny the request for temporary relief within five (5) working days of receipt of the petition by the office; and

(f) A statement of the specific relief requested.

(5) Hearing process.

(a) In addition to the service requirements of 400 KAR 1:090, Section 5, the petitioner shall serve other parties with a copy of the petition simultaneously with the filing of the petition in the office. If service is accomplished by mail, the petitioner shall inform the other parties by telephone at the time of mailing that a petition is being filed in the office and the contents of the petition.

(b) The representative of the cabinet and any other party may indicate their objection to the application by communicating the objection to the hearing officer and the petitioner by telephone. Ex parte communication as to the merits of the proceeding shall not be conducted with the hearing officer. The representative of cabinet and any other party may simultaneously reduce their objections to writing. Written objections shall be immediately filed with the office and immediately served upon the petitioner.

(c) Scheduling a hearing.

1. Upon receipt of communication that there is an objection to the petition, the hearing officer shall immediately order a location, time, and date for the administrative hearing by communicating the information to the cabinet, any other party, and the petitioner by telephone.

2. The hearing officer shall reduce the communication to writing in the form of a memorandum to the file.

3. The administrative hearing on the request for temporary relief shall be held in the locality of the permit area, or at any other location acceptable to the cabinet, the petitioner, and any other person named in the action.

4. If the petitioner did not waive the requirement for the hearing officer to grant or deny temporary relief within five (5) working days of the office's receipt of the petition for temporary relief as set forth in subsections (3) and (4)(e) of this section, the hearing officer shall schedule the administrative hearing within (5) five days of the office's receipt of the petition for temporary relief.

(d) If an evidentiary hearing is held the hearing officer may require the parties to submit proposed findings of fact and conclusions of law to be considered at the evidentiary hearing, which may be orally supplemented on the record at the hearing.

(e) If at any time, the petitioner requests a delay or acts in a manner so as to frustrate the expeditious nature of the proceeding or fails to supply the information required by the hearing officer, the action shall constitute a waiver of the five (5) day requirement in subsection (3) of this section.

(6) Standard of review. A hearing officer may grant temporary relief if:

(a) The person requesting relief shows that there is substantial likelihood that the findings on the merits in an administrative hearing conducted by the cabinet will be favorable to the person; and

(b) The relief will not adversely affect the health or safety of the public or cause significant, imminent environmental harm to land, air, or water resources.

(7) Timing of hearing officer's determination.

(a) A hearing officer shall grant or deny relief expeditiously.

(b) If the petitioner did not waive the requirement for a hearing officer to grant or deny the request for temporary relief within five (5) days of the office's receipt of the petition as required in subsections (3) and (4)(e) of this section, the hearing officer shall either:

1. Orally rule on the request for temporary relief at the conclusion of the hearing stating the reasons for the decision and issue a written decision stating the reasons for the finding within three (3) working days; or

2. Within twenty-four (24) hours of completion of the administrative hearing issue a written decision stating the reasons for the finding.

(c) If the petitioner waived the requirement for a hearing officer to grant or deny the request for temporary relief within five (5) days of the office's receipt of the petition in accordance with subsections (3) and (4)(e) of this section, or the petitioner did not request temporary relief from a cessation order or a bond release hearing, then hearing officer shall either:

1. Orally rule on the request for temporary relief at the conclusion of the hearing stating the reasons for the decision and issue a written decision stating the reasons for the finding within twenty (20) working days; or

2. Within fifteen (15) days of completion of the administrative hearing issue a written decision stating the reasons for the finding.

Section 12. Petition for Recovery of Costs and Expenses. (1) Who may file and time to file.

(a) A person may file a petition for an award of costs and expenses, including attorneys' fees reasonably incurred, as a result of the person's participation in a proceeding held pursuant to this administrative regulation for an action brought pursuant to KRS Chapter 350 that results in an order of the secretary.

(b) A person shall file, with the cabinet within forty-five (45) days of the date of entry of the final order, a petition for an award of costs and expenses, including attorneys' fees.

(c) Failure of a person to timely file the petition shall constitute a waiver of the person's right to an award.

(2) Content of the petition. A person shall include in the petition filed under this section the name of the party from whom costs and expenses are sought and the following:

(a) An affidavit setting forth in detail all costs and expenses including attorneys' fees reasonably incurred for, or in connection with, the person's participation in the proceeding;

(b) Receipts or other evidence of the costs and expenses; and

(c) If attorneys' fees are claimed, evidence concerning:

1. The hours expended on the case;

2.The customary commercial rate of payment for the services in the area; and

3. The experience, reputation, and ability of the individual or individuals performing the services.

(3) Answer.

(a) The respondent shall file with the office within thirty (30) days from service of the petition an answer or other responsive pleading.

(b) The answer shall contain:

1.a. A statement specifically admitting or denying the facts stated in the petition or amended petition; or

b. If the person is without knowledge or information sufficient to form a belief as to the truth of an allegation, then the person shall so state and it shall have the effect of a denial;

2. Any defense to each claim for relief; and

3. Any other matter to be considered on review.

(c) Failure to plead any available administrative affirmative defense in a required answer or responsive pleading may constitute a waiver of that defense, except that lack of jurisdiction over the subject matter and failure to state a claim upon which relief can be granted shall not be waived by failure to assert them in a responsive pleading.

(d) An allegation in the petition to which no answer or responsive pleading is required or permitted shall be taken as denied or avoided.

(e) An allegation in the petition to which an answer or responsive pleading is required may be deemed admitted if not denied in the answer or responsive pleading.

(4) Criteria for awarding of costs.

(a) Appropriate costs and expenses including attorneys' fees may be awarded to a person from the permittee, if:

1. The person initiated an administrative proceeding reviewing an enforcement action, and a Secretary's Order was issued finding that, on or after May 18, 1982:

a. A notice of noncompliance and order for remedial measures or a cessation order was properly issued for violations of KRS Chapter 350, KAR Title 405 or a permit condition; or

b. An imminent hazard existed; or

2. The person participated in an administrative proceeding reviewing an enforcement action, and a Secretary's Order was issued finding that, on or after May 18, 1982:

a. A notice of noncompliance and order for remedial measures or a cessation order was properly issued for violations of KRS Chapter 350, KAR Title 405, or a permit condition; or

b. An imminent hazard existed; and

c. The hearing officer finds and the secretary concurs that the person made a substantial contribution to the full and fair determination of the issues.

(b) Appropriate costs and expenses including attorneys' fees may be awarded to a person other than a permittee or his representative from the cabinet, if:

1. The person initiated or participated in any proceeding under KRS Chapter 350; and

2. The hearing officer finds and the secretary concurs that the person made a substantial contribution to a full and fair determination of the issues.

(c) Appropriate costs and expenses including attorneys' fees may be awarded to a permittee from the cabinet if the permittee demonstrates that the cabinet initiated an administrative hearing or issued a notice of noncompliance and order for remedial measures or a cessation order:

1. In bad faith; and

2. For the purpose of harassing or embarrassing the permittee.

(d) Appropriate costs and expenses including attorneys' fees may be awarded to a permittee from a person if the permittee demonstrates that the person initiated an administrative hearing under this administrative regulation or participated in an administrative hearing or conference:

1. In bad faith; and

2. For the purpose of harassing or embarrassing the permittee.

(e) Appropriate costs and expenses including attorneys' fees may be awarded to the cabinet from a person if the cabinet demonstrates that:

1. A person applied for review pursuant to this administrative regulation in bad faith and for the purpose of harassing or embarrassing the cabinet or the Commonwealth; or

2. A party participated in an administrative hearing or conference in bad faith and for the purpose of harassing or embarrassing the cabinet or the Commonwealth.

(5) An award under this section may include reimbursement for costs and expenses, including attorneys' fees and expert witness fees, reasonably incurred.

Section 13. Location of an Administrative Hearing. (1) An administrative hearing conducted in accordance with this administrative regulation shall be held at the location designated by the hearing officer unless a written request for a hearing at or close to the mine site is submitted with the initiating document or an answer.

(2) The department's regional office for the mine site shall be deemed reasonably close, unless a closer location is requested by a party to the case and agreed to by the hearing officer.

(3) An administrative hearing pursuant to KRS Chapter 351.315 to 351.375 shall be held in Frankfort at the location designated by the hearing officer.

Section 14. Judicial Review, Effect, and Subsequent Proceeding. (1) Judicial review. Judicial review may be taken from a final order of the secretary to the appropriate circuit court of competent jurisdiction in accordance with KRS 350.032 or 350.0305, as applicable.

(2) Effect of final order pending judicial review. The commencement of a proceeding for judicial review of a final order of the secretary shall not operate as a stay of a final order, unless specifically ordered by the court of competent jurisdiction.

(3) Remand from a court.

(a) If a matter is remanded from a court for a further proceeding, and to the extent the court's directive and time limitations will permit, each party shall be allowed an opportunity to submit to the hearing officer, a report recommending a procedure to be followed in order to comply with the court's order.

(b) The hearing officer shall review each report and enter a special order governing the handling of the matter remanded to it for further proceedings by a court.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: August 13, 2019

FILED WITH LRC: August 13, 2019 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 22, 2019 at 5:00 p.m. (Eastern Time) in Training Room C of the Energy and Environment Cabinet at 300 Sower Blvd, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the

hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through October 31, 2019. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Michael Mullins, Regulation Coordinator, 300 Sower Blvd, Frankfort, Kentucky 40601, phone: (502) 782-6720, fax: (502) 564-4245, email: michael.mullins@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes hearing, conference, notice, penalty assessment, and other procedural and due process provisions for the permanent regulatory program under KRS Chapter 350, and the hearing procedures pursuant to KRS Chapter 351.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish administrative hearing practice provisions that relate to the cabinet's administrative hearing process.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS Chapters 350 and 351 authorize the cabinet to conduct administrative hearings and authorize the cabinet to promulgate administrative regulations to regulate the administrative hearing process. This administrative regulation sets forth hearing, conference, notice, penalty assessment, and other procedural and due process provisions for the surface coal mining permanent regulatory program and the Department for Natural Resources blasting program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets forth hearing, conference, notice, penalty assessment, and other procedural and due process provisions for the surface coal mining permanent regulatory program and is authorized by KRS Chapter 350.

(2) If 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 reinforces the Office of Administrative Hearings' existing practice of generally allowing regulated entities to challenge both fact of violation and penalty in a Penalty Assessment Hearing if the fact of violation has not already been adjudicated. The amendment also provides the Office of Administrative hearings the authority to send out notice of assessment conference by standard mail rather than certified mail.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary correct an issue in the administrative regulation that made the provisions in Section 7 less stringent than the corresponding federal regulation. The amendment is also necessary to provide the Office of Administrative hearings the authority to send out notices of assessment conference by standard mail rather than certified mail.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment is consistent with 30 C.F.R. § 723.19(a) and in turn conforms KRS 350.028(5) which requires Kentucky administrative regulations to be no more stringent than the Federal regulations promulgated under SMCRA.

(d) How the amendment will assist in the effective administration of statutes: The statutes, specifically KRS 350.028(5), require that the KRS 350 administrative regulations closely conform with and shall be no more stringent than SMCRA and the regulations promulgated thereunder. This amendment accomplishes that goal.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. This administrative regulation establishes practice provisions that apply to all individuals, businesses, organizations, or state and local governments that either initiate or become subject to an administrative proceeding in the cabinet's Office of Administrative Hearings specifically involving matters brought under KRS Chapter 350 and 351. The number of individuals will be dependent on those entities that fall subject to proceeding in the cabinet's Office of Administrative Hearings.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the 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 the amendment the entity will receive notices of assessment conferences by standard mail and will continue to comply with the current hearings procedures as the administrative hearing process will not change.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost to the regulated entity related to these amendments.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, entities will continue to benefit from effective, fair, and timely administrative hearing process.

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

(a) Initially: The cabinet will not incur any additional costs for the implementation of this administrative regulation.

(b) On a continuing basis: The cabinet will not incur any additional costs for the implementation of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The cabinet's current operating budget will be used for the implementation of this administrative regulation.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees. This administrative regulation does not establish any fees, nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Yes, tiering was used. Generally, the provisions in this administrative regulation will apply equally to all parties of an administrative adjudication in the Cabinet's Office of Administrative Hearings. However, tiering was used to determine how service will be made to different types of legal entities.

FISCAL NOTE ON STATE AND LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The cabinet will continue to hold administrative hearings as needed concerning matters covered by KRS Chapters 350 and 351. State and local government will only be impacted insofar as they are parties of an administrative adjudication with the cabinet.

2. Identify each state or federal statute or federal regulation that requires or authorizes action taken by the administrative regulation. KRS 350.020, 350.028, 350.0301, 350.255, 350.465, 350.610, 351.315, 351.345, 351.350, 30 C.F.R. Parts 730, 731, 732, 733, 735, 917, 30 U.S.C. 1253, 1255.

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

(a) How much revenue will this administrative regulation

generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The proposed administrative regulation will not generate revenue in the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The proposed administrative regulation will not generate revenue in subsequent years.

(c) How much will it cost to administer this program for the first year? The cabinet's current operating budget will be used to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? The cabinet's operating budget will be used to administer this program for subsequent years.

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

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 43 C.F. R. 733.11

2. State Compliance Standards. KRS 350.028 and 350.060.

3. Minimum or uniform standards contained in the federal mandate. 43 C.F.R. Part 4 Subpart L are federal regulations related to the federal hearings and appeals for surface coal mining.

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 return Kentucky's program to equivalency with the federal program.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. NA

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Kentucky Board of Education
Department of Education
(Amendment)

703 KAR 5:240. Accountability administrative procedures and guidelines.

RELATES TO: KRS 158.6451, 158.6453, 158.6455

STATUTORY AUTHORITY: KRS 158.6453, 158.6455

NECESSITY, FUNCTION, AND CONFORMITY: KRS 158.6453(3)(a) and KRS 158.6455(2)(a) require the Kentucky Board of Education to promulgate administrative regulations to create and implement a balanced statewide assessment and accountability program that measures the achievement of students, schools, and districts; complies with the federal Every Student Succeeds Act of 2015[~~No Child Left Behind Act of 2001~~], 20 U.S.C. secs. 6301 et seq., or its successor; and ensures accountability. This administrative regulation establishes administrative procedures and guidelines for Kentucky's assessment and accountability program.

Section 1. Definitions. (1) "A1" means a school that:

(a) Is under administrative control of a principal and eligible to establish a school-based decision-making council; and

(b) Is not an alternative education program operated by, or as a part of, another school.

(2) "Alternative education program" is defined by KRS 160.380(1)(a).

(3) "Full Academic Year" means 100 or more instructional days of enrollment within the school year.

Section 2. Assigning Students for School and District Accountability. (1)(a) A student enrolled in an A1 school for a full academic year shall be counted in the accountability membership of the A1 school and shall be attributed to the A1 school for accountability purposes. This shall include state agency children or other students who have been enrolled in an A1 school by any authority.

(b) A student qualifying as an early graduate based on criteria defined in 704 KAR 3:305 shall be included in the school's accountability calculation in the year in which the student graduates whether or not the student has a full academic year of enrollment.

(2) A student enrolled in an A1 school and attending an alternative education program during the year as a result of local school district policies or procedures shall be counted in the accountability membership of the A1 school and shall be attributed to the A1 school for accountability purposes if the student's combined enrollment in the A1 school and alternative education program is a full academic year.

(3) A student enrolled in an alternative education program for a full academic year as a result of local school district policies or procedures without any enrollment in an A1 school during the same year shall be attributed to the accountability of the district that the student would have attended if not enrolled in the alternative education program.

(4) A student not enrolled in any A1 school or an alternative education program for a full academic year, but enrolled in a district for a full academic year, shall be assigned to the district for accountability purposes.

(5) The Department of Education shall monitor alternative school placements. If evidence indicates a district is inappropriately placing students into alternative programs to avoid inclusion in accountability, it shall be further investigated by the Department of Education.

Section 3. Assigning Students for State Accountability. (1) Students enrolled in alternative education programs, and not attributed to an A1 school or district, shall be aggregated into a state level accountability report.

(2) If a student, before completing a full academic year in a school or district as provided in Section 2 of this administrative regulation, is enrolled in an alternative education program by a court, a governmental agency other than a Kentucky public school, or Kentucky school district, the student shall be accountable to the state.

Section 4. Inclusion of Schools in Accountability. (1) All A1 schools shall receive annual accountability classifications as established in 703 KAR 5:270[~~703 KAR 5:200, Section 4(6)(b)~~], for the state's assessment and accountability system[~~and shall receive recognition or support as provided by 703 KAR 5:225~~].

(2)(a) For reporting purposes, all alternative education programs shall receive annual accountability reports based on tested students.

(b) Reports for alternative education programs shall be separate from the A1 school accountability reporting.

(c) The alternative education program reports shall outline the unique features and characteristics of the alternative education program and the appropriate uses and limitations of the data. [~~(d) State support and recognition as provided in 703 KAR 5:225 may apply to an alternative education program at the discretion of the Commissioner of Education if resources are available.~~] Section

Section 5. Standard Grade Configuration for Accountability. (1) Accountable grade level configurations shall be elementary, middle, or high school.

(a) Elementary shall include any configuration of grades K-5 or K-6.

(b) Middle school shall include any configuration of grades 5-8 or 6-8.

(c) High school shall include any configuration of grades 9-12.

(2) An A1 school or an alternative education program shall fall into one (1), two (2), or three (3) grade level configurations for accountability reporting.

Section 6. Reporting of Schools with Changed School Service Area. (1)(a) For reporting purposes, a school's past data trend shall be removed from public reporting if a school has a significant change in its stable population.

(b) A school shall be considered to have a stable population, if as a result of a change in service area boundaries or local board of education policies affecting student population served by a school, the population of the school remains at sixty (60) percent or higher of its original students from the previous year in the accountability grades.

(c) To determine if the population is stable, the number of students in the stable population shall be divided by the total number of students in the grades included in the accountability calculations.

1. If the stable population is sixty (60) percent or higher, the school's past trend data shall be reported.

2. If the stable population is less than sixty (60) percent, the school's past trend data shall not be reported.

(2) A school district shall notify the Department of Education of any school that will have[~~has~~] an unstable population compared to the prior year[~~years~~] by June 30[~~October 1~~].

Section 7. Data Review and School or District Appeal of Accountability Classifications. (1) A written request for a data review shall be submitted to the Department of Education within ten (10) days after the Department of Education officially releases the final accountability classifications as established in 703 KAR 5:270[~~703 KAR 5:200, Section 4(6)(b)~~], to the public.

(2) A written appeal of a final accountability classification shall be submitted to the Commissioner of Education within forty-five (45) days after the Department of Education officially releases the accountability classifications. The appeal of a final classification shall:

(a) Identify clearly the basis for the wrongful effect on the calculations used to place a school into a classification; and

(b) Detail the requested adjustment to be made to the calculations used to place a school into a classification.

(3)(a) The request for an appeal for a school accountability classification shall be signed by the principal upon approval of the school council. If there is no school council, the request shall also be signed by the superintendent, upon approval of the local board of education.

(b) The request for an appeal for a district accountability classification shall be signed by the superintendent upon approval of the local board of education.

(4)(a) Department of Education staff shall review the request for an appeal against the standards set forth in KRS 158.6455 (6)[~~(8)~~].

(b) A committee shall be appointed by the Commissioner of Education to review the pending appeals and make recommendations to the Commissioner of Education as to whether to dispute an appeal. The committee may include a teacher, a parent, a principal, a district assessment coordinator, a superintendent, and a counselor.

(c) If the appeal is disputed by the department, it shall submit the request to the hearing officer for the Kentucky Board of Education.

(5) The hearing officer shall conduct a hearing in accordance with KRS Chapter 13B. The hearing officer shall submit a written recommended order to the Kentucky Board of Education for the board's consideration in rendering its final order, in accordance with KRS Chapter 13B.

Section 8. Student Participation in State Assessments. (1)(a) All students enrolled shall participate at the appropriate grade level for the state-required assessments in grades 3-12[~~8, the college readiness tests, and the writing on demand tests~~].

(b) For assessment and accountability purposes, the state shall not use the primary level designator and all students in grades 3-12 shall be assigned a single grade level. The assigned grade level shall determine the state tests to administer.

(c) Exceptions for testing shall be made for medical-exempted students or extraordinary circumstances[~~and foreign exchange students~~].

(d) Students categorized as English Learners (EL) shall follow testing guidelines set forth by the federal Every Student Succeeds Act of 2015[~~No Child Left Behind Act of 2001~~], 20 U.S.C. secs. 6301 et seq., or its successor. [~~(2) High school students shall participate in the state-required end of course testing program after completing the appropriate course linked to the end of course test.~~]

(2)[~~(3)~~] For the state assessments in grades 3-12[~~8, the college readiness tests, and the writing on demand tests~~], a school shall test all students during the test window that are enrolled in each accountability grade on the first day of the school's testing window and shall complete a roster in the electronic application provided by the Department of Education. [~~(4) For the end-of-course examination, the school shall test all students enrolled at the completion of the course associated with the state-required end-of-course examination and shall complete a roster in the electronic application provided by the Department of Education.~~]

(3)[~~(5)~~] A student retained in a grade in which state-required assessments are administered shall participate in the assessments for that grade again and shall continue to be included in all accountability calculations.[~~A high school student who re-takes a course attached to an end-of course examination shall take the end-of-course examination at the end of the appropriate coursework.~~]

(4)[~~(6)~~] A student who is suspended or expelled but continues to receive instructional services required under KRS 158.150 shall participate in the state-required assessments.

Section 9. Students Not Participating in State-Required Assessments. (1) If a student does not participate in state-required assessments, the school at which the student was enrolled on the first day of the testing window shall include the student in the roster in the electronic application provided by the Department of Education.

(2) A student who does not take the state assessments and does not qualify for approved exempted status shall be assigned the lowest reportable score on the appropriate test for accountability calculations.

(3) A student reaching the age of twenty-one (21) years of age who no longer generates state funding under Support Education Excellence in Kentucky shall not be required to participate in state-required assessments.

(4) A student who is expelled and legally not provided instructional services under the standards established in KRS 158.150 shall not be considered to be enrolled for a full academic year, and shall not be included in accountability calculations.

(5) If a student has been expelled or suspended at some point during a year and is enrolled but does not complete the state-required assessment, the student shall be included in the accountability calculation.

(6)(a) If participation in the state-required assessment would jeopardize a student's physical, mental, or emotional well-being, a school or district shall submit a request for medical exemption, which shall be subject to the approval of the Department of Education and which describes the medical condition that warrants exempting a student from the assessments.

(b) An identified disability or handicapping condition alone shall not be considered sufficient reason for granting a medical exemption to state-required assessment and accountability requirements.

(c) A student with an approved medical exemption or extraordinary circumstance shall be excluded from state-required assessments and state and federal accountability calculations. [~~(7) A foreign exchange student may be assessed with state-required assessments, but the foreign exchange student scores shall not be included in the accountability calculations.~~]

(7)[~~(8)~~] If the student moves out of state or to a private school before state-required assessments can be completed in the school or district's announced testing window, the student shall be excluded from accountability calculations.

Section 10. Required Participation in the National Assessment of Educational Progress (NAEP) and State-Required Field Testing.

(1) If a school is selected by the U.S. Department of Education or its designated contractors to participate in NAEP testing, the school shall participate fully.

(2) If a school is selected by the Department of Education to participate in field testing for state assessment purposes, the school shall participate fully.

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

WAYNE D. LEWIS, Commissioner
HAL HEINER, Chairperson

APPROVED BY AGENCY: August 12, 2019

FILED WITH LRC: August 14, 2019 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on October 21, 2019, at 10:00 a.m.. in the State Board Room, 5th Floor, Kentucky Department of Education, 300 Sower Boulevard, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 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 administrative procedures and guidelines for Kentucky's assessment and accountability program.

(b) The necessity of this administrative regulation: KRS 158.6453(3)(a) and 158.6455(2)(a) require the Kentucky Board of Education to promulgate administrative regulations to create and implement a balanced statewide assessment and accountability program that measures the achievement of students, schools, and districts; complies with the federal Every Student Succeeds Act of 2015, 20 U.S.C. secs. 6301 et seq, or its successor; and ensures accountability.

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation provides administrative procedures and guidelines for the state assessment and accountability system for Kentucky public schools.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides specific details and guidance to ensure consistent implementation of the state assessment and accountability system.

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

(a) How the amendment will change this existing administrative regulation: With the new accountability regulation, 703 KAR 5:270, in effect, it is important to amend this regulation so they both align. It also is important to align the regulation to both state and federal requirements. A few issues of miss-alignment within the regulation are: the regulation references 703 KAR 5:200, Next generation learners, which is the old accountability regulation that has been recently repealed; the regulation references 703 KAR 5:225, Continuous improvement planning for schools and districts, which has been amended and no longer applies to this regulation; Kentucky no longer uses End-of-Course (EOC) assessments in high school for accountability, Kentucky moved to an End-of-Span assessment that is administered at grade 10 (reading and mathematics) and grade 11 (science, social studies and writing); and, the regulation includes medical exemptions, but does not include extraordinary circumstances for students to be exempted from testing.

Additionally, the regulation currently states that foreign exchange students may be assessed with state required assessments, but the foreign exchange students shall not be included in the accountability calculations. During the review of Kentucky's initial consolidated State plan in 2018, the United States Department of Education informed Kentucky that its policy for foreign exchange students must be modified. All foreign exchange students who have been enrolled for a full academic year (i.e. 100 days of enrollment) shall be tested and included in accountability.

(b) The necessity of the amendment to this administrative regulation: The amendment provides specific improvements to procedures and guidelines for the state assessment and accountability program that measures the achievement of students, schools and districts, complies with the federal Every Student Succeeds Act of 2015, 20 U.S.C. secs. 6301 et seq., or its successor, and ensures accountability as required by KRS 158.6453 and KRS 158.6455.

(c) How the amendment conforms to the content of the authorizing statute: This amendment provides specific details and guidance regarding implementation of the state assessment and accountability system in Kentucky public schools.

(d) How the amendment will assist in the effective administration of the statutes: This amendment provides specific procedures and guidance to ensure consistent implementation of accountability in Kentucky schools and districts.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All public school districts in Kentucky and supporting staff in the Kentucky Department of Education.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: The amendment will impact schools and districts and the Kentucky Department of Education by providing the administrative procedures and guidance necessary to ensure consistent application of accountability by schools and districts as required by KRS 158.6453.

(a) List 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 Kentucky Department of Education, schools and districts shall apply consistently the specific procedures and guidance in the state assessment and accountability system. Minimal action required by schools and districts as a result of 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 will be no additional cost to the schools, districts or the Kentucky Department of Education.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The schools and districts will consistently apply procedures and guidance in the assessment and accountability system.

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

(a) Initially: Additional costs are not anticipated.

(b) On a continuing basis: Additional costs are not anticipated.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Additional costs are not anticipated. State and federal funds to the extent any additional costs are incurred.

(7) Provide an assessment of whether an 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 will be necessary.

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all 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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 158.6453; KRS 158.6455

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: Regulation does not generate revenue or establish fees.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Kentucky Board of Education
Department of Education
(Amendment)

703 KAR 5:280. School improvement procedures.

RELATES TO: KRS 158.6453, 158.6455, 158.782, 160.346, 20 U.S.C. 6301

STATUTORY AUTHORITY: KRS 156.029(7), 156.070(5), 158.6453, 158.6455, 160.346, 20 U.S.C. 6301

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.029(7) requires the Kentucky Board of Education (KBE) to adopt policies and administrative regulations that shall govern the Kentucky Department of Education (department) in planning and operating programs within its jurisdiction. KRS 156.070(5) requires the KBE, upon the recommendation of the Commissioner of Education, to establish policy or act on all programs, services, and other matters that are within the administrative responsibility of the department. KRS 158.6453(3)(a) requires the KBE to create an assessment system that measures achievement of the state learning goals, ensures compliance with Title I of the federal Elementary and Secondary Education Act of 1965 (ESEA), 20 U.S.C. sec. 6301, et seq., as amended by the Every Student Succeeds Act (2015) or its successor, and ensures school accountability. KRS 158.6455 requires the KBE to create an accountability system to classify schools and LEAs, and to establish appropriate consequences for schools failing to meet accountability measures. KRS 158.782 requires the KBE to promulgate administrative regulations establishing the process for monitoring and periodic review of schools' turnaround efforts for schools identified for comprehensive support and improvement pursuant to KRS 160.346. KRS 160.346 establishes the process for the required audit and turnaround efforts for schools identified for comprehensive support and improvement. Additionally, KRS 160.346 requires the KBE to create state-wide exit criteria for identified schools, additional action to support schools continuously failing to meet improvement goals, and additional support for LEAs with a significant number of schools identified for comprehensive and targeted support and improvement. Section 1111(c) of Title I of the Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act, 20 U.S.C. 6311(c) and (d), requires the KBE to identify the state's lowest achieving schools as schools identified for comprehensive support and improvement and for those schools to follow the requirements of 20 U.S.C. 6311(c) and (d) regarding school improvement. This administrative regulation establishes the process and procedures for school improvement efforts.

Section 1. Definitions. (1) "Additional Targeted Support and Improvement" means the process for schools identified pursuant to KRS 160.346(2)(b)[~~"Adequate performance progress" means meeting the exit criteria pursuant to KRS 160.346~~].

(2) "Advisory leadership team" means the team established pursuant to KRS 160.346(7)(g) and Section 8 of this administration regulation.

(3) "Annual improvement" means a school reaching annual goals, established by the department, in the areas identified for comprehensive support and improvement.

(4) "Audit" means the process established in KRS 160.346(5) and (6).

(5) "Audit team" means the team selected by the LEA, pursuant to KRS 160.346(5), to complete a school or district audit.

(6) "Charter school" means a "public charter school" as defined in KRS 160.1590(12).

(7) "Charter school board of directors" or "governing board" means charter school board of directors as defined in KRS 160.1590(6).

(8) "Comprehensive Support and Improvement" means the process for schools identified pursuant to KRS 160.346(3).

(9) "District" or "school district" means the local school district governed by a local board of education.

(10) "District audit" means an audit that:

(a) Reviews the functioning of the district and the district's ability to manage an intervention in a school identified for comprehensive support and improvement; and

(b) Meets the requirements of Section 5 of this administrative regulation[~~KRS 160.346(6)~~].

(11) "Evidence based interventions" is defined in the Elementary and Secondary Education Act, as reauthorized by the Every Student Succeeds Act (2015), 20 U.S.C.A. Section 7801.

(12) "Local education agency" or "LEA" means a local school district as established in KRS 160.010 and KRS 160.020 or a charter school board of directors as established in KRS 160.1590.

(13) "Minority" is defined in KRS 160.345(1)(a).

(14) "School audit" means an audit that:

(a) Reviews the functioning of a school;

(b) Assesses principal capacity for leadership of school turnaround; and

(c) Meets the requirements of KRS 160.346(6).

(15) "School improvement assistance" means a program designed by the department to support improved teaching and learning.

(16) "School improvement plan" means the plan created by schools identified for targeted support and improvement or additional targeted support and improvement pursuant to KRS 160.346(4) and embedded in the comprehensive school improvement plan required pursuant to 703 KAR 5:225.

(17) "Targeted Support and Improvement" means the process for schools identified pursuant to KRS 160.346(2)(a).

(18) "Turnaround plan" means the plan created pursuant to KRS 160.346(7)(h)[~~(1)(e)~~] and embedded in the comprehensive school improvement plan required pursuant to 703 KAR 5:225.

(19) "Turnaround team" means the team selected pursuant to KRS 160.346(7)(a).

Section 2. Notification of Status for Comprehensive Support and Improvement. (1) Following notification of a school's identification for comprehensive support and improvement, an LEA shall, within thirty (30) days,[~~:~~

~~(a)~~] declare its intent to either utilize the department for the audit team or another option pursuant to KRS 160.346(5)[~~; and~~

~~(b) Declare its intent to either utilize the department for the turnaround team or another option pursuant to KRS 160.346(7)~~].

(2) If the LEA declares its intent to use any option other than the department for the audit team, the LEA shall provide, to the Kentucky Department of Education, the following information:

(a) The name and address of each person included on the audit team;

(b) The role and responsibilities of each person included on the audit team;

(c) The occupation and any vendor affiliations of each person included on the audit team; and

(d) Each person or entity's documented expertise in diagnosing the causes of an organization's low performance and providing advice and strategies resulting in effective turnaround leadership.

(3) If the LEA declares its intent to use any other option other than the department for the audit team, the LEA shall ensure that all audit team members report potential conflicts of interest. The LEA shall report these conflicts of interest to the department and provide information regarding the LEA's work to remedy the conflicts of interest.

(4) Audit team members shall not be employed by or otherwise affiliated with the LEA or school under review.

(5)[~~If the LEA declares its intent to use any option other than the department for the turnaround team, the LEA shall provide the following information:~~

~~(a) The name and address of each person or entity fulfilling the status of turnaround team;~~

~~(b) The role and responsibilities of each person or entity fulfilling the status of turnaround team; and~~

~~(c) The evidence-based interventions that shall be utilized by the person or entity fulfilling the status of turnaround team.~~

~~(6) If the LEA utilize a private entity as the turnaround team for a school, the LEA shall submit to the department evidence of the private entity's documented success at turnaround diagnosis, training, and improved performance of organizations.~~

~~(7)~~] Upon receipt of the notification and appropriate information from the LEA, the department, within fifteen (15) days, shall review the proposals for non-department audit teams[~~and turnaround teams~~] and either accept or deny the proposal. Denied proposals shall be returned to the LEA and the department shall advise the LEA to remedy the proposal.

(6)[~~(8)~~] The LEA shall provide the information required in this Section utilizing the "[~~LEA~~]Notification of Non-Department Audit[~~or Turnaround~~] Team Form incorporated by reference in this administrative regulation.

(7)[~~(9)~~] Non-department audit teams shall complete a Kentucky-specific induction training prior to conducting an audit.

Section 3. Audit Team Membership. For audit teams directed by the department: (1) Members shall be selected from qualified applicants by the department, and approved by the Commissioner of Education, or his designee;

(2) Members shall complete department-provided or department-approved training in any areas needed to effectively perform their duties;

(3) Members shall hold appropriate certification or qualifications for the position being represented;

(4) The team shall not include any members currently employed by or otherwise affiliated with the LEA or school under review;

(5) The team shall include the following representation:

(a) The chairperson, who shall be designated by the department or its designee, and shall be:

1. A certified administrator approved by the department to provide school improvement assistance;

2. A certified administrator member of the review team; or

3. A similarly qualified professional approved by the department;

(b) An individual approved by the department to provide school improvement assistance;

(c) A teacher who is actively teaching or has taught within the last three (3) years;

(d) A principal who is currently serving or has served as a principal within the last three (3) years;

(e) An LEA administrator who is currently serving or has served in an LEA administrative position within the last three (3) years;

(f) A parent or legal guardian who has or has had a school-aged child; and

(g) A university representative who is currently serving or has served in that capacity within the last three (3) years;

(6) The chair may serve in addition to the six (6) members outlined in subsection (5) of this section, or may be selected from those six (6) members who also meet the qualifications of this section.

Section 4. School Audit. (1) A school audit shall be scheduled within forty-five (45) days of a school's identification for comprehensive support and improvement.

(2) The KBE recommends a school audit, in addition to the requirements established in KRS 160.346(6), consist of and incorporate into the audit process and report the following criteria:

(a) Analysis of state and local education data;

(b) An analysis and recommendation regarding the principal's capacity to lead turnaround in a school identified for comprehensive support and improvement and whether the principal should be replaced;

(c) Review of comprehensive school improvement plans and other planning documents;

(d) Interviews with students, parents, all school council members, if applicable, school and LEA personnel, and community members;

(e) Direct observation;

(f) Administration of teacher and principal working conditions surveys and student satisfaction surveys;

(g) Review of school council minutes and agendas, if applicable; and

(h) Other information deemed necessary by the Commissioner of Education, or his designee.

(3) Where the audit team is directed by the department, the recommendation of the principal's ability to lead the intervention in the school, as required by KRS 160.346(6)(a)2, shall be based upon an assessment of whether:

(a) The principal demonstrates maintenance and communication of a visionary purpose and direction committed to high expectations for learning as well as shared values and beliefs about teaching and learning;

(b) The principal leads and operates the school under a governance and leadership style that promotes and supports student performance and system effectiveness;

(c) The principal establishes a data-driven system for curriculum, instructional design, and delivery, ensuring both teacher effectiveness and student achievement;

(d) The principal ensures that systems are in place for accurate collection and use of data;

(e) The principal ensures that systems are in place to allocate human and fiscal resources to support improvement and ensure success for all students; and

(f) The principal ensures that the school implements a comprehensive assessment system that generates a range of data about student learning and system effectiveness and uses the results to guide continuous improvement.

(4) An audit team not directed by the department may utilize the criteria established in subsection (3) of this section for the recommendation of principal capacity, as required by KRS 160.346(6)(a)2. An audit team not directed by the department shall include a recommendation as to the principal's capacity to serve as

a leader in school intervention and turnaround at a school identified for comprehensive support and improvement. If that audit team chooses not to use the criteria established in subsection (3) of this Section, it shall provide notification to the department as well as the framework to be used in the analysis of principal capacity and submit the criteria that shall be utilized to the department for approval.

(5) Upon identification as a school in need of comprehensive support and improvement, the authority of the school council shall be suspended.

(6) Pursuant to KRS 160.346, the authority of the school council may be restored if the school is not classified under comprehensive support and improvement status for two (2) consecutive years.

(7) Charter schools shall be subject to a school audit that shall include an addendum providing a determination regarding the governing board's capacity to provide support for turnaround. Each addendum shall include:

(a) Analysis of state and local education data;

(b) A review of the governing board's level of functioning and recommendation to the Commissioner of Education as to whether the governing board has the capacity to manage the intervention in the charter school;

(c) Interviews with governing board members, students, parents, school personnel, authorizer, and community members.

(d) Direct observations;

(e) Administration of teacher and principal working conditions surveys and student satisfaction surveys;

(f) Review of charter school governing board minutes and agendas; and

(g) Other information deemed necessary by the Commissioner of Education, or his designee, to assess the functionality of the governing board to support school improvement.

(8) If the audit team chooses not to use the criteria established in subsection (7) of this Section, it shall provide notification to the department as well as the framework to be used in the analysis of the governing board's capacity and submit the criteria that shall be utilized to the department for approval.

Section 5. District Audit. (1) A district shall be subject to a district audit upon identification of a school within the district for comprehensive support and improvement.

(2) Within forty-five (45) days of identification by the department of a district containing a school identified for comprehensive support and improvement, an audit shall be scheduled to review the functioning of the district's administration and its specific leadership capacity related to each school identified for comprehensive support and improvement.

(3) Each district audit shall include:

(a) Analysis of state and local education data;

(b) A review of the district's level of functioning and recommendation to the Commissioner of Education as to whether the district has the capacity to manage the intervention in each identified school;

(c) Review of comprehensive district improvement plan and other planning documents;

(d) Interviews with local board members, students, parents, school and district personnel, and community members;

(e) Direct observation;

(f) Administration of teacher and principal working conditions surveys and student satisfaction surveys;

(g) Review of school board minutes and agendas; and

(h) Other information deemed necessary by the Commissioner of Education, or his designee, to assess the functionality of the district to support school improvement.

(4) If the audit team is directed by the department, the determination of the district's level of functioning and ability to manage the intervention in the school identified for comprehensive support and improvement shall be based upon an assessment of capacity in the following areas:

(a) The district demonstrates maintenance and communication of a visionary purpose and direction committed to high expectations for learning as well as shared values and beliefs about teaching and learning;

(b) The district leads and operates under a governance and leadership style that promotes and supports student performance and system effectiveness;

(c) The district establishes a data-driven system for curriculum, instructional design, and delivery, ensuring both teacher effectiveness and student achievement;

(d) The district ensures that systems are in place for accurate collection and use of data;

(e) The district ensures that systems are in place to allocate human and fiscal resources to support improvement and ensure success for all students; and

(f) The district ensures that a comprehensive assessment system, which generates a range of data about student learning and system effectiveness and uses the results to guide continuous improvement, is implemented.

(5)[~~Pursuant to KRS 160.346,~~] An audit team not directed by the department may utilize the criteria established in subsection (4)[~~(3)~~] of this Section for recommendation to the Commissioner of Education of the district's level of functioning and ability to manage the intervention in the school identified for comprehensive support and improvement. An audit team not directed by the department shall include a recommendation as to district functioning and capacity to manage the interventions at a school identified for comprehensive support and improvement. If that audit team chooses not to use the criteria established in subsection (4)[~~(3)~~] of this Section, it shall provide notification to the department as well as the framework to be used in the analysis of district functioning and capacity to manage the intervention in each identified school to the department for approval.

(6) There shall be only one (1) district audit per district, per year, regardless of the number of schools identified for comprehensive support and improvement located in the district.

Section 6. Notification to Schools and LEAs of Audit Findings. (1) Following any school audit, the audit team shall submit all findings and the principal capacity recommendation to the Commissioner of Education.

(2) Following any charter school or district audit, the district or governing board audit findings and capacity recommendations shall be submitted to the Commissioner of Education who shall then make a determination regarding the district or governing board's level of functioning and whether the district or governing board has the capacity to manage the intervention in each identified school.

(3) After completion of the initial school or district audits and within thirty (30) days of receiving the audit findings, the Commissioner of Education shall notify in writing the school, district or charter governing board, and the charter authorizer of the audit findings and recommendation regarding principal or school leader's leadership capacity and authority and a determination regarding district or governing board's leadership capacity and authority. The superintendent shall then make any necessary determination regarding the principal or other certified staff pursuant to KRS 160.346(7)(c)-(e).

Section 7. Turnaround Team and Development of Turnaround Plan for School Identified for Comprehensive Support and Improvement. (1)[~~(a)~~] Within fifteen (15)[~~thirty (30)~~] days after the Commissioner notifies the school, district or charter governing board, and the charter authorizer of the audit findings, as described in Section 6(3) of this administrative regulation[~~are released~~], an LEA shall declare its intent to either utilize the department for the turnaround team or another option pursuant to KRS 160.346(7) and, if the LEA declares its intent to use any option other than the department for the turnaround team, the LEA shall use the "Notification of Non-Department Turnaround Team Form" to provide the following information to the department:

(a) The name and address of each person or entity fulfilling the status of turnaround team;

(b) The role and responsibilities of each person or entity fulfilling the status of turnaround team; and

(c) The evidence-based interventions that shall be utilized by

the person or entity fulfilling the status of turnaround team.[~~the turnaround team shall develop a turnaround plan pursuant to KRS 160.346(7)(h). The turnaround team shall be selected pursuant to the requirements of KRS 160.346(7)(a).~~]

(2)[~~(b)~~] If the LEA utilizes a private entity to serve as the turnaround team, pursuant to KRS 160.356(7)(a)(1), the LEA shall submit to the department evidence of the private entity's documented success at turnaround diagnosis, training, and improved performance of organizations[~~ensure compliance with Section 2 of this administrative regulation~~] and provide ongoing oversight of the private entity's work, functioning, and accomplishments as the turnaround team.

(3)[~~(c)~~] If the LEA utilizes the local staff and community partners to serve as the turnaround team, pursuant to KRS 160.346(7)(a)(2), the LEA shall ensure the following:

1. Schools having eight (8) percent or more minority students enrolled, as determined by the enrollment on the preceding October 1, shall have at least one (1) minority member serving on the turnaround team; and

2. At least one (1) parent of a student in the identified school is selected as a member of the turnaround team.

(4) Upon receipt of the notification and appropriate information from the LEA, the department shall review within fifteen (15) days the proposals for non-department turnaround teams and either accept or deny the proposal. Denied proposals shall be returned to the LEA and the department shall advise the LEA to remedy the proposal.

(5)[~~(d)~~] If the LEA utilizes the department to serve as the turnaround team, the turnaround team shall be comprised of team members selected and approved by the Commissioner of Education, or his designee, to provide school improvement assistance.

(6) Within thirty (30) days after the Commissioner notifies the school, district or charter governing board, and the charter authorizer of the audit findings, as described in Section 6(3) of this administrative regulation, the turnaround team shall develop a turnaround plan pursuant to KRS 160.346(7)(h).

(7)[~~(2)~~] In addition to the requirements established in KRS 160.346(7)(h), the turnaround plan shall be embedded in the comprehensive school improvement plan required pursuant to 703 KAR 5:225 and shall include:

(a) Evidence-based interventions to be utilized to increase student performance and address the critical needs identified in the school audit;

(b) A comprehensive list of persons and entities involved in the turnaround efforts and the specific roles each shall play in the school's turnaround; and

(c) A review of resource inequities that shall include an analysis of school level budgeting to ensure resources are adequately channeled towards school improvement.

(8)[~~(3)~~] The[~~turnaround team shall, no later than thirty (30) days after the turnaround team is on site, present the~~] turnaround plan shall be approved by the superintendent and local board of education, as required by KRS 160.346(7)(h), who shall[~~to the LEA, which shall give final approval,~~] provide the necessary support and resources for the turnaround plan[~~,~~] and submit the turnaround plan to the Commissioner of Education for final approval.

(9)[~~(4)~~](a) Following receipt of the turnaround plan specified in subsection (8)[~~(3)~~] of this section and before the beginning of the school year following the audit, the Commissioner of Education, in consultation with the advisory leadership team, superintendent, and local board of education, shall determine the sufficiency of the school's turnaround plan to meet the needs of the school's turnaround effort.

(b) If the Commissioner of Education finds that the plan is not sufficient to meet the needs of the school turnaround effort for a school identified for comprehensive support and improvement, the department shall provide feedback detailing the deficiencies and advise the LEA and school to make changes to the plan.

Section 8. Advisory Leadership Team. (1) The principal or charter school leader of a school identified for comprehensive support and improvement shall provide, in a format acceptable to the department, the names and addresses of advisory leadership team members appointed pursuant to KRS 160.346(7)(g) to the department.

(2) The department shall maintain a database of all advisory leadership team members appointed pursuant to KRS 160.346(7)(g).

(3) In establishing the advisory leadership team, the principal or charter school leader shall ensure that schools having eight (8) percent or more minority students enrolled, as determined by the enrollment on the preceding October 1, shall have at least one (1) minority member serving on the advisory leadership team.

(4)[~~(2)~~] Meetings of the advisory leadership team shall be open to the[~~be~~] public.

(5)[~~(3)~~] Duties of the advisory leadership team shall include:

(a) Providing support for systems that seek to build capacity in school leadership;

(b) Promoting positive school climate and culture; and

(c) Supporting the continual use of data-driven decision-making to support school improvement.

Section 9. Monitoring and Periodic Review of Plan Implementation. (1) Pursuant to the Elementary and Secondary Education Act, as amended by the Every Student Succeeds Act, 20 U.S.C.A. Section 6301, all schools identified for comprehensive support and improvement shall be subject to monitoring and periodic review by the department.

(2) Monitoring shall include:

(a) Onsite support by department staff if the department is chosen by the LEA to serve as the turnaround team pursuant to KRS 160.346 or if more rigorous intervention by the department is warranted as established in Section 10 of this administrative regulation;

(b) Annual review of school and LEA state accountability data;

(c) Review of indicators of school quality; and

(d) Other measures deemed necessary by the department to ensure compliance with the Every Student Succeeds Act, or its successor.

(3) Periodic review of the turnaround plan shall include:

(a) Periodic site visits;

(b) Direct observation; and

(c) Interviews with students, parents, all school council members, if applicable, school and LEA personnel, and community members.

Section 10. More Rigorous Intervention. (1) Schools identified for comprehensive support and improvement that do not exit that status after three (3) years shall be subject to intervention by the department including but not limited to:

(a) A school audit conducted by the department;

(b) Onsite assistance by department staff; and

(c) Evaluation and modification of the school turnaround plan.

(2) Schools identified for comprehensive support and improvement that do not exit after three (3) years shall be subject to an audit by the department every two (2) years, or as deemed necessary by the Commissioner of Education.

(3) Schools identified for comprehensive support and improvement that do not make annual improvement for two (2) consecutive years shall be subject to intervention by the department, as established in subsections (1) and (2) of this Section, after the second year;

(4) Districts serving any number of schools identified for comprehensive support and improvement that do not exit after three (3) years, or two (2) years as established in subsection (2) of this Section, shall be subject to a district audit. Additional district audits for districts serving schools identified for comprehensive support and improvement that do not exit that status shall occur every two (2) years, or as deemed necessary by the Commissioner of Education. No district, regardless of the number of schools identified for comprehensive support and improvement that fail to exit that status, shall have more than one (1) district audit every two (2) years.

Section 11. Targeted Support and Improvement and Additional Targeted Support and Improvement. (1) Upon identification as a school for targeted support and improvement or additional targeted support and improvement, the identified school shall comply with the requirements of KRS 160.346(4). The school improvement plan shall be embedded in the comprehensive school improvement plan required pursuant to 703 KAR 5:225.

(2) LEAs with a school[~~schools~~] identified for targeted support and improvement or additional targeted support and improvement shall monitor and provide support to the school to ensure the successful implementation of the school improvement plan.

Section 12. Significant Number of Schools. (1) In addition to providing notification to LEAs as to the identification of schools for comprehensive support and improvement, additional targeted support and improvement, or targeted support and improvement, the department shall notify LEAs as to whether they shall be considered an LEA supporting a significant number of schools identified for either comprehensive support and improvement or targeted support and improvement, including additional targeted support and improvement.

(2) To determine whether an LEA meets this designation, the department shall calculate, based on the total number of A1 schools, as defined in 703 KAR 5:240, in the LEA, the LEA's percentage of schools identified for comprehensive support and improvement and the LEA's percentage of schools identified for targeted support and improvement, including additional targeted support and improvement. Any LEA containing two (2) or more schools identified for comprehensive support and improvement or targeted support and improvement, including additional targeted support and improvement, and whose percentage of identified schools exceeds ten (10) percent of all schools within the district[~~for either comprehensive support and improvement or targeted support and improvement schools~~] shall be designated an LEA supporting a significant number of schools identified for either comprehensive support and improvement or targeted support and improvement.

Section 13. Technical Assistance for LEAs Supporting a Significant Number of Schools Identified for Comprehensive Support and Improvement. (1) LEAs supporting a significant number of schools identified for comprehensive support and improvement shall receive the following technical assistance:

(a) A district audit, or school audit if a charter school, conducted by the department; and

(b) Onsite support from department staff.

(2) The district audit, or school audit if a charter school, completed by the department pursuant to subsection (1)(a) of this Section shall take the place of any district or school audit conducted under Sections 4 and 5 of this administrative regulation.

(3) Department staff shall:

(a) Coordinate with the LEA to ensure direct support of schools identified for comprehensive support and improvement;

(b) Review, via the district or school audit, if a charter school, resources and allocations to determine if they are being used effectively for school improvement;

(c) Work with the LEA to address any identified resource inequities that negatively impact schools and students; and

(d) Work with the LEA to develop sustainable systems to support school improvement.

Section 14. Technical Assistance for LEAs Supporting a Significant Number of Schools Identified for Targeted Support and Improvement. (1) LEAs supporting a significant number of schools identified for targeted support and improvement, including additional targeted support and improvement, shall receive the following technical assistance:

(a) Periodic site visits; and

(b) Onsite support by department staff.

(2) Department staff shall:

(a) Review LEA resources and allocations to determine if they are being used effectively for school improvement;

(b) Provide technical assistance to the LEA regarding resource allocation to support school improvement; and

(c) Connect LEAs with professional development opportunities to build capacity for school improvement efforts.

Section 15. Exit Criteria. (1) A school identified for comprehensive support and improvement pursuant to KRS 160.346(3)(a) or (c) shall exit that status if:

(a) It no longer meets the criteria for identification; and

(b) It demonstrates[~~continued~~] progress on the overall score, which encompasses all indicators included in Kentucky's accountability system as established in 703 KAR 5:270, for the group or groups that served as the basis for identification[~~the data that were the basis for identification~~].

(2) Schools identified for comprehensive support and improvement pursuant to KRS 160.346(3)(b) shall exit that status if they no longer meet the criteria for identification.

(3) Schools identified for comprehensive support and improvement as a result of more than one (1) criteria shall exit if all relevant exit criteria are met.

(4)[~~(3)~~] Schools identified for targeted support and improvement pursuant to KRS 160.346(2)(a) shall exit that status if they no longer meet the criteria for identification[~~the identified subgroup is no longer below the performance of all students in the bottom five (5) percent of Title I schools or non-Title I schools within that range of Title I schools and demonstrates continued progress on the data that served as the basis for identification~~].

(5)[~~(4)~~] A school[~~Schools~~] identified for additional targeted support and improvement pursuant to KRS 160.346(2)(b) shall exit that status if the identified subgroup:

(a) Is no longer at or below the performance of all students in the bottom five (5)[~~ten (10)~~] percent of Title I schools or non-Title I schools within that range; and

(b) Demonstrates progress on the overall score, which encompasses all indicators included in Kentucky's accountability system as established in 703 KAR 5:270.[~~LEAs may include additional exit criteria at their discretion.~~]

(6) Schools identified for additional targeted support and improvement pursuant to KRS 160.346(2)(b) that do not exit that status within three (3) years shall be identified for comprehensive support and improvement pursuant to KRS 160.346(3)(c).

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

(a) "[~~LEA~~]Notification of Non-Department Audit[~~or Turnaround~~] Team Form", August 2019;[~~February 2018, is incorporated by reference.~~]

(b) "Notification of Non-Department Turnaround Team Form", August 2019.

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

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

WAYNE D. LEWIS, JR., Ph.D., Commissioner
HAL HEINER, Chairperson

APPROVED BY AGENCY: August 11, 2019

FILED WITH LRC: August 14, 2019 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on October 21, 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 October 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.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Deanna Durrett

(1) Provide a brief summary of:

(a) What this administrative regulation does: The Elementary and Secondary Education Act of 1965 as amended by the Every Student Succeeds Act (ESSA) requires the Kentucky Department of Education (KDE) to adopt a system of accountability and support for low-achieving schools and districts. Specifically, Sections 1111(c)(4)(D) and 1111(d)(1) of ESSA require KDE to identify schools for comprehensive support and improvement (CSI), and Section 1111(d)(2) requires KDE identify schools for targeted support and improvement (TSI). Additionally, KRS 160.346 requires the Kentucky Board of Education (KBE) to recommend principal capacity criteria to turnaround audit teams, establish statewide exit criteria for schools identified for CSI and TSI, and provide technical assistance to school districts with a significant number of TSI schools. This regulation establishes a system of support and ongoing accountability for CSI and TSI schools in compliance with ESSA and KRS 160.346.

(b) The necessity of this administrative regulation: This amended regulation is necessary because it establishes a system of support and ongoing accountability for CSI and TSI schools in compliance with ESSA and KRS 160.346. Amendments to 703 KAR 5:280, including incorporating new terminology and expectations for schools identified for Additional Targeted Support and Improvement (ATSI) as well as establishing the exit criteria for schools identified for TSI and ATSI, are necessary to align the regulation with proposed revisions to Kentucky's Consolidated State Plan and with KRS 160.346 as amended by Senate Bill (SB) 175 (2019).

(c) How this administrative regulation conforms to the content of the authorizing statute: This amended regulation conforms to federal and state statutes by establishing a system of support and ongoing accountability for CSI and TSI schools in compliance with ESSA and KRS 160.346. Specifically, Sections 1111(c)(4)(D) and 1111(d)(1) of ESSA require KDE to identify schools for CSI, and Section 1111(d)(2) requires KDE identify schools for TSI. Additionally, KRS 160.346 requires the KBE to recommend principal capacity criteria to turnaround audit teams, establish statewide exit criteria for schools identified for CSI and TSI, and provide technical assistance to school districts with a significant number of TSI schools.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This amended regulation assists in the effective administration of federal and state statutes by establishing a system of support and ongoing accountability for CSI and TSI schools in compliance with ESSA and KRS 160.346. Specifically, Sections 1111(c)(4)(D) and 1111(d)(1) of ESSA require KDE to identify schools for CSI, and Section 1111(d)(2) requires KDE identify schools for TSI. Additionally, KRS 160.346 requires the KBE to recommend principal capacity criteria to turnaround audit teams, establish statewide exit criteria for schools identified for CSI and TSI, and provide technical assistance to school districts with a significant number of TSI schools.

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

(a) How the amendment will change this existing administrative regulation: Substantive amendments to 703 KAR 5:280 include distinguishing between schools identified for TSI and those identified for ATSI as well as establishing the exit criteria for schools identified for TSI and ATSI.

(b) The necessity of the amendment to this administrative regulation: Substantive amendments to 703 KAR 5:280 are necessary to align the regulation with proposed revisions to Kentucky's Consolidated State Plan and with KRS 160.346 as amended by SB 175 (2019).

(c) How the amendment conforms to the content of the authorizing statute: Substantive amendments to 703 KAR 5:280 conform to federal and state statutes by establishing a system of support and ongoing accountability for CSI and TSI schools in compliance with ESSA and KRS 160.346. Specifically, Sections 1111(c)(4)(D) and 1111(d)(1) of ESSA require KDE to identify schools for CSI, and Section 1111(d)(2) requires KDE identify schools for TSI. Additionally, KRS 160.346 requires the KBE to recommend principal capacity criteria to turnaround audit teams, establish statewide exit criteria for schools identified for CSI and TSI, and provide technical assistance to school districts with a significant number of TSI schools.

(d) How the amendment will assist in the effective administration of the statutes: Substantive amendments to 703 KAR 5:280 assist in the effective administration of federal and state statute by establishing a system of support and ongoing accountability for CSI and TSI schools in compliance with ESSA and KRS 160.346. Specifically, Sections 1111(c)(4)(D) and 1111(d)(1) of ESSA require KDE to identify schools for CSI, and Section 1111(d)(2) requires KDE identify schools for TSI. Additionally, KRS 160.346 requires the KBE to recommend principal capacity criteria to turnaround audit teams, establish statewide exit criteria for schools identified for CSI and TSI, and provide technical assistance to school districts with a significant number of TSI schools.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Local education agencies (LEAs), the KBE, and KDE will be impacted by this regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: LEAs with schools identified for CSI to comply with the new turnaround team requirements in Section 7 of the amended regulation, including utilization of the "Notification of Non-Department Turnaround Team Form" that is incorporated by reference in Section 16 of the amended regulation. Also, LEAs with schools identified for TSI, including ATSI, will have to comply with Section 11 of the amended regulation, which relates to school improvement plans, and LEAs with schools identified for CSI and/or TSI, including ATSI, will have to meet the revised criteria established in Section 15 of the amended regulation in order for the identified school(s) to exit that status. The KBE and KDE will implement the amended regulation, which clarifies the technical assistance that will be provided to districts serving a significant number of TSI and/or ATSI schools pursuant to KRS 160.346(11) as well as revises exit criteria for schools identified for CSI, TSI, and ATSI.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no anticipated budget impact related to the amendment of this administrative regulation for local education agencies, the KBE, or KDE.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amended regulation conforms to federal and state statutes, including ESSA and KRS 160.346, and conformance with authorizing statutes ensures clarity and legal compliance for the entities identified in question (3). Further, the system of accountability and support for low-achieving schools and districts provided in this regulation is aimed at creating sustainable turnaround and, ultimately, spurring school and district improvement across Kentucky.

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

(a) Initially: ESSA, which became effective in 2015, requires

KDE to adopt a system of accountability and support for low-achieving schools and districts. Specifically, Sections 1111(c)(4)(D) and 1111(d)(1) of ESSA require KDE to identify schools for CSI, and Section 1111(d)(2) requires KDE identify schools for TSI. Additionally, KRS 160.346 requires the KBE to recommend principal capacity criteria to turnaround audit teams, establish statewide exit criteria for schools identified for CSI and TSI, and provide technical assistance to school districts with a significant number of TSI schools. Because the KBE and KDE have been complying with these federal and state statutes since their effective dates, there is no initial cost for monitoring and support.

(b) On a continuing basis: KDE incurs continuing costs as a result of the obligations in ESSA and KRS 160.346 to provide support, monitoring, and technical assistance to low-achieving schools and districts. Since the state legislature's decision not to fund the Commonwealth School Improvement Fund in the 2018-2020 biennial budget, federal funding has supported this work. Kentucky is expected to receive $600,000 under Title I, Part A of ESSA to support school improvement in identified schools.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There are no additional anticipated costs for the implementation and enforcement of the amendment of this administrative regulation; however, KDE incurs continuing costs as a result of the obligations in ESSA and KRS 160.346 to provide support, monitoring, and technical assistance to low-achieving schools and districts. These costs are covered using federal funding, and Kentucky is expected to receive $600,000 under Title I, Part A of ESSA to support school improvement in identified schools.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied because the amendment to this administrative regulation applies equally to all local education agencies.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Local education agencies, the Kentucky Board of Education (KBE), and the Kentucky Department of Education (KDE).

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 156.029(7), 156.070(5), 158.6453, 158.6455, 160.346, 20 U.S.C. 6301.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 anticipated budget impact related to the amendment of this administrative regulation for any state or local government agency; however, KDE incurs continuing costs as a result of the obligations in ESSA and KRS 160.346 to provide support, monitoring, and technical assistance to low-achieving schools and districts. These costs are covered using federal funding, and Kentucky is expected to receive $600,000 under Title I, Part of ESSA to support school improvement in identified schools.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? N/A

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

(c) How much will it cost to administer this program for the first year? The Elementary and Secondary Education Act of 1965 as amended by the Every Student Succeeds Act (ESSA), which became effective in 2015, requires KDE to adopt a system of accountability and support for low-achieving schools and districts. Specifically, Sections 1111(c)(4)(D) and 1111(d)(1) of ESSA require KDE to identify schools for CSI, and Section 1111(d)(2) requires KDE identify schools for TSI. Additionally, KRS 160.346 requires the KBE to recommend principal capacity criteria to turnaround audit teams, establish statewide exit criteria for schools identified for CSI and TSI, and provide technical assistance to school districts with a significant number of TSI schools. Because the KBE and KDE have been complying with these federal and state statutes since their effective dates, there is no initial cost for monitoring and support.

(d) How much will it cost to administer this program for subsequent years? KDE incurs continuing costs as a result of the obligations in ESSA and KRS 160.346 to provide support, monitoring, and technical assistance to low-achieving schools and districts. Since the state legislature's decision not to fund the Commonwealth School Improvement Fund in the 2018-2020 biennial budget, federal funding has supported this work. Kentucky is expected to receive $600,000 under Title I, Part A of ESSA to support school improvement in identified schools.

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

Revenues (+/-): N/A
Expenditures (+/-): NA
Other Explanation: N/A

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Protection and Permanency
(Amendment)

922 KAR 1:330. Child protective services.

RELATES TO: KRS[~~13B.050, 13B.120, 13B.140, 13B.150,~~] 159.140, 194A.005(1), 194A.050(1), 202A.011, 211.684, 214.036, 431.600(1), (8), 503.110(1), 529.010(5), (13), 532.045, 600.010, 600.020, 605.090(3), 605.130, 605.150(1), 610.010(2)(d), (9), 620.010-620.050, 620.070, 620.072, 620.180(1), 620.350, 620.990, 42 U.S.C. 5106a

STATUTORY AUTHORITY: KRS 194A.050(1), 605.150(1), 620.029(2)(a), 620.180(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Secretary of[~~for~~] the Cabinet for Health and Family Services to promulgate, administer, and enforce administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 605.150(1) authorizes the cabinet to promulgate administrative regulations to implement the provisions of KRS Chapter 605[~~ - Administrative Matters~~]. KRS 620.180(1) authorizes the cabinet to promulgate administrative regulations to implement the provisions of KRS Chapter 620[~~ - Dependency, Neglect, and Abuse~~]. KRS 620.029(2)(a) requires the cabinet, in consultation with agencies serving victims of human trafficking, to promulgate administrative regulations for the treatment of children who are reported to be victims of human trafficking as dependent, neglected, or abused children, including providing for appropriate screening, assessment, treatment, and services.[~~In addition,~~] 42 U.S.C. 5106a(b) establishes eligibility requirements for a state to receive a grant for a child abuse and neglect prevention and treatment program. This administrative regulation establishes cabinet procedures, congruent with eligibility requirements under 42 U.S.C. 5106a(b), for a child protection investigation or assessment of abuse, neglect, or dependency.

Section 1. Definitions. (1) "Assessment" means the collection

and analysis of information to inform decision-making about or service provision to a child or a family, including:

(a) An observable threat or threatening condition to the child's safety;

(b) A factor present that increases the likelihood of child abuse, neglect, or dependency; and

(c) Child or family strengths and protective capacities.

(2) "Cabinet" is defined by KRS 194A.005(1) and 600.020(7).

(3) "Caretaker" means a parent, guardian, fictive kin, person in a position of authority or special trust as defined in KRS 532.045(1), or other person exercising custodial control or supervision of a child.

(4) "Child fatality" is defined by KRS 211.684(1)(a).

(5) "Child protective services" means preventive and corrective services directed toward:

(a) Safeguarding the rights and welfare of an abused, neglected, or dependent child;

(b) Assuring for each child a safe and nurturing home;

(c) Improving the abilities of parents to carry out parental responsibilities;

(d) Strengthening family life; and

(e) Assisting a parent or other person responsible for the care of a child in recognizing and remedying conditions detrimental to the welfare of the child.

(6) "Dependent child" is defined by KRS 600.020(20).

(7) "Human trafficking" is defined by KRS 529.010(5).

(8) "Initial determination" means an evaluation of risk factors to determine immediate safety and risk of harm resulting in a decision whether to proceed with an:

(a) Investigation; or

(b) Assessment.

(9) "Investigation" means a process of collecting information and evaluating risk factors to determine if a child:

(a) Has been abused or neglected;

(b) Is dependent; or

(c) Is a victim of human trafficking.

(10) "Near fatality" is defined by KRS 600.020(40) and 42 U.S.C. 5106a(b)(4)(A).

(11) "No finding" means that the information contained in a report that met criteria to open an investigation has been found to be false or erroneous and no longer meets acceptance criteria.

(12) "Preponderance of evidence" means that evidence is sufficient to conclude that it is more likely than not that an alleged perpetrator committed an act of child abuse or neglect as defined by KRS 600.020(1).

(13)[~~(12)~~] "Prior involvement" means any assessment or investigation, of which the cabinet has record, with a child or family in the area of protection and permanency prior to the child's fatality or near fatality investigation.

(14)[~~(13)~~] "Services needed" means a low risk finding with no perpetrator that indicates a family needs to be linked to community services.

(15)[~~(14)~~] "Sexual abuse" is defined by KRS 600.020(61).

(16)[~~(15)~~] "Sexual exploitation" is defined by KRS 600.020(62).

(17)[~~(16)~~] "Substantiated" means:

(a) An admission of abuse or neglect by the person responsible;

(b) A judicial finding of child abuse or neglect; or

(c) A preponderance of evidence exists that abuse or neglect was committed by the caretaker.

(18)[~~(17)~~] "Unable to locate" means that:

(a) Identifying information about the family is insufficient for locating them; or

(b) The family has moved and their new location is not known.

(19)[~~(18)~~] "Unsubstantiated" means there is insufficient evidence, indicators, or justification present for substantiation of abuse or neglect.

(20)[~~(19)~~] "Victim of human trafficking" is defined by KRS 529.010(13).

Section 2. A Report of Child Abuse, Neglect, or Dependency. (1) In accordance with 42 U.S.C. 5106a(b)(2)(B)(i), the cabinet shall accept reports of alleged child abuse, neglect, or dependency made pursuant to KRS 620.030.

(a) A twenty-four (24) hour on-call response system and the child abuse hotline, for the receipt of emergency reports after normal office hours, shall be made available to those in a community who may have information regarding:

1. Child abuse, neglect, or dependency; or

2. Human trafficking of a child.

(b) Cabinet staff or designee shall attempt to elicit from the person reporting suspected child abuse, neglect, dependency, or human trafficking as much information about the child's circumstances as possible, including:

1. Specific information as to the nature and extent of:

a. Abuse, neglect, or dependency; or

b. Human trafficking;

2. The cause of the abuse, neglect, or dependency;

3. The location of the child and family;

4. Knowledge or suspicion of a previous incident;

5. Identifying information regarding a witness to the alleged incident that resulted in the child's condition;

6. An action taken by the reporting person, if applicable;

7. Present danger or threat of danger to the child or cabinet staff; and

8. Information in accordance with KRS 620.030(2) and (3).

(c) The reporting person's identity shall remain confidential, unless ordered to be divulged by a court of competent jurisdiction.

(d) The cabinet shall investigate or accept as an assessment an anonymous report that provides sufficient information regarding an incident involving a child:

1. Who is alleged to be dependent; or

2. And alleged:

a. Abuse or neglect perpetrated by a caretaker; or

b. Human trafficking of the child.

(e) Immunity from liability shall be in accordance with 42 U.S.C. 5106a(b)(2)(B)(vii) and KRS 620.050(1) and (2).

(2) The cabinet shall not undertake an investigation or assessment for a report of abuse or neglect allegedly perpetrated by a non-caretaker, with the exception of a report of human trafficking, but shall refer the matter in compliance with KRS 620.030(1).

(3) Pursuant to KRS 620.040(1)(b) and (2)(b), if a report does not meet an acceptance criterion for an investigation or assessment, the cabinet shall:

(a) Not accept the report for investigation or assessment;

(b) Refer the caller to a community resource that may meet family needs if available; and

(c) Keep a record of the report in accordance with 42 U.S.C. 5106a(b)(2)(B)(xii).

(4) Acceptance criteria for an investigation or assessment. The cabinet shall:

(a) Investigate or conduct an assessment upon the receipt of a report of physical abuse[~~,~~] if the report alleges:

1. An injury that is, or has been, observed on a child that was allegedly inflicted non-accidentally by a caretaker;

2. Physical abuse if no current observable injury is seen;

3. A child being hit in a critical area of the body, such as the head, neck, genitals, abdomen, or back; [~~or~~]

4. Physical injury to a child, as defined by KRS 600.020(49)[~~600.020(46)~~], that is the result of an altercation between the child and the caretaker. The cabinet shall explore the following:

a. Age of the child;

b. Precipitating factors;

c. Degree of appropriateness of force used by the caretaker; and

d. Need for further services to assist in eliminating violent behavior in the home;

5. A situation in which a child is likely to be physically abused; or

6. Physical injury to a child involved in an incident of domestic violence;

(b) Investigate or conduct an assessment upon receipt of a report that alleges neglect of a child perpetrated by a caretaker that may result in harm to the health and safety of a child in the

following areas:

1. Hygiene neglect if:

a. A child has physical symptoms that require treatment due to poor care; or

b. The child's physical health and safety are negatively affected due to an act or omission by the caretaker;

2. Supervision neglect if the individual reporting has reason to believe that the physical health and safety of the child is [~~may be~~] negatively affected by lack of necessary and appropriate supervision;

3. Food neglect if a child shows symptoms of:

a. Malnutrition;

b. Dehydration; or

c. Not having been provided adequate food for a period of time that interferes with the health needs of the child, based on height or weight norms for the child's age;

4. Clothing neglect if a child suffers from:

a. Illness;

b. Exposure; or

c. Frostbite due to inadequate clothing provided to the child or the clothing provided is insufficient to protect the child from the elements;

5. Environmental neglect, if a serious health and safety hazard is present and the caretaker is not taking appropriate action to eliminate the problem;

6. Educational neglect if the:

a. School system has exhausted its resources to correct the problem and complied with its duties pursuant to KRS 159.140; and

b. Caretaker's neglect prevents the child from attending school or receiving appropriate education;

7. Medical neglect, in accordance with 42 U.S.C. 5106a(b)(2)(C), if a child has not received a medical assessment or is not receiving treatment for an injury, illness, or dis-ability that if left untreated may:

a. Be life-threatening;

b. Result in permanent impairment;

c. Interfere with normal functioning and worsen; or

d. Be a serious threat to the child's health due to the outbreak of a vaccine preventable disease, unless the child is granted an exception to immunization pursuant to KRS 214.036;

8. Neglect due to a caretaker's use of drugs or alcohol that results in[~~At risk of harm due to an act described at KRS 600.020(1), if a child is~~]:

a. A child born exposed to drugs or alcohol, as documented by a health care provider pursuant to:

(i) 42 U.S.C. 5106a(b)(2)(B)(ii); and

(ii) KRS 620.030(2);

b. A child's facilitated access to and[~~Involved in an incident of domestic violence;~~

~~c. Permitted to~~] use of drugs or alcohol that may result in a life-threatening situation for the child[~~under circumstances that create a risk to the emotional or physical health of the child;~~

~~d. In a situation if the factors provided in a report indicate that:~~

~~(i) An act of sexual abuse, sexual exploitation, or prostitution involving a child may occur; or~~

~~(ii) The child exhibits physical or behavioral indicators of sexual abuse; or~~

~~e. In a situation where the circumstances are such that a child is likely to be physically abused~~]; or

9. Exploitation neglect if the:

a. Caretaker has used a child or child's financial resources for personal gain;

b. Caretaker has enticed a child to become involved in criminal activities; or

c. Child is a victim of human trafficking;

(c) Investigate or conduct an assessment upon the receipt of a report of sexual abuse if the report:

1.[~~Receive and investigate a report that~~] Alleges sexual abuse of a child committed or allowed to be committed by a caretaker. An investigation may be conducted without a specific allegation if a child has a sexually transmitted disease; or

2. Alleges a situation in which the factors provided in the report indicate that:

a. An act of sexual abuse, sexual exploitation, or prostitution involving a child may have occurred; or

b. The child exhibits physical or behavioral indicators of sexual abuse;

(d)[~~Receive and investigate or complete an assessment upon the receipt of a report that alleges a child is dependent, pursuant to KRS 600.020(19); and~~

~~(e)~~] Investigate or conduct[~~complete~~] an assessment upon the receipt of a report that alleges emotional injury or risk of emotional injury to a child by a caretaker pursuant to KRS 600.020(26); and

(e) Investigate or conduct an assessment upon the receipt of a report that alleges dependency if the report alleges that a child is dependent pursuant to KRS 600.020(20)[~~600.020(25)~~].

(5) The following criteria shall be used in identifying a report of abuse, neglect, or dependency not requiring a child protective services investigation or assessment:

(a) The victim of the report of abuse, neglect, or dependency is age eighteen (18) or older[~~over~~] at the time of the report;

(b) There is insufficient information to locate the child or to explore leads to locate;

(c) The problem described does not meet the statutory definitions of abuse, neglect, or dependency;

(d) The reporter notifies the cabinet that a child is injured, but the reporter does not allege injuries were the result of abuse or neglect;

(e) The report concerns custody changes, custody related issues, or lifestyle issues, without allegations of abuse, neglect, or dependency;

(f) Pursuant to KRS 503.110(1), corporal punishment appropriate to the age of the child, without an injury, mark, bruise, or substantial risk of harm; or

(g)[~~The report concerns a newborn infant abandoned pursuant to KRS 620.350; or~~

~~(h)~~] An allegation of spouse abuse to a married youth under the age eighteen (18).

(6) An abandoned newborn infant pursuant to KRS 620.350 shall be determined to be dependent unless indicators of child physical abuse or child neglect are present[~~A report of corporal punishment described in subsection (5)(f) of this section shall be reported to and assessed by the cabinet, if alleged to be committed by a caretaker parent who:~~

~~(a) Provides foster, pre-adoptive, or respite care services for a child in the custody of the cabinet; and~~

~~(b) Is approved pursuant to 922 KAR 1:310 or 922 KAR 1:350~~].

Section 3. Initial Investigation or Assessment. (1) Based upon an accepted report of child abuse, neglect, or dependency, the cabinet shall, in accordance with KRS 620.040(1)(b) or (2)(b), and 42 U.S.C. 5106a(b)(2)(B)(iv), make an initial determination as to the immediate safety and risk of harm to a child.

(2) The cabinet shall have face-to-face contact with the child or, in the case of a child fatality, initiate the investigation within four (4) hours after acceptance of the report if a report of child abuse, neglect, or dependency:

(a) Includes a child who is:

1. The alleged victim of a fatality or near fatality; or

2. A surviving child in the care of the alleged perpetrator of a child fatality or near fatality; or

(b)1. Involves a child who is:

a. Under four (4) years of age; or

b. Unable to verbally or nonverbally communicate the child's needs as provided by the reporting source; and

2. Indicates a high risk of harm to the child due to:

a. Physical abuse in accordance with Section 2(4)(a) of this administrative regulation;

b. Supervision neglect in accordance with Section 2(4)(b)2. of this administrative regulation;

c. Sexual abuse in accordance with Section 2(4)(c) of this administrative regulation, and the alleged:

(i) Perpetrator has access to the child; or

(ii) Perpetrator's access to the child is unknown by the reporting source.

(3) The cabinet shall have face-to-face contact with the child within twenty-four (24) hours after acceptance of the report, if a report of child abuse, neglect, or dependency:

(a)1. Indicates a high risk of harm to the child; or

2. Alleges the child is the victim of human trafficking; and

(b) Criteria of subsection (2) of this section are not met.

(4) If the report of child abuse, neglect, or dependency indicates a moderate risk of harm to a child, the cabinet shall have face-to-face contact with the child within forty-eight (48) hours after acceptance of the report.

(5) If the report of child abuse, neglect, or dependency indicates a low risk of harm to a child, the cabinet shall have face-to-face contact with the child within seventy-two (72) hours after acceptance of the report.

(6) Cabinet staff shall be permitted to interview an alleged victim of child abuse or neglect without obtaining the consent of the caretaker[~~child's parent, guardian, or person exercising custodial control~~] in accordance with KRS 620.072.

(7) Cabinet staff shall incorporate an unannounced home visit in accordance with provisions in KRS 620.072.

(8) Cabinet staff shall advise the individual under investigation of the complaints or allegations in accordance with 42 U.S.C. 5106a(b)(2)(B)(xviii).

(9) A written assessment shall:

(a) Be completed by the cabinet on every investigation; and

(b) Document efforts if the cabinet is unable to locate the family.

(10) The cabinet shall provide or make a referral to any community-based service:

(a) Available to a child, caretaker, or a child's family:

1. In accordance with 42 U.S.C. 5106a(b)(2)(B)(v),(vi),(ix),(xi), or (xxi); or

2. Pursuant to KRS 620.029 or 620.040(1)(b) or (2)(b); and

(b) Necessary to:

1. Reduce risk to a child; and

2. Provide family support.

(11) The cabinet shall make a referral for early intervention services pursuant to 42 U.S.C. 5106a(b)(2)(B)(xxi) for a child under the age of three (3) who is involved in a substantiated case of abuse or neglect.

(12)(a) The cabinet may develop a plan for services[~~Prevention Plan~~] at any point during an investigation or assessment to protect the health and safety of a child.

(b) The plan[~~Prevention Plan~~] shall be:

1.[~~Completed in hardcopy;~~

~~2.~~] Developed in conjunction with a family and the family's identified support system;

2.[~~3.~~] Agreed upon by the participants;

3.[~~and~~

~~4.~~] Signed by all parties identified to participate in the plan[~~Prevention Plan~~], unless a party is unwilling or unable to sign; and

4. Provided to all participants.

(13) If an investigation or assessment is conducted as a result of a child being referred pursuant to Section 2(4)(b)8. of this administrative regulation, the cabinet shall develop a plan[~~Prevention Plan~~] in accordance with 42 U.S.C. 5106a(b)(2)(B)(iii).

(14) Collateral contact shall be made pursuant to KRS 620.030, 620.040, and 620.050.

(15)(a) A medical or psychological examination may be required if a report of child abuse, neglect, or dependency alleges that a child has suffered physical or sexual harm or emotional injury.

(b) A medical examination shall be conducted in accordance with KRS 620.050(14).

(16) Cabinet staff shall coordinate an investigation with a children's advocacy center governed by 922 KAR 1:580[~~920 KAR 2:040~~], in accordance with KRS 620.040(6) and (7).

(17) Pursuant to KRS 620.030(5), an agency, institution, or facility serving the child or family shall provide cooperation, assistance, and information necessary for the cabinet to conduct an investigation or assessment.

(18) Photographs may be taken of a child or a child's environment during a protective services investigation or assessment in accordance with KRS 620.050(14).

(19) An interview with a child shall be conducted pursuant to KRS 620.040(6).

(20)(a) A child sexual abuse or human trafficking investigation shall be conducted jointly with law enforcement and other multidisciplinary team members pursuant to KRS 431.600(1) and (8), 620.040(3), and 42 U.S.C. 5106a(b)(2)(B)(xi).

(b) The cabinet's primary responsibility shall be the protection of the child.

(21) If there is reason to believe a child is in imminent danger, or if a parent or caretaker of a child refuses the cabinet entry to a child's home or refuses to allow a child to be interviewed, the cabinet may request assistance:

(a) From law enforcement; or

(b) Through a request for a court order pursuant to KRS 620.040(5)(a).

(22)(a) If the court issues a search warrant for execution by law enforcement, cabinet staff may accompany law enforcement officers.

(b) Except as provided in KRS 605.090(3), the cabinet shall not remove a committed child from the child's home without a court order.

(23) At the request of law enforcement, the cabinet shall, pursuant to KRS 620.040(3):

(a) Provide assistance in interviewing an alleged child abuse victim in a noncaretaker report; and

(b) Not be the lead investigator in a noncaretaker investigation.

Section 4. Alleged Perpetrators of Abuse or[~~,~~] Neglect[~~, or Dependency~~] Age Twelve (12) to Eighteen (18). (1) A report of child abuse or[~~,~~] neglect[~~, or dependency~~] involving alleged perpetrators in a care-taking role age twelve (12) to eighteen (18) shall be subject to investigation or assessment.

(2) If substantiated, a child age twelve (12) to eighteen (18) shall be identified as the alleged perpetrator.

Section 5. Child Fatality or Near Fatality Investigations. (1) The cabinet shall investigate a report of child fatality or near fatality alleged to be the result of abuse or neglect in accordance with KRS 620.040.

(2) If there is a surviving child in the care of the alleged perpetrator, the cabinet shall determine the safety of the surviving child through immediate assessment in accordance with this administrative regulation.

(3) If a child fatality or near fatality allegedly due to abuse or neglect occurs, cabinet staff shall immediately notify the service region administrator or designee[~~Office of the Director of the Division of Protection and Permanency~~].

(4) If a fatality or near fatality occurs to a child in the custody of the cabinet in an out-of-home placement, the cabinet shall make an immediate effort to notify:

(a) The biological or legal parents; and

(b) The Office of the Director of the Division of Protection and Permanency.

(5) If parental rights have been terminated, and there are special circumstances including ongoing contact with the child, the cabinet shall notify a child's biological or legal parents of the child's fatality or near fatality.

(6) The cabinet shall notify the Department of Public Advocacy, Protection and Advocacy Division, in the Justice and Public Safety Cabinet if:

(a)1. A child identified as a protection and advocacy client dies as a result of alleged abuse or neglect; and

2. The alleged perpetrator is a person exercising custodial control or supervision; or

(b) A child fatality has occurred as a result of:

1. Placement in a seclusion room pursuant to 922 KAR 1:390; or

2. Physical management[~~Therapeutic hold~~] applied pursuant to 922 KAR 1:300.

(7) The cabinet shall notify the following persons, in writing, of

a fatality of a child in the custody of the cabinet:

(a) Judge of the committing court; and

(b) Guardian ad litem for the deceased child.

(8) The cabinet may make public disclosure of a fatality or near fatality in accordance with:

(a) KRS 620.050(5) and (12); and

(b) 42 U.S.C. 5106a(b)(2)(A)(x).

(9) If the alleged perpetrator was not a caretaker[~~parent, guardian, or person exercising custodial control or supervision~~], notification of the child fatality or near fatality shall be in accordance with KRS 620.030(1).

(10) The cabinet shall:

(a) Be in compliance with KRS 620.050(12) in cases where the cabinet has had prior involvement; and

(b) Provide annual reporting in accordance with 42 U.S.C. 5106a(d)(4)(5)(6)(11).

(11) If a child fatality or near fatality occurs in a licensed facility, the cabinet shall notify the licensing authority in accordance with 42 U.S.C. 5106a(b)(2)(A)(ix).

Section 6. Reports of Child Abuse, Neglect, or Dependency in Cabinet-approved Homes or Licensed Facilities. (1) Pursuant to KRS 620.030(5), the cabinet shall have the authority to obtain necessary information to complete an investigation in a report of child abuse, neglect, or dependency in a:

(a) Child-caring facility licensed in accordance with 922 KAR 1:300 or its subcontractor;

(b) Child-placing agency licensed in accordance with 922 KAR 1:310 or its subcontractor;

(c) Child-care center licensed in accordance with 922 KAR 2:090;

(d) Family child-care home certified in accordance with 922 KAR 2:100;

(e) Child care provider registered in accordance with 922 KAR 2:180; or

(f) Foster, adoptive, or respite care provider home approved pursuant to 922 KAR 1:350.

(2) If a report of alleged child abuse, neglect, or dependency in a home approved pursuant to 922 KAR 1:310 or 922 KAR 1:350 is accepted, the designated cabinet staff shall:

(a) Immediately contact the service region administrator or designee; and

(b) Assign staff to conduct the investigation.

(3) If a report of alleged child abuse or neglect in a licensed child-care center, a certified family child-care home, or a registered child care provider is accepted, cabinet staff shall:

(a) Notify the cabinet's Division of Child Care to share information and request assistance in locating alternate care if needed; and

(b) Conduct an investigation.

(4) If a report of alleged child abuse or neglect in a licensed child-caring facility, child-placing agency placement, certified family child-care home, or licensed child-care center is accepted, cabinet staff shall:

(a) Notify the Office of the Inspector General, Division of Regulated Child Care; and

(b) Conduct an investigation.

1. If possible, an investigation shall be coordinated and conducted jointly with the Division of Regulated Child Care. However, if not possible, the cabinet shall proceed with an investigation.

2.a. An entrance interview with the facility administrator or designee shall be conducted; and

b. The nature of the report shall be outlined without disclosing the name of the reporting source.

3. If the cabinet substantiates the report of child abuse or neglect and the alleged perpetrator is an employee of the facility, the cabinet shall notify the provider or program director within thirty (30) working days, unless a necessary extension is granted by the designated cabinet staff in a supervisory role.

(5) The cabinet shall share written findings of an investigation with the Division of Child Care for a:

(a) Licensed child-care center;

(b) Certified family child-care home; or

(c) Registered child care provider.

(6) The cabinet shall share written findings of an investigation with the Office of Inspector General for a:

(a) Licensed child-care center;

(b) Certified family child-care home;

(c) Registered child care provider;

(d) Licensed child-caring facility; or

(e) Licensed child-placing agency.

(7) As soon as practical after a determination has been made that a child is in imminent danger or that a child needs to be removed, verbal or written notification shall be provided to the Division of Child Care or to the Office of the Inspector General.

Section 7. Interviewing a Child in a School Setting. (1) Pursuant to KRS 620.030(5) and 620.072(4), the cabinet may, upon receipt of a report of child abuse or neglect, initiate an investigation or assessment at a school, which may include the review and copying of relevant school records pertaining to the child.

(2) If initiating an investigation or assessment at a school, the cabinet shall:

(a) Inform appropriate school personnel of the need to interview a child regarding the report; and

(b) Give necessary information concerning the allegation and investigation only to school personnel with a legitimate interest in the case.

Section 8. Investigation of an Employee of the School System. If a report of child abuse or neglect involving school personnel is accepted, the following shall apply:

(1) An investigation shall be conducted;

(2) If the allegation is made about a school employee in a caretaker role of a child, the cabinet shall, if possible, conduct an interview away from the school grounds, with each of the following persons:

(a) The child;

(b) The parent or legal guardian;

(c) The alleged perpetrator; and

(d) Other collateral source, if any, in accordance with Section 3(14) of this administrative regulation;

(3) The findings shall be shared with the custodial parent and the alleged perpetrator;

(4) The cabinet shall notify the appropriate supervisor of the alleged perpetrator, in writing, of the following:

(a) That an investigation has been conducted;

(b) The results of the investigation; and

(c) That the alleged perpetrator has the right to appeal pursuant to 922 KAR 1:480; and

(5) A person desiring other information shall employ the open records procedure, as described in 922 KAR 1:510.

Section 9. Written Notice of Findings of Investigation. The cabinet shall provide notification to specified government officials in accordance with KRS 620.040(1) or (2) and 42 U.S.C. 5106a(b)(2)(B)(ix).

Section 10. Substantiation Criteria and Submission of Findings. (1) The cabinet shall use the definitions of "abused or neglected child" in KRS 600.020(1) in determining if an allegation is substantiated.

(2) A finding of an investigation or assessment shall be based upon the:

(a) Information and evidence collected by the cabinet during the report's investigation or assessment; and

(b) Condition that is present, rather than an action taken to remediate an issue or concern pertaining to a child's health, safety, or welfare.

(3) Cabinet staff may find and substantiate abuse or neglect, or make a services needed finding, at any point during an investigation or assessment or prior to case closure and after-care planning in accordance with Section 12 of this administrative regulation, if preponderance of the evidence exists.

(4)(a) At the completion of an investigation or assessment involving a caretaker, the cabinet shall make a finding of:

1. Unsubstantiated child abuse or neglect;
2. Substantiated child abuse or neglect;
3. Child fatality or near fatality related to abuse or neglect;
4. Unable to locate the child;
5. Services needed for the child or child's family, which may include a dependent child;[~~or~~]
6. No finding; or
7. Closed, which may include completed service provision.

(b) At the completion of an investigation involving human trafficking of a child by a non-caretaker, the cabinet shall make a finding of:

1. Confirmed human trafficking;
2. Not confirmed human trafficking; or
3. Unable to locate the child.

(5) A cabinet finding shall not be a judicial finding.

(6) The cabinet staff's supervisor or designee shall review and approve the final finding of the investigation or assessment.

(7) Upon approval of the finding by designated cabinet staff in a supervisory role, the cabinet shall send a notice of finding and notice of the perpetrator's right to appeal in accordance with 922 KAR 1:480, Section 2[~~3~~], to the alleged or substantiated perpetrator by certified mail to the last known address of the perpetrator.

(8) Upon approval of the finding by designated cabinet staff in a supervisory role, the cabinet shall:

(a) Send a notice of finding to the child's parent or guardian by certified mail; or

(b) Give a notice of finding to the parent or guardian, in person, with the parent or guardian and a witness signature to document receipt of the notice.

(9) The cabinet's notice of a substantiated finding of child abuse or neglect shall include:

(a) The factual basis for the finding of child abuse or neglect;

(b) The results of the investigation;

(c) Information about the perpetrator's right to appeal the substantiated finding in accordance with 922 KAR 1:480; and

(d) A statement informing the perpetrator that the perpetrator's name shall be added to the central registry in accordance with 922 KAR 1:470.

Section 11. Appeals. (1) The perpetrator of a substantiated finding of child abuse or neglect may request a hearing in accordance with 922 KAR 1:480.

(2) A person may have additional hearing rights as specified in 922 KAR 1:320.

Section 12. Closure[~~and Aftercare Planning~~]. (1)(a) A decision to close a child protective services case shall be based on evidence that the factors resulting in the child abuse, neglect, or dependency have been resolved to the extent that the family is able to:

1. Protect the child; and
2. Meet the needs of the child.

(b) Prior to a case's closure in accordance with paragraph (a) of this subsection, designated cabinet staff in a supervisory role shall review and agree to the decision to close the child protective services case.

(2) If the cabinet does not have the authority to obtain court-ordered cooperation from a family, the cabinet shall close the child protective services investigation or assessment.

(3) Unless court-ordered cooperation from the family cannot be obtained in accordance in subsection (2) of this section, a child protective services case shall not be closed if withdrawal of services places a child at risk of abuse, neglect, or dependency.

(4) A family shall be:

(a) Notified in writing of the decision to close the protective services case; and

(b) Advised of the right to a fair hearing in compliance with 922 KAR 1:320, Section 2.

(5) Aftercare planning shall link a family to community resources for the purpose of continuing preventive measures if the cabinet discontinues services in accordance with this section.

(6) An aftercare plan[~~The Aftercare Plan~~] shall be developed upon the completion of an investigation or assessment, if an issue or concern identified by the cabinet falls below the level that triggers a protection services case being opened.

(7)(a) When it is determined that a protective services case is appropriate for closure, the cabinet shall work with the family to develop the aftercare plan[~~Aftercare Plan~~].

(b) The focus of the aftercare plan[~~Aftercare Plan~~] shall be to prevent a recurrence of abuse, neglect, or dependency to the child in the home.

(8) The cabinet may open a child protective services case in accordance with 922 KAR 1:140, 1:400[~~, 1:410~~], or 1:430.

(9) The cabinet may request the assistance of a court of competent jurisdiction to protect the child in accordance with KRS 620.070.

[~~Section 13. Incorporation by Reference. (1) The following material is incorporated by reference:~~

~~(a) "Aftercare Plan", 2/04; and~~

~~(b) "Prevention Plan", 6/04.~~

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

ERIC T. CLARK, Commissioner
ADAM M. MEIER, Secretary

APPROVED BY AGENCY: August 12, 2019

FILED WITH LRC: August 14, 2019 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on October 28, 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 October 21, 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 through October 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

Agency Contacts: Laura Begin, Phone: (502) 564-3703, email: Laura.Begin@ky.gov.; and Chase Coffey

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes cabinet procedures, congruent with eligibility requirements under 42 U.S.C. 5106a(b), for a child protection investigation or assessment of abuse, neglect, or dependency.

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to establish child protective services procedures.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation assists with the effective administration of the statutes by establishing cabinet procedures for a child protection investigation of assessment of abuse, neglect, or dependency, consistent with KRS 620.180(1).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 605.150(1) authorizes the cabinet to promulgate administrative regulations to implement the provisions of KRS Chapter 605 - Administrative Matters. KRS 620.180(1) authorizes the cabinet to promulgate administrative regulations to implement the provisions of KRS Chapter 620 - Dependency, Neglect, and Abuse. KRS 620.029(2)(a) requires the cabinet, in consultation with agencies serving victims of human trafficking, to promulgate administrative regulations for the treatment of children who are reported to be victims of human trafficking as dependent, neglected, or abused children, including providing for appropriate screening, assessment, treatment, and services.

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

(a) How the amendment will change this existing administrative regulation: The amendment adds to the definition of "caretaker" consistent with recently passed legislation to include a person in a position of authority or special trust. The amendment changes this administrative regulation by including and defining the term "no finding" as a possible outcome for an investigation regarding an allegation that has been found to be erroneous or false. The amendment also includes changes to services provided when a child protective services case is opened and closed, moving from a set form to be filled out to an interactive process with the flexibility to meet a family's needs. Additionally, the proposed administrative regulation amends the screening acceptance criteria to provide greater clarity.

(b) The necessity of the amendment to this administrative regulation: The amendment to the definition of "caretaker" is necessary for consistency with recently passed legislation. It is necessary to amend the administrative regulation to make allowances for reports that are a result of erroneous or false information associated with no high-risk behaviors. Additional amendments to the administrative regulation alter the process by which staff develop service plans with families who need services and plans for services when a case is set to close. The administrative regulation was amended to better organize screening acceptance criteria.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes through its enhancement and clarity of cabinet procedures pertaining to the investigation and assessment of child abuse, neglect, and dependency.

(d) How the amendment will assist in the effective administration of the statutes: The amendment is necessary for consistency with related Kentucky Revised Statutes amended to include persons in position of authority or special trust and to account for erroneous or false reports received.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: According to the cabinet's Statewide Child Protective Services (CPS) Intake Fact Sheet (July 1, 2018, through June 30, 2019), the cabinet received 130,455 CPS reports with nearly 52,628 meeting the screening acceptance criteria. Of those, 13,088 resulted in a finding of substantiated child abuse or neglect involving 25,936 unique children. Approximately 2,094 resulted in a services needed finding involving 3,670 unique children.

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

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

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Regulated entities will experience no new or additional costs as a result of this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Regulated entities will benefit from the amendment's enhancements to the cabinet's acceptance criteria, planning for services and case closure, and expanding available finding results when applicable.

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

(a) Initially: The amendment to this administrative regulation is not projected to have a fiscal impact on the administrative body.

(b) On a continuing basis: The amendment to this administrative regulation is not projected to have a fiscal impact on the administrative body.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The cabinet's provision of child protective services is funded by the federal Social Services Block Grant, General Funds, and Agency Restricted Funds derived from Medicaid. Child protective and other child welfare services are further enhanced and supported by funding made available through federal grants authorized through Title IV of the Social Security Act, including Child Abuse Prevention and Treatment Act as amended.

(7) Provide an assessment of whether an 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: This administrative regulation does not establish any fees or directly or indirectly increase any fees.

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

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.
42 U.S.C. 5106a.

2. State compliance standards. KRS 194A.050(1), 605.150(1), 620.029(2)(a), 620.180(1).

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 5106a.

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 42 U.S.C. 5106a, KRS 194A.050(1), 605.150(1), 620.029(2)(a), 620.180(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? The amendment to this administrative regulation will not generate any revenue for state or local government.

(b) How much revenue will this administrative regulation

generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The amendment to this administrative regulation will not generate any revenue for state or local government in subsequent years.

(c) How much will it cost to administer this program for the first year? The amendment to this administrative regulation is not projected to have a new fiscal impact on the administrative body.

(d) How much will it cost to administer this program for subsequent years? The amendment to this administrative regulation is not projected to have a new fiscal impact 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:

NEW ADMINISTRATIVE REGULATIONS

PUBLIC PROTECTION CABINET
Department of Insurance
(Repealer)

806 KAR 7:031. Repeal of 806 KAR 7:030.

RELATES TO: KRS 304.7-361
STATUTORY AUTHORITY: KRS 304.2-110
NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 authorizes the commissioner of insurance to make reasonable rules and regulations necessary for or as an aid to the effectuation of any provision of the Kentucky insurance code. This administrative regulation repeals 806 KAR 7:030, which detailed required reporting by domestic insurers related to KRS 304.7-040, which has been repealed. The duties of an insurer's board of directors are now established by KRS 304.7-361 and no longer include specific finance committee requirements.

Section 1. 806 KAR 7:030, Finance committee of domestic insurers, is hereby repealed.

NANCY G. ATKINS, Commissioner
K. GAIL RUSSELL, Secretary
APPROVED BY AGENCY: August 15, 2019
FILED WITH LRC: August 15, 2019 at 11 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 21, 2019 at 10:00 a.m. at 215 W. Main St., 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 October 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, Esq., Deputy Commissioner, Policy, 215 W. Main St., Frankfort, Kentucky 40601, 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 repeals 806 KAR 7:030, which is no longer necessary because KRS 304.7-040 has been repealed. Additionally, the Department will continue to receive similar information within the newly created Corporate Governance Annual Disclosure filed pursuant to KRS 304.3-235.
(b) The necessity of this administrative regulation: This administrative regulation repeals 806 KAR 7:030, which is no longer necessary because KRS 304.7-040 has been repealed.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation repeals 806 KAR 7:030, which is no longer necessary because KRS 304.7-040 has been repealed.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation repeals 806 KAR 7:030, which is no longer necessary because KRS 304.7-040 has been repealed.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This is a repealer.
(b) The necessity of the amendment to this administrative regulation: This is a repealer.
(c) How the amendment conforms to the content of the authorizing statutes: This is a repealer.
(d) How the amendment will assist in the effective administration of the statutes: This is a repealer.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Domestic insurers will be affected by the repeal of this administrative regulation.
(4) Provide an analysis of how the entities identified in the previous question will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: Regulated entities will not have to take actions to comply with this administrative regulation repealer.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: There will be no cost to regulated entities to comply with this administrative regulation repealer.
(c) As a result of compliance, what benefits will accrue to the entities: Regulated entities will have increased clarity regarding filings with the department, which must follow current statutes rather than outdated regulations.
(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 the administrative body to implement this repealer.
(b) On a continuing basis: There will be no cost to the administrative body to implement this repealer.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is necessary for the implementation of this repealer.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No fees or funding are necessary for the implementation of this repealer.
(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This repealer does not establish any fees directly or indirectly.
(9) TIERING: Is tiering applied? Tiering is not applied because this is a repealer.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Insurance 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 304.2-110.
(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. 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 repealer 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 repealer 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 will be no cost to administer this program.

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

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

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: None

PUBLIC PROTECTION CABINET
Department of Insurance
(New Administrative Regulation)

806 KAR 9:025. Agent licensing process.

RELATES TO: KRS 304.4-010, 304.9-105, 304.9-130, 304.9-150, 304.9-160, 304.9-230, 304.9-270, 304.9-295, 304.9-430

STATUTORY AUTHORITY: KRS 304.2-110, 304.9-080, 304.9-105, 304.9-230, 304.9-270, 304.9-295

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 provisions of the Kentucky Insurance Code. KRS 304.9-080 requires the commissioner to prescribe and furnish all forms required for licenses and appointments under Subtitle 9 of the insurance code. KRS 304.9-105 requires the commissioner to promulgate administrative regulations to mandate a prelicensing course of study for all agents except for a variable life and variable annuities line of authority and limited lines of authority. KRS 304.9-230 requires the commissioner to promulgate administrative regulations regarding a prelicensing course of study for limited lines of authority. KRS 304.9-160 requires the commissioner to establish the examination process, and KRS 304.9-170 provides exemptions to the examination requirement. KRS 304.9-270 requires the commissioner to prescribe a form required for appointment of individual and business entity agents. KRS 304.9-295 requires the commissioner to establish forms and standards for the approval of pre-licensing and continuing education course providers, instructors, and courses. This administrative regulation establishes the guidelines for individual agents, business entities, consultants, and adjusters to become licensed, obtain appointments, as required, in Kentucky, maintain their licenses through the completion of continuing education, and surrender their license voluntarily or have their appointment terminated by an insurer.

Section 1. Pre-Licensing Course Requirements. (1) An individual applying for an agent license shall complete a pre-licensing course study approved by the commissioner for a minimum of forty (40) hours for life and health insurance, forty (40) hours for property and casualty insurance, or twenty (20) hours for each line of authority, as applicable, for the lines of authority included in the application, unless the applicant is:

(a) Seeking a limited line of authority under KRS 304.9-230;

(b) Exempt pursuant to KRS 304.9-170; or

(c) A rental vehicle managing employee licensee.

(2)(a) All prelicensing courses, providers, and instructors shall be approved by the commissioner prior to offering a course.

(b) A prelicensing course provider shall submit either in writing or electronically through the department's Web site, http://insurance.ky.gov:

1. A Form KYP-01, Provider Approval Application, submitted once to become an approved course provider;

2. A Form CE/PL-100, Course Approval Application, for each course the approved provider wants to offer;

3. A Form CE/PL-200, Instructor Approval Application, for each course instructor;

4. The fee, as applicable, established for provider, instructor, and course approval in 806 KAR 4:010; and

5. An outline of the content of the course of study.

(c) In approving a prelicensing course of study, the commissioner or the commissioner's designee shall consider whether the course of study covers the subject matter included in the department's current study outlines or their equivalent.

(d) If approved, a prelicensing course of study approved by the commissioner shall be renewed biennially.

(e) If approved previously, the provider and instructor approval applications are not required to be submitted with each course.

(3) A prelicensing course of study is valid for one (1) year from the date of completion.

(4) The prelicensing provider shall submit proof of completion of a course of study to the department and applicant on Form CPL-01 or electronically through the department's Web site, http://insurance.ky.gov, for each applicant.

Section 2. Agent Examinations. (1) All applicants for a license shall file with the commissioner:

(a) A completed Form 8301, NAIC Individual Insurance Producer License Application;

(b) Documentation demonstrating successful completion of any required prelicensing courses;

(c) A completed background check through the administrative office of the courts; and

(d) Payment of the fees applicable to the license and lines of authority sought according to KRS 304.4-010 and 806 KAR 4:010.

(2) If an examination is required, the documents and fees required in subsection (1) of this section shall be submitted prior to scheduling an examination.

(3) An individual applying for a line of authority identified in KRS 304.9-030(2) shall successfully complete examinations as follows:

(a) For life line of authority, a life examination;

(b) For health line of authority, a health examination;

(c) For property line of authority, a property examination;

(d) For casualty line of authority, a casualty examination;

(e) For personal lines, a property and casualty personal lines examination;

(f) For a line of authority identified in accordance with KRS 304.9-030(2)(h), an examination appropriate for the kind of insurance; and

(g) For variable life and variable annuity products, no examination is required.

(4) Examinations shall only be required for the following limited lines of authority identified in KRS 304.9-230:

(a) For crop limited of authority, a crop examination; and

(b) For rental vehicle limited line of authority, a rental vehicle examination shall be administered or monitored by a rental vehicle agent pursuant to 806 KAR 9:265.

(5) Every applicant for a license required to take an examination shall answer correctly seventy (70) percent of the questions to pass the examination.

(6) To retake an examination, an applicant shall submit:

(a) Form 8304, Examination Retake Form; and

(b) The applicable examination retake fees established in 806 KAR 4:010.

Section 3. Adjuster Examinations. (1) An individual applying for an adjuster line of authority identified in KRS 304.9-430(7) or (8) shall:

(a) For property and casualty line of authority, successfully complete a property and casualty adjuster examination;

(b) For workers' compensation line of authority, successfully complete a workers' compensation adjuster examination; and

(c) For crop line of authority, either:

1. Successfully complete a crop adjuster examination; or

2. Demonstrate certification through the Crop Adjuster Proficiency Program, by providing to the department a copy of a Crop Adjuster Proficiency Program certification identification card with an active status issued by the federal Risk Management Agency, an agency within the U.S. Department of Agriculture, which specifies the applicant has passed a proficiency examination

to adjust multi-peril crop claims.

(2) Every applicant for a license required to take an examination shall answer correctly seventy (70) percent of the questions to pass the examination.

Section 4. Consultant Examination. An applicant for a consultant license shall answer correctly seventy (70) percent of the questions to pass the consultant examination and obtain a license.

Section 5. Continuing Education. (1) Continuing education providers, instructors, and courses shall be approved by the commissioner unless specifically exempted by KRS 304.9-295.

(a) Continuing education courses providers shall submit a completed Form KYP-01, Provider Approval Application.

(b) Continuing education course instructors shall submit a completed Form CE/PL-200, Instructor Approval Application.

(c) A continuing education course shall be filed by submitting the Form CE/PL-100, Course Approval Application form at least sixty (60) days in advance of advertising, unless good cause is demonstrated by the provider for the failure to file. If the course is offered in multiple states, the provider may use the National Association of Insurance Commissioners' "Uniform Continuing Education Reciprocity Course Filing Form" for approval.

(d) The commissioner shall consider the following in determining approval of continuing education courses:

1. Whether the applicant has remitted all fees due once the total credit hours are determined pursuant to 806 KAR 4:010;

2. Whether the continuing education course contributes directly, at a professional level, to the competence of the licensee with respect to the following subjects:

a. Insurance, annuities, and risk management;

b. Insurance laws and administrative regulations;

c. Mathematics, statistics, and probability;

d. Economics;

e. Business law;

f. Finance;

g. Taxes;

h. Agency management including all aspects of agency operations that support the long-term stability of the agency system and encourage the service and protection of customers;

i. Ethics; or

j. Other topics approved by the commissioner which contribute directly at a professional level to the competence of the licensee.

(e) The continuing education course shall:

1. Include current, relevant, accurate, and valid reference materials, graphics, and interactivity;

2. Have clearly defined objectives and course completion criteria;

3. Have a written outline and study materials or texts; and

4. Include a means for evaluation.

(f) Self-study courses shall require successful completion of an examination.

(g) Continuing education credit shall not be provided for:

1. Any course used to prepare for taking an examination required pursuant to KRS Chapter 304;

2. Committee service for professional organizations;

3. Computer training to develop functional skills; and

4. Motivational or self-help courses.

(h) The commissioner shall measure continuing education course credit hours by the following:

1. Each credit hour for live instruction courses, completed in a classroom, by video, teleconference, or computer, shall include at least fifty (50) minutes of continuous instruction or participation.

2. Each credit hour for recorded self-study courses, completed online or by correspondence, shall be calculated in accordance with the National Association of Insurance Commissioners' "Recommended Guidelines for Online Courses."

(i) Any material change in a previously approved continuing education course shall be filed and approved by the commissioner prior to use.

(j) Biennially, providers shall renew approval of continuing education courses and instructors by submitting all applicable information and fee payment to the commissioner prior to June 30 of even-numbered years.

(2) Licensees engaging in the sale, solicitation, or negotiation of specialized products as noted are subject to the following:

(a) Resident licensees selling, soliciting, or negotiating insurance products that qualify under the Long-Term Care Partnership Insurance Program, as described in KRS 304.14-642, shall complete eight (8) hours of initial long-term care training, and four (4) hours of additional training for each biennial continuing education compliance period;

(b) Any resident licensee licensed with Property and Casualty lines of authority selling federal flood insurance shall complete three (3) hours of training in accordance with the Flood Insurance Reform Act of 2004, as set forth in Pub.L. 108-264, Section 207; and

(c) Any individual licensee who holds a life line of authority shall successfully complete four (4) hours of initial training, prior to the sale, solicitation, or negotiation of annuities, unless the licensee has documented the completion of substantially similar training in another state, that shall include information on the following topics:

1. The types of annuities and various classifications of annuities;

2. Identification of the parties to an annuity;

3. The manner in which fixed, variable, and indexed annuity contract provisions affect consumers;

4. The application of income taxation of qualified and non-qualified annuities;

5. The primary uses of annuities; and

6. Appropriate sales practices, replacement, and disclosure requirements.

(3) Continuing education providers shall:

(a) Within thirty (30) days of completion of a continuing education course, submit to the commissioner the Continuing Education Certificate of Completion forms and attendance roster for all licensees who satisfactorily completed the course;

(b) Issue the Form CE-301, Continuing Education Certificate of Completion form to the licensee that successfully completed the course; and

(c) Maintain all attendance rosters and course completion certificates in hard copy or electronic format for at least five (5) years for review, as necessary, by the commissioner.

(4) Licensees remain responsible for the timely submission of continuing education certificates of completion to the commissioner even if the provider does not fulfill their responsibilities under this section.

(5) Licensees may carry forward up to twelve (12) excess credit hours to the subsequent continuing education biennium.

(6) If the department does not receive proof of fulfillment of a licensee's continuing education requirement on or before the deadline, the commissioner shall:

(a) Make information of the deficiency available to the licensee; and

(b) Terminate the license if proof of completion of the deficient hours is not received as prescribed by KRS 304.9-295.

(7) Licensees whose license is terminated due to the failure to submit the certification of continuing education by the required deadline shall:

(a) Have the license reissued within twelve (12) months of the license termination if the licensee:

1. Satisfies the delinquent continuing education requirements;

2. Submits a new application with required attachments included within Section 2(1) for a license; and

3. Submits the applicable fees; or

(b) Be required to complete all licensing requirements specified in KRS Chapter 304, Subtitle 9 and this administrative regulation after the continuing education delinquency remains unsatisfied for twelve (12) months or longer.

(8) A licensee may seek exemption from Continuing Education requirements by completing an "Affidavit for Exemption from Continuing Education Requirement", form CE AFF 304.

(a) An agent exempted from continuing education requirements on the basis of a supporting affidavit that the agent

license is maintained for the sole purpose of receiving renewals or deferred commissions may withdraw the continuing education exemption and may have all restrictions against selling, soliciting, and negotiating insurance removed from the agent license by:

1. Completing the continuing education requirements for the immediate preceding continuing education biennium;

2. Providing a certification of completion of those continuing education requirements; and

3. Providing a signed, written statement withdrawing the affidavit.

(b) The false use of a supporting affidavit that the agent license is maintained for the sole purpose of receiving renewals or deferred commissions for any reason, including for the purpose of obtaining an extension for completion of continuing education requirements for a continuing education biennium, shall be a violation of KRS 304.9-295 and shall subject the affiant to suspension or revocation of the agent license.

(9) Members of the Armed Forces who have been mobilized or deployed in support of their duties may:

(a) Request an extension of time for completion of continuing education requirements, in accordance with KRS 304.9-260(3), by filing with the department the Request for Waiver of Renewal Procedures or Exemption from Examination or Extension for Continuing Education Due to Active Military Service Deployment, Form MLW-1; or

(b) Request a waiver of continuing education requirements in accordance with KRS 304.9-260(3).

Section 6. Business Entity Agent Application and Designation. (1) A business entity seeking an agent license pursuant to KRS 304.9-130 shall submit:

(a) Form 8301-BE, Uniform Application for Business Entity Insurance License; and

(b) The applicable fee.

(2) A business entity shall submit Form 8305, Business Entity Designation or Termination of Designation Form to designate individuals authorized to act under the entity's license and appointments.

Section 7. Agent Appointment. (1) Each insurer shall appoint each agent acting on the insurer's behalf within fifteen (15) days of the agent contract's execution or the date on which the agent submits their first application to the insurer, whichever is earlier, as established by KRS 304.9-270.

(2) An insurer seeking approval of an agent's appointment shall submit:

(a) Form 8302-AP, Producer Appointment; and

(b) the applicable filing fee.

(3) An insurer terminating an appointment shall submit Form 8302-TE, Termination of Producer Appointment within thirty (30) days following the effective date of an agent's termination.

(4) The requirements of this section apply to both individual and business entity agent appointments.

Section 8. Record Correction. A licensee shall submit Form 8303, Record Correction Form with the commissioner to make a change or update the licensee's name and address.

Section 9. Material Incorporated by Reference. (1) The following material is incorporated by reference.

(a) Form CPL-01, "Certificate of Prelicensing Course Completion," (8/2019);

(b) Form 8301, "NAIC Individual Insurance Producer License Application," (8/2019);

(c) Form 8301-BE, "Uniform Application for Business Entity Insurance License Application," (8/2019);

(d) Form 8302-AP, "Producer Appointment," (8/2019);

(e) Form 8302-TE, "Termination of Producer Appointment," (8/2019);

(f) Form 8305, "Business Entity Designation or Termination of Designation Form," (8/2019);

(g) Form 8304, "Examination Retake Form," (8/2019);

(h) Form KYP-01, "Provider Approval Application," (8/2019);

(i) Form CE/PL-100, "Course Approval Application," (8/2019);

(j) Form CE/PL-200, "Instructor Approval Application," (8/2019);

(k) Form CE-301, "Approved Continuing Education Certificate of Completion," (8/2019);

(l) Form CA AFF 304, "Affidavit for Exemption from Continuing Education," (8/2019);

(m) Form 8303, "Record Correction Form," (8/2019);

(n) Form MLW-01, "Request for Waiver of Renewal Procedures or Exemption from Examination or Extension for Continuing Education Due to Active Military Service Deployment," (8/2019);

(o) "NAIC Uniform Continuing Education Reciprocity Course Filing Form," (8/2019).

(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: August 15, 2019

FILED WITH LRC: August 15, 2019 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 21, 2019 at 10:00 a.m. at 215 W. Main 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 p.m. on October 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 D. O'Connor II, Deputy Commissioner - Policy, 215 W. Main Street, Frankfort, Kentucky 40601, phone (502) 564-6026, fax (502) 564-1453, email patrick.oconnor@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Patrick D. O'Connor II

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements, process, and forms to be used throughout the agent licensing process including the pre-licensing education, examination, continuing education, appointment, and termination processes.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to fulfill the requirements of various statutory provisions related to the agent licensing process where the commissioner is required to develop forms and standards governing pre-licensing education, examination, continuing education, appointment, and termination processes.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation fulfills the requirements of various statutory requirements, including KRS 304.9-080, 304.9-105, 304.9-230, 304.9-270, and 304.9-295 where the commissioner is required to draft administrative regulations related to the pre-licensing education, examination, continuing education, appointment, and termination processes.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will provide clarity for agents as they embark and fulfill the licensure process by consolidating the requirements into one administrative regulation. The administrative regulation incorporates forms currently in use into the body of the

administrative regulation, and eliminates unnecessary and outdated forms.

(2) If 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 amendment will affect insurance agent applicants, licensed agents, providers of pre-licensing and continuing education courses.

(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:
Insurance agent applicants will have to comply with the pre-licensing and continuing education requirements. Agents seeking limited licenses will have reduced examination requirements allowing them to obtain the license necessary to sell ancillary products to their normal business under the current statutory framework. The expanded continuing education license requirements ensure agents have the variety of courses available for credit to enhance their operations and service to clients. Pre-licensing and continuing education course providers will benefit from reduced record retention requirements, the express permission of electronic record keeping, and additional course opportunities to obtain credit.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: There is no new cost to any of the regulated entities as all fees have been charged as set by 806 KAR 4:060, the administrative regulation establishing all fees charged by the department.

(c) As a result of compliance, what benefits will accrue to the entities: Compliance will be easier with the clarity provided by this amendment. Agents will benefit from reduced examination requirements that do not impact consumer protection, and a wider array of courses to satisfy licensure requirements. Education providers will benefit from the elimination of unnecessary forms, the new electronic record retention permission and reduction in duration, and the expansion of course offerings.

(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 the department to implement this administrative regulation. The processes established in this administrative have been in use for multiple years under existing statutory and regulatory framework.

(b) On a continuing basis: There will be no cost to the department to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funding for the review of applications, educational materials, and examinations is covered by the existing fees established in 806 KAR 4:010.

(7) Provide an assessment of whether an 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 amendment does not establish any fees or increase any fees. Department of Insurance fees are set in 806 KAR 4:060.

(9) TIERING: Is tiering applied? Tiering is not applied because similarly situated applicants are treated equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will affect the 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, 304.9-080, 304.9-105, 304.9-230, 304.9-270, and 304.9-295.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate any new revenue for the state or local government. The fees required are already established by 806 KAR 4:010. The potential expansion of continuing education opportunities may result in additional fees, but the amount is speculative.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate any new revenue for the state or local government. The fees required are already established by 806 KAR 4:010. The potential expansion of continuing education opportunities may result in additional fees, but the amount is speculative.

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

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

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

Revenues (+/-): Neutral.

Expenditures (+/-): Neutral.

Other Explanation: None.

PUBLIC PROTECTION CABINET
Department of Insurance
(Repealer)

806 KAR 9:221. Repeal of 806 KAR 9:001, 806 KAR 9:070, and 806 KAR 9:220.

RELATES TO: KRS 304.4-010, 304.9-030, 304.9-105, 304.9-160, 304.9-190, 304.9-230, 304.9-295, 304.9-320, 304.9-430, 304.9-505, 304.14-642, 304.15-700

STATUTORY AUTHORITY: KRS 304.1-110(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes the commissioner of insurance to make reasonable rules and regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. This administrative regulation repeals three outdated (3) regulations governing insurance producer licensing whose necessary substantive provisions are being concurrently promulgated as part of a new comprehensive licensing administrative regulation for ease of use by applicants, licensees, and department staff.

Section 1. The following administrative regulations are repealed:

(1) 806 KAR 9:001, Prelicensing courses of study; instructors;

(2) 806 KAR 9:070, Examinations; and

(3) 806 KAR 9:220, Continuing Education.

NANCY G. ATKINS, Commissioner
K. GAIL RUSSELL, Secretary
APPROVED BY AGENCY: August 15, 2019
FILED WITH LRC: August 15, 2019 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 21, 2019 at 10:30 a.m. at 215 W. Main St., 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 October 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, Esq., Deputy Commissioner, 215 W. Main St., Frankfort, Kentucky 40602, phone (502) 782-5262, 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 repeals three outdated (3) regulations governing insurance producer licensing whose necessary substantive provisions are being concurrently promulgated as part of a new comprehensive licensing regulation for ease of use by applicants, licensees, and department staff.

(b) The necessity of this administrative regulation: This administrative regulation repeals three outdated (3) regulations governing insurance producer licensing whose necessary substantive provisions are being concurrently promulgated as part of a new comprehensive licensing regulation for ease of use by applicants, licensees, and department staff.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110(1) authorizes the commissioner of insurance to make reasonable rules and regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation repeals three outdated (3) regulations governing insurance producer licensing whose necessary substantive provisions are being concurrently promulgated as part of a new comprehensive licensing regulation for ease of use by applicants, licensees, and department staff.

(2) If 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 repealer will affect all current and future insurance agents in the Commonwealth; the Department is concurrently promulgating a new comprehensive insurance agent licensing regulation at 806 KAR 9:025 that includes only the necessary substantive provisions from the three (3) administrative regulations being repealed.

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

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: The regulated entities and applicants will have to comply with the new administrative regulation governing the insurance agent licensing process at 806 KAR 9:025.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: No cost is anticipated for licensees to comply with this repealer.

(c) As a result of compliance, what benefits will accrue to the entities: This repealer and the concurrently promulgated new administrative regulation will make the insurance agent licensing process much easier for applicants, current licensees, and department staff.

(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 repealer.

(b) On a continuing basis: There is no cost anticipated to implement this repealer.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is necessary for the implementation of this repealer.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied because this is a repealer.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This repealer will affect the 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(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 repealer 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 repealer 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 will be no cost to administer this repealer for the first year.

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

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

Revenues (+/-): Neutral
Expenditures (+/-): Neutral
Other Explanation: None

PUBLIC PROTECTION CABINET
Department of Insurance
(Repealer)

806 KAR 10:061. Repeal of 806 KAR 10:060.

RELATES TO: KRS 304.1-040, 304.2-110, 304.10-030, 304.10-040, 304.10-140

STATUTORY AUTHORITY: KRS 304.2-110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 authorizes the Commissioner of Insurance to make reasonable rules and regulations necessary for or as an aid to the effectuation of any provision of the Kentucky insurance code. KRS 304.10-140 establishes the requirements for evidence of financial responsibility for a surplus lines broker. This administrative regulation repeals 806 KAR 10:060 because the restrictions on cancellation of financial responsibility are more appropriately addressed through statute.

Section 1. 806 KAR 10:060, Cancelation of financial responsibility, is hereby repealed.

NANCY G. ATKINS, Commissioner
K. GAIL RUSSELL, Secretary

APPROVED BY AGENCY: August 15, 2019

FILED WITH LRC: August 15, 2019 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 21, 2019 at 10:15 a.m. at 215 W. Main St., 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 October 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, Esq., Deputy Commissioner, Policy, 215 W. Main St., 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 repeals 806 KAR 10:060. KRS 304.10-140 provides the specific financial responsibility and bond requirements. The notice requirements within 806 KAR 10:060 exceed the statutory provisions, and the Department prefers to leave this to the contracting parties to determine. Additionally, in some instances, the 30 day written notice requirement may be ill advised, especially in cases of fraud.

(b) The necessity of this administrative regulation: The administrative regulation is necessary to conform to the statutory requirements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation conforms through the repeal of notice requirements not provided within the statutory framework.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation will allow brokers and insurers to freely contract for provisions they believe are necessary to perform their 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: This is a repealer.

(b) The necessity of the amendment to this administrative regulation: This is a repealer.

(c) How the amendment conforms to the content of the authorizing statutes: This is a repealer.

(d) How the amendment will assist in the effective administration of the statutes: This is a repealer.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The administrative regulation will impact surplus lines brokers primarily.

(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: Surplus lines brokers will be required to negotiate the terms of their bonds and financial responsibility requirements.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: Due to the standardization of forms and notice requirements, it is unlikely the administrative regulation will result in any cost to the regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities: Regulated entities may have more freedom to contract for terms that are applicable to their situation. The extent of the benefit may be muted due to standardization of forms.

(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 administrative body to implement this repealer.

(b) On a continuing basis: There is no cost to the administrative body to implement this repealer.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There is no funding necessary to implement this repealer.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied because this is a repealer.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation repealer will affect the 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.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 repealer 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 repealer 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 repealer.

(d) How much will it cost to administer this program for subsequent years? There is no cost to administer this repealer.

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

Revenues (+/-): Neutral.

Expenditures (+/-): Neutral.

Other Explanation: None.

PUBLIC PROTECTION CABINET
Department of Insurance
(Repealer)

806 KAR 14:061. Repeal of 806 KAR 14:060.

RELATES TO: KRS 304.14-120

STATUTORY AUTHORITY: KRS 304.2-110(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes the commissioner of insurance to make reasonable rules and regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. This administrative regulation repeals 806 KAR 14:060 because the text of the regulation has been incorporated into statute at KRS 304.14-120(1) and is no longer necessary.

Section 1. 806 KAR 14:060, Group certificate filing, is hereby repealed.

NANCY G. ATKINS, Commissioner
K. GAIL RUSSELL, Secretary

APPROVED BY AGENCY: August 15, 2019

FILED WITH LRC: August 15, 2019 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 21, 2019 at 10:00 a.m. at 215 W. Main St., 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 October 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, Esq., Deputy Commissioner, Policy, 215 W. Main St., 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 repeals 806 KAR 14:060, which is no longer necessary due to amendments of KRS 304.14-120(1) incorporating the regulatory language within statute.

(b) The necessity of this administrative regulation: The administrative regulation is repealed due to the amendment of KRS 304.14-120 incorporating the same requirement.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The authorizing statute has been amended to incorporate the regulatory language. The administrative regulation is now unnecessary.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation will further reduce the Insurance Code and remove unnecessary 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 is a repealer.

(b) The necessity of the amendment to this administrative regulation: This is a repealer.

(c) How the amendment conforms to the content of the authorizing statutes: This is a repealer.

(d) How the amendment will assist in the effective administration of the statutes: This is a repealer.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The administrative regulation will apply to all regulated entities.

(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 actions will be necessary due to the incorporation of the requirements within KRS 304.14-120.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: Regulated entities will not be subject to any cost as a result of this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities: Regulated entities will receive the benefit of a reduction in unnecessary and duplicative administrative regulations.

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

(a) Initially: There is no cost to implement this administrative regulation.

(b) On a continuing basis: There is no cost to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is required to implement this administrative regulation.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied in this repealer.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky 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.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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? There is no cost to administer the administrative regulation.

(d) How much will it cost to administer this program for subsequent years? There is no cost to administer the administrative regulation.

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

Revenues (+/-): Neutral.

Expenditures (+/-): Neutral.

Other Explanation: Not applicable.

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of August 9, 2019

Call to Order and Roll Call

The August meeting of the Administrative Regulation Review Subcommittee was held on Friday, August 9, 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 July 2019 were approved.

Present were:
Members: Senators Perry Clark, Alice Forgy Kerr, Julie Raque Adams and 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: Emily Dennis, Registry of Elections; Rosemary Holbrook, Personnel Cabinet; Todd Renner, Department of Revenue; Victoria Hale, Alan Hurst, Kentucky Retirement Systems; Jeff Allen, Board of Dentistry; Heather Becker, H.E. Corder II, Jack Kenkel, Tom Veit, Real Estate Authority; Mike Sunseri, Office of Homeland Security; Karen Waldrop, Department of Fish and Wildlife Resources; Melissa Duff, Anthony Hatton, Department for Environmental Protection; Jeff Baird, Michael Mullins, Charles Snavely, Department for Natural Resources; Amy Barker, Brandon Lynch, Joseph Woods, Department of Corrections; Jon Johnson, Godwin Onodu, Kyle Willard; Department of Transportation; Todd Allen, Chad Collins, Julian Tackett, Department of Education; Steve Humphress, Marc Manley, Alcoholic Beverage Control; Tony Cotto, Department of Insurance; Erica Brakefield, Julie Brooks, Jessica Davenport, Kelly Giesbrecht, Virginia Hamilton, Pamela Hendren, Jim Musser, Department for Public Health; Lee Guice, Jonathan Scott; Department for Medicaid Services; Shannon Gadd, Jessica Wayne, Tonia Wells, Department for Aging and Independent Living; Laura Begin, Laura Carpenter, Kelli Root, Department for Community Based Services; Charles Wheeler, Tattoo Charlies of Kentucky.

The Administrative Regulation Review Subcommittee met on Friday, August 9, 2019, and submits this report:

Administrative Regulations Reviewed by the Subcommittee:

DEPARTMENT OF STATE: Registry of Election Finance: Reports and Forms

32 KAR 1:061. Repeal of 032 KAR 001:060. Emily Dennis, general counsel, represented the registry.

PERSONNEL CABINET: Classified

101 KAR 2:230. Kentucky Employee Mediation and Workplace Resolution Programs. Rosemary Holbrook, general counsel, and Larry Gillis, Ombudsman, represented the cabinet.

FINANCE AND ADMINISTRATION CABINET: Department of Revenue: General Administration

103 KAR 1:010. Protests. Todd Renner, executive director, Office of Tax Policy and Regulation, represented the department.

A motion was made and seconded to approve the following amendments: to amend Sections 2 and 6 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

103 KAR 1:060. Electronic fund transfer.

A motion was made and seconded to approve the following amendments: (1) to delete Section 7, which was no longer applicable; and (2) to amend the RELATES TO; STATUTORY AUTHORITY; and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 through 4 and 8 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

103 KAR 2:030. Policies and circulars relating to inheritance tax.

Ad Valorem Tax, Administration

103 KAR 5:151. Repeal of 103 KAR 005:150.

103 KAR 5:160. Property valuation administrator office employees: payment of leave upon separation.

Ad Valorem Tax; Local Assessment

103 KAR 7:031. Repeal of 103 KAR 007:030.

Ad Valorem Tax; State Assessment

103 KAR 8:011. Repeal of 103 KAR 008:010.

103 KAR 8:110. Apportioned vehicles.

103 KAR 8:130. Ad valorem taxation of machinery actually engaged in the manufacturing of coal, crushed stone, sand, gravel and hot asphalt.

A motion was made and seconded to approve the following amendments: to amend the TITLE and Section 5 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

103 KAR 8:141. Repeal of 103 KAR 008:140 and 103 KAR 008:150.

Income Tax; General Administration

103 KAR 15:050. Filing dates and extensions.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY paragraph and Sections 1 through 5 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Income Tax; Corporations

103 KAR 16:200. Consolidated Kentucky corporation income tax return.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Section 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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

A motion was made and seconded to approve the following amendments: to amend the RELATES TO; STATUTORY AUTHORITY; and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 through 3 and 6 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

103 KAR 16:400. Combined Unitary Kentucky corporation income tax return.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 8 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to amend Section 7 to establish how a designated filer may request a change in election. Without objection, and with agreement of the agency, the amendments were approved.

Sales and Use Tax; Service and Professional Occupations

103 KAR 26:010. Nontaxable service enterprises.

Sales and Use Tax; Miscellaneous Retailer Occupations

103 KAR 27:140. Publishers of newspapers, magazines and periodicals.

Sales and Use Tax; General Exemptions

103 KAR 30:261. Repeal of 103 KAR 030:260.

Sales and Use Tax; Administration and Accounting

103 KAR 31:030. Direct pay authorization.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 2 and 10 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

103 KAR 31:111. Sales and purchases for resale.

A motion was made and seconded to approve the following amendment: to amend Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendment was approved.

KENTUCKY RETIREMENT SYSTEMS: General Rules

105 KAR 1:200. Retirement procedures and forms. Victoria Hale, staff attorney, and Alan Hurst, staff attorney, represented the systems.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

105 KAR 1:390 & E. Employment after retirement.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 through 4 and Section 6 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

BOARDS AND COMMISSIONS: Board of Dentistry

201 KAR 8:581. Charity dental practices. Jeff Allen, executive director, represented the board.

Real Estate Appraisers Board

201 KAR 30:010. Definitions for 201 KAR Chapter 030. Heather Becker, general counsel; H.E. Corder II, executive director, Kentucky Real Estate Authority; and Tom Veit, executive assistant, represented the board.

In response to questions by Co-Chair West, Ms. Becker stated that this package of administrative regulations was precipitated by federal revisions. These revisions were unrelated to the process of combining licensure boards.

A motion was made and seconded to approve the following amendments: to amend Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 30:021. Repeal of 201 KAR 030:020, 201 KAR 030:030, 201 KAR 030:050, 201 KAR 030:060, 201 KAR 030:120, 201 KAR 030:125, 201 KAR 030:150, 201 KAR 030:160, 201 KAR 030:170, 201 KAR 030:180, 201 KAR 030:200, 201 KAR 030:310, 201 KAR 030:315, 201 KAR 030:360, 201 KAR 030:375, and 201 KAR 030:380.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 1 to: (a) clarify that the content of repealed administrative regulations was established in other administrative regulations; and (b) remove the repeal of 201 KAR 30:125, 30:150, 30:160, 30:170, and 30:180; and (2) to amend Section 1 to comply with the formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 30:040. Professional standards of practice and conduct.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 and 6 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 30:070. Grievances.

201 KAR 30:110. Appraiser roster and fees.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs and Sections 1 through 3 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to amend Section 3 to add the Roster fee of one (1) dollar required for nonfederally-related transactions pursuant to KRS 324A.065(1)(b)4. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 30:190. Certification and licensing requirements.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 3, 4, 8 through 18, 20, and 21 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 30:330. Registration and supervision of appraisal management companies.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO; STATUTORY AUTHORITY; and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 2, 3, 6, and 7 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

OFFICE OF HOMELAND SECURITY: 911 Services Board

202 KAR 6:010. Definitions for 202 KAR Chapter 006. Christie Ross, chief operations officer, and Mike Sunseri, office deputy executive director and board administrator, represented the board.

In response to a question by Senator Clark, Mr. Sunseri stated that there had been significant advances in the past fourteen (14) months regarding advanced location services related to cellular calls for emergency response. The next hurdle was distinguishing, for example, from which floor a call originated in the case of large, multi-level urban buildings.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

202 KAR 6:020. CMRS provider cost recovery.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 3, 4, 9, 10, and 15 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

202 KAR 6:030. Confidential and proprietary information.

202 KAR 6:050. PSAP certification.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO; STATUTORY AUTHORITY; and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 through 6 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

202 KAR 6:060. PSAP pro data fund disbursement.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

202 KAR 6:070. PSAP workload fund disbursement.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

202 KAR 6:080. CMRS surcharge remittance and reporting.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO; STATUTORY AUTHORITY; and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 through 3, and 6 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

202 KAR 6:090. Permitted uses by PSAPs for CMRS funds.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 4 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

202 KAR 6:100. PSAP Phase II certification.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 through 4, 7, and 8 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

TOURISM, ARTS AND HERITAGE CABINET: Department of Fish and Wildlife Services: Fish

301 KAR 1:152 & E. Harvest and sale of Asian carp. Daniel Schulman, staff attorney, and Karen Waldrop deputy commissioner, represented the department.

Wildlife

301 KAR 4:090. Taxidermy and the buying and selling of inedible wildlife parts.

ENERGY AND ENVIRONMENT CABINET: Department for Natural Resources: Division for Air Quality: Asbestos

401 KAR 58:005. Accreditation of asbestos professionals. Melissa Duff, division director, and Tony Hatton, commissioner, represented the division.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Sections 1, 4, 5, and 8 through 10 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Division of Mine Permits: Bond and Insurance Requirements

405 KAR 10:001. Definitions for 405 KAR Chapter 010. Jeff Baird, division director, and Michael Mullins, regulation coordinator, represented the division.

A motion was made and seconded to approve the following amendments: to amend Section 1 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

405 KAR 10:015. General bonding provisions.

A motion was made and seconded to approve the following amendments: to amend Sections 1 and 2 through 12 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

JUSTICE AND PUBLIC SAFETY CABINET: Department of Corrections: Office of the Secretary

501 KAR 6:160. Correctional Industries. Amy Barker, assistant general counsel, and Joseph Woods, branch manager, represented the department.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and STATUTORY AUTHORITY paragraphs, Section 1, and the material incorporated by reference to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

TRANSPORTATION CABINET: Department of Vehicle Licensing: Division of Motor Licensing: Motor Vehicle Tax

601 KAR 9:130. Motor vehicle registration. Jon Johnson, assistant general counsel; Godwin Onodu, assistant director; and Kyle Willard, transportation engineer, represented the cabinet.

A motion was made and seconded to approve the following amendments: to amend Sections 17 and 21 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Department of Highways: Division of Maintenance: Traffic

603 KAR 5:150. Encroachment permits.

A motion was made and seconded to approve the following amendment: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendment was approved.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET: Board of Education: Department of Education: School Terms, Attendance, and Operation

702 KAR 7:065. Designation of agent to manage middle and high school interscholastic athletics. Todd Allen, deputy general counsel; Chad Collins, general counsel; and Julian Tackett, commissioner, represented the Kentucky High School Athletic Association.

In response to questions by Co-Chair Hale, Mr. Tackett stated that, over the last couple of years, the Kentucky High School Athletic Association (KHSAA) made changes to reduce unintended problems pertaining to student athletes who transferred schools and were prohibited from participation in certain sports as a result of the transfer. KHSAA was continuing to address the issue of exceptions

based on a guardian who works at a school, including implementing an appeal process. Only a small percentage (approximately 100) of the thousand student transfers per year resulted in an appeal. The transfer rule did not apply until a student had already played a specific sport at the high school level. Due to liability, transportation, and insurance concerns, principals and superintendents were disinclined to allow a student enrolled in a school to participate in sports events for another school. Mr. Collins stated that a student may enroll in a school and play a sport if the student did not have previous varsity experience at another school in that sport. Member schools were trying to narrow the scope of the transfer requirements in order to apply the requirements to the situations intended to be regulated. Mr. Tackett stated that there were families who would move residences in order to ensure that their child played a certain sport at a specific school. Free agency was inappropriate in true interscholastic environments; however, there were always those who would find a way to circumvent the rules. While imperfect, this administrative regulation made Kentucky interscholastic sports programs more equitable. The girls' state basketball tournament would continue to be held at Rupp Arena. While expensive, the benefits were significant. Parts of the arena were curtained off in order to prevent a feeling of cavernousness.

In response to a question by Representative Frazier, Mr. Tackett stated that there were some coaches who would allow a player to play in order to prevent that student from transferring. It was a discouraged practice.

In response to questions by Co-Chair West, Mr. Tackett stated that Kentucky was a member of the National Federation of High Schools, which was developing e-sport gaming programs between schools. Due to concerns for school safety, the e-sport games were carefully vetted, and principals and participants' guardians were required to review the gaming content and establish permission. Students were required to play as a team, rather than as individuals. E-sport gaming was engaging students who had previously been isolated. Those students were now representing their schools.

A motion was made and seconded to approve the following amendments: to amend Sections 3, 4, and the material incorporated by reference to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

PUBLIC PROTECTION CABINET: Department of Alcoholic Beverage Control: Local Administrators

804 KAR 10:040. Cities with quotas for quota retail package licenses in excess of statutory default quotas. Steve Humphress, general counsel, and Marc Manley, attorney, represented the department.

In response to a question by Co-Chair West, Mr. Humphress stated that, for a city within a dry county that had voted to go wet and subsequently requested a quota increase, the default quota was one (1) retail package license for every 2,300 city residents; however, a city could request additional licenses up to one (1) per 1,500 city residents. The increase request process required public notification via newspaper, a city council resolution, and a request to the agency board. The authorizing statute established criteria for use by the agency board making the determination. There were also various due-process procedures. Changes to this administrative regulation were precipitated by statutory revisions.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO; STATUTORY AUTHORITY; and NECESSITY, FUNCTION, AND CONFORMITY paragraphs to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Department of Insurance: Authorization of Insurers and General Requirements

806 KAR 3:240. Corporate Governance Annual Disclosure. Tony Cotto, executive advisor, represented the department.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO; STATUTORY AUTHORITY; and NECESSITY, FUNCTION, AND CONFORMITY paragraphs, Sections 1 through 4, and the material incorporated by reference to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Life Insurance and Annuity Contracts

806 KAR 15:081. Repeal of 806 KAR 015:080.

CABINET FOR HEALTH AND FAMILY SERVICES: Department for Public Health: Division of Epidemiology and Health Planning: Communicable Diseases

902 KAR 2:070. Rabies control. Erica Brakefield, section supervisor; Julie Brooks, regulation coordinator; and Kelly Giesbrecht, Kentucky State Public Health Veterinarian, represented the division.

Department for Public Health: Division of Public Health Protection and Safety: Mobile Homes and Recreational Vehicles Parks; Facilities Standards

902 KAR 15:010. Manufactured and mobile homes. Jessica Davenport, program evaluator; Erica Brakefield, section supervisor; and Julie Brooks, regulation coordinator, represented the division.

In response to a question by Co-Chair West, Ms. Brakefield stated that the requirements established in this administrative regulation were not much more stringent than the previous provisions. These changes were primarily a consolidation of other requirements into one (1) administrative regulation for ease of use by stakeholders.

Food and Cosmetics

902 KAR 45:065. Tattooing. Julie Brooks, regulation coordinator; Virginia Hamilton, program coordinator; Pamela Hendren, branch manager; and Jim Musser, executive director, represented the division. Charles Wheeler, owner, Tattoo Charlie's of Kentucky, appeared in support of but requesting changes to this administrative regulation.

In response to a question by Co-Chair West, Mr. Musser stated that the division acknowledged the complexity of the administrative regulation process pertaining to this administrative regulation. The process was a testament to Kentucky's administrative regulation system. Mr. Musser thanked Senator Raque Adams, Representative Marzian, and their constituents for input during the development of these administrative regulations. The division received over 500 comments during the public comment period, and department staff did an excellent job of responding to the public comments. The primary concern was always the health, safety, and welfare of constituents.

In response to a question by Co-Chair West, Mr. Wheeler stated that he supported the updates to this administrative regulation, but requested amendments to this administrative regulation and 902 KAR 45:070. The requirement for a nonporous ceiling was impractical and unnecessary. Most studio ceilings were drop-down ceilings, which were porous; however, it was unlikely that bodily fluids could contaminate the ceiling. While the administrative regulation effectively addressed definitions pertaining to sterilization, tattoo studios and piercers that used metal or receiving tubes (lumens) should not sterilize with a gravity-based sterilizer only, which did not adequately sterilize the interior of the tubes, but should instead use a pulsed-vacuum sterilizer. Consent for minors should include both notarized consent and parental presence, rather than one (1) or the other. Practitioners should wear appropriate clothing and closed-toed shoes because sharp instruments could be dropped and cause injury to exposed skin.

Representative Marzian stated that prohibiting open-toed shoes and requiring appropriate attire was a good idea. In response to a question by Representative Marzian, Ms. Brooks stated that a health inspector would not cite a facility for inappropriate attire; therefore, the division believed that attire should be a policy

decision for the facility. The division agreed that appropriate attire was an important safety component.

In response to questions by Representative Frazier, Mr. Wheeler stated that many clients took anti-coagulant medications. Practitioners always recommended that a client check with his or her physician about safety concerns. This was a more appropriate procedure than an explicit regulatory directive. Practitioners were prohibited due to privacy requirements from asking extensive questions of clients regarding medical conditions; however, if a client volunteered information, such as a diagnosis of diabetes, standard procedure was to recommend that a client check with his or her physician. Additionally, it was recommended that diabetics tattoo or pierce only above the waist because wounds above the waist healed better than wounds below the waist. Ms. Hamilton stated that a nonporous ceiling was something for which a studio may receive a violation. It would not necessarily be a critical violation; however, a studio may receive a lower inspection score as a result. Mr. Wheeler stated that health inspection violations should be standard.

In response to a question by Co-Chair West, Ms. Hamilton stated that there was an Association of Professional Tattooers. Mr. Wheeler stated that the Association of Professional Tattooers was not as comprehensive as the Association of Professional Piercers.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 2 and 3 to remove the phrase, "or postmarked by" from the deadline requirement for a renewal application; (2) to amend Section 7 to revise provisions for parental or legal guardian consent to remove language that would conflict with KRS 211.760(3)(d); (3) to amend Section 12 to change the application requirements for a mobile studio to establish that an owner shall submit the application to the local health department where the owner resides, instead of to the health department where the studio is located; (4) to amend Section 12 to require mobile studio certification to: (a) be valid statewide; (b) be publicly displayed in the mobile studio; (c) be nontransferable from one person to another; (d) expire on December 31 each year; and (e) be assessed a $100 late renewal fee if the renewal application is not received by January 31 each year; and (5) to amend Sections 2, 3, 5, 7, 8, 12 through 15, and 17 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

902 KAR 45:070. Body piercing and ear piercing.

A motion was made and seconded to approve the following amendments: (1) to remove the phrase, "or postmarked by" from the deadline requirement for a renewal application; (2) to revise provisions for parental or legal guardian consent to remove language that would conflict with KRS 211.760(3)(d); (3) to revise application requirements for a mobile studio to establish that an owner shall submit the application to the local health department where the owner resides, rather than the health department where the studio is located; (4) to add mobile studio requirements, including that certification shall: (a) be valid statewide; (b) be publicly displayed in the mobile studio; (c) be nontransferable from one person to another; (d) expire on December 31 each year; and (e) be assessed a $100 late renewal fee if the renewal application is not received by January 31 each year; and (5) to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

902 KAR 45:075. Tanning facilities.

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

Department for Medicaid Services: Division of Policy and Operations

907 KAR 1:604 & E. Recipient cost-sharing. Lee Guice, director, and Jonathan Scott, regulatory and legislative advisor, represented the division.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 2, 4, and 8 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Department for Aging and Independent Living: Division of Guardianship

910 KAR 2:020. Referral process for adult guardianship. Shannon Gadd, commissioner; Jessica Wayne, assistant director; and Tonia Wells, director, represented the division.

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

922 KAR 1:310 & E. Standards for child-placing agencies. Laura Begin, staff assistant; Mary Carpenter, assistant director; and Kelli Root, branch manager, represented the division.

In response to a question by Co-Chair West, Ms. Begin stated that changes to these administrative regulations were precipitated by House Bills 1 and 446 from the 2019 Regular Session of the General Assembly. These administrative regulations established a new type of foster home, the child-specific foster home, which was specific to relative or fictive kin caregivers.

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.

A motion was made and seconded to approve the following amendments: to amend Section 2 to clarify that the cabinet shall waive up to twelve (12) hours of preservice training curricula for an applicant seeking approval as a child specific foster home unless the cabinet identifies an unmet need that necessitates training. Without objection, and with agreement of the agency, the amendments were approved.

The following administrative regulations were deferred or removed from the August 9, 2019, subcommittee agenda:

STATE BOARD OF ELECTIONS: Forms and Procedures

31 KAR 4:120. Additional and emergency precinct officers.

FINANCE AND ADMINISTRATION CABINET: Office of Financial Management: State Investment Commission

200 KAR 14:201. Repeal of 200 KAR 014:200.

BOARDS AND COMMISSIONS: Board of Pharmacy

201 KAR 2:095. Pharmacist interns.

201 KAR 2:165. Transfer of prescription information.

Board of Dentistry

201 KAR 8:540. Dental practices and prescription writing.

Real Estate Commission

201 KAR 11:011. Definitions for 201 KAR Chapter 011.

201 KAR 11:105. Advertising.

201 KAR 11:461. Repeal of 201 KAR 011:420.

Board of Embalmers and Funeral Directors

201 KAR 15:010. Definitions.

201 KAR 15:015. Per Diem compensation of board members.

201 KAR 15:030. Fees.

201 KAR 15:040. Examination.

201 KAR 15:050. Apprenticeship and supervision requirements.

201 KAR 15:080. Complaints.

201 KAR 15:110. Funeral establishment criteria.

201 KAR 15:120. Requirements for applicants holding a license in another state.

201 KAR 15:125. Surface Transportation Permit.

Real Estate Appraisers
201 KAR 30:130. Education provider, instructor, and course.

ENERGY AND ENVIRONMENT CABINET: Department for Environmental Protection: Division of Water: Water Quality
401 KAR 5:010. Operation of wastewater systems by certified operators.

Water Quality Certification
401 KAR 8:030. Water treatment plant and water distribution system classification and staffing.

401 KAR 8:050. Drinking water program fees.

Water Quality Standards
401 KAR 10:001. Definitions for 401 KAR Chapter 010.

401 KAR 10:026. Designation of uses of surface waters.

401 KAR 10:029. General provisions.

401 KAR 10:030. Antidegradation policy implementation methodology.

401 KAR 10:031. Surface water standards.

Certified Operators
401 KAR 11:001. Definitions for 401 KAR Chapter 011.

401 KAR 11:030. Wastewater treatment and collection system operators; classification and qualifications.

401 KAR 11:040. 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.

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.

Department of Corrections: Office of the Secretary
501 KAR 6:110. Roederer Correctional Complex.

TRANSPORTATION CABINET: Department of Vehicle Regulation: Driver Improvement
601 KAR 13:090. Medical Review Board; basis for examination, evaluation, tests.

601 KAR 13:100. Medical standards for operators of motor vehicles.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET: Board of Education: Department of Education: Office of Chief State School Officer
701 KAR 5:090. Teacher disciplinary hearings.

Office of District Support Services: School Administration and Finance
702 KAR 3:130. Internal accounting.

Office of Employment and Training: Apprenticeship Standards
787 KAR 3:010. Registration of apprenticeship programs.

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 9:030. Adjuster licensing restrictions.

806 KAR 9:061. Repeal of 806 KAR 009:060.

806 KAR 9:070. Examinations.

806 KAR 9:110. Agent's rights after contract termination.

806 KAR 9:190. Disclosure requirements for financial institutions authorized to engage in insurance agency activities.

806 KAR 9:200. Volume of insurance agent exchange of business.

806 KAR 9:310. Life settlement licenses.

806 KAR 9:321. Repeal of 806 KAR 009:320.

806 KAR 9:341. Repeal of 806 KAR 009:340.

806 KAR 9:350. Recognition of financial planning certification and designation for receipt of fees and commissions.

Rates and Rating Organizations
806 KAR 013:120. Workers' compensation deductible policies.

LABOR 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 Public Health Protection and Safety: Public Accommodations
902 KAR 7:010. Hotel and motel code.

Office of Inspector General: Division of Healthcare: Health Services and Facilities
902 KAR 20:036. Operation and services; personal care homes.

Department for Public Health: Division of Audits and Investigations: Controlled Substances
902 KAR 55:070. Emergency medication kits in long-term care facilities.

Department for Medicaid Services: Payments and Services
907 KAR 3:170 & E. Telehealth service coverage and reimbursements.

Department for Aging and Independent Living: Division of Guardianship

910 KAR 2:040. Service provisions for adult guardianship.

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

922 KAR 1:470. Central registry.

The subcommittee adjourned at 2:15 p.m. The next meeting of the subcommittee is tentatively scheduled for September 16, 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 HEALTH, WELFARE, AND FAMILY SERVICES
Meeting of August 19, 2019

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Health, Welfare, and Family Services for its meeting of August 19, 2019, having been referred to the Committee on July 3, 2019 and August 7, 2019, pursuant to KRS 13A.290(6):

201 KAR 002:010
201 KAR 002:090
201 KAR 002:100
201 KAR 002:116
201 KAR 002:225
201 KAR 002:240
201 KAR 002:270
201 KAR 002:340
201 KAR 006:030
201 KAR 006:040
201 KAR 013:040
201 KAR 013:050
201 KAR 013:055
201 KAR 013:060
201 KAR 020:370
201 KAR 020:506
201 KAR 025:090
202 KAR 007:560
902 KAR 004:030
902 KAR 004:035
902 KAR 009:010
902 KAR 045:120
908 KAR 001:341
908 KAR 001:370
908 KAR 001:372
908 KAR 001:374
921 KAR 001:380
922 KAR 001:510

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320:

911 KAR 001:010

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the August 19, 2019 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

INTERIM JOINT COMMITTEE ON NATURAL RESOURCES AND ENERGY
Meeting of August 20, 2019

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Natural Resources & Energy for its meeting of August 20, 2019, having been referred to the Committee on August 7, 2019, pursuant to KRS 13A.290(6):

301 KAR 002:221
301 KAR 002:222
301 KAR 002:300
805 KAR 003:110
807 KAR 005:056

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2):

none

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 **C - 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 **C - 9**

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 **C - 16**

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 **C - 19**

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 **C - 20**

A general index of administrative regulations published during this *Register* year, and is mainly broken down by agency.

REGISTER YEAR 45

The administrative regulations listed under VOLUME 45 are those administrative regulations that were originally published in Volume 44 (last year's) issues of the *Administrative Register of Kentucky* but had not yet gone into effect when the new *Register* year began.

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.

EMERGENCY ADMINISTRATIVE REGULATIONS:

Note:

Emergency regulations filed BEFORE noon, July 15, 2019, 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.

Emergency regulations filed AFTER noon, July 15, 2019, expire 240 days from the date filed; or 240 days from the date filed plus number of days of requested extension, or upon replacement or repeal, whichever occurs first.

Regulation Number	45 Ky.R. Page No.	Effective Date
9 KAR 1:010E	3382	5-15-2019
9 KAR 1:040E	3383	5-15-2019
200 KAR 3:020E	2304	1-4-2019
Replaced	28	8-2-2019
500 KAR 15:010E	3011	4-5-2019
601 KAR 2:030E	2310	1-8-2019
Withdrawn		8-7-2019
803 KAR 025:270E	2316	12-27-2018
Withdrawn		7-2019
907 KAR 1:604E	3015	3-15-2019
921 KAR 2:015E	2322	12-28-2018
Replaced	3232	7-5-2019
921 KAR 2:055E	1501	11-1-2018
Replaced	2925	5-31-2019
922 KAR 1:310E	3019	4-1-2019
922 KAR 1:350E	3033	4-1-2019
922 KAR 1:495E	3042	4-1-2019

ORDINARY ADMINISTRATIVE REGULATIONS:

Regulation Number	45 Ky.R. Page No.	Effective Date
009 KAR 001:010		
Amended	3439	See 46 Ky.R.
009 KAR 001:040		
Amended	3440	See 46 Ky.R.
011 KAR 005:145		
Amended	3239	8-2-2019
016 KAR 003:010		
Repealed	2801	7-5-2019
016 KAR 003:011*(r)*	2801	
As Amended	3387	7-5-2019
016 KAR 003:020		
Repealed	2801	7-5-2019
016 KAR 003:030		
Repealed	2801	7-5-2019
016 KAR 003:040		
Repealed	2801	7-5-2019
016 KAR 003:050		
Repealed	2801	7-5-2019
016 KAR 003:090	2250	
As Amended	3387	7-5-2019
016 KAR 8:030		
Amended	3240	See 46 Ky.R.
031 KAR 004:120		
Amended	2152	
101 KAR 002:034		
Amended	2955	
As Amended	3390	7-5-2019
101 KAR 002:180		
Amended	3443	See 46 Ky.R.
101 KAR 002:190	3592	See 46 Ky.R.
101 KAR 003:045		
Amended	2960	
As Amended	3394	7-5-2019
102 KAR 001:060		
Amended	2404	
As Amended	3398	7-5-2019
103 KAR 015:050		
Amended	3445	
As Amended	865	
103 KAR 015:061(r)	3594	
103 KAR 017:121*(r)*	3595	
200 KAR 003:020	2528	
Am Comments	3190	See 46 Ky.R.
200 KAR 014:201*(r)*	3596	
201 KAR 001:290	2802	
As Amended	3399	7-5-2019
201 KAR 001:300		
Amended	2964	
As Amended	3401	7-5-2019
201 KAR 001:310	2804	
As Amended	3403	7-5-2019
201 KAR 002:010		
Amended	3447	See 46 Ky.R.
201 KAR 002:090		
Amended	3449	See 46 Ky.R.
201 KAR 002:095		
Amended	3450	
201 KAR 002:100		
Amended	3451	See 46 Ky.R.
201 KAR 002:116		
Amended	3453	See 46 Ky.R.
201 KAR 002:165		
Amended	3454	
201 KAR 002:225		
Amended	3456	See 46 Ky.R.
201 KAR 002:240		
Amended	3458	See 46 Ky.R.
201 KAR 002:270		
Amended	3460	See 46 Ky.R.
201 KAR 002:310		
Amended	3461	
201 KAR 002:340		
Amended	3462	See 46 Ky.R.
201 KAR 006:030		
Amended	3464	See 46 Ky.R.
201 KAR 006:040		
Amended	3466	See 46 Ky.R.
201 KAR 008:581		
Amended	3244	
201 KAR 013:040		
Amended	3246	See 46 Ky.R.
201 KAR 013:050		
Amended	3249	8-19-2019
201 KAR 013:055		
Amended	3251	See 46 Ky.R.
201 KAR 013:060		
Amended	3253	See 46 Ky.R.
201 KAR 020:370		
Amended	3469	See 46 Ky.R.
201 KAR 020:506		

Regulation Number	43 Ky.R. Page No.	Effective Date
Amended	3471	8-19-2019
201 KAR 022:135		
Amended	3258	7-19-2019
201 KAR 023:150	1459	
Withdrawn		7-30-2019
201 KAR 025:062*(r)*	3597	
Withdrawn		7-2-2019
201 KAR 025:090		
Amended	3472	See 46 Ky.R.
201 KAR 041:020		
Amended	3475	
201 KAR 041:030		
Amended	3477	See 46 Ky.R.
201 KAR 041:040		
Amended	3478	See 46 Ky.R.
201 KAR 041:060		
Amended	3480	
201 KAR 041:065		
Amended	3482	See 46 Ky.R.
201 KAR 041:070		
Amended	3483	See 46 Ky.R.
201 KAR 041:080		
Amended	3486	See 46 Ky.R.
201 KAR 046:010		
Amended	2967	
As Amended	3403	7-5-2019
201 KAR 046:020		
Amended	2970	7-5-2019
201 KAR 046:030		
Amended	2971	7-5-2019
201 KAR 046:040		
Amended	2972	7-5-2019
201 KAR 046:045		
Amended	2975	7-5-2019
201 KAR 046:081		
Amended	2976	7-5-2019
202 KAR 003:010		
Amended	3259	
202 KAR 007:520		
Amended	2760	
As Amended	3405	7-5-2019
202 KAR 007:560		
Amended	3489	See 46 Ky.R.
202 KAR 007:575	2805	
As Amended	3409	7-5-2019
301 KAR 002:030		
Amended	3260	See 46 Ky.R.
301 KAR 002:221		
Amended	3491	8-20-2019
301 KAR 002:222		
Amended	3493	8-20-2019
301 KAR 002:300		
Amended	3498	8-20-2019
301 KAR 003:090		
Repealed	2996	7-5-2019
301 KAR 003:091*(r)*	2996	7-5-2019
302 KAR 016:010		
Amended	3502	See 46 Ky.R.
302 KAR 016:020		
Amended	3503	See 46 Ky.R.
302 KAR 016:040		
Amended	3504	See 46 Ky.R.
302 KAR 016:070		
Amended	3506	
302 KAR 016:091		
Amended	3507	
302 KAR 016:101		
Amended	3509	
302 KAR 016:111		
Amended	3510	See 46 Ky.R.
302 KAR 016:121		
Amended	3511	See 46 Ky.R.
302 KAR 016:131		
Amended	3513	See 46 Ky.R.
302 KAR 78:021*(r)*	3598	
302 KAR 101:010	3599	See 46 Ky.R.
401 KAR 5:010		
Amended	3514	
401 KAR 008:030		
Amended	3516	See 46 Ky.R.
401 KAR 008:050		
Amended	3519	See 46 Ky.R.
401 KAR 011:001		
Amended	3522	See 46 Ky.R.
401 KAR 011:030		
Amended	3524	See 46 Ky.R.
401 KAR 011:040		
Amended	3527	See 46 Ky.R.
401 KAR 011:050		
Amended	3531	See 46 Ky.R.
401 KAR 011:060		
Amended	3535	See 46 Ky.R.
405 KAR 010:001		
Amended	2979	See 46 Ky.R.
405 KAR 010:015		
Amended	2982	See 46 Ky.R.
500 KAR 009:011*(r)*	3354	
500 KAR 0015:010	3355	
601 KAR 002:030		
Withdrawn		8-7-2019
704 KAR 003:303		
Amended	2987	
As Amended	3410	7-5-2019
704 KAR 008:060	2810	
Am Comments	3193	
As Amended	3410	7-5-2019
803 KAR 002:180		
Amended	2989	6-7-2019
803 KAR 025:270	2534	
Am Comments	2928	See 46 Ky.R.
804 KAR 007:020		
Amended	3262	See 46 Ky.R.
804 KAR 007:030		
Repealed	3360	8-2-2019
804 KAR 007:031*(r)*	3360	8-2-2019
805 KAR 003:100		
Amended	2991	
As Amended	3410	7-5-2019
805 KAR 003:110		
Amended	3538	See 46 Ky.R.
806 KAR 009:001		
Amended	3264	
806 KAR 009:020		
Amended	3265	
806 KAR 009:030		
Amended	3539	
806 KAR 009:061*(r)*	3361	
806 KAR 009:070		
Amended	3267	
806 KAR 009:110		
Amended	3541	See 46 Ky.R.
806 KAR 009:190		
Amended	3542	
806 KAR 009:200		
Amended	3543	
806 KAR 009:310		
Amended	3269	
806 KAR 009:321*(r)*	3362	
806 KAR 009:341*(r)*	3600	
806 KAR 009:350		
Amended	3545	
806 KAR 010:030		

Regulation Number	43 Ky.R. Page No.	Effective Date
Amended	1824	
Am Comments	2716	
As Amended	3411	7-5-2019
806 KAR 010:050		
Repealed	3363	8-2-2019
806 KAR 010:051*(r)*	3363	8-2-2019
806 KAR 015:081*(r)*	3601	
806 KAR 047:010		
Amended	2993	See 46 Ky.R.
806 KAR 047:021*(r)*	2997	
807 KAR 005:056		
Amended	3272	See 46 Ky.R.
808 KAR 001:180	2266	
815 KAR 007:120		
Amended	3274	8-2-2019
815 KAR 007:125		
Amended	3277	8-2-2019
831 KAR 001:010		
Amended	3546	See 46 Ky.R.
831 KAR 001:020		
Amended	3549	
831 KAR 001:030		
Amended	3551	See 46 Ky.R.
902 KAR 002:070		
Amended	3279	
902 KAR 004:030		
Amended	3553	8-19-2019
902 KAR 004:035		
Amended	3557	8-19-2019
902 KAR 007:010		
Amended	3560	See 46 Ky.R.
902 KAR 009:010		
Amended	3564	See 46 Ky.R.
902 KAR 015:010		
Amended	3281	
902 KAR 020:036		
Amended	3286	
902 KAR 020:111		
Amended	2781	
Am Comments	3416	7-19-2019
902 KAR 045:065		
Amended	3294	
902 KAR 045:070		
Amended	3304	
902 KAR 045:075		
Amended	3314	
902 KAR 045:110		
Amended	3568	
Withdrawn		6-28-2019
902 KAR 045:120		
Amended	3571	8-19-2019
902 KAR 050:100		
Repealed	3364	7-19-2019
902 KAR 050:101*(r)*	3364	7-19-2019
902 KAR 050:110		
Amended	3316	7-19-2019
907 KAR 001:022		
Amended	2784	
Am Comments	3419	8-2-2019
907 KAR 001:330		
Amended	2790	8-2-2019
907 KAR 001:340		
Amended	2793	8-2-2019
907 KAR 001:441	2813	8-2-2019
907 KAR 001:436		
Repealed	2813	8-2-2019
907 KAR 001:604		
Amended	3318	See 46 Ky.R.
907 KAR 001:755		
Amended	2796	8-2-2019
907 KAR 005:005		
Amended	2496	
As Amended	3412	7-5-2019
908 KAR 001:340		
Repealed	2538	8-19-2019
908 KAR 001:341*(r)*	2538	8-19-2019
908 KAR 001:370		
Amended	2500	
Am Comments	3195	See 46 Ky.R.
908 KAR 001:372	2539	
Am Comments	3215	See 46 Ky.R.
908 KAR 001:374	2546	
Am Comments	3222	See 46 Ky.R.
910 KAR 002:020		
Amended	3322	
910 KAR 002:040		
Amended	3573	See 46 Ky.R.
911 KAR 001:010	2814	
Am Comments	3425	See 46 Ky.R.
911 KAR 001:020	2819	
Am Comments	3430	7-19-2019
911 KAR 001:060	2823	
Am Comments	3434	7-19-2019
911 KAR 001:070		
Repealed	2828	7-19-2019
911 KAR 001:071*(r)*	2828	7-19-2019
911 KAR 001:080		
Repealed	2828	7-19-2019
921 KAR 001:380		
Amended	3583	See 46 Ky.R.
921 KAR 002:015		
Amended	2520	
Am Comments	3232	7-5-2019
922 KAR 001:310		
Amended	3326	
922 KAR 001:350		
Amended	3340	
922 KAR 001:470		
Amended	3587	See 46 Ky.R.
922 KAR 001:495		
Amended	3350	
922 KAR 001:510		
Amended	3589	See 46 Ky.R.

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.

REGISTER YEAR 46

EMERGENCY ADMINISTRATIVE REGULATIONS

Note:

Emergency regulations filed BEFORE noon, July 15, 2019, 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.

Emergency regulations filed AFTER noon, July 15, 2019, expire 240 days from the date filed; or 240 days from the date filed plus number of days of requested extension, or upon replacement or repeal, whichever occurs first.

Regulation Number	45 Ky.R. Page No.	Effective Date
105 KAR 001:390E	6	6-12-2019
301 KAR 001:152E	9	5-24-2019
401 KAR 006:001E	311	7-11-2019
401 KAR 006:310E	313	7-11-2019
401 KAR 006:320E	323	7-11-2019
401 KAR 006:350E	327	7-11-2019
601 KAR 002:030E	849	8-7-2019
803 KAR 025:271E	333	6-21-2019
902 KAR 020:430E	336	6-28-2019
902 KAR 045:090E	12	6-14-2019
907 KAR 003:170E	18	6-14-2019
907 KAR 010:830E	347	6-19-2019
907 KAR 015:005E	356	6-28-2019
907 KAR 015:010E	359	6-28-2019
907 KAR 015:015E	371	6-28-2019
907 KAR 015:020E	374	6-28-2019
907 KAR 015:022E	385	6-28-2019
907 KAR 015:025E	396	6-28-2019
922 KAR 001:320E	400	6-28-2019
922 KAR 001:330E	855	8-14-2019

ORDINARY ADMINISTRATIVE REGULATIONS

Regulation Number	45 Ky.R. Page No.	Effective Date
009 KAR 001:010		See 45 Ky.R.
As Amended	405	
009 KAR 001:040		See 45 Ky.R.
As Amended	405	
013 KAR 001:020		
Amended	550	
016 KAR 008:030		See 45 Ky.R.
As Amended	26	8-2-2019
032 KAR 001:061*(r)*	281	
045 KAR 001:050		
Amended	998	
101 KAR 002:102		
Amended	558	
101 KAR 002:180		See 45 Ky.R.
As Amended	407	
101 KAR 002:190		See 45 Ky.R.
As Amended	409	
101 KAR 002:230		
Amended	44	
101 KAR 003:015		
Amended	564	
102 KAR 001:032	778	
103 KAR 001:010		
Amended	46	
As Amended	862	
103 KAR 001:060		
Amended	48	
As Amended	862	
103 KAR 002:005		
Amended	50	
Withdrawn		7-24-2019
103 KAR 002:030		
Amended	51	
103 KAR 005:151*(r)*	282	
103 KAR 005:160		
Amended	53	
103 KAR 007:031*(r)*	283	
103 KAR 008:011*(r)*	284	
103 KAR 008:141*(r)*	285	
103 KAR 008:110		
Amended	54	
103 KAR 008:130		
Amended	55	
As Amended	864	
103 KAR 016:200		
Amended	57	
As Amended	866	
103 KAR 016:250		
Amended	60	
As Amended	868	
103 KAR 016:400	286	
As Amended	875	
103 KAR 025:131		
Amended	570	
103 KAR 026:010		
Amended	67	
103 KAR 026:070		
Amended	571	
103 KAR 026:090		
Amended	574	
103 KAR 027:140		
Amended	69	
103 KAR 027:180		
Amended	577	
103 KAR 028:010		
Amended	578	
103 KAR 030:170		
Amended	581	
103 KAR 030:261*(r)*	289	
103 KAR 031:030		
Amended	70	
As Amended	877	
103 KAR 031:111		
Amended	72	
As Amended	878	
103 KAR 041:220	779	
105 KAR 001:200		
Amended	74	
As Amended	879	
105 KAR 001:390		
Amended	76	
As Amended	883	
200 KAR 003:020		See 45 Ky.R.
As Amended	28	8-2-2019
201 KAR 001:100		
Amended	1001	
201 KAR 001:190		
Amended	1004	
201 KAR 002:010		See 45 Ky.R.
As Amended	410	8-19-2019
201 KAR 002:090		See 45 Ky.R.
As Amended	410	8-19-2019
201 KAR 002:100		See 45 Ky.R.
As Amended	411	8-19-2019
201 KAR 002:116		See 45 Ky.R.
As Amended	412	8-19-2019
201 KAR 002:225		See 45 Ky.R.
As Amended	412	8-19-2019
201 KAR 002:240		See 45 Ky.R.
As Amended	413	8-19-2019
201 KAR 002:270		See 45 Ky.R.
As Amended	414	8-19-2019

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	45 Ky.R. Page No.	Effective Date
201 KAR 002:340		See 45 Ky.R.
As Amended	414	8-19-2019
201 KAR 006:030		See 45 Ky.R.
As Amended	415	8-19-2019
201 KAR 006:040		See 45 Ky.R.
As Amended	416	8-19-2019
201 KAR 008:540		
Amended	80	
201 KAR 011:002*(r)*	780	
201 KAR 011:011		
Amended	83	
201 KAR 011:105		
Amended	86	
201 KAR 011:121		
Amended	582	
201 KAR 011:170		
Amended	588	
201 KAR 011:190		
Amended	596	
201 KAR 011:210		
Amended	599	
201 KAR 011:220		
Amended	606	
201 KAR 011:461*(r)*	290	
201 KAR 012:030		
Amended	608	
201 KAR 013:040		See 45 Ky.R.
As Amended	417	8-19-2019
201 KAR 013:055		See 45 Ky.R.
As Amended	419	8-19-2019
201 KAR 013:060		See 45 Ky.R.
As Amended	420	8-19-2019
201 KAR 015:010		
Amended	89	
201 KAR 015:015		
Amended	90	
201 KAR 015:030		
Amended	91	
201 KAR 015:040		
Amended	93	
201 KAR 015:050		
Amended	95	
201 KAR 015:080		
Amended	99	
201 KAR 015:110		
Amended	100	
201 KAR 015:120		
Amended	104	
201 KAR 015:125	292	
201 KAR 016:011*(r)*	782	
201 KAR 016:200	784	
201 KAR 016:210	786	
201 KAR 016:212	788	
201 KAR 016:214	790	
201 KAR 016:216	791	
201 KAR 016:220	793	
201 KAR 016:230	794	
201 KAR 016:240	795	
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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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199.505	922 KAR 001:560
199.555	922 KAR 001:320
199.557	922 KAR 001:320
199.990	922 KAR 001:560
200.080-120	505 KAR 001:160
200.503	902 KAR 020:430
202A.011	922 KAR 001:330
205.211	922 KAR 001:565
205.510	902 KAR 020:430
	907 KAR 003:170
	907 KAR 010:830
	907 KAR 015:005
205.520	902 KAR 021:020
	907 KAR 015:010
	907 KAR 015:015
	907 KAR 015:020
	907 KAR 015:022
	907 KAR 015:025
205.559	907 KAR 003:170
205.560	907 KAR 003:170
205.565	907 KAR 010:830
205.637	907 KAR 010:830
205.638	907 KAR 010:830
205.639	907 KAR 010:830
205.640	907 KAR 010:830
205.641	907 KAR 010:830
205.712	601 KAR 002:030E
205.8451	907 KAR 015:005
209.020	922 KAR 001:320
209A.020	922 KAR 001:320
210.005	902 KAR 020:430
211.005	902 KAR 045:065
	902 KAR 045:070
211.015	902 KAR 045:065
	902 KAR 045:070
211.025	902 KAR 045:065
	902 KAR 045:070
211.684	922 KAR 001:330
211.760	902 KAR 045:065
211.892	805 KAR 001:060
211.893	805 KAR 001:060
214.036	922 KAR 001:330
214.540	902 KAR 021:020
214.542	902 KAR 021:020
214.543	902 KAR 021:020
216.380	907 KAR 010:830
216B.020	902 KAR 020:370
216B.050	902 KAR 020:430
216B.105	902 KAR 020:430
217.005 – 217.215	902 KAR 045:090
217.290	902 KAR 045:090
217.992	902 KAR 045:090
217B.555	902 KAR 045:090
217B.990	902 KAR 045:090
217C.010	902 KAR 050:005
217C.070	902 KAR 050:003
218A.205	201 KAR 008:540
223.400-223.460	401 KAR 006:001
	401 KAR 006:310
	401 KAR 006:320
	401 KAR 006:350
223.170	401 KAR 006:211
223.180	401 KAR 006:211
223.190	401 KAR 006:211
223.991	401 KAR 006:001
	401 KAR 006:310
	401 KAR 006:320
	401 KAR 006:350
223.210	401 KAR 006:211
224.01-300	103 KAR 030:261
224.1-310	103 KAR 030:261
224.1-010	401 KAR 010:001
	401 KAR 010:026

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	401 KAR 010:029
	401 KAR 010:030
	401 KAR 010:031
224.1-400	401 KAR 010:001
	401 KAR 010:026
	401 KAR 010:029
	401 KAR 010:030
	401 KAR 010:031
224.1-405	401 KAR 006:350
224.10-010	401 KAR 006:320
224.10-100	401 KAR 006:320
	401 KAR 058:005
224.10-110	401 KAR 006:211
224.10-410	400 KAR 001:110
224.10-410 - 224.10-470	401 KAR 006:320
224.16-050	401 KAR 010:001
	401 KAR 010:026
	401 KAR 010:029
	401 KAR 010:030
	401 KAR 010:031
224.16-070	401 KAR 010:001
	401 KAR 010:026
	401 KAR 010:029
	401 KAR 010:030
	401 KAR 010:031
224.20-100	401 KAR 051:010
	401 KAR 058:005
224.20-110	401 KAR 051:010
	401 KAR 058:005
224.20-120	401 KAR 051:010
	401 KAR 058:005
224.20-300	401 KAR 058:005
224.20-310	401 KAR 058:005
224.20-320	401 KAR 058:005
224.43-010 - 224.43-815	401 KAR 006:350
224.46-012 - 224.46-870	401 KAR 006:350
224.60-100 - 224.60-160	401 KAR 006:350
224.70-100 – 224.70-140	401 KAR 010:001
	401 KAR 010:026
	401 KAR 010:029
	401 KAR 010:030
	401 KAR 010:031
224.71-100 – 224.71-145	401 KAR 010:001
	401 KAR 010:026
	401 KAR 010:029
	401 KAR 010:030
	401 KAR 010:031
224.73-100 – 224.30-120	401 KAR 010:001
	401 KAR 010:026
	401 KAR 010:029
	401 KAR 010:030
	401 KAR 010:031
224.99-010	401 KAR 058:005
241.067	804 KAR 010:040
241.069	804 KAR 010:040
241.021	804 KAR 010:040
247	302 KAR 034:011
	302 KAR 035:011
	302 KAR 036:011
273.161 - 273.405	300 KAR 001:010
278	807 KAR 005:056
286.4	808 KAR 001:170
286.8-010	808 KAR 001:170
286.8-020	808 KAR 001:170
286.8-030	808 KAR 001:170
286.8-032	808 KAR 001:170
286.8-034	808 KAR 001:170
286.8-036	808 KAR 001:170
286.8-060	808 KAR 001:170
286.8-070	808 KAR 001:170
286.8-080	808 KAR 001:170
286.8-090	808 KAR 001:170
286.8-255	808 KAR 001:170
286.8-260	808 KAR 001:170

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286.8-290	808 KAR 001:170
286.9-010	808 KAR 001:170
	808 KAR 009:050
286.9-020	808 KAR 001:170
	808 KAR 009:050
286.9-030	808 KAR 001:170
	808 KAR 009:050
286.9-040	808 KAR 001:170
	808 KAR 009:050
286.9-050	808 KAR 001:170
	808 KAR 009:050
286.9-060	808 KAR 001:170
	808 KAR 009:050
286.9-070	808 KAR 009:050
286.9-071	808 KAR 001:170
	808 KAR 009:050
286.9-073	808 KAR 001:170
	808 KAR 009:050
286.9-080	808 KAR 001:170
	808 KAR 009:050
286.9-104	808 KAR 009:050
304.1-040	806 KAR 010:061
304.2-110	806 KAR 010:061
304.2-140	806 KAR 047:010
304.4-010	806 KAR 009:025
	806 KAR 009:221
304.7-361	806 KAR 007:031
304.9-030	806 KAR 009:221
304.9-105	806 KAR 009:025
	806 KAR 009:221
304.9-130	806 KAR 009:025
304.9-150	806 KAR 009:025
304.9-160	806 KAR 009:025
	806 KAR 009:221
304.9-190	806 KAR 009:221
304.9-230	806 KAR 009:025
	806 KAR 009:221
304.9-270	806 KAR 009:025
304.9-295	806 KAR 009:025
	806 KAR 009:221
304.9-320	806 KAR 009:221
304.9-430	806 KAR 009:025
	806 KAR 009:221
304.9-505	806 KAR 009:221
304.10-030	806 KAR 010:061
304.10-040	806 KAR 010:061
304.10-140	806 KAR 010:061
304.13-057	806 KAR 013:120
304.13-167	806 KAR 013:120
304.13-400 – 304.13-420	806 KAR 013:120
304.14-120	806 KAR 014:061
304.14-642	806 KAR 009:221
304.15-700	806 KAR 009:221
304.17A-257	902 KAR 021:020
304.47-010	806 KAR 047:010
304.47-020	806 KAR 047:010
304.47-040	806 KAR 047:010
304.47-050	806 KAR 047:010
304.47-080	806 KAR 047:010
309.080	907 KAR 015:005
309.130	902 KAR 020:430
	907 KAR 015:005
311.840	907 KAR 015:005
311.860	902 KAR 020:430
313.060	201 KAR 008:540
313.085	201 KAR 008:540
314.011	907 KAR 015:005
314.041	902 KAR 020:370
314.042	902 KAR 020:430
314.051	902 KAR 020:370
314A.110	201 KAR 029:015
314A.112	201 KAR 029:015
314A.215	201 KAR 029:015
314A.220	201 KAR 029:015

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316	201 KAR 015:010
316.010	201 KAR 015:110
316.030	201 KAR 015:040
	201 KAR 015:050
	201 KAR 015:110
316.125	201 KAR 015:030
	201 KAR 015:110
316.127	201 KAR 015:110
316.130	201 KAR 015:030
	201 KAR 015:110
316.132	201 KAR 015:030
316.140	201 KAR 015:030
	201 KAR 015:120
316.150	201 KAR 015:080
316.165	201 KAR 015:125
316.170	201 KAR 015:015
316.210	201 KAR 015:015
316.260	201 KAR 015:110
317A.020	201 KAR 012:030
317A.050	201 KAR 012:030
317A.060	201 KAR 012:030
319	907 KAR 015:010
319.050	902 KAR 020:430
319.053	907 KAR 015:005
319.056	902 KAR 020:430
	907 KAR 015:005
319.064	902 KAR 020:430
	907 KAR 015:005
319C.010	902 KAR 020:430
	907 KAR 015:005
321	201 KAR 016:011
321.193	201 KAR 016:210
	201 KAR 016:220
	201 KAR 016:230
	201 KAR 016:240
	201 KAR 016:270
321.201	201 KAR 016:216
321.207	201 KAR 016:214
	201 KAR 016:250
	201 KAR 016:260
	201 KAR 016:272
321.211	201 KAR 016:210
	201 KAR 016:270
	201 KAR 016:280
	201 KAR 016:290
321.221	201 KAR 016:240
	201 KAR 016:290
321.235	201 KAR 016:290
	201 KAR 016:310
	201 KAR 016:400
321.240	201 KAR 016:210
	201 KAR 016:212
	201 KAR 016:216
321.351	201 KAR 016:200
	201 KAR 016:310
	201 KAR 016:400
321.360	201 KAR 016:310
	201 KAR 016:400
321.441	201 KAR 016:212
	201 KAR 016:220
	201 KAR 016:230
	201 KAR 016:240
	201 KAR 016:270
	201 KAR 016:290
321.181	201 KAR 016:300
322	401 KAR 006:320
322A	401 KAR 006:320
324.010	201 KAR 011:011
	201 KAR 011:121
	201 KAR 011:170
	201 KAR 011:210
	201 KAR 011:220
324.020	201 KAR 011:210
	201 KAR 011:220

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324.040	201 KAR 011:210
324.045	201 KAR 011:190
	201 KAR 011:210
324.046	201 KAR 011:011
	201 KAR 011:170
	201 KAR 011:190
	201 KAR 011:210
324.085	201 KAR 011:170
	201 KAR 011:210
324.090	201 KAR 011:170
	201 KAR 011:210
324.111	201 KAR 011:011
	201 KAR 011:121
324.121	201 KAR 011:121
324.117	201 KAR 011:011
	201 KAR 011:105
324.141	201 KAR 011:210
324.150	201 KAR 011:190
324.151	201 KAR 011:190
324.160	201 KAR 011:011
	201 KAR 011:105
	201 KAR 011:121
	201 KAR 011:170
	201 KAR 011:190
	201 KAR 011:210
324.170	201 KAR 011:190
324.200	201 KAR 011:190
324.281	201 KAR 011:121
	201 KAR 011:170
	201 KAR 011:190
	201 KAR 011:210
324.282	201 KAR 011:002
	201 KAR 011:105
324.287	201 KAR 011:210
324.310	201 KAR 011:121
	201 KAR 011:210
324.330	201 KAR 011:210
324.360	201 KAR 011:121
324.395	201 KAR 011:220
324.410	201 KAR 011:011
324.420	201 KAR 011:011
324.990	201 KAR 011:210
324A	201 KAR 030:010
324A.020	201 KAR 030:190
324A.015	201 KAR 030:021
	201 KAR 030:040
324A.020	201 KAR 030:070
	201 KAR 030:110
324A.030	201 KAR 030:190
	201 KAR 030:330
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
	201 KAR 030:190
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
325.240	201 KAR 001:100
325.261	201 KAR 001:190
325.270	201 KAR 001:190

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325.330	201 KAR 001:100
335.080	902 KAR 020:430
	907 KAR 015:005
335.100	902 KAR 020:430
	907 KAR 015:005
335.300	902 KAR 020:430
	907 KAR 015:005
335.500	201 KAR 036:060
	902 KAR 020:430
	907 KAR 015:005
335.505	201 KAR 036:060
335.525	201 KAR 036:060
342.020	803 KAR 025:271E
342.035	803 KAR 025:271E
342.640	702 KAR 003:130
342.0011	803 KAR 025:271E
343	787 KAR 003:010
344.030	101 KAR 002:102
	101 KAR 003:015
349.015	805 KAR 001:030
	805 KAR 001:140
	805 KAR 001:170
	805 KAR 009:011
349.035	805 KAR 001:140
	805 KAR 009:011
349.040	805 KAR 001:140
	805 KAR 009:011
349.075	805 KAR 001:140
	805 KAR 009:011
349.335	805 KAR 001:080
349.045	805 KAR 001:020
349.105	805 KAR 001:170
349.110	805 KAR 001:020
	805 KAR 009:011
349.115	805 KAR 001:030
349.120	805 KAR 001:050
	805 KAR 001:140
	805 KAR 001:170
	805 KAR 001:200
	805 KAR 009:011
349.155	805 KAR 001:140
	805 KAR 001:170
	805 KAR 009:011
350	405 KAR 010:001
350.010	400 KAR 001:110
350.028	400 KAR 001:110
350.070	400 KAR 001:110
350.090	400 KAR 001:110
350.093	400 KAR 001:110
350.130	400 KAR 001:110
350.255	400 KAR 001:110
350.465	400 KAR 001:110
350.990	400 KAR 001:110
350.0301	400 KAR 001:110
351.315	400 KAR 001:110
351.345	400 KAR 001:110
351.350	400 KAR 001:110
353.050	805 KAR 001:140
353.060	805 KAR 001:140
353.120	805 KAR 001:060
353.160	805 KAR 001:190
353.170	805 KAR 001:060
353.180	805 KAR 001:060
	805 KAR 001:110
	805 KAR 001:140
	805 KAR 001:170
353.500	805 KAR 001:080
	805 KAR 001:190
353.500 - 353.730	805 KAR 001:001
353.510	805 KAR 001:110
	805 KAR 001:140
	805 KAR 001:170
353.520	805 KAR 001:020
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	805 KAR 001:110
	805 KAR 001:120
	805 KAR 001:140
	805 KAR 001:170
353.540	805 KAR 001:080
353.550	805 KAR 001:030
	805 KAR 001:060
	805 KAR 001:080
	805 KAR 001:110
	805 KAR 001:180
	805 KAR 001:200
353.560	805 KAR 001:080
353.561 - 353.564	805 KAR 001:140
	805 KAR 001:170
353.570	805 KAR 001:110
353.590	805 KAR 001:030
	805 KAR 001:050
	805 KAR 001:110
	805 KAR 001:140
	805 KAR 001:170
	805 KAR 001:190
353.5901	805 KAR 001:140
	805 KAR 001:170
	805 KAR 001:190
353.592	805 KAR 001:140
	805 KAR 001:170
353.595	805 KAR 001:170
353.597	805 KAR 001:170
353.610	805 KAR 001:140
353.651	805 KAR 001:140
	805 KAR 001:170
353.652	805 KAR 001:140
	805 KAR 001:170
353.6601 - 353.6606	805 KAR 001:140
	805 KAR 001:170
353.730	805 KAR 001:140
	805 KAR 001:170
353.735 - 353.747	805 KAR 001:200
353.737	805 KAR 001:030
	805 KAR 001:140
	805 KAR 001:170
353.745	805 KAR 001:190
353.990	805 KAR 001:060
353.991	805 KAR 001:140
	805 KAR 001:170
	805 KAR 001:190
353.992	805 KAR 001:110
363.410	302 KAR 081:010
363.510	302 KAR 075:130
	302 KAR 076:100
	302 KAR 080:010
	302 KAR 081:010
363.610	302 KAR 081:010
363.710	302 KAR 076:100
363.720	302 KAR 075:130
363.730	302 KAR 075:130
363.770	302 KAR 076:100
363.780	302 KAR 076:100
363.800	302 KAR 076:100
369.101 - 369.120	907 KAR 015:010
369.102	601 KAR 009:130
369.107	601 KAR 009:130
383.085	902 KAR 045:065
	902 KAR 045:070
387	922 KAR 001:565
387.010	902 KAR 045:065
	902 KAR 045:070
403.270 - 403.355	922 KAR 001:565
405.024	922 KAR 001:565
422.317	201 KAR 008:540
	907 KAR 003:170
424	805 KAR 001:140
424.260	702 KAR 003:130
431.600	922 KAR 001:330

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434.840 – 434.860	907 KAR 003:170
439	501 KAR 006:060
	501 KAR 006:110
	501 KAR 006:140
	501 KAR 006:160
439.3401	902 KAR 020:430
503.110	922 KAR 001:330
527.100	922 KAR 001:565
527.110	922 KAR 001:565
529.010	922 KAR 001:330
532.045	922 KAR 001:330
600.010	922 KAR 001:330
600.020	922 KAR 001:320
	922 KAR 001:330
	922 KAR 001:565
600 - 645	505 KAR 001:160
605.090	922 KAR 001:320
	922 KAR 001:330
605.120	922 KAR 001:565
605.130	922 KAR 001:330
	922 KAR 001:565
605.150	922 KAR 001:330
	922 KAR 001:565
610.010	922 KAR 001:330
610.110	922 KAR 001:320
	922 KAR 001:565
620.010 - 620.050	922 KAR 001:330
620.020	922 KAR 001:320
	922 KAR 001:560
	922 KAR 001:565
620.070	922 KAR 001:330
620.072	922 KAR 001:330
620.090	922 KAR 001:565
620.140	922 KAR 001:320
	922 KAR 001:565
620.142	922 KAR 001:320
	922 KAR 001:565
620.157	922 KAR 001:320
620.170	922 KAR 001:565
620.180	922 KAR 001:320
	922 KAR 001:330
620.230	922 KAR 001:320
620.350	922 KAR 001:330
620.363	922 KAR 001:320
620.990	922 KAR 001:330
625.065	922 KAR 001:560
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7 C.F.R.	405 KAR 010:001
12 C.F.R.	201 KAR 030:040
	201 KAR 030:190
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16 C.F.R.	201 KAR 015:110
21 C.F.R.	902 KAR 045:090
	902 KAR 055:120
24 C.F.R.	201 KAR 011:121
26 C.F.R.	102 KAR 001:032
	105 KAR 001:390
28 C.F.R.	201 KAR 011:210
	902 KAR 045:065
	902 KAR 045:070
29 C.F.R.	101 KAR 002:102
	101 KAR 003:015
	902 KAR 045:065
	902 KAR 045:070
30 C.F.R.	400 KAR 001:110
	405 KAR 010:001
40 C.F.R.	401 KAR 010:001
	401 KAR 010:029
	401 KAR 051:010
	401 KAR 058:005
	405 KAR 010:001
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	805 KAR 001:190
42 C.F.R.	907 KAR 003:170
	907 KAR 010:830
	907 KAR 015:005
	907 KAR 015:010
	907 KAR 015:020
44 C.F.R.	201 KAR 011:121
45 C.F.R.	902 KAR 020:370
	902 KAR 020:430
	907 KAR 015:010
	907 KAR 015:020
	922 KAR 001:320
49 C.F.R.	805 KAR 001:190
9 U.S.C.	202 KAR 006:010
	202 KAR 006:050
	202 KAR 006:080
	202 KAR 006:090
12 U.S.C.	201 KAR 030:010
	201 KAR 030:040
	201 KAR 030:110
	201 KAR 030:130
	201 KAR 030:190
15 U.S.C.	201 KAR 030:330
18 U.S.C.	501 KAR 006:160
	601 KAR 002:030E
20 U.S.C.	013 KAR 001:020
	702 KAR 007:065
	703 KAR 005:280
	902 KAR 020:430
	907 KAR 015:010
	907 KAR 015:020
21 U.S.C.	902 KAR 045:090
26 U.S.C.	102 KAR 001:032
	105 KAR 001:390
29 U.S.C.	101 KAR 002:102
	101 KAR 003:015
	201 KAR 015:110
	902 KAR 020:430
	907 KAR 015:005
	907 KAR 015:010
	907 KAR 015:020
30 U.S.C.	400 KAR 001:110
	401 KAR 010:030
31 U.S.C.	045 KAR 001:050
33 U.S.C.	401 KAR 010:029
42 U.S.C.	201 KAR 008:540
	202 KAR 006:050
	401 KAR 051:010
	805 KAR 001:110
	902 KAR 020:370
	902 KAR 020:430
	902 KAR 021:020
	907 KAR 010:830
	907 KAR 015:010
	907 KAR 015:015
	907 KAR 015:020
	907 KAR 015:022
	907 KAR 015:025
	922 KAR 001:320
	922 KAR 001:330
	922 KAR 001:565
47 U.S.C.	202 KAR 006:010
	202 KAR 006:020
	202 KAR 006:030
	202 KAR 006:050
	202 KAR 006:060
	202 KAR 006:070
	202 KAR 006:080
	202 KAR 006:090
	202 KAR 006:100

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 004:120	11-13-1984	06-06-2019	To be amended, filing deadline 12-10-20
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 001:050	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 001:100	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
102 KAR 001:010	03-12-1975	07-03-2019	Remain in Effect without Amendment
102 KAR 001:039	03-12-1975	07-03-2019	Remain in Effect without Amendment
102 KAR 001:105	06-05-2009	07-03-2019	Remain in Effect without Amendment
102 KAR 001:145	03-12-1975	07-03-2019	Remain in Effect without Amendment
102 KAR 001:163	05-31-2009	07-03-2019	Remain in Effect without Amendment
102 KAR 001:168	05-31-2019	07-03-2019	Remain in Effect without Amendment
102 KAR 001:170	06-05-2009	07-03-2019	Remain in Effect without Amendment
102 KAR 001:178	06-03-2011	07-03-2019	Remain in Effect without Amendment
102 KAR 001:250	05-16-2002	07-03-2019	Remain in Effect without Amendment
102 KAR 001:280	02-03-2003	07-03-2019	Remain in Effect without Amendment
102 KAR 001:300	04-03-2009	07-03-2019	Remain in Effect without Amendment
102 KAR 001:330	11-08-2010	07-03-2019	Remain in Effect without Amendment
102 KAR 001:340	03-08-2013	07-03-2019	Remain in Effect without Amendment
102 KAR 001:350	05-31-2013	07-03-2019	Remain in Effect without Amendment
102 KAR 002:025	06-02-1976	07-03-2019	Remain in Effect without Amendment
103 KAR 001:070	02-03-2006	06-07-2019	Remain in Effect without Amendment
103 KAR 001:092	02-02-2007	06-07-2019	Remain in Effect without Amendment
103 KAR 001:150	01-05-2009	06-07-2019	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 028:130	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 030:280	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 040:035	10-06-1982	08-05-2019	Remain in Effect without Amendment
103 KAR 041:090	05-14-1975	08-05-2019	Remain in Effect without Amendment
103 KAR 041:130	02-05-1975	08-06-2019	Remain in Effect without Amendment
103 KAR 041:140	05-04-2007	08-05-2019	Remain in Effect without Amendment
103 KAR 041:160	05-04-2007	08-05-2019	Remain in Effect without Amendment
103 KAR 043:320	05-04-2007	08-07-2019	Remain in Effect without Amendment
103 KAR 044:090	05-04-2007	08-07-2019	Remain in Effect without Amendment
103 KAR 045:015	05-04-2007	08-07-2019	Remain in Effect without Amendment
201 KAR 008:581	05-06-2011	04-08-2019	To be amended. Amendment filed 04-15-19.
201 KAR 023:140	10-13-1997	06-21-2019	Remain in Effect without Amendment
201 KAR 030:130	06-16-2003	08-06-2019	Remain in Effect without Amendment
201 KAR 030:160	08-25-2005	08-06-2019	Remain in Effect without Amendment
201 KAR 030:170	08-25-2005	08-06-2019	Remain in Effect without Amendment
302 KAR 029:070	12-19-2001	06-27-2019	Remain in Effect without Amendment
702 KAR 006:110	10-07-2011	06-28-2019	Remain in Effect without Amendment

705 KAR 002:140	11-17-2000	06-28-2019	Remain in Effect without Amendment
770 KAR 001:010	02-07-1992	06-21-2019	Remain in Effect without Amendment
770 KAR 001:020	02-07-1992	06-21-2019	Remain in Effect without Amendment
770 KAR 001:030	02-07-1992	06-21-2019	Remain in Effect without Amendment
770 KAR 001:040	02-07-1992	06-21-2019	Remain in Effect without Amendment
770 KAR 001:050	02-07-1992	06-21-2019	Remain in Effect without Amendment
770 KAR 001:060	02-07-1992	06-21-2019	Remain in Effect without Amendment
770 KAR 001:070	10-31-2003	06-21-2019	Remain in Effect without Amendment
772 KAR 001:010	09-03-1998	07-01-2019	Remain in Effect without Amendment
772 KAR 001:020	09-03-1998	07-01-2019	Remain in Effect without Amendment
772 KAR 001:030	09-03-1998	07-01-2019	Remain in Effect without Amendment
772 KAR 001:040	09-03-1998	07-01-2019	Remain in Effect without Amendment
772 KAR 001:050	09-03-1998	07-01-2019	Remain in Effect without Amendment
772 KAR 001:060	09-03-1998	07-01-2019	Remain in Effect without Amendment
772 KAR 001:070	09-03-1998	07-01-2019	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 during *Register* year 46. 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
401 KAR 039:060	5-7-2019		
401 KAR 039:080	5-7-2019		
401 KAR 042:020	5-7-2019		
401 KAR 042:060	5-7-2019		
401 KAR 042:250	5-7-2019		
401 KAR 042:330	5-7-2019		
401 KAR 045:040	5-7-2019		
401 KAR 045:070	5-7-2019		
401 KAR 045:080	5-7-2019		
401 KAR 045:090	5-7-2019		
401 KAR 045:100	5-7-2019		
401 KAR 045:135	5-7-2019		
401 KAR 045:135	5-7-2019		
401 KAR 046:120	5-7-2019		
401 KAR 047:090	5-7-2019		
401 KAR 047:095	5-7-2019		
401 KAR 047:110	5-7-2019		
401 KAR 047:205	5-7-2019		
401 KAR 048:205	5-7-2019		
401 KAR 045:206	5-7-2019		
401 KAR 048:207	5-7-2019		
401 KAR 048:208	5-7-2019		
401 KAR 048:310	5-7-2019		
401 KAR 049:011	5-7-2019		
401 KAR 049:080	5-7-2019		
401 KAR 049:100	5-7-2019		
401 KAR 100:030	5-7-2019		
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