



ADMINISTRATIVE REGISTER OF KENTUCKY

The submission deadline for this edition of the *Administrative Register of Kentucky* was noon, September 13, 2019.

MEETING NOTICES

The **Administrative Regulation Review Subcommittee** is **tentatively** scheduled to meet on October 8, 2019, at 1:00 p.m.. in room 149 Capitol Annex.

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

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Administrative Regulation Review Subcommittee
TENTATIVE Meeting Agenda
Tuesday, October 8, 2019, 1 p.m.
Annex Room 149



1. CALL TO ORDER AND ROLL CALL

2. REGULATIONS FOR COMMITTEE REVIEW

STATE BOARD OF ELECTIONS

Forms and Procedures

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

FINANCE AND ADMINISTRATION CABINET

Teachers' Retirement System

General Rules

102 KAR 001:032. Bona Fide Retirement. (Deferred from September)

BOARDS AND COMMISSIONS

Board of Pharmacy

201 KAR 002:095. Pharmacist interns. (Deferred from July)

Board of Dentistry

201 KAR 008:540. Dental practices and prescription writing. (Amended After Comments)

TOURISM, ARTS AND HERITAGE CABINET

Department of Fish and Wildlife Resources

Game

301 KAR 002:185. Hunter education. (Deferred from September)

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401 KAR 051:010. Attainment status designations. (Not Amended After Comments)

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

Department of Corrections

Office of the Secretary

501 KAR 006:060. Northpoint Training Center. (Not Amended After Comments)

501 KAR 006:140. Bell County Forestry Camp. (Not Amended After Comments)

TRANSPORTATION CABINET

Department of Vehicle Licensing

Driver Improvement

601 KAR 013:090. Medical Review Board; basis for examination, evaluation, tests. (Amended After Comments)

601 KAR 013:100. Medical standards for operators of motor vehicles. (Amended After Comments)

PUBLIC PROTECTION CABINET

Department of Insurance

Agents, Consultants, Solicitors, and Adjustors

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)

806 KAR 009:070. Examinations. (Deferred from June)

806 KAR 009:110. Agent's rights after contract termination. (Amended After Comments)

806 KAR 009:190. Disclosure requirements for financial institutions authorized to engage in insurance agency activities. (Deferred from July)

806 KAR 009:200. Volume of insurance agent exchange of business. (Deferred from July)

806 KAR 009:310. Life settlement licenses. (Deferred from June)

806 KAR 009:321. Repeal of 806 KAR 009:320. (Deferred from June)

806 KAR 009:341. Repeal of 806 KAR 009:341. (Deferred from July)

806 KAR 009:350. Recognition of financial planning certification and designation for receipt of fees and commissions. (Deferred from July)

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. (Not Amended After Comments)

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Department for Medicaid Services Payments and Services

907 KAR 003:170 & E. Telehealth service coverage and reimbursements. ("E" expires 01-09-2020) (Amended After Comments)

3. REGULATIONS REMOVED FROM SEPTEMBER'S AGENDA

COUNCIL ON POST SECONDARY EDUCATION

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013 KAR 001:020. Private College licensing. (Comments Received; SOC ext. due 10-15-2019)

BOARDS AND COMMISSIONS

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Real Estate Commission

201 KAR 011:002. Repeal of 201 KAR 011:030, 201 KAR 011:045, 201 KAR 011:062, 201 KAR 011:090, 201 KAR 011:095, 201 KAR 011:100, 201 KAR 011:110, 201 KAR 011:115, 201 KAR 011:135, 201 KAR 011:145, 201 KAR 011:147, 201 KAR 011:175, 201 KAR 011:180, 201 KAR 011:195, 201 KAR 011:215, 201 KAR 011:225, 201 KAR 011:230, 201 KAR 011:232, 201 KAR 011:235, 201 KAR 011:240, 201 KAR 011:245, 201 KAR 011:250, 201 KAR 011:300, 201 KAR 011:350, 201 KAR 011:400, 201 KAR 011:410, 201 KAR 011:440, 201 KAR 011:450, and 201 KAR 011:460. (Deferred from September)

201 KAR 011:011. Definitions for 201 KAR Chapter 11. (Amended After Comments)

201 KAR 011:105. Advertising. (Amended After Comments)

201 KAR 011:121. Standards of professional conduct. (Comments Received; SOC ext. due 10-15-2019)

201 KAR 011:170. Education provider requirements. (Comments Received; SOC ext. due 10-15-2019)

201 KAR 011:190. Consumer and administrative complaints; discipline; administrative hearings. (Comments Received; SOC ext. due 10-15-2019)

201 KAR 011:210. Licensing, education, and testing requirements. (Comments Received; SOC ext. due 10-15-2019)

201 KAR 011:220. Errors and omissions insurance requirements. (Comments Received; SOC ext. due 10-15-2019)

201 KAR 011:461. Repeal of 201 KAR 011:420. (Deferred from September)

Board of Veterinary Examiners

201 KAR 016:011. Repeal of 201 KAR 016:010, 201 KAR 016:015, 201 KAR 016:020, 201 KAR 016:030, 201 KAR 016:040, 201 KAR 016:050, 201 KAR 016:060, 201 KAR 016:080, 201 KAR 016:090, 201 KAR 016:100, and 201 KAR 016:110. (Withdrawn; SOC not filed by deadline)

201 KAR 016:200. Code of ethical conduct for veterinarians. (Withdrawn; SOC not filed by deadline.)

201 KAR 016:210. Fees for veterinarians. (Withdrawn; SOC not filed by deadline.)

201 KAR 016:212. Fees for veterinary technicians. (Withdrawn; SOC not filed by deadline.)

201 KAR 016:214. Fees for animal control agencies and animal euthanasia specialists. (Withdrawn; SOC not filed by deadline.)

201 KAR 016:216. Fees—other fees. (Withdrawn; SOC not filed by deadline)

201 KAR 016:220. Approved veterinary colleges; approved programs for veterinary technicians. (Withdrawn; SOC not filed by deadline.)

201 KAR 016:230. Examination requirements for veterinarians and veterinary technicians. (Withdrawn; SOC not filed by deadline.)

201 KAR 016:240. Application requirements for veterinarians and veterinary technicians. (Withdrawn; SOC not filed by deadline.)

201 KAR 016:250. Authorization for animal control agencies to apply for a restricted controlled substances certificate from DEA. (Withdrawn; SOC not filed by deadline.)

201 KAR 016:260. Certification as an animal euthanasia specialist. (Withdrawn; SOC not filed by deadline.)

201 KAR 016:270. License renewal for veterinarians and veterinary technicians; renewal notice. (Withdrawn; SOC not filed by deadline.)

201 KAR 016:272. License renewal for registered animal control agencies and animal euthanasia specialists; renewal notice. (Withdrawn; SOC not filed by deadline.)

201 KAR 016:280. License, inactive and retired statuses. (Withdrawn; SOC not filed by deadline.)

201 KAR 016:290. Continuing education. (Withdrawn; SOC not filed by deadline.)

201 KAR 016:300. Prescription and dispensation of drugs for animal use. (Withdrawn; SOC not filed by deadline.)

201 KAR 016:310. Procedures for grievances, investigations, and administrative charges. (Withdrawn; SOC not filed by deadline.)

201 KAR 016:400. Material Incorporated by Reference. (Withdrawn; SOC not filed by deadline.)

Real Estate Appraisers

201 KAR 030:130. Education provider, instructor, and course. (Deferred from August)

ENERGY AND ENVIRONMENT CABINET

Department for Environmental Protection

Division of Water

Water Wells

401 KAR 006:001 & E. Definitions for 401 KAR Chapter 006. ("E" expires 02-08-2020) (Comments Received; SOC ext. due 10-15-2019)

401 KAR 006:211. Repeal of 401 KAR 006:200. (Comments Received; SOC ext. due 10-15-2019)

401 KAR 006:310 & E. Water supply well construction practices and standards. ("E" expires 02-08-2020) (Comments Received; SOC ext. due 10-15-2019)

401 KAR 006:320 & E. Certification of water well drillers and water well driller assistants. ("E" expires 02-08-2020) (Comments Received; SOC ext. due 10-15-2019)

401 KAR 006:350 & E. Monitoring well construction practices and standards. ("E" expires 02-08-2020) (Comments Received; SOC ext. due 10-15-2019)

Water Quality Standards

401 KAR 010:001. Definitions for 401 KAR Chapter 010. (Amended After Comments) (Deferred from October)

401 KAR 010:026. Designation of uses of surface waters. (Amended After Comments) (Deferred from October)

401 KAR 010:029. General provisions. (Amended After Comments) (Deferred from October)

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401 KAR 010:030. Antidegradation policy implementation methodology. (Amended After Comments) (Deferred from October)
401 KAR 010:031. Surface water standards. (Amended After Comments) (Deferred from October)

JUSTICE AND PUBLIC SAFETY CABINET

Asset Forfeiture

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

ENERGY AND ENVIRONMENT CABINET

Department for Natural Resources

Division of Oil and Gas

805 KAR 001:001. Definitions for 805 KAR Chapter 001. (Comments Received; SOC ext. due 10-15-2019)
805 KAR 001:020. Protection of fresh water zones. (Comments Received; SOC ext. due 10-15-2019)
805 KAR 001:030. Well location and as-drilled location plat, preparation, form and contents. (Comments Received; SOC ext. due 10-15-2019)
805 KAR 001:050. Bonds, requirements, cancellation. (Comments Received; SOC ext. due 10-15-2019)
805 KAR 001:060. Plugging wells. (Comments Received; SOC ext. due 10-15-2019)
805 KAR 001:080. Gas storage reservoirs; drilling, plugging in vicinity. (Comments Received; SOC ext. due 10-15-2019)
805 KAR 001:110. Underground injection control. (Comments Received; SOC ext. due 10-15-2019)
805 KAR 001:120. Operating or deepening existing wells and drilling deeper than the permitted depth. (Deferred from September)
805 KAR 001:140. Directional and horizontal wells. (Comments Received; SOC ext. due 10-15-2019)
805 KAR 001:170. Content of the operations and reclamation plan. (Comments Received; SOC ext. due 10-15-2019)
805 KAR 001:180. Production reporting. (Comments Received; SOC ext. due 10-15-2019)
805 KAR 001:190. Gathering lines. (Comments Received; SOC ext. due 10-15-2019)
805 KAR 001:200. General information associated with oil and gas permits. (Comments Received; SOC ext. due 10-15-2019)

Sanctions and Penalties

805 KAR 009:011. Repeal of 805 KAR Chapter 009. (Deferred from September)

CABINET FOR HEALTH AND FAMILY SERVICES

Office of Inspector General

Division of Healthcare

Health Services and Facilities

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. (Comments Received; SOC ext. due 10-15-2019)
902 KAR 020:430 & E. Facilities specifications, operation and services; behavioral health services organizations for mental health treatment. ("E" expires 01-23-2020) (Comments Received; SOC ext. due 10-15-2019)

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Behavioral Health

907 KAR 015:005 & E. Definitions for 907 KAR Chapter 015. ("E" expires 01-23-2020) (Comments Received; SOC ext. 10-15-2019)
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 01-23-2020) (Comments Received; SOC ext. 10-15-2019)
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 01-23-2020) (Comments Received; SOC ext. 10-15-2019)
907 KAR 015:020 & E. Coverage provisions and requirement regarding services provided by behavioral health services organizations for mental health treatment. ("E" expires 01-23-2020) (Comments Received; SOC ext. 10-15-2019)
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 01-23-2020) (Comments Received; SOC ext. 10-15-2019)
907 KAR 015:025 & E. Reimbursement provisions and requirements regarding behavioral health services provided by behavioral health services organizations. ("E" expires 01-23-2020) (Comments Received; SOC ext. 10-15-2019)

Department for Community Based Services

Division of Protection and Permanency

922 KAR 1:320 & E. Service appeals. ("E" expires 01-23-2020) (Comments Received; SOC ext. 10-15-2019)

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.

ADMINISTRATIVE REGULATION REVIEW PROCEDURE
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
101 KAR 2:210E

This emergency administrative regulation incorporates by reference the 2020 plan year handbook for the self-insured plan offered through the Public Employee Health Insurance Program, commonly known as the Kentucky Employees' Health Plan. KRS 18A.2254(1) requires the Personnel Cabinet to promulgate an administrative regulation that incorporates the plan year handbook by reference and to file the administrative regulation by September 15 of each year. This emergency administrative regulation is necessary to meet the filing deadline established by state law at KRS 18A.2254(1)(a)3. KRS 18A.2254(1)(a) requires the secretary of the Personnel Cabinet to annually promulgate an administrative regulation to incorporate by reference the plan year handbook. The handbook must contain, at a minimum, the premiums, employee contributions, employer contributions, and a summary of benefits, co-pays, coinsurance, and deductibles for each plan provided to public employees covered under the self-insured plan. The 2020 plan year handbook, or Benefits Selection Guide, contains the required and necessary information for public employees to make health insurance coverage decisions during open enrollment in October 2019. This administrative regulation incorporates by reference the 2020 Benefits Selection Guide that will be distributed by the Personnel Cabinet's Department of Employee Insurance to public employees covered under the self-insured plan. An ordinary administrative regulation is not sufficient due to the statutory filing deadlines and handbook distribution requirements. This emergency administrative regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation is not identical to this emergency administrative regulation. This emergency administrative regulation will be in effect for part of the current 2019 plan year. The existing language in the Benefits Selection Guide for the 2019 plan year should remain until such time as the ordinary administrative regulation incorporating the Benefits Selection Guide for plan year 2020 replaces this emergency administrative regulation.

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

PERSONNEL CABINET
Office of the Secretary
(Emergency Amendment)

101 KAR 2:210E. 2019 and 2020 Plan Year Handbooks[Handbook] for the Public Employee Health Insurance Program.

RELATES TO: KRS 18A.030, 18A.225, 18A.2254

STATUTORY AUTHORITY: KRS 18A.030(2)(b), 18A.2254(1)(a)

EFFECTIVE: September 13, 2019

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.2254(1)(a)1 requires the secretary of the Personnel Cabinet to promulgate an administrative regulation to incorporate by reference the plan year handbook distributed by the Department of Employee Insurance to public employees covered under the self-insured plan and establishes the minimum requirements for the information included in the handbook. This administrative regulation incorporates by reference the plan year Benefits Selection Guide, which is the handbook distributed by the department to public employees for the 2019 and 2020 Plan Years[Year] as required by KRS 18A.2254(1)(a)1.

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

each plan provided to the public employees covered under the self-insured plan.

Section 2. (1) The Department of Employee Insurance shall distribute or make available to the public employees covered under the self-insured plan the 2020 Plan Year Kentucky Employees' Health Plan Benefits Selection Guide, which shall include the premiums, employee contributions, employer contributions, and a summary of benefits, copays, coinsurance, and deductibles for each plan provided to the public employees covered under the self-insured plan.

(2) The 2020 Plan Year Kentucky Employees' Health Plan Benefits Selection Guide shall govern the health plan benefits for public employees covered under the self-insured plan beginning January 1, 2020.

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

(a) "2019 Plan Year Kentucky Employees' Health Plan Benefits Selection Guide", 2019 edition; and

(b) "2020 Plan Year Kentucky Employees' Health Plan Benefits Selection Guide", 2020 edition[is incorporated by reference].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Personnel Cabinet, 501 High Street, 3rd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m.

THOMAS B. STEPHENS, Secretary

APPROVED BY AGENCY: August 27, 2019

FILED WITH LRC: September 13, 2019 at 9 a.m.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Sharron Burton

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation incorporates by reference the 2020 plan year handbook containing information about the self-insured health insurance plans offered through the Public Employee Health Insurance Program. The handbook, commonly referred to as the Benefits Selection Guide, is distributed to all plan holders participating in the self-insured program. The Benefits Selection Guide contains the premiums, employee contributions, employer contributions, and a summary of benefits, co-pays, coinsurance, and deductibles for each plan available to public employees through the self-insured program in 2020.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with the statutory mandate of KRS 18A.2254. More specifically, KRS 18A.2254(1)(a) requires the Personnel Cabinet to promulgate an administrative regulation that incorporates by reference the 2020 plan year handbook that will be distributed to the public employees covered by the Public Employee Health Insurance Program. The handbook must be filed with the Legislative Research Commission on or before September 15 each year.

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

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation aids in the effectuation of the statute, KRS 18A.2254, by incorporating by reference the 2020 plan year handbook for the Public Employee Health Insurance Program in an administrative regulation. Further, this administrative regulation is the method by which the Personnel Cabinet will comply with KRS

18A.2254.

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

(a) How the amendment will change this existing administrative regulation: This is an amendment. The existing administrative regulation incorporates by reference the 2019 plan year handbook which constitutes a compilation of the premium rates and contributions, benefit options, eligibility rules, and enrollment information for participants of the Public Employee Health Insurance Program for plan year 2019. The amendment adds and incorporates by reference the 2020 plan year handbook which contains the premiums, employee contributions, employer contributions, and a summary of benefits, co-pays, coinsurance, and deductibles for each plan available to public employees for plan year 2020.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to give notice regarding the premiums, employee contributions, employer contributions, benefits, co-pays, coinsurance, and deductibles for each plan available to public employees under the Public Employee Health Insurance Program for plan year 2020. This amendment is also necessary to comply with the statutory mandate in KRS 18A.2254 to annually update the regulation incorporating the plan year handbook.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of KRS 18A.2254, the statute authorizing the self-insured plan under the Public Employee Health Insurance Program. KRS 18A.2254 mandates that the plan year handbook be incorporated by reference in an administrative regulation on or before September 15 each year. This amendment incorporates the 2020 plan year handbook by reference in accordance with KRS 18A.2254.

(d) How the amendment will assist in the effective administration of the statutes: This amendment conforms to the requirements of KRS 18A.2254, the statute authorizing the self-insured plan under the Public Employee Health Insurance Program. KRS 18A.2254 mandates that the plan year handbook be incorporated by reference in an administrative regulation on or before September 15 each year. This amendment incorporates the 2020 plan year handbook by reference in accordance with KRS 18A.2254.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects employees of state and select county and local government entities, including employees of the local school boards and districts. This administrative regulation also affects certain retirees as specified by KRS 18A.225. More specifically, and as defined by KRS 18A.225(1)(a), this administrative regulation affects approximately 174,177 employees and retirees eligible to participate in the Public Employee Health Insurance Program. In total, this administrative regulation affects 294,424 members in the self-insured plan including employees and retirees, qualifying beneficiaries, and dependents.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Affected entities will not be required to take any additional action to comply with this administrative regulation that incorporates the 2020 plan year handbook. The 2020 Benefits Selection Guide will provide information to the public employees covered under the Public Employee Health Insurance Program about the premiums, employee contributions, employer contributions, and a summary of benefits, co-pays, coinsurance, and deductibles for the 2020 plan year.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This administrative regulation provides employer and employee premium contribution information for health plans available under the Public Employee Health Insurance Program for

plan year 2020. There is no direct cost impact to employers participating in the Public Employee Health Insurance Program as a result of incorporating the 2020 plan year handbook into the administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): For plan year 2020, participating employers (entities) and participating employees and retirees and their beneficiaries and dependents covered under the Public Employee Health Insurance Program will have access to comprehensive health insurance benefits under all plans offered through the self-insured program. For plan year 2020, employee contributions to health coverage premiums increased 3% across all plans as compared to 2019 premiums. The employee contribution increase resulted in an average increase to family plans in the amount of \$12.10/month and an average increase to single plans in the amount of \$1.40/month. The largest increase was \$19.90/month for the LivingWell PPO Family Plan. Employer premium contribution amounts did not increase for any plan. In addition to the employee contribution increase, all plan deductibles and out-of-pocket maximums increased \$250.

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

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

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

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

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

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will affect all employees of state and select county and local government entities, including employees of the local school boards and districts that participate in the Public Employee Health Insurance Program. As employers, this administrative regulation will affect state and select county and local government entities as well as local school boards and districts. This administrative regulation also affects retirees under the age of 65 who are eligible to participate in the Program by virtue of their participation in one of the state-administered retirement systems.

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

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

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

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

(c) How much will it cost to administer this program for the first year? Costs of implementing this program are believed to be similar to previous plan years. However, the 2020 plan year handbook will be online and distributed electronically rather than in printed hard copy. This method of distribution is expected to be a savings for the Public Employee Health Insurance Program during the 2019 open enrollment season and throughout the 2020 plan year.

(d) How much will it cost to administer this program for subsequent years? The 2020 plan year handbook will be online and distributed electronically rather than in printed hard copy. This method of distribution is expected to be a savings for the Public Employee Health Insurance Program during the 2019 open enrollment season and throughout the 2020 plan year. Should the distribution of the plan year handbook continue to be made available online and distributed only by electronic means in the future, the Public Employee Health Insurance Program could recognize cost savings 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:

STATEMENT OF EMERGENCY 300 KAR 1:010E

This emergency administrative regulation amends the requirements for the Kentucky Tourism Marketing Incentive Program. The Tourism Marketing Incentive Program distributes the "1%" hotel tax to County Visitor Bureaus (CVB). The emergency administrative regulation corrects a formula error which if not corrected will adversely impact those counties which generate the hotel tax and have budgeted for this year's distribution. This emergency administrative regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

MATTHEW G. BEVIN, Governor
DON PARKINSON, Secretary

TOURISM, ARTS AND HERITAGE CABINET Department of Travel Development (Emergency Amendment)

300 KAR 1:010E. Procedure for Tourism[Regional] Marketing Incentive[and Matching Funds] Program.

RELATES TO: KRS 91A.350,142.406, 148.522, 148.525, 273.161-273.405

STATUTORY AUTHORITY: KRS 148.525(2), (3)

EFFECTIVE: August 23, 2019

RELATES TO: KRS 91A.350,142.406, 148.522, 148.525, 273.161-273.405

STATUTORY AUTHORITY: KRS 148.525(2), (3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 148.525(2) provides that the Division of Tourism Services shall be responsible for the Tourism Marketing Incentive[and matching fund-tourism advertising] Program. KRS 148.525(3) authorizes the Commissioner of the Department of Tourism to promulgate administrative regulations to promote, develop, and support the

tourism industry in Kentucky. This administrative regulation establishes uniform and consistent administration of the application, participation, and reimbursement requirements of the Tourism[Regional] Marketing Incentive[and Matching Funds] Program.

Section 1. Subject to the availability of~~Definitions.~~ (1) "Familiarization trip" means a trip or tour given by a tourism professional to visit a site or location to inform a person about attractions, amenities, entertainment, natural areas, or other tourist destinations in an effort to educate the person who may then market the site or location through the person's own venues.

(2) "Local promotional project" means a promotional project that:

(a) Is not affiliated with a:

1. State agency;

2. Federal agency;

3. Nonprofit organization that receives funds from the Tourism Marketing Incentive Program shall provide financial and marketing assistance for projects which are in direct support of the promotion and marketing efforts of a tourism[Department of Tourism or the Office of the Sports Authority for the purpose of sponsorship or advertising; or

4. Statewide project;

(b) Promotes to markets outside of the local area:

1. A specific local tourism event;

2. An attraction, event, or; or

3. A geographic area.

Section 2. Definitions. (1) "County Assessment" means an assessment fee each county is assessed and is paid to the region in order to participate in the regional marketing efforts.

(a) County assessments are (2) Funding shall be distributed based on an average percentage derived from county population and tourism expenditures or factors determined by Regional Committee.

(b) Regional committees are required to match a percentage of funding through the program, and assessments are used for the match.

(c) A county's funding remains in the Tourism, Meeting and Convention Marketing Fund account when the county pays the assessment and does not request funding through the program.

(2) "Designated Marketing Organization" means the organization designated by a county's fiscal court such as Chamber of Commerce or Fiscal Court to receive Tourism Marketing Incentive funds when no Convention & Visitors Bureau or Tourism Commission exists in the county.

(3) "Number of rooms" means total number of rooms within a county or city that transient room tax is collected from an overnight stay at the property.

(4) "Program Year" means the Tourism Marketing Incentive;

(c) Shall be completed and documented in a matching funds program cycle; and

(d) Meets the eligibility requirements in this administrative regulation.

(3) "Matching funds program cycle" means the Regional Markets and Matching Funds Program Year[eyele] that:

(a) Runs for a fiscal[calendar] year; and

(b) Has one (1) application deadline of June[May] 1; and

(c) Has two (2) final reimbursement deadlines:

1. February 1 for projects completed July through December; and

2. August 1 for projects completed January through June.

(5)[(4)] "Regional promotional project" means a project that:

(a) Promotes tourism opportunities throughout one (1) of the nine (9) tourism regions designated by the Department of Tourism as a tourism region.[Section 2. Regional Marketing and Matching Funds Program Reimbursement Distribution. (1) The regional Marketing and Matching Funds Program shall provide financial and marketing assistance to promotional projects completed by tourism regions and local nonprofit organizations.]

Section 3. Tourism Region Committees. (1) To qualify for

Tourism Marketing Incentive funds, a tourism region shall establish a tourism region committee.

(a) Each tourist and convention commission established pursuant to KRS 91A.350 in a tourism region shall appoint a person to serve on the tourism region committee.

(b) If a tourism and convention commission has not been established pursuant to KRS 91A.350 by the local governing bodies of a county, or cities within a county, in a tourism region, the county judge executive of each county shall appoint a person to serve on the tourism region committee.

(c) Counties with multiple tourism commissions are able to have a representative from each tourism commission on the committee.

(2) A member of the tourism region committee:

(a) Shall serve a two (2) year term; and

(b) May be reappointed for successive two (2) year terms.

(3) A tourism region committee shall be incorporated as a nonprofit, nonstock corporation, pursuant to KRS 273.161 through 273.405.

(4) A tourism region committee shall:

(a) Elect a chairperson, vice chairperson, secretary, and treasurer; and

(b) Establish bylaws that shall include:

1. Purpose, mission, and limitations of committee;

2. Composition and duties of the board of directors and officers;

3. Procedures for election, removal of directors and officers, and filling of vacancies;

4. When meetings shall be held;

5. Quorum and voting requirements;

6. Financial and contractual procedures;

7. Preparation of annual budget and financial report; and

8. Procedure for amendment of bylaws.[to calculate county allotments.

~~(3) Convention and visitors' bureaus, tourism commissions, and designated marketing organizations shall be eligible to receive up to seventy (70) percent of a county allotment.~~

~~(4) Applicants other than convention and visitor bureaus, tourism commissions, and designated marketing organizations shall be eligible to receive up to thirty (30) percent of a county allotment.~~

~~(5) Percentage of eligible costs reimbursement.~~

~~(a) 100 percent of the costs of an eligible promotional project shall be available to a tourism region;~~

~~(b) Eighty (80) percent of the costs of an eligible promotional project shall be available to a convention and visitors' bureau, a tourism commission, or a designated marketing organization; and~~

~~(c) Fifty (50) percent of the costs of an eligible promotional project shall be available to eligible applicants not specified in paragraph (a) and (b) of this subsection.]~~

Section 4.[3.] Tourism Regions. Nine (9) tourism regions, as specified on the Tourism Regions Map, are established, as follows:

(1) Tourism Region 1, Western Lakes and Rivers, shall consist of the following counties:

- (a) Ballard;
- (b) Caldwell;
- (c) Calloway;
- (d) Carlisle;
- (e) Christian;
- (f) Crittenden;
- (g) Fulton;
- (h) Graves;
- (i) Hickman;
- (j) Livingston;
- (k) Lyon;
- (l) Marshall;
- (m) McCracken;
- (n) Todd; and
- (o) Trigg.

(2) Tourism Region 2, Green River, shall consist of the following counties:

- (a) Daviess;

- (b) Hancock;
- (c) Henderson;
- (d) Hopkins;
- (e) McLean;
- (f) Muhlenberg;
- (g) Ohio;
- (h) Union; and
- (i) Webster.

(3) Tourism Region 3, Cave, shall consist of the following counties:

- (a) Allen;
- (b) Barren;
- (c) Butler;
- (d) Edmonson;
- (e) Hart;
- (f) Logan;
- (g) Metcalfe;
- (h) Monroe;
- (i) Simpson; and
- (j) Warren.

(4) Tourism Region 4, Louisville-Lincoln, shall consist of the following counties:

- (a) Breckinridge;
- (b) Bullitt;
- (c) Grayson;
- (d) Hardin;
- (e) Henry;
- (f) Jefferson;
- (g) Larue;
- (h) Marion;
- (i) Meade;
- (j) Nelson;
- (k) Oldham;
- (l) Shelby;
- (m) Spencer;
- (n) Trimble; and
- (o) Washington.

(5) Tourism Region 5, Southern Kentucky Lakes and Rivers, shall consist of the following counties:

- (a) Adair;
- (b) Casey;
- (c) Clinton;
- (d) Cumberland;
- (e) Green;
- (f) McCreary;
- (g) Pulaski;
- (h) Russell;
- (i) Taylor; and
- (j) Wayne.

(6) Tourism Region 6, Northern Kentucky, shall consist of the following counties:

- (a) Boone;
- (b) Bracken;
- (c) Campbell;
- (d) Carroll;
- (e) Fleming;
- (f) Gallatin;
- (g) Grant;
- (h) Kenton;
- (i) Lewis;
- (j) Mason;
- (k) Owen;
- (l) Pendleton; and
- (m) Robertson.

(7) Tourism Region 7, Bluegrass, shall consist of the following counties:

- (a) Anderson;
- (b) Bourbon;
- (c) Boyle;
- (d) Clark;
- (e) Fayette;
- (f) Franklin;
- (g) Garrard;

- (h) Harrison;
- (i) Jessamine;
- (j) Lincoln;
- (k) Madison;
- (l) Mercer;
- (m) Nicholas;
- (n) Scott; and
- (o) Woodford.

(8) Tourism Region 8, Eastern Highlands-North, shall consist of the following counties:

- (a) Bath;
- (b) Boyd;
- (c) Carter;
- (d) Elliott;
- (e) Floyd;
- (f) Greenup;
- (g) Johnson;
- (h) Lawrence;
- (i) Magoffin;
- (j) Martin;
- (k) Menifee;
- (l) Montgomery;
- (m) Morgan;
- (n) Pike; and
- (o) Rowan.

(9) Tourism Region 9, Eastern Highlands-South, shall consist of the following counties:

- (a) Bell;
- (b) Breathitt;
- (c) Clay;
- (d) Estill;
- (e) Harlan;
- (f) Jackson;
- (g) Knott;
- (h) Knox;
- (i) Laurel;
- (j) Lee;
- (k) Leslie;
- (l) Letcher;
- (m) Owsley;
- (n) Perry;
- (o) Powell;
- (p) Rockcastle;
- (q) Whitley; and
- (r) Wolfe.

Section 5.[4.] Tourism Marketing Incentive Program Application and Applicants.

(1) An application may be submitted by an organization that is a tourism region, a convention and visitors' bureau, a tourism commission, or a designated marketing organization that is a nonprofit 501C(3) or 501C(6) tourism entity prior to June 1 for eligible:

- (a) Projects that are listed and will be completed during the program year;
- (b) Expenses totaling at least \$1,000 for a project, or several projects;
- (c) Promotion projects in markets outside local area;
- (d) Meet the eligibility requirements of this administrative regulation; and
- (e) Complete and submit the Affidavit for Bidders, Offerors and Contractors.

(2) An applicant shall submit proof of nonprofit status with the application.

(3) A local tourism commission[Region Committees. (1) To qualify for state tourism matching funds, a tourism region shall establish a tourism region committee.

(2)(a) Each tourist and convention commission established pursuant to KRS 91A.350 in a tourism region] shall submit a copy of the ordinance establishing the commission; and one (1) of the following:

- (a) Federal or State determination of tax exempt status; or
- (b) A copy of the organization's W9; or

(c) A letter from fiscal court stating applying organization is part of city or county government and fiscal courts Federal ID number.

(3) New Tourist Commission established:

- (a) Will not be eligible for funding for two (2) years;
- (b) Must have at least a part time paid director;
- (c) Must have a source of funding; and
- (d) Must have established budget and marketing plan.

(4) Applicant shall not be affiliated with:

- (a) A state agency;
 - (b) A state agency nonprofit affiliates;
 - (c) A federal agency;
 - (d) An organization that receives funds from other state agencies for the purpose of sponsorship or advertising;
 - (e) An organization that receives line item funding through the Executive Budget;
 - (f) A statewide organization; or
 - (g) An organization that receives state or federal grants in order to match the Tourism Marketing Incentives funds.
- (5) Applicant must be a Kentucky based organization.

Section 6. Approval of Applications. (1) The state program manager shall review each application and determine the applicant's eligibility for reimbursement in accordance with applicable Kentucky Revised Statutes and this administrative regulation:

(2) The state program manager or assistant program manager shall hold allocation meetings in each of the nine (9) tourism regions with the tourism region committee for the region to:

- (a) Discuss the tourism marketing incentive program;
- (b) Review and establish priorities for the region;
- (c) Vote and approve the distribution of funds to organizations within the region; and
- (d) Review and discuss the tourism region application if submitted.

(e) The state program manager shall base the allocation determination on:

1. A formula derived from county economic impact figures and number of rooms within the county; and

2. The availability of funds.

(f) The state program manager shall mail each applicant:

- 1. "Project Agreement" form stating the amount of the state funds allocation for the program year; or
- 2. Letter stating why an applicant's projects have been denied funding; and
- 3. Copy of the application submitted by each applicant, indicating approved and disapproved projects; and

(g) An applicant shall sign and return the Project Agreement form to the state program manager by the dates mandated in Section 1 of this regulation.

Section 7. Reimbursement Percentages and Requirements. (1) Convention and visitor bureaus, tourism commissions, and designated marketing organizations shall be eligible to receive funding.

(2) Multiple tourism commissions within a county and distribution of funds:

(a) After the county allocation has been determined, a formula calculating the number of rooms located within their city will be used to determine individual tourist commission funding.

(b) If there is less than twenty-five (25) percent of rooms within a city the tourism commission will automatically be eligible for twenty-five (25) percent of the allotment.

(3) Reimbursement Percentage of eligible cost for Kentucky Department of Tourism cooperative opportunities:

(a) Up to ninety (90) percent of the costs of an eligible co-op project may be available;

(b) Up to seventy-five (75) percent of the cost with participation with selected vendor outside of co-ops.

(4) Reimbursement percentage of eligible cost for promotional projects other than cooperative opportunities:

(a) Up to eighty (80) percent costs for promotional projects may be available to a tourism region;

(b) Up to fifty (50) percent of the costs of an eligible

promotional project may be available to all applicants not specified in paragraph (a) of this subsection.

(5) Convention sponsorship/bid fee that guarantees room nights within the state may be reimbursed up to eighty (80) percent of the cost.

(6) New event that has been brought to the state through a sponsorship/bid fee may be reimbursed up to seventy (70) percent of the cost. Reoccurring events may be reimbursed up to fifty (50) percent of the cost.

(7) Applicants shall be eligible for reimbursement for expenditures that do not exceed the amount allocated by the tourism marketing incentive program.

(8) Requests for reimbursement shall not be made until:

(a) At least \$1,000 has been expended; or

1. Applicants original estimated expenses fall under the \$1,000 within a program year can be submitted to utilize an applicant's allotment; or

2. Applicant has submitted reimbursements through program year and remaining amount available was under \$1,000.

(b) Projects were included on the application or amendments had prior approval from program manager;

(c) Projects were compliant with the eligibility and reimbursement requirements; and

(d) Projects have been completed.

(9) A request for reimbursement shall be made on the Reimbursement Request form which shall:

(a) Be submitted to the state program manager by February 1 or August 1;

Applicants are able to submit multiple reimbursement requests for completed projects but must submit by the final reimbursement deadlines of February 1 or August 1:

(b) Be signed; and

(c) State the federal identification number of the organization.

(10) Checks submitted as documentation shall be issued by the organization that applied for tourism marketing incentive funds.

(11) The following information shall be attached to the Reimbursement Request form:

(a) A copy of each vendor's invoice;

(b) A copy of the front and back of each canceled check;

(c) Proof of payment of all expenditures;

(d) For tourism region projects:

1. Proof of payment of twenty (20) percent of expenditure;

2. Proof of payment of the remaining eighty (80) percent of expenditures shall be submitted after receipt of tourism marketing incentives funds; and

3. Completion of Regional Ad Sale form, if ads were sold in the region visitor's guide.

(e) Four (4) completed brochures;

(f) Four publications or videos, a copy of invoices, with a breakdown of layout and design costs, the number of copies printed, and other related expenses;

(g) If printing costs exceed \$1,000, a copy of three (3) written bids;

(h) One (1) duplicate of a completed video, CD, or DVD;

(i) One (1) original tear sheet of advertisements as they appeared in the print media including date of issue;

(j) One (1) typed transcript or a tape of a radio, television, or videotape, CD, or DVD travelogue advertisement;

(k) A copy of a press kit;

(l) Documentation of the distance of media from the event, attraction, or area promoted;

(m) One (1) photograph of a completed billboard and signage rentals;

(n) Documentation of the location and dates of service for billboard and signage rentals;

(o) Documentation of location, distribution routes, and dates for distribution services;

(p) Documentation of postage expenses, including postage invoices or paid receipts, list of names, addresses, and material mailed (for regional committees only);

(q) Verification of attendance at consumer travel shows or group tour marketplaces, including signed agreements or contracts; and

(r) Verification of regional travel show or group tour marketplace per diem, including a completed and signed Tourism Region Per Diem reimbursement form.[appoint a person to serve on the tourism region committee.

(b) If a tourism and convention commission has not been established pursuant to KRS 91A.350 by the local governing bodies of a county, or cities within a county, in a tourism region, the county judge executive of each county shall appoint a person to serve on the tourism region committee. (3) A member of the tourism region committee:

(a) Shall serve a two (2) year term; and

(b) May be reappointed for successive two (2) year terms.

(4) A tourism region committee shall be incorporated as a nonprofit, nonstock corporation, pursuant to KRS 273.161 through 273.405.

(5) A tourism region committee shall:

(a) Elect a chairperson, vice chairperson, secretary, and treasurer; and

(b) Establish bylaws that shall include:

1. Purpose, mission, and limitations of committee;

2. Composition and duties of the board of directors and officers;

3. Procedures for election, removal of directors and officers, and filling of vacancies;

4. When meetings shall be held;

5. Quorum and voting requirements;

6. Financial and contractual procedures;

7. Preparation of annual budget and financial report; and

8. Procedure for amendment of bylaws.]

Section 8.[5-] Types of Promotional Projects. (1) The types of [local or tourism region] promotional projects eligible for funding shall be:

(a) Tourism publications, CDs, DVDs, and videos;

(b) Media advertisements and press kits;

(c) Billboards and signage;

(d) Brochure distribution services;

(e) Postage and freight expenses[; (only available to regional committee);

(f) Meeting and convention advertising[(f) Consumer travel show] expenses;

(g) Group tour marketplace, meeting and conventions, and consumer travel show expenses;

(h) Sponsorship/Bid fee of tourism trade shows, conventions, sporting events and other events;

(i) Web site design; and

(j) Research studies and analysis.

(2) Other projects not listed above may be considered on a case by case basis if they are consistent with the purpose of the Tourism Marketing Incentive Program.[expenses;

(h) Meeting, convention, and sports-marketing trade show and exposition expenses;

(i) Familiarize trips and site visits;

(j) Sponsorship of tourism trade show and events;

(k) Bid fees to assist in bringing events to Kentucky; and

(l) Internet hosting, design, and maintenance expenses.

(2)(a) Promotional projects shall meet the requirements established in specified by Section 6 of this administrative regulation.

(b) Brochures, videos, CDs, DVDs, tourism region media, advertisements and press kits shall not be eligible for reimbursement unless they have been reviewed and approved by the state matching funds program manager prior to submission of a Reimbursement Request form for expenditures relating to these items.]

Section 9.[6-] Requirements for Tourism Publications, CD's, DVD's, Video[and Types of Promotional] Projects.[and] Allowable Costs and Bid Requirements. (1)[Tourism publications, videos, CDs, and DVDs and meeting, convention, and sports-marketing tools.

(a) Types of travel related brochures, CDs, DVDs, and videos that highlight the attractions, facilities, meeting and convention,

sports-marketing capabilities, ~~[sporting—venues,]~~ and special events ~~[of the tourism region or local area and]~~ that encourage travelers to stop and visit, shall be eligible for reimbursement and include:

~~(a)[1. Tourism region and local area]~~ Visitor's guides;

~~(b)[2.] General festival brochures;~~

~~(c)[3-] Group tour publications;~~

~~(d) Sports Publications;~~

~~(e) Meeting/Convention publications; and~~

~~(f)[4.] Brochures, videos, CDs, and DVDs promoting tourist attractions open to the public for regular hours.~~

~~(2)[(b)] Costs that exceed the advertising revenue shall be eligible for reimbursement if the expenditures were for brochures or other publications. [(c) A brochure that lists another state's attraction, business, or facilities shall be eligible for forty (40) percent or twenty-five (25) percent depending on reimbursement of costs depending on the applicant's eligibility for a fifty (50) or eighty (80) percent reimbursement of costs as established in Section 2(5) of this administrative regulation.]~~

~~(3)[(d)] Brochures, other publications, and videos shall include: [the following information, as applicable:]~~

~~(a) Four (4) color cover, if applicable, and a distribution plan is required to receive reimbursement for print items. See Section 7 for distribution sources. [1. A description of points of interest, recreational opportunities, and listing of services, including food, lodging, and camping facilities;~~

~~2. Landmarks that relate to the history or tradition of the area, or of architectural interest, such as buildings listed on the state or national register;~~

~~3. Attractions open to the public, such as theaters and museums, including the:~~

~~a. Date and time that they are open to the public;~~

~~b. Admission fee, if applicable;~~

~~c. Attraction location;~~

~~d. Mailing address;~~

~~e. Telephone number; and~~

~~f. Web site address, if applicable;~~

~~4. Information relating to recreational activities and attractions, such as fishing, water sports, and hiking, and required fees;~~

~~5. A list of tourism region or tourism-related local area events;~~

~~6. The telephone number and Web site address of the state travel information office; and~~

~~7. Current maps of the tourism region, with major highways and access routes into the area clearly marked, and a chart listing mileage from major cities outside the immediate local area or tourism region.~~

~~(e) If possible, the title of a brochure shall be placed at the top of the publication for placement in a brochure rack.~~

~~(f) A brochure shall be professionally typeset.~~

~~(g) If feasible, to save costs, brochures shall:~~

~~1. Consist of the lightest possible paper weight and cover stock, and the least number of pages possible;~~

~~2. Be manufactured from recycled paper; and~~

~~3. Be designed as self-mailers.]~~

~~(b)[(h)] The front or back cover of a brochure shall include the Kentucky state official tourism brand, according to the Graphics Standards, which shall be obtained from the Kentucky Department of Tourism, [advertising theme, which shall be obtained from the state matching funds program manager.~~

~~(c)[(i)] A tag line stating: "Paid in Part by [Printed in cooperation with] the Kentucky Department of Tourism" shall be included in a brochure. [(j) A tourism region brochure shall:~~

~~1. Include a four (4) color brochure cover;~~

~~2. The telephone number and or Web site address of the state tourism information office;~~

~~3. Include a map of the tourism region that shall be:~~

~~a. Prominently placed in the brochure;~~

~~b. Of at least eight (8) point font size, in order to be of sufficient size to be easily read;~~

~~c. Of sufficient detail to show major traffic arteries, primary cities and towns, lakes and other natural attractions, and shall be and keyed to the major attractions addressed in the brochure; and~~

~~4. Emphasize the tourism region as a whole and shall not favor~~

~~a particular area of the region.]~~

~~(d)[(k)] An advertisement may be sold to a business and included in a tourism region brochure to supplement the cost of a tourism region brochure if the:]~~

~~4-] ratio of advertising to editorial space does not exceed 2:3;~~

~~(e) Printing or publications requires: [2- Advertiser provides a tourism-oriented service directly to travelers; or~~

~~3. Theme and content of advertisements promote tourism in the region.~~

~~(l) Distribution plan and services. A distribution plan for the distribution of brochures to potential tourists shall be developed with the following distribution sources:~~

~~1. Tourist commissions;~~

~~2. State and local welcome centers;~~

~~3. State Tourism Department;~~

~~4. Consumer travel shows; and~~

~~5. similar distribution sources.~~

~~(m) A distribution plan shall include a method for responding to inquiries resulting from state, tourism region and local area tourism advertising campaigns.~~

~~(n)[1. If the total printing cost of a publication, excluding layout and design expenses, exceeds \$1,000, three (3) written bids shall be obtained.~~

~~2. Bids shall not be required for reprints made with only minor changes.~~

~~3. [(e)] A publication, video, CD, or DVD shall be submitted to [the state matching funds] program manager for review and approval, prior to completion.~~

~~(f)[(p)] The Department of Tourism reserves the right to deny reimbursement for any brochure submitted that does not follow guidelines or questions regarding layout, design, or necessity will be reviewed by the Department of Tourism for final approval or denial.~~

~~(g) Only one (1) visitors guide per county is eligible unless there are multiple convention and visitors bureau offices within the county. If so, one (1) guide per office is eligible. If more than one (1) attraction/festival brochure is requested for reimbursement applicant shall give an explanation as to why individual brochures are needed.~~

Section 10. Distribution Plan and Services. (1) Funds available for brochure distribution expenses. A distribution plan shall be developed for the distribution of brochures to potential tourists with the following distribution sources:

(a) Tourist Commissions;

(b) State and local welcome centers;

(c) State Travel Department;

(d) Consumer travel shows;

(e) Meeting planning expos;

(f) Marketplaces; and

(g) Brochure distribution rack services.

Section 11. [state matching funds program manager shall review submissions within five (5) business days after receipt.

(2) Media] Advertisements and [tourism region] Press Kits.

(1) A [(a) A media] tourism advertisement may be placed:

(a)[4-] In a newspaper, magazine, or other periodical;

(b)[2-] On the radio or television;

(c)[3-] On video tape, CD, or DVD travelogue;

(d)[or

4-] On electronic media such as the Internet;

(e) Sports media; or

(f) Meeting/convention media outlets.

(2) Tourism advertisement shall include the official state advertising brand according to the Graphic Standards, unless the advertisement is in conjunction with a Department of Tourism co-op. [(b) A media tourism advertisement shall include:

1. An address, telephone number, or Web site address to be contacted for more information;

2. The official state advertising theme; and

3. General information about the tourism region in addition to specific information relating to an event, attraction, or geographic area promoted in the advertisement.

~~(c) Media costs;~~

~~(3)[1-] Costs for tourism [media]advertisements, including media time, production costs, and [media]placement, shall be eligible for reimbursement.~~

~~(4) Major media markets and reimbursement percentages:~~

~~(a) Advertisement costs will qualify if they are[2- Except as provided by this subsection, advertising placed with media located within a fifty (50) mile radius shall not be eligible for reimbursement.~~

~~3. All media advertisement costs placed in a tourist-oriented publication shall be eligible for reimbursement.~~

~~4. Percentage of reimbursement for media costs shall be:~~

~~a. Forty (40) percent of media costs for advertising placed with media located within a fifty (50) mile radius of a major media market. The[shall be eligible for] reimbursement may be up to twenty-five (25) percent of media costs.~~

~~(b) Except as provided by this subsection,[to convention and visitors' bureaus, tourism commissions, or designated marketing organizations; and~~

~~b. Twenty-five (25) percent of media costs for] advertising costs[placed] with media located within a fifty (50) mile radius shall not be eligible for reimbursement.~~

~~(c)[to organizations if the:~~

~~(i) Organization is located within a fifty (50) mile radius of a major media market listed in paragraph (d) of this subsection; and~~
~~(ii) Media cost is not a type listed as excluded in paragraph (e) of this subsection.~~

~~(d)] Major media markets shall be:~~

- ~~1. Cincinnati, Ohio;~~
- ~~2. Evansville, Indiana;~~
- ~~3. Huntington, West Virginia;~~
- ~~4. Louisville, Kentucky;~~
- ~~5. Lexington, Kentucky;~~
- ~~6. Paducah, Kentucky; and~~
- ~~7. Bowling Green, Kentucky.~~

~~(d)[(e) Media] Advertisement costs shall not be eligible for reimbursement if they are incurred for advertisements that are[:~~

~~1. Sponsored] sponsored or advertised by tourism organizations in tourism region brochures that have been allocated state Tourism Marketing Incentive Program[matching] funds[;] or~~
~~[2-] funded through other cooperative advertising programs of the Kentucky Department of Tourism.~~

~~(e)[(f)] Costs associated with media press kits and media relations programs shall be reimbursable.~~

Section 12. Billboards and Signage. (1)[(3) Brochure distribution services. Rental of rack space for the distribution of eligible promotional materials shall be eligible for reimbursement.

(4) Postage and freight costs for bulk mail, United Parcel Service, mailing firm, and actual postage costs excluding stamps and postage meters shall be eligible for reimbursement if they are incurred in:

(a) Response to general tourist requests or media or group tour operator inquiries;

(b) Shipping tourism promotional literature and displays for use at consumer travel shows and group tour marketplaces; or

(c) Conventions, meetings, or sports-marketing expenses.

(5) Rental of a billboard, tourist-oriented directional signage (TODS), fifth legends or attraction logos, including related artwork, design, and production costs shall be eligible for reimbursement if it:

(a) Promotes specific attractions, events, availability of food, lodging, camping or other services;

(b) Is placed on interstates or other major access highways outside a twenty (20) mile radius; [er]and

(c) Does not consist solely of language welcoming a visitor to a community or region.

(2) A photo of the billboard must be submitted with reimbursement request.

(3) The Department of Tourism brand must be included on billboards.

(4) Cost associated with construction of any permanent signage structure is not reimbursable.

(5) Only new signs shall be eligible for reimbursement; previously signs existing or maintenance of signs are not reimbursed.

Section 13. Postage and Freight. (1) Only region committees can be reimbursed for postage, freight, and mailing firm fees incurred in:

(a) Response to tourist requests, media or group tour operator inquiries; and

(b) Shipping tourism literature and displays for use at[6)(a)] consumer travel shows,[show;] group tour marketplaces, or sports-marketing expenses.

Section 14. (1) Consumer travel show; group tour marketplaces, meeting/convention trade show, sports marketing, or exposition expenses shall qualify that:

(a)[; meeting, convention, or sports-marketing trade show or exposition costs:]

4-] Promote an attraction, event, or geographic area;

[b][2-] Are not a county fair or festival;

[c][3-] Are not expended for booth space costs at industrial solicitation events;

[d][4-] Are not registration expenses to attend a conference or meeting.

[e][expended for consumer travel shows and group tour marketplaces located more than forty (40) miles from the event, attraction, or geographical area promoted;

5-] Are expended for the purchase and maintenance of exhibits such as display assembly, artwork, transparencies, photographs, brochure racks, consumer travel show, or group tour marketplace booth space, or furniture rental; and

[f][6-] Are[registration fees to interview prospective tour operators;

7. Are for shipping costs of displays and promotional material; or

8. Are] rental fees for[audiovisual] equipment and material.

(2)[(b)] A tourism region [group] shall be eligible for reimbursement of membership dues for major tourism associations, if membership is required to participate in advertising or promotional ventures.

(3)[(e)1-] A tourism region [group]shall be eligible for a seventy (70) dollar per diem, for a maximum of two (2) persons who serve as staff for tourism region travel booths at a consumer travel show or group tour marketplace if:

[a][a-] Booths are staffed continuously during event hours; and

[b][b-] The header, transparencies, photos, and regional[region] or local tourism brochures are representative of the tourism region or local areas within the tourism region.[2- The per diem shall be paid to the tourism region committee.]

(c)[(e)] Transportation costs related to a tourism region's attendance at a consumer travel show or group tour marketplace shall not be eligible for reimbursement.

Section 15. Web site. (1) Region committees are eligible to claim design, hosting, and maintenance of a regional tourism website.

(2) Applicants are eligible to claim design of tourism related websites for reimbursement.

(3) Current state tourism branding with a link to the Department of Tourism Web site and regional website are required on applicants home page.

(4) A Web site that contains paid advertisements shall not[(7) Familiarize trips and site visits.

(a) Familiarization visits for planners and media staff shall be eligible for tourism matching funds if the efforts are based on future business to Kentucky.

(b) Event planners include the following:

1. Meeting planners;

2. Group travel planners;

3. Reunion planners;

4. Sports planners or rights holders; and

5. Media staff.

(c) Reimbursement shall be based on cash expenditures and

not in-kind amenities.

(d) Airline fees and mileage costs up to \$300, based on the state's current vehicle mileage rate per person (excluding any additional guests), shall be eligible for reimbursement with the exception of regional committees.

Section 16. Sponsorship/Bid Fees[(8) Sponsorship] of Tourism Trade Shows, Conventions, and Other[and] Events. (1)[(a)] Sponsorship of tourism trade shows, conferences, and events are eligible for reimbursement if:

(a) The sponsorship opportunity may create an economic impact for the state[.];

(b) The sponsorship is for overall convention[opportunities sessions at a trade show or convention];

1. Meal functions;

2. Tangibles such as name badges, lanyards, and registration bags;

3. Education sessions and materials; and

4. Overall conference] partner or[sponsor of] a total event sponsor;

(c) The event is brought to the county/state by way of sponsorship/bid fee; or

(d) If the sponsorship is for a meal function or educational sessions at a trade show or convention.

(2)[(c) Reimbursement shall be for cash] Expenditures [and]not covered include:

(a) In-kind[In-kind] amenities;

(b)[(d)1.] Expenses for hospitality events that include alcohol;

(c)[or a sponsorship package shall not be eligible for reimbursement.

2.] Gratuities, service charges, and tips;

(d) Tourism industry events such as:

1. Kentucky Tourism Council; and

2. Kentucky Association of Convention & Visitor Bureaus;

(e) In-state or local events and conferences;

(f) Kentucky Association meetings and conferences.

(3) Convention sponsorship/bid fee reimbursement percentages:

(a) A sponsorship/bid fee that guarantees room nights within[shall not be eligible for reimbursements.

(9) Bid fees to assist in bringing events to Kentucky.

(a) Fees involved in securing and attracting events in an effort to attract sports events or conventions and meetings to] the state may be reimbursed up to eighty (80) percent of costs.

(4) Event sponsorship/bid fee reimbursement percentages:

(a) New event or sporting event that is brought to the state through a sponsorship or bid fee may be reimbursed up to seventy (70) percent of the cost; and

(b) Reoccurring events brought to the state through a sponsorship or bid fee may be reimbursed up to fifty (50) percent of the cost.

Section 17. Research. (1) Tourism Marketing Incentive funds may be used for research and analysis. Any such use of funds for these purposes must have a clear relationship to planning and executing tourism marketing and promotion. Economic impact research and research related to future capital projects are not allowable. Research funded under the provision must be approved in advance and outside firms, organizations or individuals to be engaged in such activities must meet the following minimum criteria:

(a) In operation at least two (2) years, if a firm or organization; if an individual, at least five (5) years of relevant experience;

(b) At least three (3) references; and

(c) Demonstrate expertise in the type of services to be rendered.

Section 18. Ineligible Project and Expenses.[shall be eligible for reimbursement.

(b) To be eligible for reimbursement, the event shall have at least a five (5) year history in other locations. Events previously held in Kentucky are eligible if proof is provided that the event has been or will be secured through a competitive bid process.

(c) An applicant shall include a letter of award of event if submitting a Reimbursement Request when submitting reimbursement.

(10) Internet and Web site.

(a) Costs associated with the design, hosting, and maintenance of tourism-related Web sites shall be are eligible for reimbursement if the current state tourism brand and logo with a link to the Department of Tourism's Web site and regional Web site are on the applicant's home page.

(b) A Web site that contains paid advertisements shall not be eligible for reimbursement.

(c) If applicable, a Web site shall include the following information:

1. A description of points of interest, recreational opportunities, and services, including:

a. Food;

b. Lodging; and

c. Camping facilities;

2. Landmark features related to the area's history or tradition or landmark features that are of architectural interest;

3. Attractions open to the public such as theaters and museums, including the:

a. Time and date the attraction is open to the public;

b. Admission fee;

c. Attraction's address, telephone number, and Web site address;

4. Recreational activities and applicable license information for attractions such as:

a. Fishing;

b. Water Sports;

c. Hiking; and

d. Golfing;

5. A Listing of area or regional tourism-related events; and

6. Current area maps with major highways and access routes into the area clearly marked as well as mileage from other cities.

(14)[(1)] The following items shall not be eligible for reimbursement:

(a) Industrial incentive brochures;

(b) General community relocation and development brochures;

(c) City/county[City or county, or city-county] maps or directories that list businesses and services;

(d)[Items related to theatrical productions, such as]Programs;

(e)[. Playbills;

(f)[. or] Posters;

(g)[(e)] Table tents;

(h)[(f)] Material related to] Membership and subscription solicitation;

(i)[(g)] Registration and entry forms;

(j)[(h)] Event and contest category or regulation material;

(k) Quick print materials such as flyers, handbills, and circulars;

(l) Entertainment expenses;

(m)[(i)] Entertainment expenses;

(j) Excluding group tour marketplaces, registration expenses for conferences and meetings;

(k) Research projects such as marketing or feasibility studies;

(f) Unless requested in advance by a tourism region, expenses for[, bumper stickers,]posters,] banners, flags, postcards, lapel pins, or bags;[, or other types of specialty advertising;]

(n)[(m)] Prizes, trophies, plaques, decorations, paint supplies, and poster board;

(o)[(n)] Items for resale;

(p)[(o)] Amounts paid for Kentucky sales tax;

(q)[(p)] Except for tourism region organizations, stationery, letterhead, envelopes, general office supplies and material;

(r)[(q)] Salaries or other compensation for the staff or personnel of a tourism region committee;

(s)[(r)] General operating and administrative costs;

(t)[(s)] Finance charges or late payment fees;[(t) Quick-print material such as flyers, handbills, or circulars; and

(u) Expenditures in violation of law.

Section 7. Matching Funds Application. (1) A Matching Funds Application may be submitted by a local organization that is not a

convention and visitors' bureau, tourism commission, or designated marketing organization but is a nonprofit entity prior to May 1 for eligible:

- (a) Projects that have been or will be completed during the matching funds program cycle; and
- (b) Expenses totaling at least \$1,000 for a project, or several projects.

(2) A Matching Funds Application shall include a detailed list of eligible tourism projects that will be completed during the current program cycle, and the following information for each project:

- (a) Its direct relation to the promotion of tourism;
- (b) Its ability to attract visitors from outside the immediate area;
- (c) Its potential to enhance local, tourism region, or state economies;
- (d) The cost estimates; and
- (e) The completion date.

(3) An applicant shall submit proof of the applicant's nonprofit status with the Matching Funds Application as follows:

- (a) A tourism region committee shall submit a copy of the committee's:

1. Articles of incorporation as a nonprofit, nonstock corporation pursuant to KRS 273.161 through 273.405; and

2. Bylaws.

- (b) A local tourism commission shall submit a copy of the ordinance establishing the commission.

(c) Other local organizations shall submit a copy of the:

- 1. Federal or state determination of tax exempt status; or
- 2. Articles of incorporation as a nonprofit, nonstock corporation pursuant to KRS 273.161 through 273.405.

(4) Guidance regarding the application process is established in the Samples of Completed Forms.

Section 8. Approval of Matching Applications. (1) The state matching funds program manager shall:

- (a) Review each Matching Funds Application and determine the applicant's eligibility for reimbursement in accordance with Sections 2, 5, 6, 7, and 9 of this administrative regulation; and
- (b) Transmit copies of eligible Matching Funds Applications to the members of appropriate tourism region committees.

(2) The state matching funds program manager or assistant state matching funds program manager shall hold allocation meetings in each of the nine (9) tourism regions with the tourism region committee for the region to:

- (a) Discuss the regional marketing and matching funds program;
- (b) Review and establish priorities for local organization Matching Funds Applications;
- (c) Screen local Matching Funds Applications for eligibility;
- (d) Discuss each project's:
 - 1. Direct relationship to tourism promotion;
 - 2. Ability to attract visitors into the tourism region;
 - 3. Impact on local, tourism region, and state economies; and
 - 4. Compatibility with the marketing goals of the tourism region;
- (e) Recommend the distribution of local funds; and
- (f) Review and discuss the tourism region Matching Funds Application.

(c) A tourism region committee shall submit a recommendation for each applicant within the tourism region to the state matching funds program manager.

(d) The state matching funds program manager shall base the allocation determination on:

- (a) The items specified in subsection (2) of this section;
- (b) If applicable, an applicant's successful completion of similar projects; and
- (c) The availability of funds.

(5) The state matching funds program manager shall mail to each applicant a:

- (a) "Project Agreement" form to each approved applicant stating the amount of the state matching funds allocation for the matching funds program cycle; or
- (b) Letter stating why an applicant's projects have been denied funding; and

(c) Copy of the Matching Funds Application submitted by each applicant, indicating approved and disapproved projects.

(6) An applicant shall sign and return the Project Agreement form to the state matching funds program manager.

Section 9. Reimbursement. (1)(a) A local project shall be eligible for reimbursement for eighty (80) or fifty (50) percent of its total expenditures that do not exceed the amount allocated by the state matching funds program.

(b) A tourism region project shall be eligible for reimbursement for 100 percent of the project's total expenditures that do not exceed the amount allocated by the state matching funds program.

(2) Requests for reimbursement shall not be made until at least \$1,000 has been expended.

(3) Reimbursement shall be limited to projects that:

- (a) Were included on a Matching Funds Application;
- (b) Were compliant with the eligibility and reimbursement requirements established in Sections 2, 5, 6, 7, and 9 of this administrative regulation; and
- (c) Have been completed.

(4)]

(u) In-kind contributions shall not be reimbursed, and shall not be included as part of an applicant's match; and[.]

(v) Expenditures in violation of law.[(5) A request for reimbursement shall be made on the Reimbursement Request form which shall:

(a) Be submitted to the state matching funds program manager on or before February 1 or August 1;

(b) Be signed; and

(c) State the federal identification number of the organization.

(6) Checks submitted as documentation shall be issued by the organization that applied for matching funds.

(7) The following information shall be attached to the Reimbursement Request form:

- (a) A copy of each vendor's invoice;
- (b) A copy of the front and back of each canceled check;
- (c) For local projects, proof of payment of all expenditures;
- (d) For tourism region projects, proof of payment of twenty (20) percent of expenditures;
- (e) Four (4) completed brochures;
- (f) For publications or videos, a copy of invoices, with a breakdown of layout and design costs, the number of copies printed, and other related expenses;
- (g) If printing costs exceed \$1,000, a copy of three (3) written bids;

(h) One (1) duplicate of a completed video, CD, or DVD;

(i) One (1) original tear sheet of advertisements as they appeared in the print media including date of issue and, for regional projects, a cover of the publication;

(j) One (1) typed transcript or a tape of a radio; television; or videotape, CD, or DVD travelogue advertisement;

(k) A copy of a press kit;

(l) Documentation of the distance of media from the event, attraction, or area promoted;

(m) One (1) photograph of a completed billboard and signage advertisement;

(n) Documentation of the location and dates of service for billboard and signage rentals;

(o) Documentation of the location, distribution routes, and dates for distribution services;

(p) Documentation of postage expenses, including postage invoices or paid receipts, list of names, addresses, and material mailed;

(q) Verification of attendance at consumer travel shows or group tour marketplaces, including signed agreements or contracts;

(r) Verification of regional travel show or group tour marketplace per diem, including a completed and signed Tourism Region Per Diem Reimbursement Form; and

(8) For tourism region projects, proof of payment of the remaining eighty (80) percent of expenditures shall be submitted after receipt of state matching funds; and

(9) Guidance regarding the reimbursement process is established in the:

(a) List of Documentation and Requirements for

Reimbursement Per Project; and
(b) Samples of Completed Forms.]

Section 19[40]. Forfeited and Unused Funds. (1) Funds allocated to an approved project shall be forfeited if:

(a) Documentation required by the provisions of this administrative regulation is not submitted timely; [~~before February 1 and August 1;~~]

(b) An approved project does not materialize; or

(c) A completed project did not remain in compliance with program requirement[s];

(2) ~~At the end of a Tourism Marketing Incentive~~[(d) Funding is denied because the expenses of an approved project are improperly documented;

(e) Funds were spent on the project.

(2) ~~At the end of a Regional and Matching Funds~~] Program year[cycle], forfeited and unused funds shall remain in the Tourism, Meeting, and Convention Fund, to be used[~~be utilized~~] by the Department of Tourism for advertising and marketing promotions.

Section 20[44]. Audits. (1) The department may request the State Auditor to audit a tourism project governed by this administrative regulation.

Section 21[42]. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Tourism Marketing Incentive Program Application", August 2019;

(b) "Application Project Description Form", August 2019;

(c) "Tourism Marketing Incentive Program Reimbursement Request", August 2019;

(d) ["Matching Funds Application", September 2007;

(b) "Reimbursement Request", September 2007;

(c) "Project Agreement", September 2007;

(d) "List of Documentation & Requirements for]Reimbursement

[Per]Project Description Form", August 2019;

(e) "Regional Ad Sale Form", one (1) page, August 2019;

(f) [", September 2007;

(e)] "Tourism Region Per Diem Reimbursement Form", August 2019; and

(g) [", 1996;

(f)] "Tourism Regions Map", 1996; and

(h) [", 1996;

(g)] "Samples of Completed Forms", September 2007; and

(h)] "Designated Marketing Organization", August 2019.[2007;]

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, from the Department of Tourism, Division of Tourism Services[Marketing and Advertising, Capital Plaza Tower], 500 Mero Street, 5th Floor[Room 2200], Frankfort Kentucky 40601, phone (502) 564-4930, fax (502) 564-5695, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available at the Department of Tourism's Web site at www.kytourism.com/industry/mfunds.

JAY HALL, Commissioner
DON PARKINSON, Secretary

APPROVED BY AGENCY: August 23, 2019

FILED WITH LRC: August 23, 2019 at 3 p.m.

CONTACT PERSON: Becky Cottongim, Executive Staff Advisor, Tourism, Arts, and Heritage Cabinet, 100 Airport Road, 2nd floor, Frankfort, Kentucky 40601, phone (502) 564-4270, fax (502) 564-1079, email becky.cottongim@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Becky Cottongim

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures for uniform and consistent administration of the application, participation, and reimbursement requirements of the Tourism Marketing Incentive Program.

(b) The necessity of this administrative regulation: This

regulation is necessary so that those promotional projects within the tourism regional and local nonprofit organizations will be aware of the process for participation in the program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 148.525(3) authorizes the department to promulgate administrative regulations to implement or carry out the purposes of KRS Chapter 148.525(2).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statute by establishing a process to implement the marketing incentives.

(2) If 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 administrative regulation and provides procedures for the programs seeking reimbursement for new projects to include costs associated to include conventions, meetings or sports marketing expenses; sponsorship of tourism trade shows and events; bid fees associated with bringing events to Kentucky; and Internet and website costs.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to update the reimbursements that are tourism marketing related.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 148.525 (2) and (3) states that the Division of Advertising Services shall be responsible for the program and the Commissioner is authorized to promulgate administration regulations to carry out the process of this provision. This administrative regulation establishes the procedures, requirements and components with in the marketing incentive program for the Department of Tourism.

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

(3) List the type and number of individuals, businesses, organizations or state and local governments affected by this administrative regulation: The Department of Travel anticipates ninety (90) applicants to participate in this 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 regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendments. The department does not anticipate any impact as this amendment simplifies the process of applying and seeking reimbursement.

(b) In complying with this administrative regulation or amendment, how much will it costs each of the entities identified in question (3): There will be no cost to the entities to apply for the incentive program.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The benefit that will accrue will be that tourism regions and nonprofits can participate in more marketing events. There will be more opportunity for participation in the marketing efforts where reimbursement can be made.

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

(a) Initially: No expenses or an unknown amount will be incurred.

(b) On a continuing basis: No expenses or an unknown amount will be incurred.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: 1% transient tax 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 does not establish or create a fee or increase funding.

(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 directly or indirectly.

(9) TIERING: Is tiering applied? No. All applicants who apply

for incentives are treated the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Tourism and the Regional Marketing and Matching Funds Program 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 148.525 authorizes the Commissioner of the Department of Tourism to promulgate administrative regulations to carry out the provisions of KRS 148.522. KRS 148.522 includes the authority and responsibility for the promotion, development and support services for the tourism industry in Kentucky. The Regional Marketing and Matching Funds Program is organized within the Marketing and Advertising Division established in KRS 148.522.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. Expenditures and revenues for the Kentucky Department of Tourism will not change. The current budget of the Department of Tourism funds the administrative costs of the Regional Marketing Funds Program. Two staff persons within the Department of Tourism administer the program. The monies that the Regional Marketing and Matching Funds Program distributes within the tourism regions from the 1% transient room tax (KRS 142.400) are for tourism projects and are not used to administer the program.

(a) How much 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 administration of this regulation generates no revenue. The Regional Marketing Funds Program is funded via the transient room tax (KRS 142.400). For fiscal year '19 – '20 the program has \$2.5 million dollars annually to distribute to applicants. This amount has remained the same for several years.

(b) How 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 money for state or local government with its application; there is no fee for applicants. However, the program does generate money (see KRS 142.400, 142.402, 142.404 and 142.406) through transient room tax.

(c) How much will it cost to administer this program for the first year? The program originated over twenty (20) years ago. The Department of Tourism staff has continuously administered the program since its inception. Salaries have fluctuated since the first year of the program. Two members of the department staff have administered the program for several years. There is no need for additional staff or administrative expenditures.

(d) How much will it cost to administer this program for subsequent years? There are no additional 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 (+/-): \$0 change

Expenditures (+/-): \$0 change

Other Explanation: N/A

ADMINISTRATIVE REGULATIONS AS AMENDED BY PROMULGATING AGENCY
AND REVIEWING SUBCOMMITTEE

ARRS = Administrative Regulation Review Subcommittee
IJC = Interim Joint Committee

PERSONNEL CABINET
(As Amended at ARRS, September 16, 2019)

101 KAR 2:102. Classified leave general requirements.

RELATES TO: KRS 18A.020, 18A.030, 18A.095, 18A.110, 18A.140, 18A.145, 18A.195, 18A.990, 61.373, 61.394, [61.673] 118.035, [61.373,] 344.030, 29 C.F.R. 825, 29 U.S.C. 8, 29 U.S.C. 201 – 219, 2601 – 2654

STATUTORY AUTHORITY: KRS 18A.030(2)(b), 18A.110, 29 U.S.C. 201 – 219, 2601 – 2654

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.030(2)(b) requires the Secretary of Personnel to promulgate administrative regulations, consistent with KRS Chapter 18A and federal standards, for the administration of a personnel system. KRS 18A.110(7)(g) requires the secretary, with the approval of the Governor, to promulgate administrative regulations that govern annual leave, sick leave, special leaves of absence, and other conditions of leave. This administrative regulation establishes the leave requirements for classified employees.

Section 1. Annual Leave. (1) Accrual of annual leave.

(a) Each full-time employee shall accumulate annual leave at the following rate:

Months of Service	Annual Leave Days
0-59 months	1 leave day per month; 12 per year
60-119 months	1 1/4 leave days per month; 15 per year
120-179 months	1 1/2 leave days per month; 18 per year
180-239 months	1 3/4 days per month; 21 per year
240 months & over	2 leave days per month; 24 per year

(b) A full-time employee shall have worked, or been on paid leave, other than educational leave with pay, for 100 or more regular hours per month to accrue annual leave. This does not include hours worked in excess of the prescribed hours of duty.

(c) Accrued leave shall be credited on the first day of the month following the month in which the annual leave is earned.

(d) In computing months of total service for the purpose of earning annual leave, only the months for which an employee earned annual leave shall be counted.

(e) A former employee who has been rehired[~~except as provided in paragraph (f) of this subsection;~~] shall receive credit for months of prior service, unless the employee had been dismissed for cause or has retired from a position covered by a state retirement system[~~as a result of misconduct or a violation of KRS 18A.140, 18A.145, or 18A.990.~~]

(f)[~~An employee, who has retired from a position covered by a state retirement system, is receiving retirement benefits, and returns to state service, shall not receive credit for months of service prior to retirement.~~]

(g) A part-time employee shall not be entitled to accrue annual leave.

(2) Use and retention of annual leave.

(a) Annual leave shall be used in increments of ~~[hours or]~~ one-quarter (1/4) hours.

(b) Except as provided in paragraph (c) of this subsection, an employee who makes a timely request for annual leave shall be granted annual leave by the appointing authority, during the calendar year, up to at least the amount of time earned that year, if the operating requirements of the agency permit.

(c) An appointing authority may require an employee who has a balance of at least 100 hours of compensatory leave to use compensatory leave before the employee's request to use annual leave is granted, unless the employee's annual leave balance exceeds the maximum number of hours that may be carried forward pursuant to this administrative regulation.

(d) Absence due to sickness, injury, or disability in excess of

the amount available for those purposes shall, at the request of the employee, be charged against annual leave.

(e) An employee shall be able to use annual leave for an absence on a regularly scheduled workday.

(f) An employee who is transferred or otherwise moved from the jurisdiction of one (1) agency to another shall retain accumulated annual leave in the receiving agency.

(g) An employee who is eligible for state contributions for life insurance pursuant to KRS Chapter 18A shall have worked or been on paid leave, other than holiday or educational leave, during any part of the previous month.

(h) An employee who is eligible for state contributions for health benefits pursuant to KRS Chapter 18A shall have worked or been on paid leave, other than holiday or educational leave, during any part of the previous pay period.

(i) Annual leave may be carried from one (1) calendar year to the next. If annual leave is carried from one (1) calendar year to the next, the leave shall be calculated as established in the following table:

Months of Service	Maximum Amount	37.5 Hour Week Equivalent	40 Hour Week Equivalent
0-59	30 workdays	225 hours	240 hours
60-119 months	37 workdays	277.50 hours	296 hours
120-179 months	45 workdays	337.50 hours	360 hours
180-239 months	52 workdays	390 hours	416 hours
240 months and over	60 workdays	450 hours	480 hours

(j) Leave in excess of the maximum amounts specified in paragraph (i) of this subsection shall be converted to sick leave at the end of the calendar year or upon retirement.

(k) The amount of annual leave that may be carried forward and the amount of annual leave that may be converted to sick leave shall be determined by computing months of service as provided by subsection (1)(d) of this section.

(3) Annual leave on separation.

a1. If an employee is separated by proper resignation or retirement, the employee shall be paid in a lump sum for accumulated annual leave.

2. The accumulated annual leave for which the employee is paid shall not exceed the amounts established by subsection (2)(i) of this section.

3. Following payment of annual leave at resignation, any remaining annual leave after the payment of the maximum shall:

- Not be paid to the employee or converted to sick leave; and
- Be removed from the balance.

(b) If an employee is laid off, the employee shall be paid in a lump sum for all accumulated annual leave.

(c) An employee in the unclassified service who reverts to the classified service, or an employee who resigns one (1) day and is employed the next workday, shall retain the accumulated leave in the receiving agency.

(d) An employee who has been dismissed for cause[~~related to misconduct or who has failed, without proper excuse, to give proper notice of resignation or retirement~~] shall not be paid for accumulated annual leave.

(e) An appointing authority may withhold payment of accumulated annual leave for an employee who has failed to give proper notice of resignation or retirement as described in 101 KAR 2:095 Section 6, or who has submitted notice of resignation or retirement after receiving an intent to dismiss letter.

(f) Upon the death of an employee, the employee's estate shall

be entitled to receive pay for the unused portion of the employee's accumulated annual leave.

~~(g)[(f)]~~ An employee may request in writing that accumulated annual leave not be paid upon resignation, and that all or part of the amount of accumulated annual leave that does not exceed the amount established by this section be waived, if:

1. The employee resigns, or is laid off, because of an approved plan of privatization of the services performed; and
2. The successor employer has agreed to credit the employee with an equal amount of annual leave.

Section 2. Sick Leave. (1) Accrual of sick leave.

(a) An employee, except a part-time employee, shall accumulate sick leave with pay at the rate of one (1) working day per month.

(b) An employee shall have worked or been on paid leave, other than educational leave, for 100 or more regular hours in a month to accrue sick leave. This does not include hours worked in excess of the prescribed hours of duty.

(c) An employee shall be credited with additional sick leave upon the first day of the month following the month in which the sick leave is earned.

(d) A full-time employee who completes 120 months of total service with the state shall be credited with ten (10) additional days of sick leave upon the first day of the month following the completion of 120 months of service.

(e) A full-time employee who completes 240 months of total service with the state shall be credited with another ten (10) additional days of sick leave upon the first day of the month following the completion of 240 months of service.

(f) In computing months of total service for the purpose of crediting sick leave, only the months for which an employee earned sick leave shall be counted.

(g) A former employee who has been rehired shall receive credit for months of prior service, and shall be credited with the unused sick leave balance that existed at the time of the previous separation, unless the employee had been dismissed for cause or has retired from a position covered by a state retirement system.

~~(h) The total service shall be verified by the Personnel Cabinet before the leave is credited to the employee's record.~~

~~(i) Sick leave may be accumulated with no maximum [(h) A former employee who has been rehired, except as provided in paragraph (i) of this subsection, shall receive credit for prior service, unless the employee had been dismissed as a result of misconduct or a violation of KRS 18A.140, 18A.145, or 18A.990.~~

~~(i) A former employee who is appointed, reinstated, or reemployed, other than a former employee receiving benefits pursuant to a state retirement system, shall be credited with the unused sick leave balance upon separation.~~

~~(j) Sick leave may be accumulated with no maximum].~~

(2) Use and retention of sick leave.

(a) An appointing authority shall grant or may require the use of sick leave with or without pay if an employee:

1. Is unable to work due to medical, dental, or optical examination or treatment;

2. Is disabled by illness or injury. If requested by the appointing authority, the employee shall provide a statement from an appropriate medical health professional certifying the employee's inability to perform the employee's duties for the days or hours sick leave is requested. Before an employee is permitted to return to work, if requested by the appointing authority, the employee shall obtain and present a fitness-for-duty certification from an appropriate medical health care professional indicating the employee is able to resume work[provide a certificate from an appropriate medical health professional certifying the employee's fitness to return to duty before the employee is permitted to return to work];

3. Is required to care for or transport a member of the employee's immediate family in need of medical attention for a reasonable period of time. If requested by the appointing authority, the employee shall provide a statement from an appropriate medical health professional certifying the employee's need to care for a family member;~~[or]~~

4. Would jeopardize the health of the employee or others at the employee's work station because of a contagious disease or communicable condition. Before an employee is permitted to return to work, if requested by the appointing authority, the employee shall obtain and present a fitness-for-duty certification from an appropriate medical health care professional indicating the employee is able to resume work; or

5. Demonstrates[~~demonstration of~~] behavior that might endanger the employee or others. Before an employee is permitted to return to work, if requested by the appointing authority, the employee shall obtain and present a fitness-for-duty certification from an appropriate medical health care professional indicating the employee is able to resume work.

(b) At the termination of sick leave with pay, the appointing authority shall return the employee to the employee's former position.

(c) An employee eligible for state contributions for life insurance pursuant to the provisions of KRS Chapter 18A shall have worked or been on paid leave, other than holiday or education leave, during any part of the previous month.

(d) An employee who is eligible for state contributions for health benefits pursuant to the provisions of KRS Chapter 18A shall have worked or been on paid leave, other than holiday or educational leave, during any part of the previous pay period.

(e) Sick leave shall be used in increments of ~~[hours of]~~ one-quarter (1/4) hours.

(f) An employee who is transferred or otherwise moved from the jurisdiction of one (1) agency to another shall retain accumulated sick leave in the receiving agency.

(g) An employee shall be credited for accumulated sick leave if separated by proper resignation, layoff, or retirement.

(3) Sick leave without pay.

(a) An appointing authority shall grant sick leave without pay, without a change in the employee's personnel status, for the duration of an employee's impairment by injury or illness, if:

1. The leave does not exceed thirty (30) continuous calendar days; and

2. The employee has used or been paid for all accumulated annual, sick, and compensatory leave unless the employee has requested to retain up to ten (10) days of accumulated sick leave.

(b) Within an employee's first twelve (12) months of employment after initial appointment, an appointing authority shall grant sick leave without pay to an employee who does not qualify for family and medical leave due to lack of service time and who has exhausted all accumulated paid leave if the employee is required to care for a member of the immediate family, or for the duration of the employee's impairment by illness or injury, for a period not to exceed thirty (30) working days in a calendar year.

(4) Sick leave by personnel action.

(a) If the duration of an employee's impairment by illness or injury exceeds the sick leave without pay allotment of thirty (30) continuous calendar days, including holidays, the appointing authority shall place the employee on sick leave without pay by personnel action.

(b) The appointing authority shall notify the employee in writing that the employee is being placed on sick leave by personnel action.

(c) Sick leave by personnel action shall not exceed one (1) year.

(d) If requested by the appointing authority, the employee shall provide statements during the year from an appropriate medical health professional attesting to the employee's continued inability to perform the essential functions of the employee's duties with or without reasonable accommodation.

(e) If an employee has given notice of the employee's ability to resume duties following sick leave by personnel action, the appointing authority shall return the employee to the original position or to a position for which the employee is qualified and which resembles the former position as closely as circumstances permit. The appointing authority shall notify the employee in writing of the following:

1. The effective date of the employee's return;
2. The position to which the employee is being returned;~~[and]~~

3. The employee's salary upon return to work; and

4. The employee's new annual increment date, if applicable.

(f) If reasonable accommodation is requested, the employee shall:

1. Inform the employer; and

2. Upon request, provide supportive documentation from a certified professional.

(g) An employee shall be deemed resigned if the employee:

1. Has been on one (1) year continuous sick leave by personnel action;

2. Has been requested by the appointing authority in writing to return to work at least ten (10) days prior to the expiration of leave;

3. Is unable to return to the employee's former position or to a position for which the employee is qualified and which resembles the former position as closely as circumstances permit;

4. Has been given priority consideration by the appointing authority for a vacant, budgeted position with the same agency, for which the employee is qualified and is capable of performing its essential functions with or without reasonable accommodation; and

5. Has not been placed by the appointing authority in a vacant position.

(h) Sick leave granted pursuant to this subsection shall not be renewable after the employee has been medically certified as able to return to work.

(i) An employee with status who is deemed resigned pursuant to paragraph (g) of this subsection shall retain reinstatement privileges that were accrued during service in the classified service.

(5) Application for sick leave and supporting documentation.

(a) An employee shall file a written application for sick leave with or without pay within a reasonable time.

(b) Except for an emergency illness, an employee shall request advance approval for sick leave for medical, dental, or optical examinations, and for sick leave without pay.

(c) If the employee is too ill to work, the employee shall notify the immediate supervisor or other designated person. Failure, without good cause, to do so in a reasonable period of time shall be cause for denial of sick leave for the period of absence.

(d) An appointing authority may, for good cause and on notice, require an employee to supply supporting evidence in order to receive sick leave.

(e) A medical certificate may be required, signed by a licensed practitioner and certifying to the employee's incapacity, examination, or treatment.

(f) An appointing authority shall grant sick leave if the application is supported by acceptable evidence but may require confirmation if there is reasonable cause to question the authenticity of the certificate or its contents.

Section 3. Family and Medical Leave. (1) An appointing authority shall comply with the requirements of the Family and Medical Leave Act (FMLA) of 1993, 29 U.S.C. 2601 – 2654, and the federal regulations implementing the Act, 29 C.F.R. Part 825.

(2) An employee in state service shall qualify for twelve (12) weeks of unpaid family leave if the employee has:

(a) Completed twelve (12) months of service; and

(b) Worked or been on paid leave at least 1,250 hours in the twelve (12) months immediately preceding the first day of family and medical leave.

(3) Family and medical leave shall be awarded on a calendar year basis.

(4) An employee shall be entitled to a maximum of twelve (12) weeks of unpaid family and medical leave for the birth, placement, or adoption of the employee's child.

(5) While an employee is on unpaid family and medical leave, the state contribution for health and life insurance shall be maintained by the employer.

(6) An employee shall use accrued paid leave concurrently with FMLA leave, except an employee may reserve up to ten (10) days of accumulated sick leave while on FMLA leave. If an employee reserves accumulated sick leave, the remaining FMLA leave will be unpaid. The employee shall satisfy any procedural requirements of this administrative regulation for use of accrued

paid leave only in connection with the receipt of such payment[If the employee would qualify for family and medical leave, but has an annual, compensatory, or sick leave balance, upon the employee's request, the agency shall permit the employee to:

(a) Reserve ten (10) days of accumulated sick leave and be placed on FMLA leave; or

(b) Use accrued paid leave concurrently with FMLA leave].

Section 4. Court Leave. (1) An employee shall be entitled to court leave during the employee's scheduled working hours without loss of time or pay for the amount of time necessary to:

(a) Comply with a subpoena by a court, administrative agency, or body of the federal or state government or any political subdivision thereof; or

(b) Serve as a juror~~or a witness, unless the employee or a member of the employee's family is a party to the proceeding~~].

(2) Court leave shall include necessary travel time.

(3) If relieved from duty as a juror or released from subpoena[witness] during the employee's normal working hours, the employee shall return to work or use annual or compensatory leave.

(4) An employee shall not be required to report as court leave attendance at a proceeding that is part of the employee's assigned duties.

(5) An employee shall not be eligible for court leave to comply with a subpoena if the employee or a member of the employee's family is a party to the proceeding.

Section 5. Compensatory Leave and Overtime. (1) Accrual of compensatory leave and overtime.

(a) An appointing authority shall comply with the overtime and compensatory leave provisions of the Fair Labor Standards Act (FLSA), 29 U.S.C. Chapter 8.

(b) An employee who is directed to work, or who requests and is authorized to work, in excess of the prescribed hours of duty shall be granted compensatory leave and paid overtime subject to the provisions of the Fair Labor Standards Act, 29 U.S.C. Chapter 8, the Kentucky Revised Statutes, and this administrative regulation.

(c) An employee deemed to be "nonexempt" by the provisions of the FLSA shall be compensated for hours worked in excess of forty (40) per week as provided by subparagraphs 1 through 3 of this paragraph.

1. An employee who has not accumulated the maximum amount of compensatory leave shall have the option to accumulate compensatory leave at the rate of an hour and one-half (1 1/2) for each hour worked in excess of forty (40) per week in lieu of paid overtime.

2. The election to receive compensatory leave in lieu of paid overtime shall be in writing on the Overtime Compensation Form and shall remain in force for a minimum of three (3) months. The election shall be changed by the submission of a new form. The effective date of a change shall be the first day of the next work week following receipt of the election.

3. An employee who does not elect compensatory leave in lieu of paid overtime shall be paid one and one-half (1 1/2) times the regular hourly rate of pay for all hours worked in excess of forty (40) hours per week.

(d) An employee deemed to be "exempt" pursuant to the provisions of the FLSA shall accumulate compensatory time on an hour-for-hour basis for hours worked in excess of the regular work schedule.

(e) Compensatory leave shall be accumulated or used in increments of one-quarter (1/4) hours[taken off in one-quarter (1/4) hour increments].

(f) The maximum amount of compensatory leave that may be carried forward from one (1) pay period to another shall be:

1. 239.99 hours by an employee in a non policy-making position; or

2. 240 hours by an employee in a policy-making position.

(g) An employee who is transferred or otherwise moved from the jurisdiction of one (1) agency to another shall retain the compensatory leave in the receiving agency.

(2) Reductions in compensatory leave balances.

(a) An appointing authority may require an employee who has accrued at least 100 hours compensatory leave to use compensatory leave before annual leave and shall otherwise allow the use of compensatory leave if it will not unduly disrupt the operations of the agency.

(b) An appointing authority may require an employee who has accrued 200 hours of compensatory leave to take off work using compensatory leave in an amount sufficient to reduce the compensatory leave balance below 200 hours.

(c) An employee who is not in a policy-making position may, after accumulating 151 hours of compensatory leave, request payment for fifty (50) hours at the regular rate of pay. If the appointing authority or the designee approves the payment, an employee's leave balance shall be reduced accordingly.

(d) An employee who is not in a policy-making position shall be paid for fifty (50) hours at the regular hourly rate of pay upon accumulation of 240 hours of compensatory leave at the end of a pay period. In the event a work week is split between pay periods, then the 240 hours of compensatory leave required for payment must be accrued at the end of the pay period following the split pay period week~~[upon accumulating at the end of the pay period, 240 hours of compensatory leave]~~. The employee's leave balance shall be reduced accordingly.

(e) If an employee's prescribed hours of duty are normally less than forty (40) hours per week, the employee shall receive compensatory leave for the number of hours worked that:

1. Exceed the number of normally prescribed hours of duty; and
2. Do not exceed the maximum amount of compensatory time that is permitted.

(f) Only hours actually worked shall be used for computing paid overtime or time and one-half (1 1/2) compensatory time.

(g) Upon separation from state service, an employee shall be paid for all unused compensatory leave at the greater of the employee's:

1. Regular hourly rate of pay; or
2. Average regular rate of pay for the final three (3) years of employment.

Section 6. Military Leave. (1) Upon request, an employee who is an active member of the United States Army Reserve, the United States Air Force Reserve, the United States Naval Reserve, the United States Marine Corps Reserve, the United States Coast Guard Reserve, the United States Public Health Service Reserve, or the National Guard shall be relieved from the civil duties, to serve under order or training duty without loss of the regular compensation for a period not to exceed the number of working days specified in KRS 61.394 for a federal fiscal year.

(2) The absence shall not be charged to leave.

(3) Absence that exceeds the number of working days specified in KRS 61.394 for a federal fiscal year shall be charged to annual leave, compensatory leave, or leave without pay.

(4) If requested by the appointing authority, the employee shall provide a copy of the orders requiring the attendance of the employee before military leave is granted.

(5) An appointing authority shall grant an employee entering military duty a leave of absence without pay for the period of duty in accordance with KRS 61.373. Upon receiving military duty leave of absence, all accumulated annual and compensatory leave shall be paid in a lump sum, if requested by the employee.

Section 7. Voting and Election Leave. (1) An employee who is eligible and registered to vote shall be allowed, upon prior request and approval, leave up to four (4) hours~~;~~ for the purpose of voting or to appear before the county clerk to request an application for or to execute an absentee ballot. A supervisor, manager, or appointing authority may specify the hours an employee may be absent.

(2) An employee casting an absentee ballot shall record the leave on the day the employee's vote is cast. An employee shall be regularly scheduled to work on the day the vote is cast in order to receive the leave.

(3) An election officer shall receive additional leave if the total leave for election day does not exceed a regular workday.

(4) The absence shall not be charged against leave.

(5) An employee who is permitted or required to work during the employee's regular work hours, in lieu of voting leave, shall be granted compensatory leave on an hour-for-hour basis for the hours during the times the polls are open, up to a maximum of four (4) hours.

Section 8. Funeral and Bereavement Leave. (1) Upon the approval of the appointing authority, an employee who has lost an immediate family member by death may utilize five (5) days of accrued sick leave, compensatory leave, annual leave, or leave without pay if the employee does not have accrued leave, or a combination thereof.

(2) An appointing authority may approve the use of additional sick leave, compensatory leave, annual leave, or leave without pay if the employee does not have accrued leave, or a combination thereof, at the request of the employee following the loss of an immediate family member.

(3) For purposes of funeral and bereavement leave, an immediate family member shall include the employee's spouse, parent, grandparent, child, brother, or sister, or the spouse of any of them, and may include other relatives of close association if approved by the appointing authority.

Section 9. Special Leave of Absence. (1) If approved by the secretary, an appointing authority may grant a leave of absence for continuing education or training.

(a) Leave may be granted for a period not to exceed twenty-four (24) months.

(b) If granted, leave shall be granted either with pay (if the employee contractually agrees to a service commitment) or without pay.

(c) Leave shall be restricted to attendance at a college, university, vocational, or business school for training in subjects that relate to the employee's work and will~~provide~~ benefit~~to~~ the state.

(2) An appointing authority, with approval of the secretary, may grant an employee a leave of absence without pay for a period not to exceed one (1) year for purposes other than specified in this administrative regulation that are of tangible benefit to the state.

(3) If approved by the secretary, an appointing authority may place an employee on special leave with pay for investigative purposes pending an investigation of a work-related incident or an allegation of employee misconduct.

(a) Leave shall not exceed sixty (60) working days.

(b) The employee shall be notified in writing by the appointing authority that the employee is being placed on special leave for investigative purposes, and the reasons for being placed on leave.

(c) If the investigation reveals no misconduct by the employee, records relating to the investigation shall be purged from agency and Personnel Cabinet files maintained in accordance with KRS 18A.020(2)(a).

(d) The appointing authority shall notify a current~~the~~ employee, in writing, of the completion of the investigation and the action taken.~~[This notification shall be made to the employee, whether the employee has remained in state service, or has voluntarily resigned after being placed on special leave for investigative purposes.]~~

(4) An appointing authority may place an employee on administrative leave with pay upon the employee's receipt of an intent to dismiss letter as authorized by KRS 18A.095(2)(c).

Section 10. Absence Without Leave. (1) An employee who is absent from duty without prior approval shall report the reason for the absence to the supervisor immediately.

(2) Unauthorized or unreported absence shall:

(a) Be considered absence without leave;

(b) Be treated as leave without pay for an employee covered by the provisions of the Fair Labor Standards Act, 29 U.S.C. Chapter 8; and

(c) Constitute grounds for disciplinary action.

(3) An employee who has been absent without leave or notice to the supervisor for a period of five (5)~~ten (10)~~ working days shall be deemed resigned.

Section 11. Absences Due to Adverse Weather. (1) An employee, who is not designated for mandatory operations and chooses not to report to work or chooses to leave early if there are adverse weather conditions, such as tornado, flood, blizzard, or ice storm, shall have the time of the absence reported as:

- (a) Charged to annual or compensatory leave;
- (b) Taken as leave without pay, if annual and compensatory leave has been exhausted; or
- (c) Deferred in accordance with subsections (3) and (4) of this section.

(2) An employee who is on prearranged annual, compensatory, or sick leave shall charge leave as originally requested.

(3) If operational needs allow, except for an employee in mandatory operations, management shall make every reasonable effort to arrange schedules whereby an employee shall be given an opportunity to make up time not worked rather than charging it to leave.

(4) An employee shall not make up work if the work would result in the employee working more than forty (40) hours in a workweek.

(a) Time lost shall be made up within four (4) months of the occurrence of the absence. If it is not made up within four (4) months, leave shall be deducted from compensatory leave, followed by annual leave, and if no compensatory or annual leave is available, time lost shall be charged to leave without pay and deducted from an employee's wages~~annual or compensatory leave shall be deducted to cover the absence, or leave without pay shall be charged if no annual or compensatory leave is available~~.

(b) If an employee transfers or separates from employment before the leave is made up, the leave shall be charged to annual or compensatory leave or deducted from the final paycheck.

(5) If catastrophic, life-threatening weather conditions occur, as created by a tornado, flood, ice storm, or blizzard, and it becomes necessary for authorities to order evacuation or shutdown of the place of employment, the provisions established in paragraphs (a) and (b) of this subsection shall apply.

(a) An employee who is required to evacuate or who would report to a location that has been shutdown shall not be required to make up the time that is lost from work during the period officially declared hazardous to life and safety.

(b) An employee who is required to work in an emergency situation shall be compensated pursuant to the provisions of Section 5 of this administrative regulation and the Fair Labor Standards Act, 29 U.S.C. Chapter 8.

Section 12. Blood Donation Leave. (1) An employee who, during regular working hours, donates whole blood at a licensed blood center certified by the Food and Drug Administration shall receive four (4) hours leave time, with pay, for the purpose of donating and recuperating from the donation.

(2) Leave granted pursuant to this section shall be used when the blood is donated unless circumstances as specified by the supervisor required the employee to return to work. If the employee returns to work, the unused portion of the leave time shall be credited as compensatory leave.

(3) An employee shall request leave in advance to qualify for blood donation leave.

(4) An employee who is deferred from donating blood shall not:

- (a) Be charged leave time for the time spent in the attempted donation; and
- (b) Qualify for the remainder of the blood donation leave.

Section 13. Incorporation by Reference. (1) "Overtime Compensation Form", May 2013, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Personnel Cabinet, 501 High Street, 3rd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

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

APPROVED BY AGENCY: June 13, 2019

FILED WITH LRC: July 15, 2019 at 9 a.m.

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FINANCE AND ADMINISTRATION CABINET
Department of Revenue
(As Amended at ARRS, September 16, 2019)

103 KAR 25:131. Current month accelerated payment of sales and use taxes by larger taxpayers.

RELATES TO: KRS 131.183, 139.590, 139.980, 139.990

STATUTORY AUTHORITY: KRS 131.130~~(1)~~, 139.590

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the department to promulgate administrative regulations for the administration and enforcement of tax laws in this state.[In order] To facilitate payment of the sales and use taxes levied in KRS Chapter 139, KRS 139.590 authorizes[permits] the Department of Revenue, within its discretion, to permit or require returns or tax payments for periods other than monthly periods. This administrative regulation establishes[prescribes] a procedure whereby any taxpayer whose average monthly sales and use tax liability exceeds \$50,000[\$40,000] is required to remit by the 25th of each month, taxes applicable to the period commencing on the 16th of the previous month and extending through the 15th of the current month.

Section 1. Any taxpayer whose average monthly sales and use tax liability exceeds \$50,000[\$40,000] shall[must] report and remit by the 25th of each month, sales and use taxes applicable to the period beginning on the 16th of the previous month and extending through the 15th of the current month.

Section 2. The department shall review all taxpayer payments annually on a calendar year basis and identify those taxpayers who meet the \$50,000 test based on the average monthly tax liability for that period. In determining the amount of tax due from a taxpayer for a reporting period, the department shall consider the total amount due based on current tax reporting procedure. Changes in reporting procedure for the purpose of circumventing the requirements of this administrative regulation shall not be permitted. The department shall notify[such] taxpayers in writing of their obligation to begin remitting tax as set forth in this administrative regulation at least forty (40) days in advance of the date that the first[such] payment is to be forwarded to the department.

Section 3.~~[2.]~~ (1) This accelerated filing requirement[This change in filing requirements] shall be effective for the July tax return following the department's calendar year review and notification referenced in Section 2 of this administrative regulation.

(2) Those taxpayers identified in Section 1 of this administrative regulation shall file the July return no later than August 25th and remit tax for both the full month of July and for the first fifteen (15) calendar days of August.[that normally would be filed on or before September 20, 1988. Instead, those taxpayers identified in Section 1 of this administrative regulation must file the August, 1988 return no later than September 25, 1988, and remit tax for both the full month of August, 1988 and for the first fifteen (15) calendar days of September, 1988.]

(3) The tax due for the first fifteen (15) days of August[September] may be computed either on an actual basis or an estimated basis. If the taxpayer elects to use the estimated basis, the tax paid for the first fifteen (15) days of August[September] cannot be less than one-half (1/2) of the total tax liability for the month of July[August, 1988].

(4) After the initial return is filed under this procedure, subsequent returns shall be due on or before the 25th of each month and shall include payment of tax covering the period from the 16th of the previous month through the 15th of the current month, with the fifteen (15) days of the current month reported on either an actual or estimated basis. The estimated amount cannot be less than one-half (1/2) the total tax computed for the previous calendar month before applying any credit for prepayment.

Section 4[3]. Taxpayers shall make the election to file on an estimated or actual basis referred to in Section 3(3)[2] of this administrative regulation at the time of filing the initial return under this administrative regulation, and shall continue to file on that basis unless a change is authorized in writing by the department.[Section 4. The Department of Revenue shall review all taxpayer payments for the 1987 calendar year and all subsequent years and identify those taxpayers who meet the \$10,000 test based on the average monthly tax liability for that period. In determining the amount of tax due from a taxpayer for a reporting period, the department shall consider the total amount due based on current tax reporting procedure. Changes in reporting procedure for the purpose of circumventing the requirements of this administrative regulation will not be permitted. The department shall notify such taxpayers in writing of their obligation to begin remitting tax as set out in this administrative regulation at least forty (40) days in advance of the date that the first such payment is to be forwarded to the department.]

Section 5. The ~~department~~[Department of Revenue] shall develop procedures for implementing and administering the payment program set forth[~~out~~] in this administrative regulation. Taxpayers electing to "estimate" tax due ~~may~~[shall be permitted to] continue to report gross receipts, deductions, and purchases subject to use tax, on a calendar month basis with appropriate credit given for the tax already remitted for the first fifteen (15) days.

Section 6. Taxpayers required to remit tax as described in this administrative regulation shall continue ~~this~~[such] practice until notified otherwise in writing by the department. Taxpayers shall[will] be relieved of ~~the~~[such] responsibility only if their average monthly tax liability is less than \$40,000[\$8,000] for two (2) consecutive calendar years.

Section 7. Taxpayers failing to comply with the provisions of this administrative regulation shall be subject to penalties as provided in KRS 139.980 and interest as provided in KRS 131.183.

DANIEL P. BORK, Commissioner

APPROVED BY AGENCY: July 12, 2019

FILED WITH LRC: July 12, 2019 at 4 p.m.

CONTACT PERSON: Lisa Swiger, Tax Policy Research Consultant II, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky 40601, phone (502) 564-9526, fax (502) 564-3875, email Lisa.Swiger@ky.gov.

**FINANCE AND ADMINISTRATION CABINET
Department of Revenue
(As Amended at ARRS, September 16, 2019)**

103 KAR 26:070. ~~Contractors~~[Construction contractors].

RELATES TO: KRS 139.210, 139.240, 139.260, 139.270, 139.310, 139.340, **139.660**, 139.710, 139.730

STATUTORY AUTHORITY: KRS 131.130

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130 authorizes the Department of Revenue to promulgate administrative regulations **for the assessment, collection, refunding, administration, and enforcement of Kentucky tax laws.** This administrative regulation interprets[~~to~~][~~to~~][interpret] the sales and use tax law as it applies to transactions involving contractors, subcontractors, and

contractor-retailers making improvements to real property.

Section 1. Definitions. (1) "Construction contract"~~[as used herein]~~ means a contract:

~~(a)1. For erecting, remodeling, or repairing a building or other structure on land; or~~

~~2. Replacing, furnishing, or installing materials or fixtures permanently to real property; and~~

~~(b)1. Includes lump sum, cost plus, and time-and- materials contracts; and~~

~~2.["Construction contract"] Includes a contract for the sale and installation of machinery, appliances, or equipment which the contractor has sold and permanently affixed to real property.~~

~~(2)(a)"Contractor" and "subcontractor" means[are used herein in] the common and ordinary acceptance of the terms and includes[include] both general contractors and subcontractors engaged in such building trades as:~~

- ~~1. Carpentry;~~
- ~~2. Bricklaying;~~
- ~~3. Wall to wall carpeting;~~
- ~~4. Cement work;~~
- ~~5. Steel work;~~
- ~~6. Plastering;~~
- ~~7. Sheet metal work (including aluminum siding);~~
- ~~8. Roofing;~~
- ~~9. Tile and terrazzo work;~~
- ~~10. Cabinet work;~~
- ~~11. Electrical work;~~
- ~~12. Plumbing;~~
- ~~13. Central heating and air conditioning;~~
- ~~14. Painting;~~
- ~~15. Interior decorating;~~
- ~~16. Storm window work; or~~
- ~~17. Permanent awning work.~~

~~(b)[The terms] "Contractor" and "subcontractor" [as used herein] does not include any person who repairs tangible personal property.~~

~~(3)[The term] "Contractor-retailer" means contractors and subcontractors that operate in a dual business, which includes selling machinery, appliances, or equipment, or reselling to the general public on an "over-the-counter" basis the same type of building materials and supplies as is used by them in their own construction work, along with their sales of construction contracts. Examples of machinery, appliances, or equipment sold by contractor-retailers include:~~

- ~~(a) Refrigerators;~~
- ~~(b) Oven-ranges and dishwashers which are not built-in;~~
- ~~(c) Laundry appliances;~~
- ~~(d) Window unit air conditioners; or~~
- ~~(e) Space heaters.~~

~~(4) "Fixtures" means things which are accessory to a building and do not lose their identity as accessories, but which do become a permanent part of the realty. Examples of fixtures are:~~

- ~~(a) Lighting fixtures;~~
- ~~(b) Plumbing fixtures;~~
- ~~(c) Hot water heaters;~~
- ~~(d) Furnaces;~~
- ~~(e) Boilers;~~
- ~~(f) Central heating units;~~
- ~~(g) Elevators;~~
- ~~(h) Hoists;~~
- ~~(i) Security and fire alarm fixtures;~~
- ~~(j) Central air conditioning;~~
- ~~(k) Built-in refrigeration units;~~
- ~~(l) Built-in oven-ranges and dishwashers;~~
- ~~(m) Storm doors and windows; or~~
- ~~(n) Cabinets.~~

~~(5) [The term] "Improvements to real estate" means[as used in this administrative regulation includes, but is not limited to] improvements such as those made to:~~

- ~~(a) Buildings;~~
- ~~(b) Roads;~~
- ~~(c) Sewers;~~

- (d) Dams;
- (e) Railroads; or
- (f) Fences.

(6) [The term] "Materials" means all of the tangible personal property, other than fixtures, which enters into and becomes a permanent part of a structure. Examples of materials are:

- (a) Bricks;
- (b) Builders hardware;
- (c) Cement;
- (d) Gravel;
- (e) Sand;
- (f) Macadam;
- (g) Asphalt;
- (h) Lumber;
- (i) Electrical wiring;
- (j) Wall board and coping;
- (k) Roofing;
- (l) Guttering; or
- (m) Aluminum siding.

Section 2. Sales to Contractors. (1) All sales to contractors, subcontractors, builders, or owners of building materials, fixtures, and supplies which are to be incorporated or fabricated into any structure or improvement to real estate by the process of erecting, remodeling, replacing, or repairing the[such] structure or improvement are subject to the sales or use tax at the time of sale to the contractor, subcontractor, builder, or owner. This applies irrespective of the type of contract (lump sum and materials, cost plus fixed fee, or other) for which the purchase is made.

(2) A contractor, subcontractor, or builder shall not claim that the purchase of materials or fixtures is exempt from the tax because the property is to be used in fulfilling a construction contract with the federal government, state government or political subdivision thereof, or any department, agency, or instrumentality of the federal government, state government or political subdivision thereof, or with a religious, educational, or charitable institution.

Section 3. Contractors Not Issued a Sales Tax Permit. A person, firm, association, partnership, or corporation engaged exclusively in construction work as a contractor or subcontractor is not required to hold a retail sales tax permit and [such] a permit will not be issued to these persons.

Section 4. Contractor-retailers. A contractor-retailer constitutes the sole exception under which a contractor will be issued a sales tax permit. Because of the retail business operated, a contractor-retailer shall[must] make an application for a Retail Sales and Use Tax Permit. Upon issuance of the permit, a contractor-retailer may then execute resale certificates for the machinery, appliances, or equipment purchased for resale and for all items of inventory purchased for resale in their[its] retail business. The contractor-retailer may also issue a resale certificate for any items that they regularly hold[it regularly holds] in stock if they do[when it does] not know at the time of purchase whether the[such] items will be resold or used in their[its] own construction business.

Section 5. Suppliers. (1) A Kentucky supplier and any out-of-state supplier who is the holder of a permit for collection of the use tax [s] shall bill and collect Kentucky tax from the contractor. A contractor, unless it falls within the exception described in Section 4 of this administrative regulation, will not be the holder of a retail sales and use tax permit and shall[is] not [entitled to] execute a resale certificate.

(2) The supplier shall[is] not [to] accept any number of the 900000-series as evidence that the purchaser is the holder of a permit. These[Such] numbers are issued to contractors for the purpose of reporting on a Consumer's Use Tax Return. The supplier shall not[Nor is the supplier to] accept any resale certificate from a contractor-retailer who holds a permit under the exception to this rule [s] for any materials or supplies which the supplier, in fact, knows are to be used by the[such] purchaser in his or her own construction business.

(3) Any contractor, subcontractor, builder, or owner who

purchases tangible personal property or digital property[such items] from an out-of-state supplier who is not licensed to collect the Kentucky use tax shall report and pay the[such] use tax directly to the department on a Consumer's Use Tax Return based upon the[its] purchase price of the property.

Section 6. Contractors Manufacturing Their Own Materials or Supplies. If[in the event] any contractor, subcontractor, builder, or contractor-retailer is the manufacturer of the building material or supplies they[it] used in their[its] construction business, the tax shall apply to the purchase price [to it] of all tangible personal property which enters into the manufacture of the[such] materials or supplies.

Section 7. Contractors With No Fixed Place of Business. Any contractor-retailer without a[who has no] fixed place of business from which they[he] regularly operate[operates] may be required to post a security as provided in KRS 139.660.

Section 8. Contractor Examples and Scenarios. The list in this section shall provide general examples and the taxable treatment for certain common [contractor] scenarios encountered by contractors. (1) An entity that contracts for the provision and installation of wall-to-wall carpeting into real property is a contractor. The contractor shall pay sales or use tax on the[its] purchase of the carpet, materials, fixtures, and any other tangible personal property that goes into the charge to the[its] customer on the cost of the construction contract.

(2) An entity which installs[contracts for the installation of] a sidewalk into real property is a contractor. The contractor shall pay sales or use tax on their[its] purchase of the concrete, supplies, materials, fixtures, and any other tangible personal property that goes into the provision of the construction contract. The contractor shall not bill sales tax as a separate charge to the[its] customer on the cost of the construction contract.

(3) An entity that repairs a hot water heater that has been installed into real property is a contractor. The contractor shall pay sales or use tax on their[its] purchase of the supplies, materials, fixtures, and any other tangible personal property that goes into the repair of the hot water heater. The contractor shall not bill sales tax as a separate charge to the[its] customer on the cost of the repair.

(4) A contractor that sells and delivers a freestanding refrigerator is operating as a contractor-retailer. The contractor-retailer may issue a resale certificate for the[its] purchase of the refrigerator to be resold. The contractor-retailer shall[would] charge sales tax on the retail sale of the refrigerator to the end customer along with any delivery or installation charges associated with the sale of the refrigerator. [Section 2. Definitions. (4) The terms "contractor" and "subcontractor" are used herein in the common and ordinary acceptance of the terms and include both general contractors and subcontractors engaged in such building trades as carpentry, bricklaying, wall to wall carpeting, cement work, steel work, plastering, sheet metal work (including aluminum siding), roofing, tile and terrazzo work, cabinet work, electrical work, plumbing, central heating and air conditioning, painting, interior decorating, and storm window and permanent awning work. The terms "contractor" and "subcontractor" as used herein do not include any person who repairs tangible personal property.

(2) The term "construction contract" as used herein means a contract for erecting, remodeling, or repairing a building or other structure on land and includes lump sum, cost plus, and time and materials contracts, but does not include a contract for the sale and installation of machinery, appliances or equipment which the contractor has sold but which do not become part of the real property. (In this latter case, the contractor must apply for a retail sales and use tax permit and remit tax on his sales price of the machinery, appliances or equipment.) Examples of taxable sales include refrigerators, oven-ranges and dishwashers which are not built-in, laundry appliances, window unit air conditioners and space heaters.

(3) The term "materials" means all of the tangible personal property, other than fixtures, which enters into and becomes a permanent part of a structure. Examples of materials are: bricks,

builders hardware, cement, gravel, sand, macadam, asphalt, lumber, electrical wiring, wall board and coping, roofing, guttering, aluminum siding, storm doors and windows, and cabinets.

(4) The term "fixtures" means things which are accessory to a building and do not lose their identity as accessories but which do become a permanent part of the realty. Examples of fixtures are: lighting fixtures, plumbing fixtures, hot water heaters, furnaces, boilers, central heating units, elevators, hoists, burglar and fire alarm fixtures, central air conditioning and built-in refrigeration units, built-in oven-ranges and dishwashers, and cabinets.

(5) The term "improvements to real estate" as used in this administrative regulation includes, but is not limited to, buildings, roads, sewers, dams, railroads, and fences.

Section 3. A contractor may not claim that the purchase of materials or fixtures is not subject to the tax because the property is to be used in fulfilling a contract with the federal government, state government or political subdivision thereof, or any department, agency, or instrumentality of the federal government, state government or political subdivision thereof, or with a religious, educational, or charitable institution.

Section 4. A Kentucky supplier and any out-of-state supplier who is the holder of a permit for collection of the use tax, shall bill and collect Kentucky tax from the contractor. A contractor, unless he falls within the exception described in Section 5 of this administrative regulation, will not be the holder of a retail sales and use tax permit and is not entitled to execute a resale certificate. The supplier is not to accept any number of the series 900000 as evidence that the purchaser is the holder of a permit. Such numbers are issued to contractors for the purpose of reporting on a Consumer's Use Tax Return. Nor is the supplier to accept any resale certificate from a contractor-retailer who holds a permit under the exception to this rule, for any materials or supplies which the supplier, in fact, knows are to be used by such purchaser in his own construction business. Any contractor, subcontractor, builder or owner who purchases such items from an out-of-state supplier who is not licensed to collect the Kentucky use tax shall report and pay such use tax directly to the cabinet on a Consumer's Use Tax Return based upon his purchase price of the property.

Section 5. In some instances, contractors and subcontractors are in a dual business which includes selling machinery, appliances or equipment as described in Section 2 of this administrative regulation or reselling to the general public on an "over-the-counter" basis the same type of building materials and supplies as is used by them in their own construction work. A person operating such a dual business is referred to in this administrative regulation as a contractor-retailer, and constitutes the sole exception under which a contractor will be issued a permit. Because of the retail business he operates, such a contractor-retailer must make application for a Retail Sales and Use Tax Permit. Upon issuance of the permit, a contractor-retailer may then execute resale certificates for the machinery, appliances or equipment purchased for resale and for all items of inventory which he purchases for resale in his retail business. He may also issue a resale certificate for any items that he regularly holds in stock when he does not know at the time of purchase whether such items will be resold or used by him in his own construction business.

Section 6. In the event any contractor, subcontractor, builder, or contractor-retailer is the manufacturer of the building material or supplies he uses in his construction business, the tax shall apply to the sales price to him of all tangible personal property which enters into the manufacture of such materials or supplies.

Section 7. Any contractor-retailer who has no fixed place of business from which he regularly operates may be required to post a security as provided in KRS 139.660.]

DANIEL P. BORK, Commissioner

APPROVED BY AGENCY: July 12, 2019

FILED WITH LRC: July 12, 2019 at 4 p.m.

CONTACT PERSON: Lisa Swiger, Tax Policy Research Consultant II, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky 40601, phone (502) 564-9526, fax (502) 564-3875, email Lisa.Swiger@ky.gov.

FINANCE AND ADMINISTRATION CABINET

Department of Revenue

(As Amended at ARRS, September 16, 2019)

103 KAR 26:090. Veterinarians and pet care service providers.

RELATES TO: KRS 139.010, 139.200, 139.260, 139.290, 139.480, **42 U.S.C. 12101**

STATUTORY AUTHORITY: KRS 131.130[(4)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations for the assessment, collection, refunding, administration, and enforcement of Kentucky tax laws. This administrative regulation interprets [To interpret] the sales and use tax law as it applies to transactions involving veterinarians **and pet care service providers**.

Section 1. Definitions. (1) "Pet care services" means non-medical services performed for the benefit of pets and other companion animals **such as [including, but not limited to,] the services listed in KRS 139.200.**

(2) "Small animal veterinary services" means:

(a) All activities related to the wellness, diagnosis, or treatment of pets and other companion animals performed by veterinarians or other persons in support of the veterinary services provided; and

(b) Does not include veterinary services that are excluded under KRS 139.200.

Section 2. Small Animal Veterinary Services. (1) Small animal veterinary services are subject to sales tax pursuant to KRS 139.200.

(2) The list in this subsection shall serve as general examples of small animal veterinary services:

(a) Bloodwork;

(b) Dentistry and teeth cleaning;

(c) Emergency care;

(d) Euthanasia services (excluding cremation);

(e) Health and wellness examinations;

(f) Laboratory testing and examination of lab work;

(g) **Surgical procedures [Performing surgeries].**

(h) **Prescriptions for [Prescribing] medicines and treatments;**

(i) Preventive care;

(j) Spaying/neutering;

(k) Vaccinations; or

(l) X-rays and ultrasounds.

Section 3. Animals Treated by Small Animal Veterinary Service Providers. The list in this **section [subsection]** shall serve as general examples of the types of animals treated by small animal veterinary service providers:

(1) Birds, except poultry and ratite birds;

(2) Cats;

(3) Dogs;

(4) Ferrets;

(5) Gerbils;

(6) Guinea pigs;

(7) Hamsters;

(8) Rabbits;

(9) Reptiles; or

(10) Turtles.

Section 4. Tangible Personal Property, Digital Property, or Services Purchased by Small Animal Veterinary Service Providers for Resale. (1) Effective July 1, 2018, a small animal veterinary service provider may purchase tangible personal property or digital property, **which is** for resale to **an [the]** end customer, exempt

from the sales and use tax according to the provisions of KRS 139.260. Examples include items such as:

(a) Items sold at retail, such as[, but are not limited to,] prescription and non-prescription dog food, animal shampoos, collars and toys;

(b)[sold at retail along with the] Medicines, vaccines, surgical sutures, flea treatments, and anesthetics injected into or remaining with the animal; and

(c)[Small animal veterinary service providers may also purchase] Food supplied[they supply] to the animals while under veterinary care or while providing pet care services exempt for resale.

(2) Effective July 1, 2019, a small animal veterinary service provider may purchase small animal veterinary services exempt for resale to the end customer according to the provisions of KRS 139.260. An example of a service[services] for resale is a[are] lab-testing service[services where a laboratory is billing its services to a small animal veterinary service provider] which is requested by a small animal veterinary service provider[the service] for a specific customer. The bill from the laboratory to the small animal veterinary service provider shall indicate the service performed for the specific customer. The resale exemption[for services] only applies to services that are specifically resold by the provider to the customer.

(3) The small animal veterinary service provider shall issue the Resale Certificate (Form 51A105) or the Streamlined Sales and Use Tax Certificate (Form 51A26) for the[these] purchases made for resale.

(4) Small animal veterinary service providers are the consumers of the materials, supplies, and general services used or consumed while providing veterinary services. Providers of small animal veterinary services may not claim a resale exemption on purchases of products used or consumed while providing veterinary services. Examples of these items include items such as[, but are not limited to,] surgical tools, tables, paper towels, syringes, needles, lab testing kits, general supplies, and janitorial services.

Section 5. Veterinary Services Provided for Animals Excluded from Small Animal Veterinary Services. (1) Veterinary services for animals excluded from small animal veterinary services are not subject to sales tax and the providers are the consumers of the tangible personal property, digital property, or services that they use in performing their services.

(2) As the consumer, providers of veterinary services for animals excluded from small animal veterinary services are responsible for paying the applicable sales and use tax on all products used in performing their services including any medicines, vaccines, surgical sutures, flea treatments, anesthetics, surgical tools, tables, paper towels, syringes, needles, general supplies, and taxable services that are used or consumed in the provision of their veterinary services.

Section 6. Mixed Veterinary Practices. (1) Persons providing both small animal veterinary services and veterinary services for animals excluded from small animal veterinary services shall maintain records in a manner that documents and distinguishes the specific products and supplies used while rendering both types of veterinary services.

(2) Persons providing both types of veterinary services may issue a resale certificate for tangible personal property held in inventory if it is unknown at the time of purchase whether the property will be resold or used in the provision of veterinary services not subject to sales tax. If any portion of the tangible personal property is used or consumed in the provision of veterinary services not subject to sales tax, then the purchaser shall report and pay the sales and use tax on that portion directly to the department according to the provisions of KRS 139.290.

Section 7. Pet Care Services. (1) Pet care services are subject to sales tax pursuant to KRS 139.200. Any person, including a veterinarian[veterinarians], that provides pet care services is subject to the sales tax on the gross receipts derived from the

provision of these services.

(2) Pet care services include services such as[, but are not limited to,] the services listed under the provisions of KRS 139.200.

(3) Persons providing pet care services are the consumers of the tangible personal property, digital property, or services they use in performing their services.

(a) Pet care service providers may not claim a resale exemption on purchases of products used or consumed while providing their taxable services. Examples of these items include items such as[, but are not limited to,] grooming equipment, shampoo, toothpaste, toys, bedding, and general supplies.

(b) Pet care service providers may claim a resale exemption on purchases of products provided to and remaining with the animals. Examples of these items include items such as[, but are not limited to,] flea treatments, food, and treats.

Section 8. Treatment of other transactions. (1) Pet adoption fees are taxable receipts subject to sales and use tax. Payment of these fees is consideration made for the transfer of tangible personal property in a retail sale.

(2) Services provided to service animals covered under the Americans with Disabilities Act (ADA), 42 U.S.C. 12101 et. seq. and any amendments to the act, are not small animal veterinary services or pet care services subject to sales tax.

(3) Services provided to farm work stock animals that are exempt under the provisions of KRS 139.480 are not small animal veterinary services or pet care services subject to sales tax.[Section 1. Veterinarians are the consumers of the materials, supplies or other items of tangible personal property which they use in performing their services. The tax, accordingly, applies to the sale of tangible personal property to them. Drugs, medicines and other tangible personal property which are personally administered by a veterinarian or by an assistant under his direction during treatment of a patient is not the subject of a "retail sale."

Section 2. Any veterinarian who, for a separate charge, supplies or dispenses drugs, medicines or other tangible personal property in any manner other than the manner described above is a retailer of such tangible personal property and the tax applies at the time of the delivery of the tangible personal property to the consumer.]

DANIEL P. BORK, Commissioner

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**FINANCE AND ADMINISTRATION CABINET
Department of Revenue
(As Amended at ARRS, September 16, 2019)**

103 KAR 27:180. Vending machines.

RELATES TO: KRS 139.010, 139.240, 139.260, 139.470, 139.485, 139.720

STATUTORY AUTHORITY: KRS 131.130(1)(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations to administer and enforce Kentucky's tax laws. This administrative regulation establishes the requirements when interpreting the sales and use tax law as it applies to sales of tangible personal property through vending machines.

Section 1. Definition. "Bulk vending machine" is defined by/in KRS 139.470(5).

Section 2. Persons who own vending machines that/which

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dispense tangible personal property, or operators of the machines under lease or rental agreements, shall complete a "Kentucky Tax Registration Application", Revenue form 10A100, to obtain a Kentucky Retail Sales and Use Tax permit to engage in the business of selling tangible personal property and shall report and pay to the department the tax upon the gross receipts from sales made through the machines by utilizing Revenue Form 51A102, "Sales and Use Tax Return". One (1) permit shall be sufficient for all machines of one (1) owner or operator.

Section 3.~~[2.]~~ The owners or operators of vending machines shall be responsible for reporting and paying the tax on the total gross receipts even though the owner or operator of the place in which the machines are located receives a share of the gross receipts under a commission or concession contract. In reporting and paying the tax, the owner or operator shall be deemed the agent of the operator or owner of the place of business in which the machine is located to the extent of commissions due the latter. Gross receipts from bulk vending machine sales of tangible personal property made in portions of fifty (50) cents or less~~[through coin-operated bulk vending machines where unsorted merchandise is dispensed in approximately equal portions]~~ are exempt from the sales and use tax pursuant to KRS 139.470(5).~~[(KRS 139.470(6)).]~~

Section 4.~~[3.]~~ A statement in the following form shall[~~must~~] be affixed upon each vending machine in a conspicuous place: "This vending machine is owned (operated) by _____ Owner (Operator), _____ Place of Business of Owner (Operator), who holds Permit No. _____, issued pursuant to the Sales and Use Tax Law."

Section 5.~~[4.]~~ If the owner or operator of vending machines also places upon each machine a statement that the sales tax is included in the price of the property dispensed,~~[they][he][may compute]~~ the[his] liability for the tax may be computed in the same manner as all other retailers who separately state the tax.

Section 6.~~[5.]~~ Adequate and complete records shall[~~must~~] be kept by the owner or operator showing the location of each vending machine owned or operated,~~[by him,]~~ the serial number thereof, purchases and inventories of merchandise bought for sale through each[such] machine, and the gross receipts derived from each location during each tax period.

Section 7.~~[6.]~~ Forms. The forms listed within this administrative regulation may be inspected, copied, or obtained:

- (1) At the Kentucky Department of Revenue, 501 High Street, Frankfort, Kentucky 40620;
- (2) At a Kentucky Taxpayer Service Center; or
- (3) On the department Web site at <http://revenue.ky.gov>.

DANIEL P. BORK, Commissioner

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FINANCE AND ADMINISTRATION CABINET Department of Revenue (As Amended at ARRS, September 16, 2019)

103 KAR 28:010. Admissions.

RELATES TO: KRS 138.480,~~[138.480,]~~ 139.010, 139.200, 139.260, 139.470, 139.480, 139.482, 139.495, 139.498, 229.031

STATUTORY AUTHORITY: KRS 131.130~~(1)~~~~(4)~~

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

enforcement of all tax laws in Kentucky. This administrative regulation establishes sales and use tax requirements for sale of admissions.

Section 1. Definition. "Admissions" is defined by[~~in~~] KRS 139.010~~(1)~~.

Section 2. Excluded admissions. The admissions listed in this section are specifically excluded from sales tax by statute:

- (1) Admissions to race tracks upon which tax is levied under KRS 138.480;
- (2) Admission fees paid to enter or participate in a fishing tournament or for the use of a boat ramp as provided by[~~under~~] KRS 139.010~~(1)~~~~(b)~~;
- (3) Admissions to historical sites defined by[~~in~~] KRS 139.482~~(1)~~;
- (4) Admissions charged by nonprofit educational, charitable, or religious institutions exempt under KRS 139.495~~(2)~~~~(a)~~~~5~~;
- (5) Admissions charged by nonprofit civic, governmental, or other nonprofit organizations exempt under KRS 139.498~~(1)~~~~(a)~~; and
- (6) Admissions to unarmed combat shows such as boxing and wrestling shows taxed under KRS 229.031~~(1)~~.

Section 3. Nontaxable fees. (1)~~(a)~~ Fees for instruction (tuition, registration fees, or ticket charges paid to attend instructional seminars, conferences, or workshops) shall not be considered the taxable sale of admissions if the primary intent of the program is for education rather than entertainment. Separate charges for meals, books, recordings, or other materials sold at or in conjunction with instructional seminars, conferences, or workshops shall be subject to sales and use tax unless an applicable exemption applies.

~~(b)~~ Examples of nontaxable instructional seminars, conferences, or workshops include:

- ~~1.[(a)]~~ Art classes, including painting and pottery;
 - ~~2.[(b)]~~ Certified training programs for lifeguard certification classes;
 - ~~3.[(c)]~~ Classes providing continuing education credits;
 - ~~4.[(d)]~~ Classes to obtain a professional designation, such as[~~including but not limited to,~~] a Certified Public Accountant, Registered Nurse, or Registered Land Surveyor;
 - ~~5.[(e)]~~ Dance lessons;
 - ~~6.[(f)]~~ Instructor-led recreational training, such as[~~including but not limited to,~~] swimming classes, fitness classes, golf lessons, and personal trainer exercise instruction;
 - ~~7.[(g)]~~ Music lessons;
 - ~~8.[(h)]~~ Summer resident camps and day camps; or
 - ~~9.[(i)]~~ Team memberships fees that include athletic training skills for youth.
- (2) Other non-taxable fees include:
- (a) Day care and child care facility fees;
 - (b) Driver's license, hunting license, and fishing license fees;
 - (c) General facility rentals, such as[~~including but not limited to,~~] conference rooms, ballrooms, and temporary storage facilities; or
 - (d) Professional and fraternal order membership fees.

Section 4. Taxable Admissions. The list in this section shall serve as examples of admissions charges that are subject to the tax either as a payment for the right of entrance, payment for the privilege of using facilities, or payment to participate in an event or activity. These same charges made by an Internal Revenue Code 501(c)(3) charitable, religious, or educational organization, nonprofit civic organization, governmental organization, and all other nonprofit organizations are exempt under the provisions of KRS 139.495 and KRS 139.498:

- (1) Amusement park entrance and ride charges;
- (2) Art exhibits;
- (3) Auditoriums where lectures and concerts are given for entertainment purposes;
- (4) Bars with cover charges;
- (5) Baseball parks;
- (6) Bowling center rentals and fees to participate in games;

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- (7) Box seats;
- (8) Dance halls;
- (9) Disc golf courses;
- (10) Fitness and recreational sports centers;
- (11) Golf courses;
- (12) Gymnasiums;
- (13) Health spas;
- (14) Indoor and outdoor play spaces ~~such as including but not limited to~~ arcade games, ball pits, inflatables, obstacle courses, rides, slides, and other similar activities;
- (15) Locker rentals at recreational facilities;
- (16) Miniature golf fees;
- (17) Movie theatres;
- (18) Museums;
- (19) National park facilities that are operated under lease by a for-profit entity;
- (20) Night clubs;
- (21) Race tracks not taxed under KRS 138.480;
- (22) Simulcast facilities;
- (23) Shooting ranges and gun clubs;
- (24) Skating rink rentals and fees to participate in activities;
- (25) Skiing charges;
- (26) Sports league fees to participate in games;
- (27) Street fairs;
- (28) Swimming pool rentals and fees to participate in activities;
- (29) Tennis court rentals and fees to participate in activities;
- (30) ~~Theaters~~Theatres; or
- (31) Weight training facilities.

Section 5. No Resale of Admissions. Sales of admissions are not eligible for the resale exemption according to the provisions of KRS 139.260.

Section 6. Ticketing. (1)(a) If the tax is included in the total price, a statement shall appear on the ticket to the effect that the sales tax is included in the price unless the tax is separately stated on a sign posted in a conspicuous place at the ticket window and all sales are made at the ticket window. For online sales, a prominent statement on the website may substitute for a statement on the ticket itself.

(b) If the tax is not included in the total price, a receipt shall be given showing that the sales tax was charged and separately stated.

(2) Each admission shall be a separate sale.

(3) Complimentary passes provided by the person conducting the event are not subject to the tax.

(4) Separately stated event sponsorships and advertising ~~that~~which do not include admission to an event are not subject to the tax.

Section 7. Required payments. Payments that are required as a prerequisite for admission, even if designated as a donation, shall be subject to tax.

Section 8. (1) This administrative regulation shall replace Revenue Circular 51C001-S6 and Revenue Policies 51P396 and 51P400.

(2) Revenue Circular 51C001-S6 and Revenue Policies 51P396 and 51P400 are hereby rescinded and shall be null, void, and unenforceable.[means the right of entrance to a display, program, sporting event, music concert, performance, play, show, movie, exhibit, fair, or other entertainment event or amusement.

Section 2. (1) The gross receipts from the sale of admissions shall be subject to tax unless the fees are paid for the privilege of using the facilities or participating in the event or activity or the fee is a separate or additional charge from any general admission charge.

(2)(a) If the tax is included in the total price, a statement shall appear on the ticket to the effect that the sales tax is included in the price unless the tax is separately stated on a sign posted in a conspicuous place at the ticket window and all sales are made at the ticket window.

(b) If the tax is not included in the total price, a receipt shall be given showing that the sales tax was charged and separately stated.

(3) Each admission shall be a separate sale.

(4) Payments that are required as a prerequisite for admission even if designated as a donation shall be subject to tax.

Section 3. (1) Tuition, registration fees, or ticket charges paid to attend instructional seminars, conferences, or workshops shall not be considered the taxable sale of admissions if the primary intent of the program is for education rather than entertainment.

(2) Separate charges for books, tapes, or other materials sold at or in conjunction with instructional seminars, conferences, or workshops shall be subject to sales and use tax unless an applicable exemption applies.

Section 4. Taxable Admissions. The list in this section shall serve as examples of admissions paid that are subject to the tax:

- (1) Amusement parks;
- (2) Art exhibits;
- (3) Auditoriums where lectures and concerts are given for entertainment purposes;
- (4) Bars with cover charges;
- (5) Baseball parks;
- (6) Box seats;
- (7) Cabarets;
- (8) Dance halls;
- (9) Fairgrounds;
- (10) Football stadiums;
- (11) Gymnasiums;
- (12) Movie theatres;
- (13) Museums;
- (14) National park facilities that are operated under lease;
- (15) Night clubs;
- (16) Race tracks;
- (17) Simulcast facilities;
- (18) Skating rinks or skating parks as a spectator;
- (19) State parks;
- (20) Street fairs; or
- (21) Theatres.

Section 5. Nontaxable fees. The list in this section shall serve as examples of nontaxable fees if the fees are paid for the privilege of using the facilities or participating in an event or activity or the fee is a separate or additional charge from any general admission charge:

- (1) Amusement park ride charges;
- (2) Bowling fees;
- (4) Fishing or picnicking fees;
- (5) Golf, greens fees or driving range fees;
- (6) Miniature golf fees;
- (7) Skating fees;
- (8) Skiing charges; or
- (9) Swimming fees.

Section 6. The admissions listed in this section shall not be subject to sales tax:

- (1) Admissions to race tracks upon which tax is levied under KRS 138.480;
- (2) Admissions to historical sites defined in KRS 139.482;
- (3) Admissions sold by nonprofit charitable and educational institutions qualifying for exemption under KRS 139.495;
- (4) Complimentary passes provided by the person conducting the event; or
- (5) Gross receipts from the first \$50,000 in sales of admissions to county fairs as provided in KRS 139.470(22).

Section 7. (1) This administrative regulation shall replace Revenue Circular 51C001-S6 and Revenue Policies 51P396 and 51P400.

(2) Revenue Circular 51C001-S6 and Revenue Policies 51P396 and 51P400 are hereby rescinded and shall be null, void, and unenforceable.]

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FINANCE AND ADMINISTRATION CABINET Department of Revenue (As Amended at ARRS, September 16, 2019)

103 KAR 30:170. Containers, wrapping, and packing materials.

RELATES TO: KRS 139.010, 139.470

STATUTORY AUTHORITY: KRS 131.130(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations for the assessment, collection, refunding, administration, and enforcement of Kentucky tax laws. This administrative regulation defines and clarifies the sales and use tax law as it applies to containers, wrapping and packing materials, labels and related products.

Section 1. Definitions. (1) "Containers" ~~[The term "containers"]~~ which appears in KRS 139.470 means articles used for shipment or delivery of tangible personal property. Examples of such articles are wrapping materials, bags, cans, twine, gummed tape, boxes, bottles, drums, carboys, cartons, baling wire, and sacks.

(2) "Nonreturnable containers" means all containers other than those defined in subsection (3) of this section ~~[Section 2 of this administrative regulation]~~. Examples are wrapping and packing materials, paper bags, twine, medicine, and distilled spirits bottles.

(3) "Returnable containers" means containers of a kind customarily returned by the buyer of the contents for reuse. Examples of returnable containers are milk bottles, ~~steel~~ steels drums, beer and soft drink bottles, wine barrels, chemical carboys, totes, and gas cylinders.

Section 2. Sales of Returnable Containers. (1) "Returnable containers" means containers of a kind customarily returned by the buyer of the contents for reuse. Examples of returnable containers are milk bottles, steel drums, beer and soft drink bottles, wine barrels, chemical carboys and gas cylinders.

(2) Sales of returnable containers when sold without the contents to manufacturers, compounders, bottlers, etc., who place the contents in the container and sell the contents together with the container are not subject to the sales or use tax. The container is not subject to the tax when it is sold at retail in connection with a retail sale of its contents. The fact that the retailer may require a deposit against the return of the container or allows a credit upon its return does not alter the rule. Returnable containers are not subject to the tax when they are resold by the final buyer for refilling.

(2) Sales of returnable containers, for example totes, to manufacturing suppliers who place the contents in the totes and sell the contents but not the tote to their manufacturing customer are subject to the sales and use tax. As the tote is not sold to the manufacturer, the sales and use tax exemption found in KRS 139.470(2) is not applicable.

Section 3. Sales of Nonreturnable Containers. (1) ~~All containers other than those defined in Section 2 of this administrative regulation are nonreturnable containers. Examples are wrapping and packing materials, paper bags, twine, medicine and distilled spirits bottles.~~

(2) Sales of nonreturnable containers to manufacturers, compounders, bottlers, etc., for use in packaging their product for resale which are not intended to be returned for reuse are not

subject to the sales or use tax. Bottle caps and crowns shall be treated at all times as nonreturnable containers for use in packaging a product for resale.

(2) ~~[(3)]~~ Sales of wrapping paper, clothes hangers, twine, tape, and similar articles to persons who use them to package merchandise for sale at retail are usually sales made for resale and are therefore not subject to the tax. Sales of such articles to persons who use them in the conduct of an activity other than sale of tangible personal property at retail, for example, laundries and dry cleaning establishments, are subject to the sales or use tax.

(3) ~~[(4)]~~ Sales of nonreturnable paper napkins, straws, and like articles to restaurants, lunch counters, etc., who use them in connection with the sale and serving of food are sales made for resale and are therefore not subject to the tax.

Section 4. Labels and Name Plates. (1) Sales of labels and name plates are not subject to the sales or use tax if:

(a) They are affixed to a nonreturnable container of property sold; or

(b) They are affixed to returnable containers if a new label is affixed to the container each time it is refilled.

(2) Labels, name plates, and price tags which are permanently affixed to the product for sale become a component part of that product and thus not subject to tax when sold to the manufacturer to be affixed by him.

(3) Price tags, shipping tags, and advertising materials used in connection with the sale of property or enclosed with the property sold are subject to the tax.

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BOARDS AND COMMISSIONS

Board of Cosmetology

(As Amended at ARRS, September 16, 2019)

201 KAR 12:030. Licensing, permits, and examinations.

RELATES TO: KRS 317A.020, 317A.050, 317A.060, 317A.145

STATUTORY AUTHORITY: KRS 317A.060

NECESSITY, FUNCTION, AND CONFORMITY: KRS 317A.060 requires the board to promulgate administrative regulations governing licenses in cosmetology, esthetic practices, and nail technology, including the operation of schools and salons of cosmetology, esthetic practices, and nail technology. This administrative regulation establishes procedures for examinations and licensing.

Section 1. Fees. License and permit fees are set forth in 201 KAR 12:260.

Section 2. Prior Felony Convictions. An applicant for any license, permit, or examination issued or conducted by the board convicted of a prior felony shall include with his or her application:

(1) A signed letter of explanation from the applicant;

(2) A certified copy of the judgment and sentence from the issuing court; and

(3) A letter of good standing from the applicant's probation or parole officer, if currently on probation or parole.

Section 3. Reciprocal Licensing. (1) A license issued by another state shall be considered comparable if the laws of that state require at a minimum:

(a) 1,500 hours of curriculum for cosmetology;

(b) 450 hours of curriculum for nail technology;

(c) 750 hours of curriculum for esthetics; or

(d) 750 hours of curriculum for instructors.

(2) An applicant licensed in another state may be licensed by reciprocity by submitting the Out of State Transfer Application and the following:

- (a) Digital certification showing proof of a passing score on a board-approved nationally recognized theory and practical exam;
- (b) Current digital certification of the out of state license from the issuing state board;
- (c) Diploma or certified testing documents proving 12th grade equivalency education;
- (d) Payment of the applicable license and endorsement fees required by 201 KAR 12:260;
- (e) A copy of the applicant's government-issued photo identification; and
- (f) A two (2) by two (2) inch passport photo of the applicant taken within the past six (6) months.

(3) An applicant from a state whose licensing requirements fail to meet subsection (1) of this section shall apply for a reciprocal license by submitting:

- (a) Documentation required by subsection (2)(a) through (f) of this section; and
 - (b) Payment of the applicable examination fees established in 201 KAR 12:260.
- (4) Active duty military and family members shall apply for a reciprocal license by submitting:
- (a) All documents required by subsection 2(a) through (f) of this section;
 - (b) The Military Transfer Application;
 - (c) A copy of the sponsor's active-duty orders listing the applicant as sponsor or an accompanying family member; and
 - (d) Payment of a twenty-five (25) dollar license fee.
- (5) All requests for certification of hours or a license shall use the Certification Request Form accompanied by a copy of the applicant's government-issued photo identification[,] and payment of the fee as set forth in 201 KAR 12:260. Certifications shall be transmitted digitally to the reciprocal state agency.

Section 4. Permits. (1) Any person who engages in the practice of threading, makeup artistry, or eyelash artistry shall first obtain a permit from the board by submitting a completed Permit Application and paying the fee established in 201 KAR 12:260.

- (2) The applicant shall include with the Permit Application:
- (a) A copy of the applicant's government-issued photo identification;
 - (b) A two (2) by two (2) inch passport photo of the applicant taken within the past six (6) months;
 - (c) Proof of completion of a board-approved sanitation course within the (1) year period preceding the application; and
 - (d) Proof of completion of a board-approved[national certification]program, if applying for an eyelash artistry permit.

Section 5. Examination Registration. (1) Applicants shall register as follows:

- (a) A student of a licensed cosmetology school shall register with the board at least eight (8) months prior to graduation for the requested cosmetologist examination date;
 - (b) A nail technician student shall register with the board at least ~~forty-five~~[fortyfive] (45) days prior to graduation for the requested nail technician examination date; and
 - (c) An esthetician student shall register with the board at least four (4) months prior to graduation for the requested esthetician examination date.
- (2) A completed Application for Examination or Out of State Application for Examination shall be received in the Board office no later than ten (10) business days prior to the examination date to be scheduled for either the theory test or the practical demonstration component of the exam. Each exam component shall be scheduled using a separate application and payment of the fee set forth in 201 KAR 12:260.

(3) All examination applicants shall submit a two (2) by two (2) inch passport photo of the applicant taken within the past six (6) months.

(4) Theory examination dates shall be valid for ninety (90) days from student notification.

(5) A passing score for the theory examination, proper application, and payment of fees shall be required prior to being scheduled for the practical examination.

(6) An applicant with curriculum hours obtained in another state shall include with the Out of State Application for Examination the following:

- (a) Certification of curriculum hours from the state licensing board or agency where the hours were obtained, if the state requires the reporting of curriculum hours; or
- (b) Certification of the valid licensing status of the school attended from the state board or licensing authority and an official transcript certified by the school.

(7) Examination applicants shall wear a full set of solid color medical scrubs and bring all instruments and supplies as listed on the board Web site for the practical examination. White colored scrubs or other clothing is prohibited.

Section 6. Examination Components. (1) The examination shall consist of a theory test and a practical demonstration taken from the curriculum requirements specified in 201 KAR 12:082.

- (2) The practical demonstration shall be performed on a:
- (a) Mannequin head and hand for the cosmetology practical examination;
 - (b) Mannequin head for the esthetician or blow drying services practical examination; or
 - (c) Mannequin hand for the nail technician practical examination.
- (3) The applicant shall provide a mannequin head or hand as needed for an examination.

Section 7. Grading. (1) A minimum passing grade of seventy (70) percent on the theory test and the practical demonstration shall be required for the cosmetologist, esthetician, and nail technician examinations

(2) A minimum passing grade of eighty (80) percent on the theory test and eighty-five (85) percent on the practical demonstration shall be required for all instructor examinations.

(3) All passing exam scores shall be valid for six (6) months from completion.

Section 8. Practice before Examination Prohibited. A student engaging in the practice of cosmetology, esthetic practices, or nail technology prior to the board examination shall be ineligible to take the examination for a period of one (1) year from the date of the unauthorized practice.

Section 9. License Application. (1) An applicant who passes the examination shall have ninety (90) days following the examination to apply for a license by submitting[using] the License Application form and the following documentation[listed below]:

- (a) Diploma or certified testing documents proving 12th grade equivalency education;
- (b) Payment of the applicable license fee required by 201 KAR 12:260;
- (c) A copy of the applicant's government-issued photo identification; and
- (d) A two (2) by two (2) inch passport photo of the applicant taken within the past six (6) months.

(2) Failure to apply for a license as required by subsection (1) of this section shall require payment of the appropriate restoration and licensing fees set forth in 201 KAR 12:260 before a license may be issued.

(3) An applicant may apply for an apprentice instructor license to be used for training in an approved program after one (1) year of professional licensing. Applicants shall submit[use] the Apprentice Instructor License Application and provide the following documentation[listed below]:

- (a) Diploma or certified testing documents proving 12th grade equivalency education;
- (b) Payment of the applicable license fee required by 201 KAR 12:260;
- (c) A copy of the applicant's government-issued photo

identification; and

(d) A two (2) by two (2) inch passport photo of the applicant taken within the past six (6) months.

Section 10. Retaking Examinations. (1) Any applicant who fails either the theory test or the practical demonstration may retake that portion of the examination upon submitting a new Application for Examination with a two (2) by two (2) inch passport photo of the applicant taken within the preceding six (6) months, and paying the examination fee required by 201 KAR 12:260.

(a) After three (3) failed attempts, the examinee shall be required to wait six (6) months before retaking either portion of the examination. If the examinee does not receive a passing score after the third attempt, then the individual shall take an eighty (80) hour supplemental course in theory studies at a school licensed by the board prior to being eligible to ~~retake~~[retaking] the examination.

(b) Following the supplemental course, the examinee may attempt the examination[test] two (2) additional times. If the examinee fails both attempts the examinee shall be prohibited from taking the examination within three (3) years from the date of the final failed attempt.

(2) An applicant caught cheating or impersonating another shall not be allowed to retake the examination for a minimum of one (1) year from the date of the original examination.

(3) Any applicant who fails to report for the examination on the date specified by the board shall submit a new examination application and examination fee prior to being rescheduled for examination. The board may waive the examination fee for good cause shown. "Good cause" includes:

(a) An illness or medical condition of the applicant that prohibits the applicant from reporting for the examination; or

(b) A death, illness, or medical condition in the applicant's immediate family that prohibits the applicant from reporting for the examination.

(4) Documents and certificates submitted with an Application for Examination are valid for one (1) year following the date of submission after which time applicants shall submit updated documents and a new examination application.

Section 11. Duplicate Licenses, Renewal, and Restoration. (1) If a license is lost, destroyed, or stolen after issuance, a duplicate license may be issued. The licensee shall submit a statement verifying the loss of the license using the Duplicate License Application that includes a copy of a government-issued photo identification, and pay the duplicate license fee listed in 201 KAR 12:260. Each duplicate license shall be marked "duplicate".

(2) The annual license renewal period is July 1 through July 31. All licenses and permits shall:

(a) Be renewed using the Renewal Application or by using the board's online portal;

(b) Include the required copy of a government-issued photo identification;

(c) Include payment of the fee set forth 201 KAR 12:260; and

(d) Include payment of any outstanding fines associated with a prior disciplinary action as described in KRS 317A.145.

(3) To restore an expired license or permit, a Restoration Application shall be submitted to the board with payment of the restoration fee as set forth in 201 KAR 12:260 for each year the license has been expired, the total of which shall not exceed \$300 per license restored, ~~along~~[as] and license fees[set forth in 201 KAR 12:260, together] with [and] the following:

(a) For an expired individual license or permit, a copy of a government-issued photo identification;

(b) For an expired salon license or limited facility permit, a new Salon Application or Limited Facility Permit Application; or

(c) For an expired school license, a new School Application.

Section 12. Salon and Facility Applications. (1) Each person, firm, or corporation applying for a license to operate a new or relocating beauty salon, nail salon, esthetic salon, or limited facility shall submit the Salon Application or Limited Facility Permit Application with required copies of state identification and driver's

licenses, pay the applicable fee set forth in 201 KAR 12:260, and be inspected by the board inspector a minimum of five (5) business days prior to opening for business.

(2) A new or relocating salon or facility shall comply with all applicable city, county, state zoning, building, and plumbing laws, administrative regulations, and codes.

(3) A salon or facility may be located on the premises of a nursing home or assisted living facility if the salon or facility meets all requirements of this section.

(4) Any salon or facility located in a residence shall have a separate outside entrance for business purposes only. This subsection shall not apply to a nursing home or assisted living facility if the home or facility has obtained a salon license from the board.

(5) A salon or facility shall not open for business prior to issuance of its license or permit.

(6) Each salon shall maintain a board licensed manager properly licensed in the services the salon provides at all times.

(7) Salon and limited beauty salon licenses and facility permits shall be mailed to the Kentucky mailing address on the application.

Section 13. Change in Salon Ownership or Transfer of Interest.

(1) The owners, firm, or corporation operating a licensed salon shall submit to the board a new Salon Application, Limited Facility Permit Application, or Manager Change Form and payment of the license or change fee as set forth in 201 KAR 12:260 no later than thirty (30) business days prior to selling, transferring, or changing ownership or changing managers.

(2) No transfer of ownership interest in a salon shall take effect while the salon license to be transferred is the subject of ongoing disciplinary action pursuant to KRS 317A.145.

Section 14. School Licenses. (1) Each person, firm, or corporation applying for a license to operate a school shall submit a School Application and the applicable fee set forth in 201 KAR 12:260.

(2) The School Application shall be accompanied by:

(a) A proposed student contract listing all financial charges to enrolling students; and

(b) A proposed floor plan drawn to scale by a draftsman or architect; and

~~(c) Proof of five (5) years of residency in the Commonwealth.~~

(3) Each school shall comply with city, county, and state zoning, building, and plumbing laws, administrative regulations and codes.

(4) Prior to license issuance and following the receipt of a completed application with all accompanying materials, the board inspector and board administrator, or their designee shall conduct an inspection.

(5)(a) The inspection shall be completed within twelve (12) months of the date that the School Application and all accompanying materials are received unless the board extends the time period for good cause. "Good cause" includes:

1. An illness or medical condition of the applicant that prohibits the applicant from completing the final preparations; or

2. A death, illness, or medical condition in the applicant's immediate family that prohibits the applicant from completing the final preparations.

(b) Requests for an extension of time shall be submitted in writing to the board and include the following:

1. The reason for the extension and the term of the request; and

2. Supportive documentation of the extension request.

(6) A license to operate a school shall be valid only for the location and person, firm, or corporate owner named on the application. A school license shall not be transferable from one (1) location to another or from one (1) owner to another.

(7) The school license shall contain:

(a) The name of the proposed school; and

(b) A statement that the proposed school may operate educational programs beyond secondary education.

(8) Each licensed school shall maintain a board licensed instructor as school manager at all times.

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Section 15. Change in School Ownership or Management. (1) The owners, firm, or corporation operating a licensed school shall submit to the board a new School Application or a Manager Change Form and payment of the applicable fee set forth in 201 KAR 12:260 no later than thirty (30) business days prior to selling, transferring, or changing ownership or changing school managers.

(2) A prospective owner(s) or manager shall meet all qualifications of KRS Chapter 317A and 201 KAR Chapter 12, and obtain approval of the board prior to assuming operation of the school.

Section 16. Classification as School. Any person, establishment, firm, or corporation that accepts, directly or indirectly, compensation for teaching any subject of cosmetology as defined in KRS 317A.010 shall comply with KRS Chapter 317A and 201 KAR Chapter 12.

Section 17. Owner and Manager Student Prohibited. An owner, partner, stockholder, corporate officer, or a manager of a licensed school shall not be enrolled as a student in the school.

Section 18. Board Member Disclosure. A board member shall disclose to the board a financial interest in a salon or school when submitting an application for a salon or school license.

Section 19. Demonstration Permits. Professional services performed outside a licensed facility shall have approval of the board and display the proper permit. Permits may be obtained by completing the Demonstration Permit Application and paying the applicable fee set forth in 201 KAR 12:260.

Section 20. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Out of State Transfer Application", June 2019~~October 2018~~;

(b) "Military Transfer Application", October 2018;

(c) "Certification Request Form" October 2018;

(d) "Permit Application", January 2019;

(e) "Application for Examination", June~~January~~ 2019;

(f) "Out of State Application for Examination", October 2018;

(g) "License Application", June 2019;

(h) "Apprentice Instructor License Application", June 2019;

(i) "Duplicate License Application", January 2019;

(j)~~(h)~~ "Renewal Application", January 2019;

(k)~~(i)~~ "Restoration Application", June~~January~~ 2019;

(l)~~(j)~~ "Salon Application", June 2019;

(m)~~October 2018~~;

(k) "Limited Facility Permit Application", June~~January~~ 2019;

(n)~~(k)~~ "Manager Change Form", October 2018;

(o)~~(m)~~ "School Application", October 2018; and

(p)~~(n)~~ "Demonstration Permit Application", October 2018.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Cosmetology, 111 St. James Court, Suite A, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

JEANETTA THORNBURY, Chair

APPROVED BY AGENCY: July 15, 2019

FILED WITH LRC: July 15, 2019 at 11 a.m.

CONTACT PERSON: Julie Campbell, Board Administrator, 111 St. James Court, STE A, Frankfort, Kentucky 40601, phone 15025644262, email julie.campbell@ky.gov.

BOARDS AND COMMISSIONS Board of Embalmers and Funeral Directors (As Amended at ARRS, September 16, 2019)

201 KAR 15:010. Definitions.

RELATES TO: KRS Chapter 316~~316.030(6)(c),—(7), 316.150(3)(b), (c)]~~

STATUTORY AUTHORITY: KRS 316.210(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 316.210(1) authorizes the Kentucky Board of Embalmers and Funeral Directors to promulgate administrative regulations to carry out and enforce the provisions of KRS Chapter 316. This administrative regulation defines terms used in 201 KAR Chapter 15~~[KRS 316.030 and 316.150]~~.

Section 1. Definitions. (1) "Chapel" means an area where a family and the public may pay their respects to a deceased human being, or an area where funerals or memorial services can be held, and which is a separate and distinct area from the preparation room.

(2) "Direct Supervision" of an apprentice means that a Kentucky-licensed funeral director or a Kentucky-licensed embalmer, as appropriate, is:

(a) Physically present with the apprentice; and~~and;~~

(b) Personally observing and guiding the activities of the apprentice.

(3) "Establishment Manager" means as required by KRS 316.125(4), shall be a Kentucky-licensed embalmer or a Kentucky-licensed funeral director, who spends at least seventy five (75) percent of his or her professional time during regular business hours in the establishment for which he or she is designated as the Establishment Manager, or actively performing funeral directing or embalming services originating in, or based in, the establishment as defined in KRS 316.010 and these administrative regulations.

(4) "Full-time for an apprentice"~~"Full time" for an apprentice~~ means at least forty (40) hours per week under the personal supervision of a licensed embalmer or licensed funeral director and shall not include time spent "on call".

(5)~~[Section 2.]~~ "Operating a funeral establishment" means the management of a funeral establishment including the daily activities of funeral directing, embalming, bookkeeping, and supervision of employees.

(6) "Preparation room" means an area with a minimum of 100 square feet, which is used exclusively to prepare dead human bodies for final disposition if arterial or cavity injection is a function of the establishment, and which is separate and distinct from the viewing area, chapel, or any other part of the establishment.

(7) "Supervisor" of an apprentice means the supervisor of record.

(8) "Supervisor's designee" means a Kentucky-licensed funeral director or a Kentucky-licensed embalmer, as appropriate, who has been approved by the supervisor of record to supervise an apprentice.

(9) "Viewing area" means an area in which a family and the public may pay their respects to a deceased human being.

HAROLD E. CORDER, II, Board Chair

APPROVED BY AGENCY: June 13, 2019

FILED WITH LRC: June 14, 2019 at 11 a.m.

CONTACT PERSON: David Trimble, Board Counsel, 911 Leawood Drive, Frankfort, Kentucky 40601, phone (502) 782-8823, fax (502) 564-3969, email davidc.trimble@ky.gov.

BOARDS AND COMMISSIONS Board of Embalmers and Funeral Directors (As Amended at ARRS, September 16, 2019)

201 KAR 15:030. Fees.

RELATES TO: KRS 316.125(2)(a), 316.130(2), (4), (5), 316.132, 316.140(2)

STATUTORY AUTHORITY: KRS 316.125(2)(a), 316.130(2), (4), (5), 316.132, 316.140(2), 316.210(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 316.125(2)(a), 316.130(2), (4), and (5), 316.132, 316.140(2), and 316.210(1) require the board to set out in administrative regulations certain fees. This administrative regulation establishes these fees.

Section 1. The funeral establishment license fee shall be \$200

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~~[\$150]. The renewal fee for a funeral establishment license shall be \$200.~~

Section 2. The embalmer's license renewal fee shall be \$100[seventy-five (75) dollars].

Section 3. The funeral director's license renewal fee shall be \$100[seventy-five (75) dollars].

Section 4. The late fee for a funeral establishment license renewal shall be \$200[\$150].

Section 5. The late fee for an embalmer's license renewal or a funeral director's license renewal shall be \$100[seventy-five (75) dollars].

Section 6. The fee for an annual courtesy card shall be \$100[seventy-five (75)] dollars.

Section 7. The fee for processing an application for a continuing education program shall be \$150 per program; for programs included in a conference or convention setting, the total fee shall not exceed \$600.

Section 8. (1) A processing fee of twenty-five (25) dollars shall apply to all document actions not covered by other fees established by KRS Chapter 316 or this administrative regulation such as national exam score requests, out-of-state verifications, official name change requests, paper submissions of any documents or applications that are available to submit electronically, and revisions to wall licensure.

(2) A fee of sixty (60) dollars shall be assessed for any payment made to the Board pursuant to KRS Chapter 316 or these administrative regulations, where the check, draft, money order, or other financial instrument is returned by the payor's bank or financial institution for insufficient funds, or cannot otherwise be deposited into the board's account.

~~Section 9.[The registration fee for funeral director apprenticeship is established in KRS 316.030(7)].~~

~~Section 10. The registration fee for embalmer apprenticeship is established in KRS 316.030(7).~~

~~Section 11]. The registration fee for Level II funeral director registration shall be fifty (50) dollars.~~

~~Section 10[42]. The registration fee for Level II embalmer registration shall be fifty (50) dollars.[Section 13. The examination fee for initial licensure as an embalmer is established in KRS 316.030(4)(g)].~~

~~Section 14. The examination fee for initial licensure as a funeral director is established in KRS 316.030(5)(f)].~~

Section 11[15]. All fees assessed under this administrative regulation shall be nonrefundable.

HAROLD E. CORDER, II, Board Chair

APPROVED BY AGENCY: June 13, 2019

FILED WITH LRC: June 14, 2019 at 11 a.m.

CONTACT PERSON: David C. Trimble, General Counsel, 911 Leewood Drive, Frankfort, Kentucky 40601, phone (502) 782-8823, fax (502) 564-3969, email davidc.trimble@ky.gov.

BOARDS AND COMMISSIONS
Board of Embalmers and Funeral Directors
(As Amended at ARRS, September 16, 2019)

201 KAR 15:040. Examination.

RELATES TO: KRS 316.030 4(h), 5(g)[(3)(h), (4)(g)]

STATUTORY AUTHORITY: KRS 316.030, 316.210(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 316.030 (4)(h) and (5)(g)[(3)(h), (4)(g)] require an applicant for an embalmer's license or a funeral director's license to pass an examination[examinations] prepared or approved by the board. [The function of]This administrative regulation establishes the administration[is to establish the procedure], content, and evaluation[time] of examinations by the board.

Section 1. Exam administration.[Content of Examination.] (1) The board shall administer examinations for funeral director and embalmer licenses at the regular meetings[The examination for a license to practice embalming and the examination for a license to practice funeral directing shall be written examinations administered by one (1) or more members] of the board.

(2) An applicant seeking to take an examination administered by the board shall submit the fee required by KRS 316.030(4)(g) or (5)(f) to the board at least forty-five (45) days before the desired examination.[The subjects to be covered in the examination for embalmer's license shall be as follows:]

(a) The examination fee shall include a license in good standing for the remainder of the fiscal year if the applicant is successful in the examination.

(b) An applicant shall be entitled to only one (1) examination for each fee paid.

(3) One (1) or more members of the board shall administer the written examination for a license issued by the board.

(4) An[Any] applicant may seek a reasonable accommodation in the manner for which[of giving] an examination by the board is given.

(a) Accommodations will be considered by the board on the same basis as reasonable accommodations that may be available under the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq.

(b) An[Any] applicant who takes an examination with a reasonable accommodation must still perform the essential functions of taking the examination and meet the normal performance requirements for passage.

(5) At the discretion of the board, examinations may be held at other times, if necessary.

Section 2. Content of Examination. (1) The examination for an embalmer's license shall include the following subjects:

- (a) Embalming;
- (b) Anatomy;
- (c) Microbiology;
- (d) Pathology;
- (e) Chemistry;
- (f) Restorative art;
- (g) Mortuary administration and law;
- (h) Accounting;
- (i) Sociology;[and]
- (j) Psychology; and
- (k) Requirements of KRS Chapter 316 and the administrative

regulations promulgated pursuant to KRS Chapter 316.

(2)[(3) The subjects to be covered in] The examination for a funeral director's license shall include the following subjects[be as follows]:

- (a) Mortuary administration;
- (b) Ethics;
- (c) Accounting;
- (d) Sociology;
- (e) Business law;
- (f) Primary psychology;
- (g) Transportation rules;
- (h) Hygiene, sanitation, and disinfection; and
- (i) Requirements of KRS Chapter 316 and the administrative regulations promulgated pursuant to KRS Chapter 316.

(3)[(4)(a) The board may accept the results of the examination prepared and administered by the Conference of Funeral Service Examining Boards and the results of an oral examination on the subject of embalming administered by one (1) or more members of the board in lieu of the written examination for embalmer's license

administered by the board.

(b) The applicant seeking to take an examination administered by the board shall submit the fee required by KRS 316.030(3)(g) or (4)(f) to the board at least thirty (30) days before the date of the examination. The fee shall include a license in good standing for the remainder of the fiscal year if the applicant is successful in the examination.

~~Section 2. Procedure for Examination. (1) Applicants shall attain a proficiency of seventy-five (75) percent on any examination to make a passing grade.~~

~~(2) All written questions for the embalmer's and funeral director's examinations are the property of the board and applicants shall return the questions to the board with their answers.~~

~~Section 3. Evaluation[Time of Examinations]. A score of seventy-five (75) percent on any examination administered by the board shall constitute a passing grade[(4) Examinations administered by the board shall normally be held for funeral director's and embalmer's licenses at the regular meeting of the board in December and June of each year.~~

~~(2) Examinations may be held at other regular or special meetings at the board's discretion.~~

~~(3) An applicant shall be entitled to only one (1) examination for each fee.]~~

Section 4. Alternative to Written Examination by the Board. An applicant who has successfully completed the examination prepared and administered by the Conference of Funeral Service Examining Boards may request exemption from the written examination. The applicant shall successfully complete an oral examination administered by one (1) or more members of the board in lieu of the written examination.

HAROLD E. CORDER, II, Board Chair

APPROVED BY AGENCY: June 13, 2019

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BOARDS AND COMMISSIONS

Board of Embalmers and Funeral Directors (As Amended at ARRS, September 16, 2019)

201 KAR 15:050. Apprenticeship and supervision requirements.

RELATES TO: KRS 316.030

STATUTORY AUTHORITY: KRS 316.210(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 316.210(1) authorizes the Kentucky Board of Embalmers and Funeral Directors to promulgate administrative regulations to carry out and enforce the provisions of KRS Chapter 316. KRS 316.030(4)(e) and (5)(d) require an applicant for an embalmer's license or a funeral director's license to serve an apprenticeship under the supervision of a Kentucky-licensed embalmer or funeral director. KRS 316.030(9) requires an applicant to file sworn statements semiannually during the apprenticeship. This administrative regulation establishes the requirements for apprentices and their supervisors, the time for filing the sworn statements, and the additional information required in the sworn statements.

Section 1.[Definitions. (1) "Direct Supervision" means that a Kentucky-licensed funeral director or a Kentucky-licensed embalmer, as appropriate, is:

(a) Physically present with the apprentice, and:

(b) Personally observing and guiding the activities of the apprentice.

(2) "Supervisor" means the supervisor of record.

(3) "Supervisor's designee" means a Kentucky-licensed funeral director or a Kentucky-licensed embalmer, as appropriate, who has been approved by the supervisor of record to supervise an apprentice.

Section 2.] Apprenticeship Application[Registration]. (1) Prior to beginning an apprenticeship, an applicant shall:

(a) File an Apprenticeship Application[Registration] Form with the board that includes the sworn statement required by KRS 316.030(7)(c);

(b) Pay the registration fee established in KRS 316.030(7)(b);

(c) Submit a current photograph;

(d) Submit a copy of the applicant's high school transcript or diploma, or high school equivalency diploma;

(e) Submit an official copy of any college transcripts;

(f) Submit an official copy of National Board scores, if available; and

(g) Submit an official copy of a current (less than ninety (90) days prior to the application) criminal justice information system (CJIS) report obtained from the Federal Bureau of Investigation (FBI); and

(h) Appear before the board with the supervisor at the time and place identified by the board.

(2) The apprenticeship shall begin [begins] the day the applicant and supervisor meet with the board.

Section 2[3]. Supervisor Responsibilities. (1) An apprenticeship shall be served under the board-approved supervisor identified on the Apprenticeship Registration Form as the supervisor of record.

(2) Apprenticeships for both embalming and for funeral directing may be served concurrently under:

(a) A single individual acting as the supervisor of record who holds both a funeral director's license and an embalmer's license; or

(b) Two (2) individual licensees acting as the supervisor of record who together hold[held] both a funeral director's license and an embalmer's license.

(3) Licensed embalmers and licensed funeral directors who seek approval from the board as a supervisor of record shall:

(a) Embalm or direct funerals at, and be employed by, the establishment where the apprentice is registered or at another funeral establishment if approved by[which is identified to] the board;

(b) Appear before the board for approval with the apprentice; and

(c) Be responsible for ensuring that the apprentice complies with KRS Chapter 316 and 201 KAR Chapter 15.

(4) The board may withdraw approval of a supervisor based upon:

(a) Evidence of the inability to supervise an apprentice properly; or

(b) A violation of KRS Chapter 316 or 201 KAR Chapter 15.

(5) Apprentices may receive supervision by licensees other than the supervisor of record.

(a) Registered embalmer apprentices may be supervised by other licensed embalmers designated by the supervisor of record.

(b) Registered apprentice funeral directors may be supervised by other licensed funeral directors designated by the supervisor of record.

(c) Supervisors of record that designate[approve] other licensees to provide supervision for an apprentice shall remain responsible for the actions of the apprentice and for the quality of the designated supervision.

(d) The apprentice shall prepare an Apprentice Travel Form and maintain it with the apprentice calendar:

1. File an Apprentice Travel Form with the board; and

2. Maintain the form with his or her calendar.

(6) The supervisor shall instruct an apprentice and ensure that an apprentice receives experience in all aspects of funeral directing or embalming, as applicable to the individual's apprenticeship.

(a) The instruction shall include:

1. The laws relating to the profession, including KRS Chapter

316 and 201 KAR Chapter 15; and

2. The theory and application of funeral directing or embalming.

(b) The training and work assignments for apprentice embalmers shall cover the following service items:

1. Initial call details;
2. Removals;
3. Embalming;
4. Restorative art treatment;
5. Posing body and features;
6. Bathing and cosmetizing of bodies;
7. Dressing and casketing of bodies;
8. Recordkeeping;
9. Purchasing of necessary supplies;
10. Preparation of autopsied bodies;
11. Care and maintenance of equipment and embalming room;

and

12. Professional responsibility.

(c) The training and work assignments for apprentice funeral directors shall cover the following service items:

1. Initial call details;
2. Removals;
3. Counseling of families on the types of services and merchandise available;
4. Arrangements of funeral services and merchandise;
5. Preparing death certificates and documents;
6. Preparing applications for certain death benefits, such as Social Security, Veterans Administration, insurance companies, and lodges;
7. Preparing newspaper notices;
8. Conducting visitations or memorial services;
9. Directing funerals and graveside services;
10. Follow-up service to the family after the funeral service has been completed;

11. Recordkeeping;
12. Purchasing of necessary supplies;
13. Caring for equipment and premises; and
14. Professional responsibility.

Section 3[4]. Supervision of Apprentices. (1) Supervision of embalmer apprentices.

(a) For the first twenty-five (25) cases with which an embalmer apprentice assists and throughout the first six (6) months of training, the supervisor or the supervisor's designee shall be present with the apprentice and provide direct supervision of all of the apprentice's embalming activities.

(b) After the apprentice has completed both twenty-five (25) cases and six (6) months of the apprenticeship, the apprentice may perform embalming services if the supervisor or the supervisor's designee is available for consultation and supervision, in accordance with KRS 316.010(14)[and 316.030(3)(e), for the duration of the apprenticeship].

(c) The supervisor shall notify the board in writing on the Level II Apprentice Registration Form that the apprentice has completed the required twenty-five (25) cases before allowing the apprentice to embalm without direct supervision. The embalmer Level II registration fee required by 201 KAR 15:030 shall be submitted with the Level II Apprentice Registration Form. The Level II apprenticeship shall commence upon receipt of a Level II apprentice card issued by the board. The supervisor or the supervisor's designee shall continue to supervise the apprentice, in accordance with KRS 316.010(14) and 316.030(4)(e), for the duration of the apprenticeship.

(d) A Level II apprenticeship may continue for a period of up to three (3) years while the apprentice completes the apprenticeship requirements and takes the licensure examination.

(e) An apprentice should take the first examination for licensure within sixty (60) days of completion of all other apprenticeship requirements.

(f) For any apprenticeship violation of the rules of the apprenticeship, or other rules applicable to the professions of embalming or funeral directing, the board may extend the period of apprenticeship as part of disciplinary action.

(g) The board may grant extensions of any apprenticeship upon application for an extension by an apprentice and demonstration by the apprentice of good cause or extenuating circumstances upon which an extension should be granted.

(2) Supervision of funeral director apprentices.

(a) For the first twenty-five (25) cases with which a funeral director apprentice assists and throughout the first six (6) months of training, the supervisor or the supervisor's designee shall provide direct supervision during all of an apprentice's funeral directing activities.

(b) After the apprentice has completed both twenty-five (25) cases and six (6) months of the apprenticeship, the apprentice may perform funeral directing services if the supervisor or the supervisor's designee is available for consultation and supervision, in accordance with KRS 316.010(14)[and 316.030(5)(d) for the duration of the apprenticeship].

(c) The supervisor shall notify the board in writing on the Level II Apprentice Registration Form that the apprentice has completed the required twenty-five (25) cases before allowing the apprentice to practice funeral directing without direct supervision. The funeral director Level II registration fee required by 201 KAR 15:030 shall be submitted with the Level II Apprentice Registration Form. The Level II apprenticeship shall commence upon receipt of a Level II apprentice card issued by the board. The supervisor or the supervisor's designee shall continue to supervise the apprentice, in accordance with KRS 316.010(14) and 316.030(4)(f), for the duration of the apprenticeship.

(d) A Level II apprenticeship may continue ~~for~~ a period of up to three (3) years while the apprentice completes the apprenticeship requirements and takes the licensure examination.

(e) An apprentice should take the first examination for licensure within sixty (60) days of completion of all other apprenticeship requirements.

(f) For any apprenticeship violation of the rules of the apprenticeship, or other rules applicable to the professions of embalming or funeral directing, the board may extend the period of apprenticeship as part of disciplinary action.

(g) The board may grant extensions of any apprenticeship upon application for an extension by an apprentice and demonstration by the apprentice of good cause or extenuating circumstances upon which an extension should be granted.

(3) Removals.

(a) The supervisor or the supervisor's designee shall be present and provide direct supervision during the removal of bodies for the first six (6) months of the apprenticeship and the first twenty-five (25) removals assisted in by the apprentice.

(b) After an apprentice has served six (6) months of apprenticeship and assisted with twenty-five (25) removals, an apprentice may make removals without the direct supervision of the supervisor or the supervisor's designee if the supervisor has determined that the apprentice is competent to perform removals without direct supervision.

(c) The supervisor shall notify the board in writing on the Level II Apprenticeship Registration Form that the apprentice has completed the required twenty-five (25) removals and that the supervisor's approval has been given for the apprentice to make removals without direct supervision before the apprentice may begin making these removals.

(d) No individual who obtains or holds a permit from this board to transport dead human bodies may use transport removals performed under that permit to accumulate the number of removals required to complete an apprenticeship. All apprenticeship removals shall be performed within the requirements of the apprenticeship and supervision. Hours accumulated performing removals under a Transport Permit shall not count toward an apprentice's weekly work hours requirement.

(4) Calendar[Calendars].

(a) The apprentice shall maintain a calendar at the registered location of the apprenticeship of the apprentice's work schedule documenting the forty (40) regular hours per week that he or she has worked[at the location of the apprenticeship]. The calendar shall be reviewed and signed on a daily basis by the supervisor[~~(s)~~] to indicate that the supervisor has reviewed and

approved the apprentice's work. The calendar shall be available for inspection by the state inspector during any inspection of the establishment. The calendar shall be maintained by an apprentice until such time as the apprentice passes required examinations and becomes licensed.

(b) The calendar shall identify:

1. The daily work schedule of the apprentice, including beginning and ending times; and

2. The days on which the apprentice does not work.

(5) An apprentice may work at the funeral establishment more hours per week than required by subsection (4) of this section. An apprentice may also attend mortuary school classes or complete mortuary school classwork while serving an apprenticeship, but shall nonetheless still work the required forty (40) hour week under the apprenticeship.

~~(6) The supervisor shall instruct an apprentice and ensure that an apprentice receives experience in all aspects of funeral directing or embalming, as applicable to the individual's apprenticeship.~~

~~(a) The instruction shall include:~~

~~1. The laws relating to the profession, including KRS Chapter 316 and 201 KAR Chapter 15; and~~

~~2. The theory and application of funeral directing or embalming.~~

~~(b) The training and work assignments for apprentice embalmers shall cover the following service items:~~

~~1. Initial call details;~~

~~2. Removals;~~

~~3. Embalming;~~

~~4. Restorative art treatment;~~

~~5. Posing body and features;~~

~~6. Bathing and cosmetizing of bodies;~~

~~7. Dressing and casketing of bodies;~~

~~8. Recordkeeping;~~

~~9. Purchasing of necessary supplies;~~

~~10. Preparation of autopsied bodies;~~

~~11. Care and maintenance of equipment and embalming room;~~

and

~~12. Professional responsibility.~~

~~(c) The training and work assignments for apprentice funeral directors shall cover the following service items:~~

~~1. Initial call details;~~

~~2. Removals;~~

~~3. Counseling of families on the types of services and merchandise available;~~

~~4. Arrangements of funeral services and merchandise;~~

~~5. Preparing death certificates and documents;~~

~~6. Preparing applications for certain death benefits, such as Social Security, Veterans Administration, insurance companies, and lodges;~~

~~7. Preparing newspaper notices; 8. Conducting visitations or memorial services;~~

~~9. Directing funerals and graveside services;~~

~~10. Followup service to the family after the funeral service has been completed;~~

~~11. Recordkeeping;~~

~~12. Purchasing of necessary supplies;~~

~~13. Caring for equipment and premises; and~~

~~14. Professional responsibility.~~

(7) If an apprentice's supervisor of record is replaced during the apprenticeship period, a Change of Supervisor form shall be completed and submitted within thirty (30) days following~~of~~ the change.

Section 4~~5~~. Terminating and Reestablishing an Apprenticeship. (1)~~The licensed funeral director or licensed embalmer who is the apprentice's supervisor of record shall:~~

~~(a) Notify the board in writing by letter of the termination of the apprenticeship] Within five (5) days of the termination of an apprenticeship, the supervisor of record and the apprentice shall; and~~

~~(b) Identify the name of the apprentice and the date on which the apprenticeship was terminated.~~

~~(2) An apprentice funeral director or embalmer shall, within five (5) days of the termination of the person's apprenticeship with a funeral director or an embalmer:~~

~~(a) notify the board in writing of the termination, including by letter that the person is no longer working as an apprentice funeral director or embalmer; and~~

~~(b) Identify the date on which the apprenticeship ceased.~~

~~(2) [(3)] An apprentice funeral director or embalmer whose apprenticeship is terminated at the establishment originally identified to the board shall, within thirty (30) days of being employed by another funeral director or embalmer:~~

~~(a) Notify the board in writing of the change in employment and apprenticeship by completing and submitting a Change of Supervisor form;~~

~~(b) Identify the name, street address, and license number of the funeral director or embalmer under which the apprentice is continuing the apprenticeship; and~~

~~(c) Complete a new registration as set out in Section 2 of this administrative regulation that is signed by the licensed funeral director or embalmer who is to be the apprentice's new supervisor of record.~~

~~(3) [(4)] An apprentice funeral director or embalmer who is unable to perform the duties of the apprenticeship for a period of two (2) weeks or more because of:~~

~~(a) The birth of a child and to care for the newborn child within one year of birth;~~

~~(b) The placement with the employee of a child for adoption or foster care and to care for the newly placed child within one year of placement;~~

~~(c) To care for the employee's spouse, child, or parent who has a serious health condition;~~

~~(d) A serious health condition that makes the employee unable to perform the essential functions of his or her job; or~~

~~(e) Any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a covered military member on ["covered active duty"; "health-related impairments"] shall immediately notify the board [in writing by letter] of:~~

~~1. [(a)] The date on which the apprentice became unable to perform the duties; and~~

~~2. [(b)] The date on which the apprenticeship will be recommenced, not to exceed six (6) months following the commencement of the leave from apprenticeship.~~

~~(4) [(5)] An apprenticeship shall not end later than the administration of the second examination for which the apprentice is eligible.~~

~~(5) At any time an apprenticeship ceases, or becomes inactive under these administrative regulations, an apprentice does not lose credit for the time served in an apprenticeship. Any such apprentice whose apprenticeship has ceased or become inactive may be reinstated to apprenticeship by notice to the board including the name of the apprentice's supervisor upon his or her return to active apprenticeship, the establishment at which the apprentice is employed, and payment of a processing fee of fifty (50) dollars. The reinstated apprentice shall be responsible for compliance with all other apprenticeship requirements from the date of reinstatement forward.~~

Section 5~~6~~. Sworn Statements. (1) An apprentice shall file the Apprenticeship Sworn Statement required by KRS 316.030(7) on or before May 1 and November 1 of each year relating to the six (6) month period ending with the preceding middle of April or middle of October, respectively.

(2) The Apprenticeship Sworn Statement shall include the following information]:

(a) The names and dates of funerals in which the apprentice for a funeral director's license assisted in managing during each six (6) month period;

(b) The names and dates of embalming cases in which the apprentice for an embalmer's license assisted during each six (6) month period; and

(c) The names of the service items set forth in Section 3(6) of this administrative regulation specifically identified for each case in which the apprentice assisted during each six (6) month period.

(3) With the initial sworn statement, an apprentice shall file a report written by the applicant summarizing the requirements of KRS Chapter 316 and 201 KAR Chapter 15.

(4) With subsequent sworn statements, an apprentice shall file a report written by the applicant on an article or a book related to embalming or funeral directing read by the applicant during the six (6) month period. It shall contain a reference that includes the author, title, month and year of publication, and page numbers.

(5) The reports required by subsections (3) and (4) of this section shall be two (2) pages at a minimum ~~and~~ typed, double-spaced, in twelve (12) point font, and with one (1) inch margins on all sides.

(6) An apprentice in mortuary school shall be exempt from the book report requirements of subsections (3) through (5) of this section if the apprentice submits the number of hours he or she is enrolled on the Apprenticeship Sworn Statements.

(7)(a) The supervisor of record shall sign the sworn statements and certify that the apprentice has completed the cases and service items identified in the statement.

(b) If the apprentice has received supervision from a supervisor's designee, the supervisor of record shall still be responsible for:

1. The activities of the apprentice;
2. Signing the sworn statement; and
3. The certification of completion of cases and service items identified in the statement.

(8) Before the activities of the apprentice can count toward the requirements of KRS 316.030(4)(f) or (5)(e), the case shall include the following service items:

(a) For an embalming case, the apprentice shall have participated in the service items listed in Section 4(6)(b)3 through 7 of this administrative regulation; and

(b) For a funeral directing case, the apprentice shall have participated in the service items listed in Section 4(6)(c)3 through 9 of this administrative regulation.

Section 6[7]. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Apprenticeship Application", 9/Registration[Form], 2019[2017];

(b) "Change of Apprentice Supervisor", 9/2019[2017];

(c) "Apprenticeship Sworn Statement", 9/2019[2017];

(d) "Level II Apprentice Application", 9/Registration Form, 2019[2017]; and

(e) "Apprentice Travel Form", 2017.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Embalmers and Funeral Directors, 9114 Leesgate Rd, Ste 4, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. to 4:30 p.m.

HAROLD E. CORDER, Board Chair

APPROVED BY AGENCY: June 13, 2019

FILED WITH LRC: June 14, 2019 at 11 a.m.

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BOARDS AND COMMISSIONS
Board of Embalmers and Funeral Directors
(As Amended at ARRS, September 16, 2019)

201 KAR 15:080. Complaints[~~of violations~~].

RELATES TO: KRS 316.150

STATUTORY AUTHORITY: KRS 316.150, 316.210(1)[~~KRS 316.150~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 316.210(1) requires the board to administer and enforce the provisions of KRS Chapter 316 and authorizes the board to promulgate administrative regulations pursuant to KRS Chapter 13A. KRS 316.150 authorizes the board to take disciplinary action

against the license of an embalmer, a funeral director, or a funeral establishment or against the registration of an apprentice for violations of KRS Chapter 316.[~~The function of~~] This administrative regulation establishes[~~is to establish~~] the procedure for filing complaints[~~of violations~~] with the board.

Section 1. Complaint. (1) A complaint that an embalmer, a funeral director, a funeral establishment, or an apprentice[~~respondent~~] has violated the provisions of KRS Chapter 316 or the administrative regulations promulgated thereunder shall be made in writing to the board.

(2) The person making the complaint shall be identified in the complaint, shall provide his or her contact information, and shall sign[~~signed by the person (complainant) making~~] the complaint.

(3) Anonymous complaints shall not serve as the sole justification for disciplinary action, but the board may use the information provided in any anonymous complaint as cause for further investigation[~~The complainant need not be a licensed embalmer or funeral director~~].

(4) The board may file a complaint based upon credible information in its possession that is sufficient to establish probable cause for further investigation and possible disciplinary action.

(5) No complaint may be made more than two (2) years following the discovery of the alleged violation of KRS Chapter 316 or the administrative regulations promulgated thereunder. [~~"Discovery"~~] for this purpose shall be the point in time when the complainant actually discovers, or a reasonably diligent complainant would have discovered, the facts constituting the violation.

Section 2. Notice to Respondent. (1) The board shall send via certified mail, return receipt requested, a notice with a copy of the complaint to the respondent requesting a written response to the complaint.

(2) The respondent shall file a written response to the complaint with the board within twenty (20) days after receipt of notice of the complaint. The respondent shall send a copy of the response to the complainant, and certify in the response that it has been so sent.

(3) The board may treat failure of a duly-notified respondent to file a response within twenty (20) days of receipt of the complaint as a default. Upon default, the board may treat the allegations contained in the complaint as admitted and impose such discipline as the board deems appropriate.

Section 3. Investigation of Complaint. (1) The board may[~~if it deems appropriate,~~] assign one (1) or more persons to conduct an investigation of the facts alleged in a complaint and submit a report to the board.

(2) The board may, at any time, conduct an investigation on its own initiative without receipt of a written complaint if the board has reason to believe that[~~there may be~~] a violation of KRS Chapter 316 or the administrative regulations promulgated thereunder is taking, or has taken, place.

Section 4. Dismissal, Resolution, and Discipline. (1)[~~(3)~~] The board may dismiss a complaint at any time if the board determines that the facts stated in the complaint, or facts known to the board after investigation, fail to create a finding of probable cause of a violation which would warrant disciplinary action. The board shall notify the complainant and the respondent in writing if it dismisses the complaint.

(2) The board may negotiate a resolution of a complaint by an agreed order if the board determines that there is probable cause that a violation has occurred and that disciplinary action may be warranted.

(3) The board may impose disciplinary action established by KRS 316.150 against a licensee or registrant if the board finds, after the conduct of a KRS 13B hearing, that a violation of KRS Chapter 316 or of the administrative regulations promulgated thereunder has occurred.

HAROLD E. CORDER, Board Chair

APPROVED BY AGENCY: June 13, 2019

FILED WITH LRC: June 14, 2019 at 11 a.m.

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BOARDS AND COMMISSIONS
Board of Embalmers and Funeral Directors
(As Amended at ARRS, September 16, 2019)

201 KAR 15:110. Funeral establishment criteria.

RELATES TO: KRS 316.010, 316.030, 316.125, 316.127,
316.130, 316.260, 16 C.F.R. 453.2(b)(2)-(5), 29 U.S.C. 651

STATUTORY AUTHORITY: KRS 316.125(1), ~~[KRS]~~
316.210(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 316.125(1) prohibits operating a full-service funeral establishment, a visitation and ceremonial funeral service establishment, or an embalming service establishment without first obtaining the applicable license from the board ~~[requires a license from the board for the operation of a funeral establishment]~~. KRS 316.210(1) authorizes the board to promulgate administrative regulations to carry out and enforce the provisions of KRS Chapter 316. This administrative regulation establishes the minimum requirements for the licensing and operation of a funeral establishment.

Section 1. ~~[Definitions. (1) "Chapel" means an area where a family and the public may pay their respects to a deceased human being, or an area where funerals or memorial services can be held, and which is a separate and distinct area from the preparation room.~~

~~(2) "Preparation room" means an area with a minimum of 100 square feet, which is used exclusively to prepare dead human bodies for final disposition if arterial or cavity injection is a function of the establishment, and which is separate and distinct from the viewing area, chapel, or any other part of the establishment.~~

~~(3) "Viewing area" means an area in which a family and the public may pay their respects to a deceased human being.~~

Section 2. ~~[General Requirements. (1) The interior and exterior of the establishment shall be kept free and clean of litter, dirt, debris, and clutter or other objects or conditions that[which] present a potential or actual hazard to the health, safety, or welfare of the public and the funeral establishment's employees.~~

~~(2) Only the following persons shall~~ ~~[A person shall not]~~ be permitted ~~[to be]~~ in a preparation room during the course of embalming a dead human body:

~~(a) [except] Employees of the establishment where ~~[in which]~~ the human body is being embalmed;~~

~~(b) [.] Registered apprentices;~~

~~(c) [.] Members of the family of the deceased;~~

~~(d) [.] Authorized representatives of the deceased; [.] or~~

~~(e) Any other individual otherwise allowed by law.~~

~~(3) An establishment shall maintain the following documents, if applicable:~~

~~(a) Board approved embalming reports that[which] ~~[include]~~ ~~[set out]~~:~~

~~1. The name of each body embalmed;~~

~~2. [.] The date of death;~~

~~3. [.] The date and time that the embalming took place;~~

~~4. [.] The name and signature of the embalmer; [.] and~~

~~5. The embalmer's license number;~~

~~(b) Proper documentation of the authorization to embalm; and~~

~~(c) Accurate and current copies of:~~

~~1. The casket price list;~~

~~2. [.] The outer burial container price list;~~

~~3. [.] The general price list; [.] and~~

~~4. The statement ~~[of funeral goods and services selected as]~~ required by the Federal Trade Commission in 16 C.F.R. 453.2(b)(2) through (5), as maintained in the general practice of the establishment.~~

~~(4) An~~ ~~[The funeral]~~ establishment shall maintain embalming reports and documentation of ~~[embalming]~~ authorization to embalm for a minimum of three (3) years.

~~(5) [A license for establishment shall not be granted for]~~ Establishments located in any public office building, strip mall, public storage, mini-storage, mini-warehouse, multiunit storage complex, or similar facility used by the general public for the storage of goods shall be ineligible for a license.

~~(6) The building in which an establishment is located, and any sidewalks and parking areas provided adjacent to the establishment,~~ shall be in conformity with the requirements of the applicable federal, state and local statutes, administrative regulations, ordinances, and zoning provisions relating to publicly-accessible buildings and establishments.

~~(7) [(a)] An~~ ~~[Each]~~ establishment shall display a sign that:

~~(a) [which]~~ Identifies the name of the establishment; and;

~~(b) [s]~~ ~~[The sign shall be]~~ in a location ~~[that is]~~ visible from an adjacent public road.

~~(8) An establishment shall have adequate rest room facilities for members of the public if~~ ~~[there will be]~~ public funeral services or visitation or ceremonial services will be conducted in the establishment.

Section 2 ~~[3].~~ Visitation and Ceremonial Funeral Service Establishment. An establishment that provides ~~[All Visitation and Ceremonial Funeral Service Establishments that provide]~~ visitation and ceremonial funeral services shall have ~~[facilities which meet the following requirements]:~~

~~(1) [The establishment shall have]~~ A viewing area or chapel that[which] shall be at least 400 square feet in size; and

~~(2) The~~ ~~[establishment shall have the]~~ applicable equipment necessary for conducting and arranging funeral services, including:

~~(a) Tables or desks and chairs for arrangement conferences;~~

~~(b) Seating for the viewing room;~~

~~(c) Casket bier;~~

~~(d) Register book stand;~~

~~(e) Officiant stand;~~

~~(f) Flower display stands; and~~

~~(g) Organ, piano, music-producing equipment, or any suitable combination of these items.~~

Section 3 ~~[4].~~ Embalming Service Establishment. (1) An establishment that provides embalming services shall:

~~(a) Have facilities and a preparation room that[which] comply with the requirements of the Occupational Safety and Health Act, 29 U.S.C. 651;~~

~~(b) Have~~ ~~[and shall also require:~~

~~(a)] at least one (1) approved embalming table and all professional instruments necessary for embalming and the preparation of dead human bodies; and~~

~~(c) Ensure~~ ~~(b)] that a preparation room shall not be used as a storage area other than for supplies pertaining to the embalming and preparation of dead human bodies.~~

~~(2) Human remains shall not be prepared for disposition except by a licensed embalmer or a Level 2 apprentice, in accordance with KRS 316.030, in a preparation room that[which] meets the requirements of this administrative regulation.~~

~~(3) All windows and doors shall be constructed or screened to prevent persons from looking into the preparation room.~~

~~(4) Each preparation room entrance shall be lockable, shall be locked when not in use, and shall display a sign indicating private or restricted entry.~~

~~(5) Licensed embalmers may perform removals and transport dead bodies.~~

Section 4 ~~[5].~~ Full Service Funeral Establishments. A full service funeral establishment shall have; ~~[In addition to the regulatory requirements established in Sections 3 and 4 of this administrative regulation, a full service funeral establishment shall meet the following additional requirements:~~

~~(1) [The establishment shall have]~~ An area available to the public devoted to the display of funeral merchandise. Caskets or casket sections may be viewed by sample, computer, catalog, or

other display that corresponds to the current general price list for the funeral establishment; and

(2) ~~In addition to the viewing area or chapel, the establishment shall have~~ A separate room or office for arranging funerals. This room may be used to satisfy the requirements of subsection (1) of this section.

Section 5[6]. Inspections. (1) Each establishment shall be subject to inspection at the convenience of the board inspector.

(a) An[~~Any~~] establishment that is sited on more than one (1) parcel of real estate shall be required to notify the inspector of the location and identity of the separate parcels, and will be charged a separate inspection fee as set forth in this administrative regulation for each separate parcel, as if each parcel were a separately-licensed establishment.

(b) Failure of the establishment to be open and available for an[such] inspection within a reasonable period of time after the inspector requests access for inspection shall be deemed by the board to be a violation of KRS Chapter 316, including[~~but not limited to~~] KRS 316.150(1)(a), and may subject the establishment and its establishment manager to disciplinary action.

(2) The inspector shall inspect the establishment to see if it has suitable and dignified quarters appropriate for the category of services for which it is licensed.

(3) An establishment that provides embalming services shall have completed and signed embalming reports available for inspection upon request.

(4) The following forms shall be available for inspection or copying by the inspector[, with a copy available to the inspector for the inspector's records]:

(a) A current general price list of charges for services to the public;

(b) A current price list of caskets as charged to the public;~~[and]~~

(c) A current price list of outer burial containers as charged to the public;~~and~~

(d) All apprentice calendars and apprentice travel forms.

(5)(a) An[~~Any~~] establishment seeking an initial inspection for the purpose of obtaining a new license under KRS Chapter 316 may request the[such] inspection by the inspector of the Board of Funeral Directors and Embalmers of the Commonwealth of Kentucky, and will be assessed a fee in the amount of \$250 for the[such] inspection. This fee will cover the inspector's initial visit, and one (1) subsequent visit for re-inspection to assure that any initial deficiencies have been cured.

(b) An[~~Any~~] establishment licensed under KRS Chapter 316 that[~~which~~] is routinely inspected by the inspector of the Board of Funeral Directors and Embalmers of the Commonwealth of Kentucky shall be assessed an inspection fee, payable to the board, of \$100. This[~~Such~~] fee shall not be assessed more than one (1) time per calendar year.

(c) An[~~Any~~] establishment licensed under KRS Chapter 316 that requires a re-inspection within a period of three (3) months following a routine inspection, due to a deficiency found by the inspector of the Board of Funeral Directors and Embalmers of the Commonwealth of Kentucky on a[such] routine inspection, shall be assessed a re-inspection fee of \$200. This fee shall be paid regardless of any disciplinary action that otherwise may be taken against the establishment for the failure of the inspection.

(d) An[~~Any~~] establishment licensed under KRS Chapter 316 may request an inspection by the inspector of the Board of Funeral Directors and Embalmers of the Commonwealth of Kentucky, and shall pay a fee of \$100 for the[~~one hundred dollars (\$100) for such~~] inspection.

(e) If an establishment fails three (3) consecutive inspections within a period of six (6) months, any[~~and all~~] subsequent inspections required to determine if the failures[~~whether such failure(s)~~] have been cured shall require payment of a fee of \$200 for each subsequent[such] inspection. In an instance of three (3) consecutive failures of inspections within six (6) months, the board may also, in its sole discretion, direct that the establishment in question cease operations for an appropriate period of time to permit the establishment to become compliant, and may assess a fine based upon the violations and failure to correct

same.

(f) Inspection fees will be invoiced by the board to the licensee, and will not be due at the time of the inspection.

Section 6[7]. Establishment Manager[~~Supervisor~~]. (1) Each[~~facility~~] establishment shall have a Kentucky-licensed funeral director,~~[and]~~ a Kentucky-licensed embalmer, or an individual licensee as required by KRS 316.125(2)(b)[5] to manage and supervise the establishment[~~facility~~].

(2) The establishment shall notify the board of a change of the funeral director or the establishment manager[~~embalmer supervisor~~] by submitting the Information and Name Change Application signed by the licensed owner and the new establishment manager[~~supervisor~~] within five (5) working days of the change.

(3) An establishment manager[A-supervisor] who leaves the employment of an establishment shall notify the board in writing within five (5) working days of the departure.

Section 7[8]. Transferability. (1) Establishment licenses shall not be transferable.

(2) If a sale or lease occurs:

(a) The existing establishment license may remain in force by mutual consent of the parties for a period of thirty (30) days or until the next regularly scheduled board meeting, whichever occurs[comes] first.

(b) During the transition period, the establishment shall be operated under the name shown on the existing license until a new license is issued.

(c) An application for a new license shall be submitted for review at the next board meeting following the sale or lease.

(3) If a relocation or name change occurs, an Information and Name Change Application shall be submitted to the board.

(4)(a) Following the death of a Kentucky-licensed owner, funeral director, or embalmer, the establishment may operate for ninety (90) days while under temporary supervision by a licensed funeral director or embalmer. A licensee who is already identified as the establishment manager[~~supervisor~~] for another establishment under KRS 316.125(4) may act as the temporary establishment manager[~~supervisor~~] for the establishment under this section for the limited ninety (90) day period.

(b) The temporary establishment manager[~~supervisor~~] shall be identified to the board in writing by letter within fifteen (15) days of the death of the Kentucky-licensed owner, funeral director, or embalmer.

(c) A licensee may be the temporary establishment manager[~~supervisor~~] for only one (1) establishment at a time.

Section 8[9]. Opening of an Establishment. (1) An establishment shall not operate or be opened for business prior to passing an inspection by the state board inspector and the issuance of an establishment license by the board for that establishment.

(2) To apply for an establishment license, the following shall be submitted to the board:

(a) A completed Establishment Application;

(b) The fee required by these administrative regulations[204 KAR 15:030, Section 4];

(c) A picture of the establishment and signage;

(d) A picture of the establishment manager;

(e) If purchasing the establishment, a certified copy of the property deed or other document demonstrating the property transfer and applicant's ownership[notarized letter from the seller];

(f) If a corporation, the articles of incorporation;

(g) If a partnership, the partnership agreement; ~~[and]~~

(h) If a limited liability company, the LLC agreement; ~~and~~

(i) If the property is not owned by the applicant, a commercial lease, certificate of occupancy, or other legal document that demonstrates that the applicant has possession and control of the premises sufficient to be responsible for the property being configured to meet the requirements of these regulations.

(3) Violation of this section shall be grounds for denial of the application for the license by the board.

(4) All establishment licenses shall expire July 31 of each year. Establishments shall renew by submitting the following to the board:

- (a) An Establishment Renewal Application;
- (b) The renewal fee established in KRS 316.130(4) and 201 KAR 15:030; and
- (c) A list of all licensed funeral directors and embalmers affiliated with the establishment.

Section 9[40]. Advertising and Signage. (1) An establishment shall use the exact name listed on the license for the establishment in all advertisements and signage.

(2) Descriptive terms shall be distinctly separated from the name of the establishment in all signage and advertisements unless registered as part of the official name.

(3) Any advertising, designation, or signage for the funeral establishment shall match the classification on the establishment's license.

Section 10. Closure of an Establishment. (1) If[At any time] an establishment is to be closed, for any reason, the establishment licensee shall notify the board that ~~the[such]~~ establishment is to be closed, and whether ~~the[such]~~ closure is permanent[,] or for a specified period of time.

(2) ~~An[Any]~~ establishment that is closing shall give notice of closure to the Office of the Attorney General together with a listing of any pre-need contracts that remain in effect for the closing establishment.

(3) The licensee for a closing establishment shall give written notice of closure to ~~any~~ clients with whom the establishment has a pre-need contract, and shall include in that notice how the establishment intends to honor its contractual obligation.

Section 11. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "Establishment Application", 9/2019/2017;
 - (b) "Information and Name Change Application", 9/2019/2017; and
 - (c) "Establishment Renewal Application", 2017.
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Embalmers and Funeral Directors, 9114 Leesgate Rd, Ste 4, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. to 4:30 p.m.

HAROLD E. CORDER, Board Chair

APPROVED BY AGENCY: June 13, 2019

FILED WITH LRC: June 14, 2019 at 11 a.m.

CONTACT PERSON: David C. Trimble, General Counsel, 911 Leawood Drive, Frankfort, Kentucky 40601, phone (502) 782-8823, fax (502) 564-3969, email davidc.trimble@ky.gov.

BOARDS AND COMMISSIONS
Board of Embalmers and Funeral Directors
(As Amended at ARRS, September 16, 2019)

201 KAR 15:120. Requirements for applicants holding a license in another state.

RELATES TO: KRS 316.140(1)

STATUTORY AUTHORITY: KRS 316.140, 316.210(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 316.140(1) authorizes the Board of Embalmers and Funeral Directors to issue a license to an applicant that is licensed in another state and who has met the same or similar requirements for a license as the standards set out in KRS 316.030. This administrative regulation establishes the criteria for determining whether applicants who are licensed in another state qualify for a Kentucky embalmer's or a Kentucky funeral director's license.

Section 1. (1) The board shall accept an applicant licensed in another state as eligible to apply for an embalmer's or funeral

director's license who has:

(a) A diploma from a school of mortuary science that is accredited by the American Board of Funeral Service Education or its predecessor; and

(b) Either:

1. Thirty (30) semester or forty-five (45) quarter hours of college credit from an accredited college or university as shown on an official transcript;[,] or

2. Engaged in the fulltime practice of embalming or funeral directing under licensure for ten (10) of the twelve (12) years immediately preceding the date of the application as demonstrated by the submission of W-2 forms or an affidavit from two (2) licensed embalmers or funeral directors in his state of original licensure which verify that he has been so engaged in practice full time.

(2) An applicant from another state shall:

(a) Submit a copy of his or her current license from the state in which he is licensed;

(b) Pass the current Kentucky examination or examinations for a funeral director license or embalmer license or both, as applicable;

(c) Submit a recently-completed (within the preceding ninety (90) days) criminal justice information system (CJIS) report obtained by the applicant from the Federal Bureau of Investigation (FBI);

(d) Inform the board of any disciplinary actions in states where he or she held a license; and

(e)[(4)] Pay the examination fee and the fees required by 201 KAR 15:030.

HAROLD E. CORDER, Board Chair

APPROVED BY AGENCY: June 13, 2019

FILED WITH LRC: June 14, 2019 at 11 a.m.

CONTACT PERSON: David C. Trimble, General Counsel, 911 Leawood Drive, Frankfort, Kentucky 40601, phone 502-782-8823, fax 502-564-3609, email davidc.trimble@ky.gov.

BOARDS AND COMMISSIONS
Board of Embalmers and Funeral Directors
(As Amended at ARRS, September 16, 2019)

201 KAR 15:125. Surface transportation permit.

RELATES TO: KRS 316.165

STATUTORY AUTHORITY: KRS 316.165, 316.210

NECESSITY, FUNCTION, AND CONFORMITY: KRS 316.210

authorizes[requires] the Board of Embalmers and Funeral Directors to promulgate administrative regulations to carry out and enforce the provisions of KRS Chapter 316. KRS 316.165(1) authorizes[(3)–requires] the board to issue a permit to an applicant for the sole and limited purpose of being allowed to provide surface transportation of dead human bodies[remains]. This administrative regulation establishes the criteria for issuance of these[such] permits.

Section 1. Application. (1) An applicant[Any person] seeking a permit to provide surface transportation for dead human bodies[remains] shall be of the age of eighteen (18) prior to submitting an application.

(2) An applicant[All persons] applying for a permit to provide surface transportation and removal services for dead human bodies[remains] shall submit:

(a) A completed and signed application form, "Surface Transportation & Removal Permit Application", 9/["Application for Permit to Transport Dead Human Remains"], 2019;

(b) A fee in the amount of \$150;

(c) Evidence of training and compliance with the standards of the Occupational Safety and Health Administration for universal precautions and blood-borne pathogens, 29 Code of Federal Regulations (C.F.R.) 1910.1030;

(d) Two (2) passport-sized photographs of the applicant;

(e) An official copy of a criminal justice information system

(CJIS) report obtained from the Federal Bureau of Investigation no more than ninety (90) days prior to the application; and

(f) Evidence of possession and control~~[,]~~ or ownership of an appropriate vehicle and necessary supplies for surface transportation of dead human ~~bodies~~~~[remains]~~.

(3)(a) An appropriate vehicle shall have enclosed cargo space of sufficient size to transport a dead human body securely and without exposure to weather.

(b) Necessary supplies shall include:

1. Mortuary ~~or~~/ambulance cot;
2. Collapsible or flexible stretcher;
3. Sheets and cot cover;
4. Pillow or head block;
5. Rubber or plastic sheeting;
6. Towels;
7. Zippered mortuary body bag or disaster pouch;
8. Straps;
9. Protective clothing; and
10. Sanitary accessories.

Section 2. Examination. (1) ~~An applicant~~~~[Any person]~~ seeking a surface transportation permit shall be required to pass an examination on Kentucky laws and transport procedures. The examination fee shall be seventy-five (75) dollars and may be paid at the time of application or at the time of examination.

(2) The examination shall be administered by the board concurrently with other monthly examinations.

(3) The board shall offer a training course related to the subject matter of the examination.

Section 3. Scope of Permit. (1) Permit holders shall only engage in surface transportation of dead human ~~bodies~~~~[remains]~~ requested by an authorized person from the establishment by which the permit holder is employed. Surface transportation shall be limited to obtaining the dead human ~~bodies~~~~[remains]~~ from the location from which the transportation services were requested, and transport to the establishment by which the permit holder is employed.

(2) Permit holders shall present a photo identification to the person or establishment requesting transport, to establish that the permit holder is employed by the establishment to which transport is being requested.

(3) Permit holders shall not engage in any services of funeral directing or embalming or distribute any documents or materials related to such services.

(4) Permit holders may only be employed by one (1) establishment at one (1) time.

(5) Permit holders shall not be required to use a casket for transportation of dead human ~~bodies~~~~[remains]~~, but shall be required to use a container as may be required by the above referenced OSHA guidelines.

(6) No individual who obtains or holds a permit from this board to transport dead human bodies may use transport removals performed under that permit to accumulate the number of removals required to complete an apprenticeship. All apprenticeship removals shall be performed within the requirements of the apprenticeship and under supervision, to the extent set forth in these administrative regulations. Hours accumulated in performing removals under a Transport Permit will not be counted toward the apprentice's weekly work hours requirement.

Section 4. Permit Issuance and Renewal. (1) The Surface Transportation Permit issued or renewed under this administrative regulation shall be effective for a period of one (1) year from its date of issuance.

(2) Renewal of the Surface Transportation Permit may be effected by sending to the board:

(a) A completed Surface Transportation and Removal Permit Application with the Renewal box checked. An applicant for renewal need not include any information already given on the original application, but shall include on the form any new or changed information;

(b) A renewal fee of fifty (50) dollars; and

(c) Evidence that the permit holder has in his or her possession or control an acceptable vehicle and the requisite equipment and supplies to perform surface transportation of dead human bodies.

Section ~~5~~~~[3]~~. Incorporation by Reference. (1) ~~"Surface Transportation & Removal Permit Application", 10/["Application for Permit to Transport Dead Human Remains",]~~2019, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Board of Embalmers and Funeral Home Directors, 9114 Leesgate Rd., Suite 4, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. to 4:30 p.m.

HAROLD E. CORDER, Board Chair

APPROVED BY AGENCY: June 13, 2019

FILED WITH LRC: June 14, 2019 at 11 a.m.

CONTACT PERSON: David C. Trimble, General Counsel, 911 Leewood Drive, Frankfort, Kentucky 40601, phone 502-782-8823, fax 502-564-3969, email davidc.trimble@ky.gov.

**TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(As Amended at ARRS, September 16, 2019)**

301 KAR 1:185. Pay lakes.

RELATES TO: KRS 150.470, 150.990

STATUTORY AUTHORITY: KRS 150.025(1)(h), 150.175(24), 150.660

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1)(h) authorizes the department to promulgate administrative regulations reasonably necessary to carry out the purposes of KRS Chapter 150. KRS 150.175(24) establishes a pay lake license that authorizes the holder to operate privately-owned impounded waters for fishing purposes for which a fee is charged. KRS 150.660 authorizes a person to establish a pay lake subject to the approval of the Commissioner of the department. This administrative regulation establishes the requirements for pay lake operators.

Section 1. Definitions. (1) "Pay lake" means a privately-owned, impounded body of water where a daily fee is charged to fish, and is open to the public.

(2) "Pay lake operator" means a person who holds a valid pay lake license, as established in 301 KAR 3:022.

(3) "Trophy catfish" means a:

- (a) Blue or flathead catfish that is a minimum of thirty-five (35) inches in length; or
- (b) Channel catfish that is a minimum of twenty-eight (28) inches in length.

Section 2. Pay Lake License and Signage. (1) A person shall not operate a pay lake without a valid pay lake license.

(2) A pay lake license shall be transferable, but only for the same pay lake, except that no license may be transferred while an enforcement action is pending.

(3) A pay lake operator shall post clearly visible signage stating:

- (a) The water body of origin of stocked catfish and any associated consumption advisories, if applicable; and
- (b) Fish handling policies if catch and release fishing is offered.

Section 3. Documentation and Fish Stocking Requirements. (1) A pay lake shall not accept catfish that have been gifted to them.

(2) A pay lake shall save all receipts for three (3) years from the date of purchase, for each fish order received, and ~~the receipts shall include:~~~~include the information established in paragraphs (a) through (c) of this subsection.]~~

(a) The name, address, and telephone number of:

1. The hatchery, if obtained from a hatchery; or
2. The commercial fisherman and driver who provided the fish,

if obtained from public waters ~~and~~:

(b) Purchase dates; and

(c) The following details of fish by species, except catfish shall be recorded with separate entries for trophy and non-trophy catfish of each species, which includes the:

1. Estimated number of fish;
2. Poundage; and
3. Waterbody of origin.

(3) A pay lake may stock trophy catfish from public waters up to 750 pounds per surface acre of water per stocking, with a maximum annual limit of up to 2,250 pounds per surface acre of water per calendar year.

Section 4. Non-conforming Pay Lakes. Any lake not meeting the definition of a pay lake, as established in Section 1 of this administrative regulation, shall not qualify for a pay lake license, except that any non-conforming pay lake that was previously licensed as a pay lake for all license years 2008 through 2018 inclusive, shall be permitted to renew a pay lake license until the pay lake operator does not purchase a pay lake license for one (1) annual license period or the pay lake license is revoked as established in Section 6 of this administrative regulation. Notwithstanding any other provision, non-conforming pay lake licenses are non-transferable, and shall not be renewed after the 2054-2055 license year.

Section 5. Pay Lakes With Trophy Catfish From Public Waters.

(1) There shall be a maximum of thirty-five (35) pay lakes with trophy catfish originating from public waters in any pay lake license year.

(2) If there are more than thirty-five (35) licensed pay lakes, as established in subsection (1) of this section, at the effective date of this administrative regulation, each licensed pay lake shall be permitted to renew a pay lake license until the pay lake operator does not purchase a pay lake license for one (1) annual license period.

(3) If at the end of a pay lake license year, less than thirty-five (35) pay lake licenses were issued, as established in subsection (1) of this section, then the department shall issue pay lake licenses on a first-come, first-served basis beginning on the first work day of the next license year.

Section 6. Pay Lake License Revocation. (1) A pay lake operator who violates this administrative regulation or is convicted or enters a guilty plea to any state or federal fish or game violation shall have his or her pay lake license revoked for a period of three (3) months for a first offense, one (1) year for a second offense, and two (2) years for a third or subsequent offense, except any revocation of non-conforming pay lake licenses shall be permanent.

(2) A pay lake operator whose pay lake license is denied, revoked, or suspended may request an administrative hearing as established in KRS Chapter 13B.

(3) A request for a hearing shall be in writing and postmarked or delivered in person to the department no later than thirty (30) days after notification of the denial or revocation.

(4) Upon receipt of the request for a hearing, the department shall proceed as established in KRS Chapter 13B.

(5) The hearing officer's recommended order shall be considered by the Commissioner and the Commissioner shall issue a final order as established in KRS Chapter 13B. Approved by the Fish and Wildlife Commission

RICH STORM, Commissioner

DON PARKINSON, Secretary

APPROVED BY AGENCY: July 15, 2019

FILED WITH LRC: July 15, 2019 at 10 a.m.

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, fax (502) 564-0506, email fwpubliccomments@ky.gov.

TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(As Amended at ARRS, September 16, 2019)

301 KAR 1:201. Taking of fish by traditional fishing methods.

RELATES TO: KRS 150.010, 150.170, 150.175, 150.340, 150.620, 150.990

STATUTORY AUTHORITY: KRS 150.025(1), 150.470

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish seasons for the taking of fish and wildlife, to regulate creel limits and methods of take, and to make these requirements apply to a limited area. KRS 150.470 authorizes the department to promulgate administrative regulations for creel and size limits for fish. This administrative regulation establishes fish size limits, daily creel limits, and possession limits for fishing.

Section 1. Definitions. (1) "Artificial bait" means a lure, bare hook, or fly made of wood, metal, plastic, feathers, preserved pork rind, or a similar inert material.

(2) "Catfish" means a blue catfish, channel catfish, or flathead catfish.

(3) "Chumming" means placing substances in the water for the purpose of attracting fish to a particular area.

(4)~~[(3)]~~ "Culling" means releasing a previously caught fish that an angler has kept as a part of a daily creel limit and replacing it with another fish of the same species.

(5)~~[(4)]~~ "Daily creel limit" means the maximum number of a particular species or group of species a person may legally take in one (1) calendar day while fishing.

(6)~~[(5)]~~ "Lake" means impounded waters from the dam upstream to the first riffle on the main stem river and tributary streams.

(7)~~[(6)]~~ "Possession limit" means the maximum number of unprocessed fish a person may hold after two (2) or more days of fishing.

(8)~~[(7)]~~ "Processed fish" means a fish that has been gutted, with the head removed.

(9)~~[(8)]~~ "Release" means to return a fish to the water from which it was taken immediately after removing the hook.

(10)~~[(9)]~~ "Shad" means a live gizzard shad or threadfin shad.

(11)~~[(10)]~~ "Single hook" means a hook with no more than one (1) point.

(12)~~[(11)]~~ "Size limit" means the minimum legal length of a fish that is measured by laying the fish flat on a ruler with the mouth closed and tail lobes squeezed together.

(13)~~[(12)]~~ "Slot limit" means a size range of a fish species that shall be released by an angler.

(14)~~[(13)]~~ "Traditional fishing methods" means the act of taking or attempting to take for noncommercial purposes any freshwater fish species using:

- (a) Hook and line in hand; or
- (b) Rod in hand.

(15) "Trophy catfish" means a:

(a) Blue or flathead catfish that is a minimum of thirty-five (35) inches in length; or

(b) Channel catfish that is a minimum of twenty-eight (28) inches in length.

(16)~~[(14)]~~ "Unprocessed fish" means the whole fish prior to being processed.

Section 2. Statewide Limits and Requirements. (1) A person taking fish from public or private waters using traditional fishing methods shall observe the daily creel limits and size limits established in paragraphs (a) through ~~(j)~~~~[(k)]~~ of this subsection, except as established in Sections 3 through 8 of this administrative regulation or pursuant to 301 KAR 1:180:

(a) Black bass daily creel limit, six (6).

1. Largemouth bass and smallmouth bass size limit, twelve (12) inches.

2. Kentucky bass and Coosa bass, no size limit;

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(b) Rock bass daily creel limit, fifteen (15); no size limit;

(c) Sauger, walleye, and any hybrid thereof daily creel limit, singly or in combination, six (6); size limit, fourteen (14) inches;

(d) Muskellunge daily creel limit, one (1); size limit, thirty (30) inches;

(e) Chain pickerel daily creel limit, five (5); no size limit;

(f) White bass and hybrid striped bass daily creel limit, singly or in combination, fifteen (15); size limit, no more than five (5) fish in a daily creel limit or ten (10) fish in a possession limit shall be fifteen (15) inches or longer;

(g) Striped bass daily creel limit, five (5); size limit, fifteen (15) inches;

(h) Crappie daily creel limit, twenty (20); no size limit;

(i) Trout.

1. No culling statewide.

2. Rainbow trout daily creel limit, eight (8); no size limit.

3. Brown trout daily creel limit, one (1); size limit, sixteen (16) inches.

4. Brook trout, catch and release only.[:]

5. Cutthroat trout daily creel limit, one (1); size limit, twenty (20) inches;

(j) Redear sunfish daily creel limit, twenty (20); no size limit; and

(k) Paddlefish daily creel limit, two (2); no size limit; and[:]

(l) Catfish daily creel limit is unlimited; no size limit, except that only one (1) trophy catfish of each species may be harvested daily.

(2) The possession limit shall be two (2) times the daily creel limit, as established in Section 3 of this administrative regulation.

(3) A person shall release grass carp caught from a lake owned or managed by the department.

(4) A person shall release any:

(a) Lake sturgeon; or

(b) Alligator gar.

(5) A person shall release fish:

(a) Below the minimum size limits established by this administrative regulation;

(b) Within a protected slot limit established by this administrative regulation; or

(c) Of a particular species if a person already possesses the daily creel limit for that species.

(6) A person shall not possess more than one (1) daily creel limit of processed or unprocessed fish while:

(a) Fishing;

(b) On the shoreline; or

(c) On the water.

(7) A fishing tournament organizer or representative, excluding a tournament angler, may possess more than the daily creel limit of tournament caught fish:

(a) At the weigh-in site;

(b) At the release site; or

(c) While transporting live fish from a remote weigh-in site back to the water body of origin for release.

(8) A fishing tournament organizer or representative, excluding a tournament angler, may possess more than the daily creel limit of unprocessed tournament caught fish that expired at the sites established in subsection (7) of this section for subsequent disposal by one (1) of the methods established in paragraphs (a) through (c) of this subsection:

(a) Bagged, sealed, and placed in a garbage dump;

(b) Donated to a charity for the purpose of human consumption; or

(c) Transferred to a conservation officer or another agent of the department.

(9) A person shall not remove the head or tail of any fish for which a size limit or daily creel limit exists while:

(a) Fishing;

(b) On the shoreline; or

(c) On the water.

(10) A person may possess sport fish below the size limit or beyond the possession limit if the person:

(a) Obtains the fish from a licensed fish propagator or other legal source; and

(b) Retains a receipt or other written proof that the fish were legally acquired.

(11) A person shall release all caught trout unless the person:

(a) Has a valid trout permit;

(b) Is exempted from trout permit requirements pursuant to KRS 150.170(2); or

(c) Is fishing in a licensed pay lake stocked with trout by the lake operator.

(12) A person fishing in an artificial bait-only area shall not attach any of the items established in paragraphs (a) through (h) of this subsection to the artificial bait:

(a) An insect;

(b) Minnow;

(c) Fish egg;

(d) A worm;

(e) Corn;

(f) Cheese;

(g) Cut bait; or

(h) A similar organic bait substance including dough bait and putty or paste-type bait designed to attract fish by taste or smell.

(13) The fishing season shall be open year-round.

Section 3. Exceptions. All other provisions of this administrative regulation shall apply to the bodies of water listed in this section, with the exceptions established in subsections (1) through (70) of this section. (1) Bad Branch, Letcher County. A person shall only fish with artificial bait with a single hook;

(2) Barkley Lake.

(a) Largemouth bass and smallmouth bass size limit, fifteen (15) inches.

(b) Crappie size limit, ten (10) inches;

(3) Barren River Lake.

(a) Crappie size limit, ten (10)[~~nine (9)~~] inches.

(b) Largemouth and smallmouth bass size limit, fifteen (15) inches, except that a person may keep one (1) bass under fifteen (15) inches within a daily creel limit.

(c) Blue and channel catfish aggregate daily creel limit of fifteen (15), only one (1) of which shall be longer than twenty-five (25) inches.

(d) Barren River Lake shall extend up:

1. Barren River to the Highway 100 bridge;

2. Long Creek to the Highway 100 bridge;

3. Beaver Creek to the Highway 1297 bridge;

4. Skaggs Creek to the Mathews Mill Road bridge; and

5. Peter Creek to the Peter Creek Road bridge;

(4) Beaver Lake, Anderson County. A person shall not possess shad or use shad as bait;

(5) Beech Fork Reservoir, Powell County.

(a) Largemouth bass size limit, fifteen (15) inches.

(b) Bluegill daily creel limit, fifteen (15);

(6) Bert Combs Lake, Clay County. A person shall not possess shad or use shad as bait;

(7) Boltz Lake, Grant County. A person shall not possess shad or use shad as bait;

(8) Briggs Lake, Logan County. A person shall not possess shad or use shad as bait;

(9) Buckhorn Lake.

(a) Largemouth bass and smallmouth bass size limit, fifteen (15) inches.

(b) Muskellunge size limit, forty (40) inches.

(c) Crappie size limit, nine (9) inches;

(10) Carnico Lake, Nicholas County.

(a) Largemouth bass size limit, fifteen (15) inches.

(b) Sunfish daily creel limit, fifteen (15);

(11) Carr Creek Lake.

(a) Largemouth bass and smallmouth bass size limit, fifteen (15) inches.

(b) Crappie size limit, nine (9) inches;

(12) Carter Caves State Park Lake, Carter County.

(a) Fishing shall be during daylight hours only.

(b) Largemouth bass.

1. There shall be a slot limit between twelve (12) and fifteen (15) inches.

2. The daily creel limit shall not include more than one (1) fish greater than fifteen (15) inches.

(c) A person shall not possess shad or use shad as bait;
(13) Cave Run Lake.

(a) Largemouth bass. There shall be a slot limit between thirteen (13) and sixteen (16) inches.

(b) Smallmouth bass size limit, eighteen (18) inches.

(c) Muskellunge size limit, thirty-six (36) inches.[:]

(d) Cave Run Lake shall extend up:

1. Scott's Creek to the Highway 801 culvert;

2. Beaver Creek to the Highway 1274 culvert;

3. North Fork Creek to the confluence of Craney Creek;

4. Licking River to the Highway 772 bridge; and

5. Ramey Creek to include the pool of water north of Highway 801;

(14) Cedar Creek Lake, Lincoln County. Largemouth bass size limit, twenty (20) inches; daily creel limit, one (1);

(15) Chimney Top Creek, Wolfe County. A person shall only fish with artificial bait[Brown trout size limit, sixteen (16) inches; daily creel limit, one (1); Artificial bait only];

(16) Corinth Lake, Grant County. A person shall not possess shad or use shad as bait;

(17) Cumberland Lake.

(a) 1. Largemouth bass size limit, fifteen (15) inches.

2. Smallmouth bass size limit, eighteen (18) inches.

3. Striped bass size limit, twenty-two (22) inches; daily creel limit, two (2).

4. Crappie size limit, ten (10) inches.

(b) Cumberland Lake shall extend up:

1. The Cumberland River to Cumberland Falls;

2. The Big South Fork to Devil's Jump;

3. The Rockcastle River to The Narrows; and

4. The Laurel River to Laurel River Dam;

(18) Cumberland River from Wolf Creek Dam downstream to the Kentucky-Tennessee state line and tributaries, except Hatchery Creek in Russell County as established in subsections[(33)-and] (34) and (35) of this section.

(a) Brown trout size limit, twenty (20) inches; daily creel limit, one (1).

(b) Brook trout size limit, fifteen (15) inches; daily creel limit, one (1).

(c) Rainbow trout. There shall be a slot limit between fifteen (15) and twenty (20) inches; daily creel limit, five (5), which shall not include more than one (1) fish greater than twenty (20) inches.

(d) A trout permit shall be required in order to fish the Cumberland River below Wolf Creek Dam to the Tennessee state line including the Hatchery Creek and all other tributaries upstream to the first riffle.

(e) Chumming shall not be permitted in the Cumberland River below Wolf Creek Dam to the Tennessee state line, including the Hatchery Creek and all other tributaries upstream to the first riffle;

(19) Cumberland River below Barkley Lake. Fishing is prohibited at the mouth of the lock chamber, as designated by signs.

(20) Dale Hollow Lake.

(a) Smallmouth bass. There shall be a slot limit between sixteen (16) and twenty-one (21) inches. The daily creel limits shall not include more than one (1) fish less than sixteen (16) inches long and one (1) fish greater than twenty-one (21) inches long.

(b) Walleye and walleye hybrids, daily creel limit, five (5); size limit, sixteen (16) inches.

(c) Sauger daily creel limit, ten (10); size limit, fourteen (14) inches.

(d) Rainbow trout and brown trout, no size limit; daily creel limit, seven (7), singly or in combination.

(e) Largemouth bass size limit, fifteen (15) inches.

(f) Black bass aggregate daily creel limit, five (5), no more than two (2) of which shall be smallmouth bass.

(g) Crappie size limit, ten (10) inches; daily creel limit, fifteen (15);

(21)[(20)] Dewey Lake.

(a) Largemouth bass and smallmouth bass size limit, fifteen (15) inches.

(b) Blue and channel catfish aggregate creel limit of fifteen (15), only one (1) of which shall be longer than twenty-five (25) inches.

(c) Muskellunge size limit, thirty-six (36) inches;

(22)[(24)] Dix River for two (2) miles downstream from Herrington Lake Dam. A person shall only fish with artificial bait;

(23)[(22)] Doe Run Lake, Kenton County.

(a) Largemouth bass size limit, fifteen (15) inches; daily creel limit, three (3).

(b) Channel catfish daily creel limit, four (4).

(c) A person shall not possess shad or use shad as bait;

(24)[(23)] Dog Fork, Wolfe County. A person shall only fish with an artificial bait with a single hook;

(25)[(24)] Elkhorn Creek, downstream from the confluence of the North and South forks to the first shoal located 3,400 feet above its confluence with the Kentucky River, as posted with signs. Largemouth bass and smallmouth bass.

(a) There shall be a slot limit between twelve (12) and sixteen (16) inches.

(b) The daily creel limit shall not include more than two (2) fish greater than sixteen (16) inches;

(26)[(25)] Elmer Davis Lake, Owen County.

(a) Largemouth bass. There shall be a slot limit between twelve (12) and fifteen (15) inches.

(b) A person shall not possess shad or use shad as bait;

(27)[(26)] Fishtrap Lake.

(a) Largemouth bass and smallmouth bass size limit, fifteen (15) inches.

(b) Crappie size limit, nine (9) inches.

(c) Blue and channel catfish aggregate daily limit of fifteen (15), only one (1) of which shall be longer than twenty-five (25) inches;

(28)[(27)] Floyd's Fork Creek, from Highway 60 downstream to Bardstown Road in Jefferson County. Largemouth and smallmouth bass size limit, fifteen (15) inches; daily creel limit, one (1);

(29)[(28)] Golden Pond at the Visitors' Center at Land Between the Lakes. Channel catfish daily creel limit, five (5); size limit, fifteen (15) inches;

(30)[(29)] General Butler State Park Lake, Carroll County.

(a) Largemouth bass size limit, fifteen (15) inches; daily creel limit, three (3).

(b) Channel catfish daily creel limit, four (4).

(c) A person shall not possess shad or use shad as bait;

(31)[(30)] Grayson Lake. Largemouth bass and smallmouth bass size limit, fifteen (15) inches;

(32)[(31)] Greenbo Lake, Greenup County.

(a) A person shall not possess shad or use shad as bait.

(b) Bluegill and sunfish daily creel limit, fifteen (15) fish;

(33)[(32)] Green River Lake.

(a) Crappie size limit, nine (9) inches.

(b) Muskellunge size limit, thirty-six (36) inches.[:]

(c) Green River Lake shall extend up:

1. Green River to the Snake Creek Boat Ramp;

2. Robinson Creek to the Highway 76 Bridge; and

3. Casey Creek to the Arnolds Landing Boat Ramp;

(34)[(33)] Hatchery Creek, upper section as established by signs, Russell County. Rainbow trout, brown trout, and brook trout, no size limit; daily creel limit, five (5), singly or in combination;

(35)[(34)] Hatchery Creek, lower section as established by signs, Russell County. A person fishing for trout shall:

(a) Only use artificial bait; and

(b) Release all trout;

(36)[(35)] Jericho Lake, Henry County.

(a) Largemouth bass size limit, fifteen (15) inches.

(b) A person shall not possess shad or use shad as bait;

(37)[(36)] Kentucky Lake and the canal connecting Kentucky and Barkley lakes.

(a) Largemouth bass and smallmouth bass size limit, fifteen (15) inches.

(b) Crappie size limit, ten (10) inches;[(37) Kentucky River WMA, Boone Tract, Benjy Kinman Lake. Catfish daily creel limit, four (4);]

(38) Kentucky River WMA, Boone Tract, excluding Benjy Kinman Lake.

(a) Largemouth bass size limit, fifteen (15) inches; daily creel limit, one (1).

(b) ~~Crappie daily creel limit, fifteen (15).~~

(c) Sunfish daily creel limit, fifteen (15).

(c) ~~(d)~~ Catfish daily creel limit, four (4);

(39) Lake Blythe, Christian County. Largemouth bass. There shall be a slot limit between twelve (12) and fifteen (15) inches;

(40) Lake Chumley, and the department-owned property surrounding the lake, Boyle and Lincoln counties. Closed to public access from one-half (1/2) hour after sunset through one-half (1/2) hour before sunrise;

(41) Lake Malone, Muhlenberg and Logan counties. Largemouth bass. There shall be a slot limit between twelve (12) and fifteen (15) inches;

(42) Lake Mingo, Jessamine County. A person shall not possess shad or use shad as bait;

(43) Lake Reba, Madison County. A person shall not possess shad or use shad as bait;

(44) Lake Shelby, Shelby County.

(a) Largemouth bass size limit, fifteen (15) inches; daily creel limit, three (3).

(b) Channel catfish daily creel limit, four (4).

(c) A person shall not possess shad or use shad as bait;

(45) Laurel River Lake.

(a) Largemouth bass size limit, fifteen (15) inches.

(b) Smallmouth bass size limit, eighteen (18) inches; daily creel limit, two (2).

(c) Crappie size limit, nine (9) inches; daily creel limit, fifteen (15);

(46) Lebanon City Lake (Fagan Branch), Marion County. Largemouth bass and smallmouth bass. There shall be a slot limit between twelve (12) and fifteen (15) inches;

(47) Lincoln Homestead Lake, Washington County.

(a) A person shall not fish except during daylight hours.

(b) Largemouth bass size limit, fifteen (15) inches; daily creel limit, three (3).

(c) Channel catfish daily creel limit, four (4).

(d) A person shall not possess shad or use shad as bait;

(48) Marion County Lake.

(a) Largemouth bass size limit, fifteen (15) inches.

(b) A person shall not possess shad or use shad as bait;

(49) McNeely Lake, Jefferson County. A person shall not possess shad or use shad as bait;

(50) Mill Creek Lake, Powell County.

(a) Largemouth bass size limit, fifteen (15) inches; daily creel limit, three (3).

(b) A person shall not possess shad or use shad as bait;

(51) New Haven Optimist Lake, Nelson County.

(a) Largemouth bass size limit, fifteen (15) inches; daily creel limit, three (3).

(b) Channel catfish daily creel limit, four (4).

(c) A person shall not possess shad or use shad as bait;

(52) Nolin River Lake shall extend up Bacon Creek to Highway 178 and to Wheelers Mill Road Bridge on the Nolin River.

(a) Largemouth bass and smallmouth bass size limit, fifteen (15) inches, except that the daily creel limit may contain one (1) bass under fifteen (15) inches.

(b) Crappie size limit, nine (9) inches;

(53) Ohio River.

(a) White bass, striped bass, and any hybrid thereof, daily creel limit, thirty (30); no more than four (4) in the daily creel limit shall be fifteen (15) inches or greater.

(b) The blue catfish daily creel limit shall be unlimited, except that no more than one (1) fish in the daily creel limit shall be thirty-five (35) inches or longer.

(c) The channel catfish daily creel limit shall be unlimited, except that no more than one (1) fish in the daily creel limit shall be twenty-eight (28) inches or longer.

(d) The flathead catfish daily creel limit shall be unlimited, except that no more than one (1) fish in the daily creel limit shall be thirty-five (35) inches or longer;

(54) Otter Creek, Meade County.

(a) Smallmouth and largemouth bass. There shall be a slot

limit between twelve (12) and sixteen (16) inches.

(b) Daily limit shall not include more than one (1) smallmouth or largemouth bass over sixteen (16) inches;

(55) Paint Creek, between upper Highway 460 Bridge and Highway 40 Bridge, Johnson County. Trout size limit, sixteen (16) inches; daily creel limit, one (1); artificial bait only;

(56) Paintsville Lake. Smallmouth bass size limit, eighteen (18) inches;

(57) Parched Corn Creek, Wolfe County. A person shall only fish with an artificial bait with a single hook;

(58) Pikeville City Lake, Pike County. A person shall release largemouth bass;

(59) Poor Fork and its tributaries in Letcher County downstream to the first crossing of Highway 932. A person shall only fish with an artificial bait with a single hook;

(60) Rockcastle River WMA, all ponds collectively, Pulaski County.

(a) Largemouth bass size limit, fifteen (15) inches; daily creel limit, one (1).

(b) Bluegill and sunfish daily creel limit, ten (10).

(c) Catfish daily creel limit, four (4).

(d) Crappie daily creel limit, fifteen (15);

(61) Rough River Lake.

(a) Crappie size limit, nine (9) inches.

(b) Largemouth bass and smallmouth bass size limit, fifteen (15) inches, except that the daily creel limit may contain one (1) bass under fifteen (15) inches.;

(c) Rough River Lake shall extend up Rough River to the Highway 84 Bridge;

(62) Shanty Hollow Lake, Warren County.

(a) Largemouth bass size limit, fifteen (15) inches.

(b) A person shall not possess shad or use shad as bait;

(63) Shillalah Creek, Bell County, outside the Cumberland Gap National Park. A person shall only fish with an artificial bait with a single hook;

(64) Spurlington Lake, Taylor County. A person shall not possess shad or use shad as bait;

(65) Sympson Lake, Nelson County. Largemouth bass size limit, fifteen (15) inches;

(66) Taylorsville Lake, including the impounded waters of the lake to Dry Dock Road Bridge on the Salt River.

(a) Largemouth bass and smallmouth bass size limit, fifteen (15) inches.

(b) Blue and channel catfish:

1. Aggregate daily creel limit of fifteen (15); and

2. Only one (1) fish of either species in the aggregate daily creel limit shall be longer than twenty-five (25) inches.

(c) Crappie size limit, ten (10) inches; daily creel limit, fifteen (15);

(67) Trammel Creek, Allen County. ~~(a) Brown trout size limit, sixteen (16) inches; daily creel limit, one (1).~~

~~(b)~~ Rainbow trout daily limit, five (5);

(68) Willisburg Park Pond, Washington County.

(a) Largemouth bass size limit, fifteen (15) inches; daily creel limit, one (1).

(b) Catfish daily creel limit, four (4).

(c) Sunfish daily creel limit, fifteen (15);

(69) Wood Creek Lake. Largemouth and smallmouth bass size limit, fifteen (15) inches; and

(70) Yatesville Lake. Largemouth bass and smallmouth bass size limit, fifteen (15) inches.

Section 4. Creel and Size Limits for Waters Containing Rockcastle Strain Walleye. (1) Rockcastle Strain Walleye Waters.

(a) Barren River and tributaries upstream from Lock and Dam 1, including Barren River Lake;

(b) Cumberland River and tributaries above Cumberland Falls;

(c) Kentucky River and tributaries upstream from Lock and Dam 14;

(d) Middle Fork Kentucky River and tributaries;

(e) North Fork Kentucky River and tributaries, including Carr Fork below Carr Creek Lake;

(f) South Fork Kentucky River and tributaries;

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(g) Levisa Fork River and tributaries upstream from Fishtrap Lake, including Fishtrap Lake;
(h) Martins Fork Lake; and
(i) Wood Creek Lake.
(2) There shall be a slot limit between eighteen (18) and twenty-six (26) inches and a daily creel limit of two (2) for walleye in the waters established in subsection (1) of this section.

Section 5. Seasonal Catch and Release for Trout. (1) There shall be a catch and release trout season from October 1 through March 31 for the bodies of water established in subsection (3) of this section.

(2) A person shall:
(a) Only use artificial bait; and
(b) Release all trout.
(3) The streams established in paragraphs (a) through (n) of this subsection shall be open for the catch and release trout season:
(a) Bark Camp Creek in Whitley County;
(b) Beaver Creek from Highway 90 Bridge upstream to Highway 200 Bridge in Wayne County;
(c) Big Bone Creek within Big Bone Lick State Park in Boone County;
(d) Cane Creek in Laurel County;
(e) Casey Creek in Trigg County;
(f) Clear Creek from mouth upstream to 190 Bridge in Bell County;
(g) East Fork of Indian Creek in Menifee County;
(h) Elk Spring Creek in Wayne County;
(i) Floyd's Fork Creek in Jefferson County from Highway 60 downstream to Bardstown Road;
(j) Gunpowder Creek in Boone County;
(k) Left Fork of Beaver Creek in Floyd County from Highway 122 Bridge upstream to the headwater;~~[(k) Middle Fork of Red River in Natural Bridge State Park in Powell County;]~~
(l) Otter Creek in Meade County on the Fort Knox Reservation and Otter Creek Park;
(m) Rock Creek from the Bell Farm Bridge to the Tennessee state line in McCreary County; and
(n) Trammel Creek in Allen County.
(4) There shall be a seasonal catch and release trout season for Swift Camp Creek in Wolf County from October 1 through May 31.

Section 6. Special Limits for Fishing Events. (1) The commissioner may establish special limits for fishing events including:

(a) Size limits for selected species;
(b) Daily creel limits for selected species;
(c) Eligible participants; and
(d) Dates and times of special limits.
(2) An event sponsor shall post signs informing anglers of any special limits for a minimum of twenty-four (24) hours before the event.

Section 7. Creel and Size Limits for Special Lakes and Ponds. (1) The requirements established in paragraphs (a) through (e) of this subsection shall apply to all bodies of water established in the Special Lakes and Ponds list:

(a) Largemouth bass size limit, fifteen (15) inches; daily creel limit, one (1);
(b) Catfish daily creel limit, four (4);
(c) Sunfish or bream daily creel limit, fifteen (15);
(d) Rainbow trout daily creel limit, five (5); and
(e) A person shall not possess shad or use shad as bait.

Section 8. Special Catfish Size Limit Lakes. All lakes established in the Special Catfish Size Limit Lakes list shall have a twelve (12) inch size limit on catfish.

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

(a) "Special Catfish Size Limit Lakes", 2019[2048] edition; and

(b) "Special Lakes and Ponds", 2019[2048] edition.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Fish and Wildlife Resources, #1 Sportsman's Lane, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

RICH STORM, Commissioner
DON PARKINSON, Secretary

APPROVED BY AGENCY: July 10, 2019

FILED WITH LRC: July 12, 2019 at 10 a.m.

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, fax (502) 564-0506, email fwpubliccomments@ky.gov.

**TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(As Amended at ARRS, September 16, 2019)**

301 KAR 1:410. Taking of fish by nontraditional fishing methods.

RELATES TO: KRS 150.010, 150.170, 150.175, 150.235, 150.445, 150.620, 150.990

STATUTORY AUTHORITY: KRS 150.025(1), 150.440, 150.470, 235.280

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish seasons for the taking of fish and wildlife, to regulate bag limits, creel limits, and methods of take, and to make those requirements apply to a limited area. KRS 150.440 requires the department to promulgate administrative regulations for establishing open seasons and creel limits for rough fish by gigging, grabbing, snaring, and snagging. KRS 150.470 requires the department to promulgate administrative regulations for bag or creel limits for fish. KRS 235.280 requires the department to promulgate administrative regulations to govern the fair, reasonable, equitable, and safe use of all waters of the state. This administrative regulation establishes the procedures for taking sport and rough fish by nontraditional fishing methods.

Section 1. Definitions. (1) "Angler" means a person holding a valid resident or nonresident fishing license and includes those persons who are fishing license exempt as established in~~[pursuant to]~~ KRS 150.170.

(2) "Archery equipment" means a long bow, recurve bow, or compound bow incapable of holding an arrow at full or partial draw without aid from the archer.

(3) "Asian carp" means bighead carp, silver carp, black carp, and grass carp.

(4) "Bow fishing" means shooting rough fish with an arrow with a barbed or retractable style point that has a line attached to it for retrieval with archery equipment, a crossbow, or a pneumatic arrow launching device.

(5) "Catfish" means a blue catfish, channel catfish, or flathead catfish.

(6) "Crossbow" means a bow designed or fitted with a device to hold an arrow at full or partial draw without the aid from an archer.

(7)~~[(6)]~~ "Cull" means to release a previously caught fish that an angler has kept as a part of a daily creel limit and replace it with another fish of the same species.

(8)~~[(7)]~~ "Pneumatic arrow launching device" means a device designed to fire an arrow through the use of a compressed air cartridge.

(9)~~[(8)]~~ "Possession limit" means the maximum number of unprocessed fish a person may hold after two (2) or more days of fishing.

(10)~~[(9)]~~ "Temporary aquatic area" means an area temporarily inundated from, but still connected to, a stream, river, or reservoir and that persists only for the duration of the elevated water levels.

(11)~~[(40)]~~ "Temporary pool" means an area temporarily

inundated from, but not connected to, a stream, river, or reservoir.

(12) "Trophy catfish" means a:

(a) Blue or flathead catfish that is a minimum of thirty-five (35) inches in length; or

(b) Channel catfish that is a minimum of twenty-eight (28) inches in length.

Section 2. General Provisions. (1) The daily creel limit for catfish using any non-traditional fishing method shall not include more than one (1) trophy catfish of each species, except as established in Section 7 (3) of this administrative regulation.

(2) The possession limit for paddlefish and trophy catfish shall be two (2) times the daily creel limit for each species.

(3)[(2)] A person shall release any:

(a) Lake sturgeon; or

(b) Alligator gar.

Section 3. Skin Diving, Scuba Diving, and Underwater Spear Fishing. (1) Skin diving or scuba diving shall be prohibited in all lakes owned by the department, except as established in subsections (2), (3), and (4) of this section.

(2) Skin diving and scuba diving shall be allowed in salvage operations if the diver receives prior written permission from:

(a) The department's Division of Law Enforcement; or

(b) The local conservation officer who is assigned to the particular department-owned lake.

(3) Skin diving or scuba diving shall be permitted anytime without prior authorization in cases of emergency involving the possibility of saving human life or in the recovery of a drowning victim.

(4) Skin diving and scuba diving shall be allowed in Greenbo Lake:

(a) In a designated cove marked with signage and buoys;

(b) From April 1 through October 31; and

(c) From 10:00 a.m. to 6:00 p.m. daily.

(5) A person who is skin diving or scuba diving in a designated cove as established in [pursuant to] subsection (4) of this section shall display an international diving flag as established in [pursuant to] 301 KAR 6:030.

(6) Recreational boating and angling shall be prohibited in the designated cove marked with signage and buoys during the times open to skin diving and scuba diving as established in subsection (4) of this section if an international diving flag is present in the cove.

(7) Underwater spearing of fish with a hand held spear or mechanically-propelled spear shall be legal throughout the year in lakes 1,000 surface acres in size or larger, as measured at the normal summer pool level as established in paragraphs (a) and (b) of this subsection.

(a) An angler[A participant] who is spearing fish shall:

1. Be completely submerged in the water where spearing takes place; and

2. ~~[Possess a valid Kentucky fishing license or be license exempt pursuant to KRS 150.170; and~~

3. ~~Only spear rough fish.~~

(b) The daily limit shall be fifteen (15) rough fish, no more than five (5) of which shall be catfish.

Section 4. Sport Fishing Trotlines, Jugging, and Setlines. (1) Each sport fishing trotline, jug line, or setline shall be permanently labeled or tagged with the customer identification number found on the current sport fishing license of the person using it.

(2) Each trotline, jug line, or setline shall be checked by the owner at least once every twenty-four (24) hours, at which time the owner shall:

(a) Bait all hooks; and

(b) Remove all caught fish.

(3) A trotline, setline, or jug line shall be confiscated if it is not:

(a) Properly labeled or tagged; or

(b) Checked or baited at least once every twenty-four (24) hours.

(4) An angler shall not use more than:

(a) Two (2) sport fishing trotlines;

(b) Twenty-five (25) setlines; or

(c) Fifty (50) jug lines.

(5) Multiple anglers in one (1) boat shall not use more than fifty (50) jug lines per boat.

(6) An angler[A person] using a sport fishing trotline shall:

(a) Set the trotline at least three (3) feet below the water's surface;

(b) Not have more than fifty (50) single or multi-barbed hooks; and

(c) Have all hooks at least eighteen (18) inches apart on the trotline.

(7) A person shall not use a jug line or setline with more than one (1) single or multi-barbed hook.

(8) A sport fishing trotline, jug line, or setline shall not be used in the waters established in paragraphs (a) through (d) of this subsection:

(a) In the Tennessee River within 700 yards of Kentucky Dam;

(b) In the Cumberland River below Barkley Dam to the Highway 62 bridge;

(c) In any lake less than 500 surface acres owned or managed by the department, except:

1. Ballard Wildlife Management Area lakes, Ballard County;

2. Peal Wildlife Management Area lakes, Ballard County; and

3. Swan Lake Wildlife Management Area lakes, Ballard County; or

(d) In the areas of the Ohio River established in subparagraphs 1. through 8. of this paragraph:

1. Smithland Dam downstream to a line perpendicular to the end of the outer lock wall;

2. J. T. Meyers Dam downstream to a line perpendicular to the end of the outer lock wall and that portion of the split channel around the southern part of Wabash Island from the fixed weir dam to the first dike;

3. Newburgh Dam downstream to a line perpendicular to the end of the outer lock wall;

4. Cannelton Dam downstream to a line perpendicular to the end of the outer lock wall;

5. McAlpine Dam downstream to the K & I railroad bridge;

6. Markland Dam downstream to a line perpendicular to the end of the outer lock wall;

7. Meldahl Dam downstream to a line perpendicular to the end of the outer lock wall; or

8. Greenup Dam downstream to a line perpendicular to the end of the outer lock wall.

(9) An angler using a trotline, jug line, or setline shall follow all sport fish daily creel limits and size limits as established in [pursuant to] 301 KAR 1:201.

Section 5. Temporary Aquatic Areas and Temporary Pools. (1) The department, with consent of the landowner, may delineate temporary aquatic areas and temporary pools where anglers may take rough fish[may be taken] by any method except:

(a) Poison;

(b) Electrical devices;

(c) Firearms; or

(d) Explosives.

(2) The department shall be authorized to establish the exact dates and times when rough fish may be taken in temporary aquatic areas and temporary pools.

(3)~~[A person shall be required to possess a valid Kentucky fishing license or be license exempt pursuant to KRS 150.170.~~

(4)~~] A person with a valid commercial fishing license may use nets and seines if the nets and seines are appropriately tagged, as established in 301 KAR 1:146.~~

(4)~~[(5)] A person shall first obtain the permission of the landowner before taking rough fish from a temporary pool.~~

Section 6. Giggling and Snagging. (1) Giggling and snagging season shall be February 1 through May 10, except as established in subsections (7) and (9) of this section.

(2) A person shall not:

(a) Gig or snag a sport fish, as established in 301 KAR 1:060, except as established in subsections (7) and (9) of this section;

- (b) Gig or snag from a platform;
- (c) Gig from a boat in ~~any[a] lake[with a surface area of]~~ less than 500 surface acres;
- (d) Gig at night from a boat; or
- (e) Snag from a boat.
- (3) A snagging rod shall be equipped with:
 - (a) Line;
 - (b) Guides;
 - (c) A reel; and
 - (d) One (1) single hook or treble hook attached to the line, except that five (5) hooks, either single or treble, may be used while snagging in:
 - 1. The Green River and its tributaries; or
 - 2. The Rolling Fork River and its tributaries.
- (4) A person who accidentally gigs or snags a sport fish shall immediately return the fish to the water, except as established in subsections (7) and (9) of this section.
- (5) A person shall not gig or snag in the areas or bodies of water established in paragraphs (a) through (f) of this subsection:
 - (a) The Cumberland River below Wolf Creek Dam downstream to the Tennessee line, including Hatchery Creek;
 - (b) Any tributary of the Cumberland River below Wolf Creek Dam to the Tennessee line from the junction of the tributary with the Cumberland River to one-half (1/2) mile upstream;
 - (c) The Middle Fork of the Kentucky River, from Buckhorn Lake Dam downstream to the Breathitt County line in Perry County;
 - (d) The Rough River, below Rough River Lake Dam downstream to the State Highway 54 bridge in Breckinridge and Grayson Counties;
 - (e) Cave Run Lake; or
 - (f) Within 200 yards of any dam on a river or stream, except as established in subsection (7) of this section.
- (6) A person shall not gig in the Tennessee River below Kentucky Lake Dam.
- (7) A person may snag sport fish or rough fish in the Tennessee River below the Kentucky Lake Dam to the U.S. 62 bridge:
 - (a) For twenty-four (24) hours a day from January 1 through May 31; and
 - (b) From sunset to sunrise from June 1 through December 31.
- (8) A person shall not snag in that section of the Tennessee River from the U.S. 62 bridge to the Interstate 24 bridge.
- (9) A person may snag sport fish or rough fish year-round in the section of the Tennessee River from the Interstate 24 bridge to the Ohio River.
- (10) A person shall not snag on the Tennessee River:
 - (a) Under the U.S. 62 bridge;
 - (b) Under the P & L Railroad bridge; or
 - (c) From the fishing piers located below the U.S. 62 bridge.
- (11) There shall not be a daily creel limit for rough fish except:
 - (a) The daily creel limit for rough fish in the Cumberland River below Barkley Lake Dam shall be eight (8), except there shall not be a creel limit on Asian Carp;
 - (b) The daily aggregate creel limit for snagging of rough and sport fish in the Tennessee River below Kentucky Lake Dam shall be eight (8), except there shall not be a creel limit on Asian Carp; and
- (c) 1. The statewide daily creel limit for snagging paddlefish shall be two (2), in all areas outside those established in paragraphs (a) and (b) of this subsection; and
- 2. In an area established in paragraph (a) or (b) of this subsection, up to eight (8) paddlefish may be taken.
- (12) A person shall immediately retain, and not release or cull, any gilled or snagged paddlefish.
- (13) All snagged fish in the Tennessee River below Kentucky Lake Dam shall be immediately retained, and not released or culled, except for Asian carp, shad, or herring.
- (14) All gilled or snagged rough fish in the Cumberland River below Barkley Lake Dam shall be immediately retained, and not released or culled, except for Asian carp, shad, or herring.
- (15) A person shall immediately cease snagging if:
 - (a) A daily creel limit of paddlefish is reached;~~[or]~~
 - (b) A daily creel limit of sport fish has been caught in the

Tennessee River below Kentucky Lake Dam, even if the creel limit for that sport fish is less than eight (8); ~~or[-]~~

(c) A trophy catfish is snagged.

Section 7. Grabbing. (1) The grabbing season for rough fish shall be June 1 to August 31 during daylight hours.

(2) Grabbing shall be permitted in all waters.

(3) The daily creel limit for grabbing shall be fifteen (15) fish, no more than five (5) of which may be catfish, except anglers grabbing at Barren River Lake, Dewey Lake, Fishtrap Lake, or Taylorsville Lake, may only harvest one (1) blue or channel catfish over twenty-five (25) inches.

Section 8. Bow Fishing. (1) An angler using archery equipment, a crossbow, or a pneumatic arrow launching device shall not take:

- (a) Sport fish;
- (b) Alligator gar;
- (c) More than five (5) catfish daily;
- (d) More than two (2) paddlefish daily; or
- (e) Lake sturgeon.

(2) Any paddlefish or catfish shot with archery equipment, a crossbow, or a pneumatic arrow launching device shall:

- (a) Be immediately retained, and not released or culled; and
- (b) Count toward a person's daily limit.

(3) Bow fishing shall be open statewide, except:

- (a) In the Cumberland River below Wolf Creek Dam downstream to the Tennessee line including Hatchery Creek;
- (b) In any tributary of the Cumberland River below Wolf Creek Dam to the Tennessee line, from the junction of the tributary with the Cumberland River to one-half (1/2) mile upstream; or
- (c) From a boat in restricted areas below navigation, power generating, or flood control dams.

RICH STORM, Commissioner

DON PARKINSON, Secretary

APPROVED BY AGENCY: July 10, 2019

FILED WITH LRC: July 12, 2019 at 10 a.m.

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**TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(As Amended at ARRS, September 16, 2019)**

301 KAR 2:185. Hunter education.

RELATES TO: KRS 150.010, 150.015, 150.990

STATUTORY AUTHORITY: KRS 150.025(1), 150.170

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish seasons for the taking of fish and wildlife, to regulate bag limits, creel limits, and methods of take, and to make these requirements apply to a limited area. KRS 150.170 authorizes exemptions for certain people from hunting license and permit requirements. This administrative regulation establishes the requirements for hunter education.

Section 1. Definitions. (1) "Adult" means a person who is at least eighteen (18) years old.

(2) "Hunter education card" means a ~~card or similar~~ document that verifies a person has successfully completed a:

- (a) Kentucky hunter education course; or
- (b) Hunter education course from another state, province, or country that meets the standards established by the International Hunter Education Association.

(3) "Hunter education exemption certificate" means a certificate issued by the department that allows a person who is required to obtain a hunter education card to hunt for a period of one (1) year from the date obtained.

Section 2. Hunter Education Card. (1) All persons shall carry a valid hunter education card while hunting in Kentucky, unless a person:

- (a) Was born prior to January 1, 1975;
- (b) Is exempt pursuant to Section 3 of this administrative regulation;
- (c) Is license-exempt pursuant to KRS 150.170, subsections 1-3 or 5-7; or
- (d) Is license-exempt pursuant to KRS 150.170, subsection 4 and was born prior to January 1, 2002[Unless exempt pursuant to Section 3 of this administrative regulation, or license-exempt pursuant to KRS 150.170, a person born on or after January 1, 1975 shall carry a valid hunter education card while hunting in Kentucky].

(2) A person who is less than twelve (12) years old hunting without a hunter education card shall be accompanied by an adult who is in position to take immediate control of the weapon and who:

- (a) Has a valid hunter education card; or
 - (b) Is exempt from hunter education requirements.
- (3) An adult shall not accompany more than two (2) hunters under twelve (12) years old at any one (1) time.

Section 3. Hunter Education Exemptions. (1) A person who is required to have a hunter education card may obtain a hunter education exemption certificate from the department.

(2) A person hunting with a valid hunter education exemption certificate shall:

- (a) Carry the certificate while hunting; and
- (b) Be accompanied by an adult who is in position to take immediate control of the weapon and who:
 - 1. Is carrying a valid hunter education card; or
 - 2. Is exempt pursuant to Section 2 of this administrative regulation[Was born before January 1, 1975].

(3) The department shall not issue more than one (1) hunter education exemption certificate to any individual.

Section 4. Hunter Education Course Requirements. (1) In order to obtain a Kentucky hunter education card, a person shall:

- (a) Complete a hunter education course by:
 - 1. Attending an entire department-sanctioned hunter education course; or
 - 2. Obtaining and possessing a certificate of completion or its equivalent for course work meeting the standards of the International Hunter Education Association from:
 - a. An online hunter education course; or
 - b. A CD-ROM course or its equivalent; and[-]
 - (b) Correctly answer at least eighty (80) percent of the questions on a department-sanctioned exam[-and
 - (c) Safely participate in department-sanctioned live fire exercises].
- (2) A person shall be at least nine (9) years old in order to take the department-sanctioned exam.

RICH STORM, Commissioner
DON PARKINSON, Secretary
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GENERAL GOVERNMENT CABINET
Department of Agriculture
Office of Consumer and Environmental Protection
(As Amended at ARRS, September 16, 2019)

302 KAR 75:130. Packaging and labeling.

RELATES TO: KRS 363.510, 363.720, 363.730

STATUTORY AUTHORITY: KRS 363.590

NECESSITY, FUNCTION, AND CONFORMITY: KRS 363.590(1)(a) requires that administrative regulations be filed and used in the enforcement of the weights and measures requirements established by KRS 363.510 – 363.850[law] relating to packaging and labeling of commodities. This administrative regulation establishes requirements for[enforces KRS 363.720 and 363.730 and requires] accurate information on packages as to the identity and quantity of contents so that purchasers can make price and quantity comparisons.

Section 1. All packaging and labeling of commodities shall comply with requirements of the National Institute of Standards and Technology Handbook 130, Uniform Laws and Regulations in the Areas of Legal Metrology and Fuel Quality, Chapter IV-A, Uniform Packaging and Labeling Regulation (PAL), with the exception of Sections 13, 14, and 15.

Section 2. Incorporation by Reference. (1) "Uniform Laws and Regulations in the Areas of Legal Metrology and Fuel Quality" [Chapter IV-A, of the National Institute of Standards and Technology Handbook 130 ([2019])(2002)], Uniform Laws and Regulations in the areas of legal metrology and engine fuel quality], As Adopted by the 86th National Conference on Weights and Measures, 2001], is incorporated by reference.

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RYAN QUARLES, Commissioner

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GENERAL GOVERNMENT CABINET
Department of Agriculture
Office of Consumer and Environmental Protection
(As Amended at ARRS, September 16, 2019)

302 KAR 76:100. Method of sale.

RELATES TO: KRS 363.510, 363.710(1), 363.770, 363.780, 363.800

STATUTORY AUTHORITY: KRS 363.590, 363.710(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 363.710(2) authorizes the Director of the Division of Regulation and Inspection to promulgate administrative regulations that are necessary to assure that amounts of commodity sold are determined in accordance with good commercial practice and are represented accurately and informatively. This administrative regulation establishes requirements for[requires] accurate and adequate information about commodities to allow purchasers to make price and quantity comparisons.

Section 1. All method of sale procedures shall comply with requirements of the National Institute of Standards and Technology Handbook 130, Uniform Laws and Regulations in the Areas of Legal Metrology and Fuel Quality, Chapter IV-B, Uniform Regulations for the Method of Sale of Commodities (MOS), with the exception of Sections 4 and 5.

Section 2. Incorporation by Reference. (1) "Uniform Laws and Regulations in the Areas of Legal Metrology and Fuel Quality" [for the Method of Sale of Commodities in Chapter IV-B, of the National Institute of Standards and Technology Handbook 130 ([2019])(2002)], Uniform Laws and Regulations in the areas of legal metrology and engine fuel quality], As Adopted by the 86th National Conference on Weights

and Measures, 2001], is incorporated by reference.

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GENERAL GOVERNMENT CABINET
Department of Agriculture
Office of Consumer and Environmental Protection
(As Amended at ARRS, September 16, 2019)

302 KAR 80:010. Examination procedure for price verification.

RELATES TO: KRS 363.510, 363.991(4)

STATUTORY AUTHORITY: KRS 363.590(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 363.590(1)(a) authorizes the Director of the Division of Regulation and Inspection to promulgate administrative regulations establishing standards of net weight, measure, or count. This administrative regulation establishes a procedure to verify pricing practices to ensure that consumers are charged a correct price for items they purchase. This administrative regulation establishes procedures through the use of randomized and stratified sampling procedures used in routine inspections to ensure that consumers are charged the correct price for items they purchase.

Section 1. All scanners shall comply with requirements of National Institute of Standards and Technology Handbook 130, Uniform Laws and Regulations in the Areas of Legal Metrology and Fuel Quality, Chapter V, Examination Procedure for Price Verification (PPV).

Section 2. Any retail establishment not meeting a ninety-eight (98) percent compliance rate of errors not in favor of the customer shall be assessed an administrative penalty of not less than \$100 and not more than \$500 per inspection based on the severity of the violation.

Section 3[2]. Incorporation by Reference. (1) "Uniform Laws and Regulations in the Areas of Legal Metrology and Fuel Quality," [Examination Procedure for Price Verification of the National Institute of Standards and Technology Handbook 130 (2019)] [(2002)], [Uniform Laws and Regulations in the areas of legal metrology and engine fuel quality], as adopted by the 86th national Conference on Weights and Measures, 2001, is incorporated by reference.

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GENERAL GOVERNMENT CABINET
Department of Agriculture
Office of Consumer and Environmental Protection
(As Amended at ARRS, September 16, 2019)

302 KAR 81:010. Technical requirements for commercial weighing and measuring devices.

RELATES TO: KRS 363.410, 363.510, 363.610

STATUTORY AUTHORITY: KRS 363.590

NECESSITY, FUNCTION, AND CONFORMITY: KRS 363.590(2) requires the Director of the Division of Regulation and Inspection to promulgate administrative regulations establishing technical requirements for commercial weighing and measuring devices. This administrative regulation establishes technical requirements for commercial weighing and measuring devices and applies to any type of device and equipment covered in National Institute of Standards and Technology (NIST) Handbook 44 (Handbook 44, Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices) [for which evaluation procedures have been published in National Conference on Weights and Measures, Publication 14, "National Type Evaluation Program, Technical Policy, Checklists and Test Procedures"].

Section 1. Definitions. (1) "Active Certificate of Conformance" means a document issued based on testing by a participating laboratory, which the certificate owner maintains in active status under the National Type Evaluation Program. The document constitutes/shall constitute evidence of conformance of a type with the requirements of this document and the NIST Handbooks 44, 105-1, 105-2, or 105-3.

(2) "Commercial equipment" means:

(a) Weighing and measuring equipment commercially used or employed in establishing the size, quantity, extent, area, or measurement of quantities, things, produce, or articles for distribution or consumption, purchased, offered, or submitted for sale, hire, or award, or in computing any basic charge or payment for services rendered on the basis of weight or measure; and

(b) Any accessory attached to or used in connection with a commercial weighing or measuring device if the accessory is so designed so that its operation affects the accuracy of the device.

(3) "Device" means any weighing and measuring device.

(4) "Director" is defined by KRS 363.510(6).

(5) "Manufactured device" means any commercial weighing or measuring device shipped as new from the original equipment manufacturer.

(6) "National Type Evaluation Program" or "NTEP" means a program of cooperation between the National Conference on Weights and Measures, the National Institute of Standards and Technology, other federal agencies, the states, and the private sector for determining, on a uniform basis, conformance of a type with the relevant provisions of [National Institute of Standards and Technology] Handbook 44, "Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices," and National Conference on Weights and Measures, Publication 14, "National Type Evaluation Program, Technical Policy, Checklists, and Test Procedures"].

(7) "NIST" means National Institute of Standards and Technology.

(8) "One-of-a-kind device" means one (1) non-NTEP device per manufacturer, which is designed to meet unique demands for a specific installation and of a specific design and that[which] is not commercially available elsewhere.

(9) "Participating laboratory" means any state measurement laboratory, state weights and measures agency, or other laboratory that has been authorized to conduct a type evaluation under the National Type Evaluation Program.

(10) "Person" means both singular and plural, as the case demands, and includes individuals, partnerships, corporations, companies, societies, and associations.

(11) "Remanufactured device" means a device that is disassembled, checked for wear, parts replaced or fixed,

reassembled, and made to operate like a new device of the same type.

(12) "Remanufactured element" means an element that is disassembled, checked for wear, parts replaced or fixed, reassembled, and made to operate like a new element of the same type.

(13) "Repaired device" means a device on which work is performed that brings the device back into proper operating condition.

(14) "Repaired element" means an element on which work is performed that brings the element back into proper operating condition.

(15) "Type" means a model or models of a particular device, measurement system, instrument, or element that positively identifies the design. A specific type ~~varies~~~~[may vary]~~ in its measurement ranges, size, performance, and operating characteristics as specified in the Certificate of Conformance.

(16) "Type evaluation" means the testing, examination, and evaluation of a type by a ~~"participating laboratory"~~~~[under the National Type Evaluation Program]~~.

Section 2. Certificate of Conformance. (1) A device shall be traceable to an active Certificate of Conformance prior to its installation or use for commercial purposes.

(2) By maintaining the certificate in active status, the certificate owner declares the intent to continue to manufacture or remanufacture the device consistent with the type and in conformance with the applicable requirements.

(3) For manufacturers of grain moisture meters, maintenance of active status also shall involve annual participation in the NTEP Laboratory Ongoing Calibration Program (OCP) Phase II.

(4) A device shall be traceable to an active Certificate of Conformance if it was manufactured during the period that the certificate was maintained in active status.

Section 3. Prohibited Acts and Exemptions. (1) Except for a device exempted by this section, a person shall not sell a device unless it is traceable to an active Certificate of Conformance.

(2) Except for a device exempted by this section, a person shall not use a device unless it is traceable to an active Certificate of Conformance.

(3) A device in service in this state prior to July 1, 2003, ~~shall~~~~[that]~~ meet the specifications, tolerances, and other technical requirements of National Institute of Standards and Technology Handbook 44 shall not be required to be traceable to an active Certificate of Conformance.

(4) A device in service in this state prior to July 1, 2003, removed from service by the owner or on which the department has issued a removal order after July 1, 2003, and returned to service at a later date shall be modified to meet all specifications, tolerance, and other technical requirements of ~~[National Institute of Standards and Technology]~~ Handbook 44 effective on the date of the return to service. The modified device shall not be required to be traceable to an active Certificate of Conformance.

(5) A device in service in this state prior to July 1, 2003, which is repaired after July 1, 2003, shall meet the specifications, tolerances, and other technical requirements of ~~[National Institute of Standards and Technology]~~ Handbook 44 and shall not be required to be traceable to active Certificate of Conformance.

(6) A device in service in this state prior to July 1, 2003, that is still in use may be installed at another location in this state if the device meets requirements in effect as of the date of installation in the new location ~~and~~~~[; except,]~~ the device shall not be required to be traceable to an active Certificate of Conformance.

(7) A device in service in another state prior to July 1, 2003, may be installed in this state ~~if~~~~[; except,]~~ the device ~~meets~~~~[shall meet]~~ the specifications, tolerances, and technical requirements for weighing and measuring devices in ~~[National Institute of Standards and Technology]~~ Handbook 44 and shall be traceable to an active Certificate of Conformance.

(8) One-of-a-kind device.

(a) If a device manufactured for sale by a company has been categorized and tested as a "one-of-a-kind~~[;]~~" device, and the manufacturer then decides to manufacture an additional device or

devices of that same type, the device shall not be considered any longer a ~~["one-of-a-kind"]~~ ~~device~~. This also shall apply to a device that has been determined to be a ~~["one-of-a-kind"]~~ device by a weights and measures jurisdiction in one (1) state and the manufacturer decides to manufacture and install another device of that same type in another state. If this occurs, the manufacturer of the device shall request an NTEP evaluation on the device through the normal application process unless NTEP has already deemed that the evaluation will not be conducted.

(b) The director may accept the design of a one-of-a-kind device without an NTEP evaluation pending inspection and performance testing to determine ~~if~~~~[whether]~~ the device complies with Handbook 44 and is capable of performing within the Handbook 44 requirements for a reasonable period of time under normal conditions of use. Indicators and load cells in ~~["one-of-a-kind"]~~ scale installations shall have an active NTEP Certificate of Conformance as evidence that the system meets the influence factors requirements of Handbook 44.

(9) Repaired device. If a person repairs or remanufactures a device, ~~the person~~~~[they]~~ shall be obligated to repair or remanufacture ~~the device~~~~[it]~~ consistent with the manufacturer' original design ~~and~~~~[; except,]~~ that specific device shall not be traceable any longer to an active Certificate of Conformance.

(10) Remanufactured device. If a person repairs or remanufactures a device, ~~the person~~~~[they]~~ shall ~~[be obligated to]~~ repair or remanufacture ~~the device~~~~[it]~~ consistent with the manufacturer's original design ~~and~~~~[; except,]~~ that specific device shall not be traceable any longer to an active Certificate of Conformance.

(11) Copy of a device. The manufacturer who copies the design of a device that is traceable to an active Certificate of Conformance, but which is made by another company, shall obtain a separate Certificate of Conformance for the device. The Certificate of Conformance for the original device shall not apply to the copy.

(12) Device components. If a person buys a load ~~cell or cells~~~~[cell(s)]~~ and an indicating element~~[that are]~~ traceable to Certificates of Conformance then manufactures a device from the parts, that person shall obtain an active Certificate of Conformance for the device.

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

(a) "Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices", National Institute of Standards and Technology Handbook 44, (2019)[(2002)]; (b) ~~"National Conference on Weights and Measures, Publication 44";~~

(b)[(c)] "Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices", National Institute of Standards and Technology Handbook 105-1, (2019)[(1990)];

(c)[(d)] "Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices", National Institute of Standards and Technology Handbook 105-2, (2019)[(1996)]; and

(d)[(e)] "Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices", National Institute of Standards and Technology Handbook 105-3, (2019)[(1997)].

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RYAN F. QUARLES, Commissioner

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ENERGY AND ENVIRONMENT CABINET
Department of Environmental Protection
Division of Water
(As Amended at ARRS, September 16, 2019)

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. [4.] 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. [4.] 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. [4.] 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. [4.] 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. [4.] 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. [4.] 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 (7 1/2) 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 shall[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.

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. [for the required experience as follows:]

a. 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)(e)~~ Collection system, ~~and~~ treatment, and distribution experience may be substituted as established in this paragraph, follows:

~~1.(4a.)~~ 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

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ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Water

(As Amended at ARRS, September 16, 2019)

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.~~[4.]~~ 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.~~[4.]~~ 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.~~[4.]~~ 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.~~[4.]~~ 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.~~[4.]~~ 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.[4-] 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. [4-]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.[4-] 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.[4-] 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.[4-] 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.[4-] 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 shall/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)[(e)] 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.

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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.

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JUSTICE AND PUBLIC SAFETY CABINET Department of Corrections (As Amended at ARRS, September 16, 2019)

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", **September 16/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[05/15/12])
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 9/16/19[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

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	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 9/16/19 [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 9/16/19 [6/14/19] [6/28/17])
RCC 19-01-01	Job and Program Assignments (Amended 9/16/19 [6/14/19] [5/28/17])
RCC 19-01-02	Honor Program (Added 9/16/19 [6/14/19])
RCC 19-01-04	Dog Program (Added 9/16/19 [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 9/16/19 [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.RegContact@ky.gov.

JUSTICE AND PUBLIC SAFETY CABINET Department of Juvenile Justice (As Amended at ARRS, September 16, 2019)

505 KAR 1:160. Department of Juvenile Justice Policy[Policies] and Procedures Manual:[treatment-program for] Juvenile Sexual Offender Treatment Program[offenders].

RELATES TO: KRS 15A.065, 15A.067, 200.080-120, Chapters 600-645

STATUTORY AUTHORITY: KRS 15A.065(1), 15A.067, 15A.160, 15A.210, 15A.305(5), 200.115, 605.150, 635.095, [635.095,] 635.500, 635.505(1), 635.515, 635.520, 640.120, 645.250

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.065(1), 15A.067, 15A.160, 15A.210, 15A.305(5), 605.150, 635.095, 635.520, and 640.120 authorize the Justice and Public Safety Cabinet and the Department of Juvenile Justice to

promulgate administrative regulations for the proper administration of the cabinet and its programs. This administrative regulation incorporates by reference into regulatory form materials used by the Department of Juvenile Justice in the implementation of a statewide juvenile services program.

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

(a) "Department of Juvenile Justice Policy and Procedures Manual: Juvenile Sexual Offender Treatment Program", September 16[July 12], 2019[April 9, 2013], which includes the following:

800 Definitions (Added ~~9/16/19~~~~[7/12/19]~~);

801[800] Treatment Program for Declared Juvenile Sexual Offenders (Amended ~~9/16/19~~~~[7/12/19]~~~~[2/15/13]~~);

803 Polygraph Examinations (Amended ~~9/16/19~~~~[7/12/19]~~~~[2/15/10]~~);

806 Private Provider Application, Approval, and Renewal Process for Juvenile Sexual Offender Treatment or Assessor Status[and Assessment Professional Approval Process] (Amended ~~9/16/19~~~~[7/12/19]~~~~[4/9/13]~~);

(b) "Standard Operating Procedures Manual for the Treatment of Declared Juvenile Sexual Offenders", (Amended ~~9/16/19~~~~[7/12/19]~~~~[4/9/13]~~);

(c) "Estimate of Risk of Adolescent Sexual Offense Recidivism, Version 2.0 (ERASOR)", 8/15/06;

(d) "Juvenile Sex Offender Assessment Protocol-II Manual (J-SOAP-II)", 8/15/06;

(e) "Juvenile Sexual Offender Tracking System Initial Reporting Form Part I", ~~7/12/19~~~~[2/15/10]~~; and

(f) "Juvenile Sexual Offender Tracking System Reporting Form Part II", ~~7/12/19~~~~[2/15/10]~~.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Juvenile Justice, Office of the Commissioner, 1025 Capital Center Drive, Third Floor, Frankfort, Kentucky 40601, or at any department field office, Monday through Friday, 8 a.m. to 4:30 p.m.

RAYMOND F. DEBOLT, Commissioner

APPROVED BY AGENCY: July 12, 2019

FILED WITH LRC: July 12, 2019 at noon

CONTACT PERSON: William Codell, Assistant General Counsel, Department of Juvenile Justice, 1025 Capital Center Drive, Frankfort, Kentucky 40601, phone (502) 573-2738, fax (502) 573-0836, email William.Codell@ky.gov.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET Kentucky Board of Education Department of Education (As Amended at ARRS, September 16, 2019)

701 KAR 5:090. Teacher disciplinary hearings.

RELATES TO: KRS 161.770, 161.790

STATUTORY AUTHORITY: KRS 156.070, 161.770, 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 him or her [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 or her 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

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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.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET

Kentucky Board of Education

Department of Education

(As Amended at ARRS, September 16, 2019)

702 KAR 3:130. Internal accounting.

RELATES TO: KRS Chapter 45A, 61.410, 66.480, 156.029, 156.076, 156.160, 156.200, 158.290, Chapter 160, 161.540, 161.560, 342.640, 424.260

STATUTORY AUTHORITY: KRS 156.070, 156.160, 156.200

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.070(1) requires[gives] the Kentucky Board of Education to manage[the management] and control[of] the common schools. KRS 156.200 requires the Kentucky Board of Education to regulate accounting procedures and reports of local school districts. This administrative regulation establishes uniform procedures for the accounting of school activity funds.

Section 1. Definition. "Activity funds" means all school funds including funds derived from fundraising activities sponsored under the auspices of the school and does not mean funds raised or received by organizations that[which] do not come under the direct supervision of school authorities.

Section 2. District Responsibilities. (1) A district board of education shall have the responsibility for administration and control of all activity funds and comply with "Accounting Procedures for Kentucky School Activity Funds", which is also known as the "Redbook".

~~(2)(a)[The August 2007 edition of the Redbook shall be used until June 30, 2013.~~

~~(b)] The March 2013 edition of the Redbook shall be used through July 31, 2019[beginning July 1, 2013].~~

(b) The August 2019 edition of the Redbook shall be used beginning on August 1, 2019.

Section 3. Audits. (1) Activity fund internal accounts shall be audited annually by a certified public accountant, and a report shall be made to the district board of education.

(2) Audit reports shall be reviewed and accepted by the local board of education, and appropriate action taken.

(3) Recommendations and exceptions listed in the audit shall be reviewed by staff of the Department of Education.

(4) A copy of the school audit report shall be on file in both the

office of the principal and the office of the superintendent of the local school district. It shall be open for public inspection in both locations.

Section 4. Incorporation by Reference. (1) "Accounting Procedures for Kentucky School Activity Funds", August 2019[March 2013], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Education, Division of District Support, 300 Sower Boulevard, 4th Floor[45th Floor, Capital Plaza Tower, 500 Mero Street], Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.

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

WAYNE D. LEWIS, Ph.D., Commissioner

HAL HEINER, Chairperson

APPROVED BY AGENCY: June 13, 2019

FILED WITH LRC: June 14, 2019 at 9 a.m.

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.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET

Apprenticeship Standards

(As Amended at ARRS, September 16, 2019)

787 KAR 3:010. Registration of apprenticeship programs.

RELATES TO: KRS Chapter 343

STATUTORY AUTHORITY: KRS 151B.020(6), 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, which is [i.e.,] an apprenticeship program sponsored by one (1) employer without the participation of a union; and

(b) A group nonjoint sponsor, which is [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)[(12)] Workplace Standards and its division charged with the responsibility and accountability for apprenticeship within the Commonwealth of Kentucky.

(14)[(13)] "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 to [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~~ on-the-job learning component of registered apprenticeship. The program standards shall address how on-the-job learning will be integrated into the program, describe competencies, and identify an appropriate means of testing and evaluation for the competencies.

3. The hybrid approach measures the individual apprentice's skill acquisition through a combination of specified minimum number of hours of on-the-job learning and the successful demonstration of competency as described in a work process schedule.

4. The determination of the appropriate approach for the program standards is made by the program sponsor, subject to approval by the registration agency of the determination as appropriate to the apprenticeable occupation for which the program standards are registered;

(c) An outline of the work processes in which the apprentice will receive supervised work experience and training on the job, and the allocation of the approximate time to be spent in each major process;

(d) Provision for organized related and supplemental instruction in technical subjects related to the occupation. A minimum of 144 hours for each year of apprenticeship shall be required. This instruction in technical subjects may be 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 lane.gordon@ky.gov.

PUBLIC PROTECTION CABINET
Department of Financial Institutions
(As Amended at ARRS, September 16, 2019)

808 KAR 1:170. Licensing and registration.

RELATES TO: KRS Chapter 286.4, 286.8-010, 286.8-020, 286.8-030(1), 286.8-032, 286.8-034, 286.8-036, 286.8-060, 286.8-070, 286.8-080, 286.8-090(1), 286.8-255, 286.8-260, 286.8-290, 286.9-010, 286.9-020, 286.9-030, 286.9-040, 286.9-050, 286.9-060, 286.9-071, 286.9-073, 286.9-080

STATUTORY AUTHORITY: KRS 286.4-420, 286.4-425, 286.4-430, 286.4-440, 286.4-450(1)(b), 286.4-480, 286.4-610(1), 286.8-032, 286.8-034, 286.8-100, 286.8-140(1), (4), 286.8-255, 286.8-285, 286.9-050, 286.9-060, 286.9-070, 286.9-090(1), 286.9-107

NECESSITY, FUNCTION, AND CONFORMITY: KRS 286.4-610(1) authorizes the commissioner to promulgate administrative regulations for the proper conduct of the consumer loan businesses licensed under KRS Chapter 286.4. KRS 286.4-430(1) authorizes the commissioner to prescribe the form of the application for a license under KRS Chapter 286.4. KRS 286.8-140(1) authorizes the commissioner to promulgate administrative regulations necessary to accomplish the basic purposes of KRS Chapter 286.8. KRS 286.9-090(1) authorizes the commissioner to adopt reasonable administrative regulations for the enforcement of KRS Chapter 286.9. KRS 286.9-050 and 286.9-060 authorize the commissioner to prescribe the form~~of~~ and materials required to apply~~[the filing procedures for an application]~~ for a license under KRS Chapter 286.9~~[and the information and documents that must be submitted to the commissioner with an application for a license]~~. This administrative regulation establishes licensing and registration requirements for consumer loan companies and procedures for using the nationwide mortgage licensing system.

Section 1. Definitions. (1) "Audited financial statement" means a financial statement prepared by a certified public accountant in accordance with generally accepted accounting principles. ~~[A financial statement shall include a balance sheet, income statement, statement of cash flows, and all relevant notes.]~~

(2) "Surety bond" means a bond furnished by a surety company authorized to conduct business in Kentucky.

Section 2.~~[Licensure as a]~~ Consumer Loan Company Licensure. A person applying for licensure as a consumer loan company shall ~~[complete and]~~ submit:

(1) A completed NMLS Company Form available online at <http://mortgage.nationwidelicencingsystem.org>~~[Form CL-1, Application for a Kentucky Consumer Loan License with all required attachments];~~

(2) A completed NMLS Individual Form available online at <http://mortgage.nationwidelicencingsystem.org>;

(3)~~(2)~~ A Form CL-4, State License Confirmation Form completed by each state or jurisdiction in which the person is licensed or registered if the person applying for licensure as a consumer loan company is licensed or registered in any other state or jurisdiction to operate a business making loans of \$15,000 or less at the time of application;

(4)~~(3)~~ The nonrefundable application investigation fee established in KRS 286.4-440(1); and

(5)~~(4)~~ The annual license fee established in KRS 286.4-440(1).

Section 3. Check Cashing and Deferred Deposit Service Business Licensure~~[Licensure as a Limited Check Casher]~~. (1) Initial Application. A person applying for an initial check cashing~~for deferred deposit service business~~~~[limited check-casher]~~ license shall~~[complete and]~~ submit:

(a) A completed NMLS Company Form available online at <http://mortgage.nationwidelicencingsystem.org>~~[Form LCC-1, Application for Limited Check Casher License with all required attachments];~~

(b) A completed NMLS Individual Form available online at <http://mortgage.nationwidelicencingsystem.org> for each control

person designated on the direct owners and executive officers section of the NMLS Company Form;

(c)~~(b)~~ The nonrefundable investigation fee established in KRS 286.9-060(1);

(d)~~(e)~~ Form COMB-1, State License Confirmation Form for Check Cashing~~[Casher]~~ License or Deferred Deposit Service Business~~[Limited Check Casher]~~ License, incorporated by reference in 808 KAR 9:050, if the applicant has a license, registration, or claim of exemption related to the financial services industry in any other state;

(e)~~(d)~~ An audited financial statement, which includes a balance sheet, income statement, statement of cash flows, and all relevant notes, dated as of the previous year end. If the applicant is a startup company, an initial statement of condition and a proforma income statement shall be submitted instead of the income statement and statement of cash flows;

(f)~~(e)~~ Evidence that the applicant has complied or will comply with all workers' compensation and unemployment compensation laws of Kentucky; and

(g)~~(f)~~ One (1) of the following, which shall be deposited with and made payable to the commissioner:

1. An irrevocable letter of credit in an amount required by KRS 286.9-040(1)(a);

2. An Electronic Surety Bond, available online at <http://mortgage.nationwidelicencingsystem.org>~~[original corporate surety bond, submitted on Form COMB-2, Surety Bond for Check Casher License or Limited Check Casher License, incorporated by reference in 808 KAR 9:050]~~, in an amount required by KRS 286.9-040(1)(b). The name of the principal insured on the bond shall match exactly the full legal name of the applicant; or

3. Form COMB-3, Escrow Agreement for Check Cashing~~[Casher]~~ License or Deferred Deposit Service Business~~[Limited Check Casher]~~ License, incorporated by reference in 808 KAR 9:050, accompanied by:

a. Evidence that the applicant has established an account in a federally insured financial institution in Kentucky and has deposited money of the United States in an amount required by KRS 286.9-040(1)(c); or

b. A savings certificate of a federally insured financial institution in Kentucky established by the applicant that is not available for withdrawal except by direct order of the commissioner in an amount required by KRS 286.9-040(1)(d).

(2) Renewal Application. A licensee applying for renewal of a check cashing~~[casher]~~ license or deferred deposit service business~~[limited check-casher]~~ license pursuant to KRS 286.9-080(1) shall complete and submit the following on or before December 31~~[June 20]~~ of each year:

(a) The required updates and attestation ensuring the accuracy of all information in the person's record maintained by the <http://mortgage.nationwidelicencingsystem.org>~~[Form COMB-4, Renewal Application for Check Casher License or Limited Check Casher License with all required attachments];~~ and

(b) The nonrefundable license fee established in KRS 286.9-080(1).

(3) Reinstatement Application. A licensee applying for reinstatement of a check cashing~~[casher]~~ license or deferred deposit service business~~[limited check-casher]~~ license pursuant to KRS 286.9-080(2) shall complete and submit the following prior to January 31~~[August 1]~~ of the year that the renewal application was due:

(a) The required updates and attestation ensuring the accuracy of all information in the person's record maintained by the <http://mortgage.nationwidelicencingsystem.org>~~[Form COMB-4, Renewal Application for Check Casher License or Limited Check Casher License with all required attachments];~~

(b) The nonrefundable license fee established in KRS 286.9-080(1); and

(c) The nonrefundable late fee and reinstatement fee established in KRS 286.9-080(2).

Section 4. Licensure as a Mortgage Loan Company or Mortgage Loan Broker. (1) Initial Application. A person applying for licensure as a mortgage loan company or mortgage loan broker

shall submit:

(a) A completed NMLS Company Form as available online at <http://mortgage.nationwidelicensingsystem.org>;

(b) A completed NMLS Individual Form as available online at <http://mortgage.nationwidelicensingsystem.org> for each control person designated on the direct owners and executive officers section of the NMLS Company Form;

(c) An audited financial statement, which includes a balance sheet, income statement, statement of cash flows, and all relevant notes, dated the previous year end to the date of submission of the NMLS Company Form. If applicant is a startup company, an initial statement of condition and a proforma income statement shall be submitted instead of the income statement and statement of cash flows;

(d) An Electronic Surety Bond available online at <http://mortgage.nationwidelicensingsystem.org> [original ~~_____~~ bond, submitted on the appropriate form] in an amount not less than the amount required by KRS 286.8-060(1). The name of the principal insured on the bond shall match exactly the full legal name of applicant. [1. For a mortgage loan company, Form ML-1, Surety Bond for Mortgage Loan Company; or

2. For a mortgage loan broker, Form ML-2, Surety Bond for Mortgage Loan Broker;]

(e) A certified copy of the following:

1. If a corporation, the Corporate Charter or Articles of Incorporation and Bylaws;

2. If a limited liability company, the Articles of Organization and Operating Agreement; or

3. If a partnership of any form, the Partnership Agreement;

(f) A Certificate of Authority or a Certificate of Good Standing issued by the Kentucky Secretary of State dated not more than sixty (60) days prior to the submission of the NMLS Company Form;

(g) If applicant will be operating in Kentucky under a name other than its legal name, a file-stamped copy of the Certificate of Assumed Business Name issued by the Kentucky Secretary of State;

(h) If required to do so by KRS 286.8-032(6), documentation that a managing principal designated by applicant has successfully completed the educational training set forth in KRS 286.8-032(6);

(i) If the principal office will be located in a residence, a completed Form ML-6, Disclosure of Location at a Residence Form; and

(j) The fees set forth in KRS 286.8-034(1).

(2) Renewal Application.

(a) A person applying for renewal of a mortgage loan company or mortgage loan broker license prior to December 1 shall submit:

1. The required updates and attestation ensuring that all information in the person's record maintained by the nationwide mortgage licensing system operated by the State Regulatory Registry, LLC is correct as available online at <http://mortgage.nationwidelicensingsystem.org>; and

2. The fee set forth in KRS 286.8-034(3).

(b) A person applying for renewal of a mortgage loan company or mortgage loan broker license through reinstatement shall submit all materials required by paragraph (a) of this subsection and the reinstatement fee required by KRS 286.8-034(4).

(3) Change of address, name, control, or agent for service [Address, Name, Control, or Agent for Service].

(a) A licensee changing its address, name, or agent for service of process shall notify the commissioner:

1. At least ten (10) days prior to the change of address or name; and

2. Five (5) days prior to the change of agent for service of process.

(b) A licensee that wants to engage in a transaction resulting in a change of control shall notify the commissioner at least thirty (30) days in advance with the information necessary for the commissioner to determine whether the requirements of KRS Chapter 286.8 will be satisfied upon the change of control. The commissioner shall notify the licensee whether the request is approved or denied within thirty (30) days.

(c) A licensee changing its address, name, control, or agent for

service of process shall update this information in Nationwide Mortgage Licensing System (NMLS) within the same time periods set forth in this section.

Section 5. Registration of a Mortgage Loan Company Branch.

(1) A mortgage loan company branch shall not be approved unless it is controlled, managed, and supervised by the applicant's principal office.

(2) A person applying for registration of a branch shall submit the following:

(a) A completed NMLS Branch Form as available online at <http://mortgage.nationwidelicensingsystem.org>;

(b) A copy of the lease or deed for the branch;

(c) A completed Form ML-7, Branch Authorization Form;

(d) If the branch will be located in a residence, a Form ML-6, Disclosure of Location at a Residence Form; and

(e) The fee set forth in KRS 286.8-034(1)(b).

(3) A person applying for renewal of a branch registration prior to December 1 shall submit all materials required by Section 4(2)(a) of this administrative regulation.

(4) A person applying for renewal of a branch registration through reinstatement shall submit all materials required by Section 4(2)(a) of this administrative regulation and the reinstatement fee required by KRS 286.8-034(4).

Section 6. Registration of a Mortgage Loan Originator. (1)

Initial registration. A person applying for registration as a mortgage loan originator pursuant to KRS 286.8-255(2) shall submit:

(a) A completed NMLS Individual Form as available online at <http://mortgage.nationwidelicensingsystem.org>;

(b) A request to submit a Federal Bureau of Investigation background records check and a credit report to the department;

(c) Certification that applicant has successfully completed all education and testing required by KRS 286.8-255; and

(d) The fee set forth in KRS 286.8-255(2)(b).

(2) Renewal registration.

(a) A person applying for renewal of a mortgage loan originator registration pursuant to KRS 286.8-255(4) shall submit:

1. The required updates and attestation ensuring that all information in the person's record maintained by the nationwide mortgage licensing system operated by the State Regulatory Registry, LLC is correct as available online at <http://mortgage.nationwidelicensingsystem.org>;

2. A request to submit a Federal Bureau of Investigation background records check and a credit report to the department;

3. Certification that applicant has successfully completed all education and testing required by KRS 286.8-255 and 286.8-260; and

4. The fee set forth in KRS 286.8-255(4).

(b) A person applying for renewal of a mortgage loan originator registration through reinstatement shall submit all materials required by paragraph (a) of this subsection and the reinstatement fee required by KRS 286.8-255(5).

(3) The cost of any Federal Bureau of Investigation background records check or credit report required by this section shall be borne by the applicant.

Section 7. Mortgage Loan Originator Bond Requirements. In addition to the requirements set forth in this administrative regulation, an applicant applying for registration, renewal, or renewal through reinstatement as a mortgage loan originator shall provide proof that the mortgage loan originator holds or is covered by a bond. If the mortgage loan originator is procuring his or her own bond, the applicant shall submit an Electronic Surety Bond available online at <http://mortgage.nationwidelicensingsystem.org> [bond shall be submitted on the applicable Surety Bond for Individual Mortgage Loan Originators form and] in an amount determined by annual loan origination as follows:

(1) If the annual loan volume of the applicant is less than \$10,000,000, the surety bond shall be in an amount not less than \$15,000 [and the applicant shall submit Form ML-3, Surety Bond for Individual Mortgage Loan Originators with an Annual Loan Origination Volume of Less than \$10,000,000]; or

(2) If the annual loan volume of the applicant is \$10,000,000 or more, the surety bond shall be in an amount not less than \$20,000~~[and the applicant shall submit Form ML-4, Surety Bond for Individual Mortgage Loan Originators with an Annual Loan Origination Volume of \$10,000,000 or Greater].~~

Section 8. Factors Used to Determine Approval or Disapproval of an Application. (1) A mortgage loan originator applicant seeking registration, renewal, or renewal through reinstatement under KRS 286.8-255 shall demonstrate the financial responsibility, character, and general fitness such as to command the confidence of the community and to warrant a determination that the applicant will operate honestly, fairly, lawfully, and efficiently within the purposes of the subtitle.

(2) ~~An[Each]~~ applicant shall authorize the commissioner to obtain a credit report containing a credit score to aid in making this determination.

(3) The applicant shall have met the requirement of financial responsibility if he or she possessed a credit score of 600 or higher at the time of application. If the applicant possesses a credit score of less than 600, the commissioner may review the applicant's credit report for the following information to make this determination:

(a) Any outstanding judgments, excluding judgments arising solely from medical expenses for the applicant or an immediate family member;

(b) Any outstanding tax liens or other governmental liens;

(c) Any foreclosures occurring within five (5) years of the date of application or renewal;

(d) Any bankruptcies occurring within five (5) years of the date of application or renewal; and

(e) Any delinquent accounts occurring within five (5) years of the date of application or renewal.

(4) The factors of character and general fitness shall be determined by the commissioner after review of all relevant information, including information shown on the applicant's credit report, the applicant's criminal history, and any administrative or civil actions taken against the applicant.

Section 9. Electronic Submission of Filings and Fees through the Nationwide Mortgage Licensing System Operated by the State Regulatory Registry, LLC. (1) A person applying for licensure, registration, renewal, or renewal through reinstatement pursuant to Sections 2, 3, 4, 5, 6, and 7 of this administrative regulation shall electronically submit the following with the State Regulatory Registry, LLC, at <http://www.stateregulatoryregistry.org/NMLS>, as part of the nationwide mortgage licensing system:

(a) All forms, updates, attestations, and requests required by Sections 2, 3, 4, 5, 6, and 7 of this administrative regulation, as applicable;

(b) Fingerprints and any other information or authorizations necessary to obtain the background records checks and credit reports referenced in Section 6 of this administrative regulation; and

(c) All fees referenced in this administrative regulation.

(2) All forms, documentation, fees, or information that are not available for electronic submission directly through the nationwide mortgage licensing system operated by the State Regulatory Registry, LLC shall be submitted directly to the department.

(3) Any fees assessed by the State Regulatory Registry, LLC, to process the electronic submissions referenced in subsection (1) of this section shall be borne by the applicant.

Section 10. Abandoned Applications. If ~~an[any]~~ applicant fails to provide or respond to a request for additional information within ninety (90) days of submission to the department, the application shall be abandoned. ~~An[Any]~~ applicant seeking licensing or registration after its application has been abandoned shall reapply and resubmit all required information.

Section 11. Inactive Status for Members of the Armed Forces.

(1) A member of the Armed Forces who holds a license or registration in good standing under this administrative regulation

may request that the commissioner place the license or registration in inactive status during the period of time that the member is mobilized or deployed, and for a period of six (6) months following termination of the mobilization or deployment.

(2) To request inactive status for a license or registration, a person shall complete Form ML-8, Request for Inactive Status Due to Military Service, and submit it along with proof of mobilization or deployment to the commissioner for approval.

(3) A person whose license or registration has been placed in inactive status shall not engage in the activity requiring the license or registration under KRS Chapter 286.8.

(4) The fee set forth in KRS 286.8-255(4) shall not accrue against ~~any~~ person whose license or registration is in inactive status.

(5) A person may reactivate an inactive license or registration by submitting a written request to the commissioner and attaching proof of compliance with KRS 286.8-255(10) and 286.8-260, if applicable. Upon receipt of a written request and confirmation of compliance with KRS 286.8-255(10) and 286.8-260, the commissioner shall issue an approval for reactivation.

Section 12. Incorporation by Reference. (1) The following material is incorporated by reference:

(a)~~[Form CL-1, "Application for a Kentucky Consumer Loan License", updated 03/2015~~

(b)~~] Form CL-4, "State License Confirmation Form", updated 03/2015;~~

~~(b)(c) Form LCC-1, "Application for Limited Check Casher License", updated 04/2016~~

~~(d) Form COMB-4, "Renewal Application for Check Casher License or Limited Check Casher License", updated 04/2014;~~

~~(e) Form ML-1, "Surety Bond for Mortgage Loan Company", updated 03/2015;~~

~~(f) Form ML-2, "Surety Bond for Mortgage Loan Broker", updated 03/2015;~~

~~(g) Form ML-3, "Surety Bond for Individual Mortgage Loan Originators with an Annual Loan Origination Volume of Less than \$10,000,000", updated 03/2015;~~

~~(h) Form ML-4, "Surety Bond for Individual Mortgage Loan Originators with an Annual Loan Origination Volume of \$10,000,000 or Greater", updated 03/2015;~~

~~(i) Form ML-6, "Disclosure of Location at a Residence Form", updated 03/2015;~~

~~(c)(j) Form ML-7, "Branch Authorization Form", updated 03/2015; and~~

~~(d)(k) Form ML-8, "Request for Inactive Status Due to Military Service", updated 03/2015.~~

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 5 p.m. This material may also be obtained from the department's Web site at <http://www.kfi.ky.gov>.

CHARLES A. VICE, Commissioner

K. GAIL RUSSELL, Secretary

APPROVED BY AGENCY: July 12, 2019

FILED WITH LRC: July 12, 2019 at 9 a.m.

CONTACT PERSON: Joseph P. Donohue, General Counsel, Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort Kentucky 40601, phone (502) 5733-390, fax (502) 573-8787, email KDFI.Reg@ky.gov.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Public Health Protection and Safety
(As Amended at ARRS, September 16, 2019)

902 KAR 7:010. Hotel and motel code.

RELATES TO: KRS 194A.050, 219.011-219.041, 219.111[-219.084], 219.991(1)

VOLUME 46, NUMBER 4– OCTOBER 1, 2019

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) requires[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) authorizes[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 requires[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 requires[(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:

(1) Primarily be transient in nature;

(2)[and shall] Not include apartments, dormitories, hostels, single or multi-family homes, or vacation rental cabins; and

(3)[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[40:040], 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 jurisdiction. 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 to this supply[,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 to this system, [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 the[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. These[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. These[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 as specified in this subsection.

(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 that[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:

(a) Stored, handled, and dispensed in a sanitary manner;

(b) and shall be Used only once; and

(c) 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, and 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.

(4) Any application of pesticides shall be in accordance with 302 KAR Chapter 29.

Section 14. Poisonous and Toxic Materials. **The hotel shall only use or store**~~Only~~~~[such]~~ poisonous and toxic materials ~~that~~~~as~~ are required to maintain sanitary conditions and for sanitization purposes. **These**~~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 communicable disease~~, the cabinet shall be notified immediately.

(2) If [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 in accordance with subsection (3) of this section.

(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. **(1) A person shall not construct, alter, or convert an existing structure into a hotel unless the cabinet has approved the plans and specifications.**

(2) The plans and specifications required in subsection (1) of this section shall:

(a) Be submitted to the cabinet; and

(b) Provide the following information:

1. The layout of the hotel;

2. The construction materials that will be used;

3. The fixed equipment; and

4. A plumbing riser diagram~~[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) If a [– 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, the permit holder 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 the[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 revocation[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 the[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", 7/19/19/18]~~, 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.

CABINET FOR HEALTH AND FAMILY SERVICES

Office of Inspector General

Division of Health Care

(As Amended at ARRS, September 16, 2019)

902 KAR 20:036. Operation and services; personal care homes.

RELATES TO: KRS 194A.700(1), (9), (11), 202A.011(12), 209.030, 209.032, 216.510 – 216.525, 216.532, 216.765, 216.785-216.793, 216A.080, 216B.010-216B.130, 216B.990, 310.021, 310.031, 21 C.F.R. Part 1317

STATUTORY AUTHORITY: KRS 216B.042[, 216B.105, 314.011(8), 314.042(8), 320.210(2), 1998 Ky. Acts ch. 228, sec. 2, ch. 424, sec. 4]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.042(1) requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary for the proper administration of the licensure function, which includes establishing licensure standards and procedures to ensure safe, adequate, and

efficient[and 216B.105 require that the Cabinet for Health Services regulate] health facilities and health services. This administrative regulation establishes minimum licensure requirements for the operation of and [the] services [to be] provided by personal care homes.

Section 1. Definitions. (1) "Activities of daily living" or "ADL" is defined by KRS 194A.700(1)[means activities of self-help (example: being able to feed, bathe and/or dress oneself), communication (example: being able to place phone calls, write letters and understanding instructions), and socialization (example: being able to shop, being considerate of others, working with others and participating in activities)].

(2)["Activities services" means social and recreation opportunities to stimulate physical and mental abilities, encourage and develop a sense of usefulness and self respect and encourage participation in a variety of activities.

(3)["Administrator" means an individual[a person] who:

(a) 1. Has a license to practice long-term care administration pursuant to KRS 216A.080; or

2.[(b)] Has[sufficient education to: maintain adequate records; submit reports requested by the board; and interpret any written material related to all phases of facility operation and resident's care. The administrator shall: be literate; be] a high school diploma, a general equivalency diploma (GED), or qualifying documentation from a comparable educational entity; and

(b)[(c)] Is age[graduate or have passed the general Education Development Test; be] twenty-one (21)[years of age] or older; or (b) Is licensed as a nursing home administrator as provided by KRS 216A.080].

(3)[(4)] "Ambulatory" means able to walk without assistance.

(4) "Certified nutritionist" means a health care professional who is certified pursuant to KRS 310.031.

(5) "Instrumental activities of daily living" or "IADL" is defined by KRS 194A.700(9).

(6) "Licensed dietician" means a health care professional who is licensed pursuant to KRS 310.021[(5) "License" means an authorization issued by the Certificate of Need and Licensure Board for the purpose of operating a personal care home and offering personal care services].

(7)[(6)] "Mobile nonambulatory" is defined by KRS 194A.700(11)[means unable to walk without assistance, but able to move from place to place;] and includes the ability to:

(a) Self exit the building; and

(b) Transfer independently or with minimal assistance from bed-to-chair [, with the use of a device such as a walker, crutches, or a wheelchair and capable of independent bed-to-chair transfer or bed-to-chair transfer with minimal assistance].

(8)[(7)] "Nonambulatory" means unable to walk without assistance.

(9)[(8)] "Nonmobile" means unable to move from place to place.

(10) "Personal care home" or "PCH" means an establishment located in a permanent building that has resident beds and provides:

(a) Supervision of residents;

(b) Basic health and health-related services;

(c) Personal care services;

(d) Residential care services; and

(e) Social and recreational activities.

(11) "Qualified mental health professional" or "QMHP" is defined by KRS 202A.011(12).[(9) "Personal care" means services to help residents to achieve and maintain good personal hygiene including but not limited to: assistance with bathing, shaving, cleaning and trimming of fingernails and toenails, cleaning of the mouth and teeth, washing, grooming and cutting of hair.

(10) "Qualified dietician or nutritionist" means a person who:

(a) Has a bachelor of science degree in foods and nutrition, food service management, institutional management, or related services and has successfully completed a dietetic internship or coordinated undergraduate program accredited by the American Dietetic Association (ADA) and is a member of the ADA or is registered as a dietician by ADA; or

(b) Has a masters degree in nutrition and is a member of ADA or is eligible for registration by ADA; or

(c) Has a bachelor of science degree in home economics and three (3) years of work experience with a registered dietician.

(11) "Residential care" means services which include but are not limited to: room accommodations, housekeeping and maintenance services, dietary services and laundering of resident's clothing and bed linens.]

(12) "Restraint" means any pharmaceutical agent or [or] physical device [or] mechanical device used to restrict the resident's freedom of movement of a portion of a patient's body [temporarily to manage a resident's behavior in a way that reduces the safety risk to the resident or others] [of a patient or the movement of a portion of a patient's body].

(13) "Serious mental illness" or "SMI" means a mental illness or disorder (but not a primary diagnosis of Alzheimer's disease or dementia), that is described in the Diagnostic and Statistical Manual of Mental Disorders (DSM), 5th Edition, or the DSM currently in use, that impairs or impedes functioning in one (1) or more major areas of living and is unlikely to improve without treatment, services, or supports.

(14) "Specialized personal care home" or "SPCH" means a personal care home that:

(a) Participates in the mental illness or intellectual disability supplement program pursuant to 921 KAR 2:015, Section 13; or

(b) Serves residents with thirty-five (35) percent or more having an SMI.

Section 2. Scope of Operations and Services. (1) [A personal care home is an establishment with permanent facilities including resident beds. Services provided include continuous supervision of residents, basic health and health-related services, personal care services, residential care services, and social and recreational activities.] A resident in a PCH or SPCH [personal care] [home] shall:

(a) Be admitted in accordance with KRS 216.765;

(b) Be sixteen (16) years of age or older and be ambulatory or mobile nonambulatory;

(c) Be and able to manage most of the activities of daily living; and

(d) Have care needs that do not exceed the capability of the PCH or SPCH.

(2) An individual [Persons] who is [are] nonambulatory or nonmobile shall not be eligible for residence in a PCH or SPCH [personal care home].

Section 3. Administration and Operation. (1) Licensee. [(a)] The licensee shall be legally responsible for:

(a) The operation of the PCH or SPCH;

(b) [personal care home and for] Compliance with federal, state, and local laws and administrative regulations pertaining to the operation of the facility;

(c) The development and implementation of [home]. (b) The licensee shall establish policies related to [for the] administration and operation of the facility; and

(d) If the licensee is an SPCH, the development and implementation of written transition procedures to ensure cooperation with an individual or entity that assists with transitioning residents with an SMI to community living arrangements [service].

(2) Administrator.

(a) The [All personal care facilities shall have an] administrator [who] shall:

1. Be responsible for the day-to-day operation of the PCH or SPCH; and

2. Designate one (1) or more staff to act on behalf of the administrator [or] to perform the administrator's responsibilities in the administrator's [facility and shall delegate such responsibility in his or her] absence.

(b) Each SPCH shall ensure that the administrator completes the mental illness or intellectual disability training workshop established by 921 KAR 2:015, Section 14, within six (6) months from the most recent effective date of this administrative

regulation and every two (2) years thereafter.

(3) Admission.

(a) [Personal care homes shall admit only persons who are sixteen (16) years of age or older and who are ambulatory or mobile nonambulatory and whose care needs do not exceed the capability of the home. Persons who are nonambulatory or nonmobile shall not be eligible for admission to a personal care home.

(b) A PCH or SPCH [personal care home] shall not care or be responsible for the care of more residents than the capacity indicated on the license [, regardless of where housed].

(b) [(e)] Upon admission, a PCH or SPCH shall provide the resident and a responsible member of the resident's [his] family or other designated representative with written information regarding the facility's policies, including:

1. Services offered and charges;

2. The right to visitation with family and friends, subject to visiting rules and hours established by the facility; and

3. Meal services [committee shall be informed in writing of the established policies of the home to include but not be limited to fees, reimbursement, visitation rights during serious illness, visiting hours, type of diets offered and services rendered].

(c) Prior to [(d)] Upon admission, each resident shall have a complete medical examination in accordance with KRS 216.765 [evaluation including medical history, physical examination and diagnosis (may be copy of discharge summary or health and physical report from physician, hospital or other health care facility if done within fourteen (14) days prior to admission)].

(d) No later than three (3) months from the most recent effective date of this administrative regulation, a PCH or SPCH shall complete the SMI Screening Form for each current resident. Upon admission, a PCH or SPCH shall complete the SMI Screening Form for each new or returning resident.

(4) Patient rights. Patient rights shall be provided for pursuant to KRS 216.510 to 216.525.

(5) Adult [and child] protection. PCHs and SPCHs [Personal care homes] shall have written policies that [which] assure the reporting of allegations [cases] of abuse, neglect, or exploitation of adults [and children] pursuant to KRS 209.030, including evidence that all allegations of abuse, neglect, or exploitation shall before thoroughly investigated internally to prevent further potential abuse while the investigation is in progress [Chapters 209 and 620].

(6) Transfer and discharge. (a) PCHs and SPCHs [personal care homes] shall:

1. Comply with the requirements of 900 KAR 2:050 upon [when] transferring or discharging a resident; and

2. [residents. (a) Personal care homes shall] Have written transfer procedures and agreements for the transfer of residents to a higher intensity level of care, if indicated [other health care facilities which can provide a level of inpatient care not provided by the personal care home].

(b) A PCH or SPCH that [Any facility which] does not have a transfer agreement in effect, but has attempted in good faith to enter into [such] an agreement shall be considered to be in compliance with the requirements of paragraph (a)2. of this subsection.

(c) [licensure requirement.] The transfer procedures and agreements shall:

1. Specify the responsibilities each party [institution] assumes in the transfer of residents;

2. [patients and] Establish responsibility for notifying the other party [institution promptly] of an [the] impending transfer; and

3. [of a patient and] Arrange for [appropriate and] safe transportation and transfer of files.

(d) [(b)] The administrator shall initiate a transfer through the resident's physician or appropriate agencies if [when] the resident's condition is not within the scope of services of the PCH or SPCH [a personal care home].

(e) PCH or SPCH resident records.

1. If a resident transfers [(c) In the event of transfer] to another health care facility, a current summary of the resident's medical record shall accompany the resident.

2. If a resident transfers [When a transfer is] to another level of

care within the same facility, a copy of the resident's record or current summary of the resident's medical record~~[thereof]~~ shall accompany the resident.

3. If a resident transitions into a community living setting, a current summary of, or a copy of the resident's records shall be provided to the resident and the resident's guardian.

(7) Tuberculosis Testing. (a) All employees of a PCH or SPCH~~[and residents]~~ shall be screened and tested for tuberculosis in accordance with 902 KAR 20:205.

(b) Residents of a PCH or SPCH shall be screened and tested in accordance with~~[the provisions of]~~ 902 KAR 20:200~~[, Tuberculosis testing in long term care facilities].~~

(8) Personnel.

(a) In accordance with KRS 216.532, a PCH or SPCH shall not employ or be operated by an individual who is listed on the nurse aide and home health aide abuse registry established by 906 KAR 1:100.

(b) In accordance with KRS 209.032, a PCH or SPCH shall not employ or be operated by an individual who is listed on the caregiver misconduct registry established by 922 KAR 5:120.

(c) A PCH or SPCH shall obtain a criminal record check on each applicant for initial employment in accordance with KRS 216.789 and 216.793.

~~(d) Operators and employees of personal care homes shall comply with 1998 Ky. Acts ch. 424, sec. 1.~~

(b) Current employee records shall be maintained on each staff member and contain~~[the following items]:~~

1. Name and address;

2. Verification of all~~[and shall include a record of each employee's]~~ training and experience, including evidence of current licensure, registration, or certification, if applicable;

3. Employee~~[where required by law,]~~ health records;

4. Annual performance evaluations; and

5. Documentation of compliance with the background check requirements of ~~paragraphs[paragraph]~~ (a) through (c) of this subsection~~[and evaluation of performance, along with employee's name, address and Social Security number].~~

(e) Each employee~~[(e) All employees]~~ shall be of an age in conformity with state laws.

(f) An~~[(d) Any]~~ employee who contracts a communicable or~~[contracting]~~ an infectious disease shall:

1. Be immediately excluded from work; and

2. Remain off work until cleared as noninfectious by a health care practitioner acting within the practitioner's scope of practice.

(g) Each~~[not appear at work until the infectious disease can no longer be transmitted. (e) All]~~ dietary staff member~~[employees]~~ shall wear a hair net~~[nets]~~.

(h)~~[(f)]~~ In-service training.

1. Each PCH ~~or~~~~and~~ SPCH employee~~[All personal care home employees]~~ shall receive orientation and annual in-service training that corresponds~~[to correspond]~~ with the staff member's job duties~~[of their respective jobs]~~.

2. Documentation of orientation and in-service training shall be maintained in the employee's record and shall include~~[the following]:~~

a. Name of the individual or individuals who provided~~[gave]~~ the training;

b.~~[,]~~ Date and number of hours the~~[period of time]~~ training was given; and

c. A summary of~~[what]~~ the training program's content~~[consisted of]~~.

3. In-service training shall include~~[but not be limited to]~~~~[the following]:~~

a.~~[1-]~~ Policies regarding the responsibilities of specific job~~[of the facility in regard to the performance of their] duties;~~

b.~~[2-]~~ Services provided by the facility;

c.~~[3-]~~ Recordkeeping procedures;

d.~~[4-]~~ Procedures for the reporting of cases of adult~~[and child]~~ abuse, neglect, or exploitation pursuant to KRS 209.030~~[Chapters 209 and 620];~~

e. Resident~~[5- Patient]~~ rights established by~~[as provided for in]~~ KRS 216.510 to 216.525;

f. Adult learning principles~~[,]~~ and~~[6-]~~ methods for~~[of]~~ assisting

residents~~[patients]~~ to achieve maximum abilities in ADLs and IADLs~~[activities of daily living];~~

g.~~[7-]~~ Procedures for the proper application of emergency manual~~[physical]~~ restraints;

h.~~[8-]~~ Procedures for maintaining a clean, healthful, and pleasant environment;

i.~~[9-]~~ The aging process;

j.~~[10-]~~ The emotional problems of illness;

k.~~[11-]~~ Use of medication; and

l.~~[12-]~~ Therapeutic diets.

4. Each SPCH shall ensure that at least one (1) direct care staff member in addition to the administrator completes the mental illness or intellectual disability training workshop established by 921 KAR 2:015, Section 14, within six (6) months from the most recent effective date of this administrative regulation and every two (2) years thereafter. An SPCH shall employ at least one (1) direct care staff member who has received the training.

(i)~~[(g)]~~ Staffing requirements.

1. The number of personnel required shall be based on:

a. The number of patients; and

b. Amount and kind of personal care, health care, and~~[,]~~ supervision~~[, and program]~~ needed to meet the needs of the residents ~~[as determined by the definitions of care and services required in this administrative regulation].~~

2.~~[If the staff to resident ratio does not meet the needs of the residents, the Division for Licensing and Regulation shall determine and inform the administrator in writing how many additional personnel are to be added and of what job classification and shall give the basis for this determination.]~~

3.~~[The administrator shall designate one (1) or more staff members to be [a person for each of the following areas who will be primarily] responsible for [the following services] [coordination and provisions of services (personnel may be required to perform combined duties)]:~~

a. Recordkeeping;

b. Basic health and health related services; and

c. Activity services.

3.~~[4-]~~ Each PCH or SPCH~~[facility]~~ shall have a full-time staff member who shall be:

a.~~[person designated by the administrator,]~~ Responsible for the total food service operation of the facility; and

b.~~[who shall be]~~ On duty a minimum of thirty-five (35) hours each week.

5. A PCH or SPCH shall ensure that sufficient staff, but no less than one (1) staff member~~[attendant]~~ shall be awake and on duty on each floor in the facility at all times.

(9) Medical records.

(a) The PCH or SPCH administrator or staff member~~[person]~~ in charge of medical records shall assure that a complete medical record ~~is~~~~[shall be]~~ kept for each resident with all entries current, dated, and signed.

(b)~~[Entries should be made in ink, ballpoint, or typed.]~~ Each record shall include~~[the following]:~~

1.~~[(a)]~~ Identification information, including:

a.~~[1-]~~ Resident's name;

b.~~[2-]~~ Social Security, Medicare, and Medical Assistance identification number (if appropriate);

c.~~[3-]~~ Marital status;

d.~~[4-]~~ Birthdate;

e.~~[5-]~~ Age;

f.~~[6-]~~ Sex;

g.~~[7-]~~ Home address;

h.~~[8-]~~ Religion and personal clergyman, if any (with consent of the resident);

i.~~[9-]~~ Attending physician, health care practitioner acting within the practitioner's scope of practice, QMHP, dentist, and podiatrist, if any, and~~[;]~~ address and phone number for each~~[one]~~;

j.~~[10-]~~ Next of kin or responsible person, address, and telephone number;

k.~~[11-]~~ Date of admission and discharge;

l. If the resident is discharged, transferred, or transitioned to a community living arrangement~~[12- In the event of transfer]~~, a copy of the summary of resident's records; and

- m.[43.] Monthly recording of the resident's weight;
- 2.[-(b)] If admitted from another facility, a discharge summary or transfer summary;
- 3.[-(c)] Admitting medical evaluation;
- 4.[-(d)] Physician's Report by the physician or health care practitioner acting within the practitioner's scope of practice, documenting completion of an[en] annual medical evaluation of each[the] resident;
- 5.[-(e)] Physician, health care practitioner, or QMHP progress notes indicating any changes in the resident's condition, documented at the time of each visit by the physician, health care practitioner, QMHP, or[and] consultant;
- 6.[-(f)] Orders for medication or therapeutic services;
- 7.[-(g)] Nurses' or staff notes indicating any changes in the[a] resident's condition as changes[they] occur;
8. Documentation of any accident, injury, illness, medication error, or drug reaction **impacting the resident**;
9. Documentation[-(h)] Reports of accidents or acute illnesses of any resident. -(i) Reports of social services, dental, laboratory, x-ray, or[and] special reports from[off] consultants or therapists if[when] the resident receives any of these services;
- 10.[-(j)] Medication and treatment sheets, including all medications, treatments, and special procedures performed **for that resident**, with the[indicating] date and time of each service documented and[-(k)] Entries shall be initiated by the individual[personnel] rendering treatment or administering medication;
11. Documentation[-(l)] Reports of the use of an emergency manual restraint for that resident[physical restraints], including justification for why the procedure was[procedures] used;
12. Documentation[-(m)] and the checks and releases of physical restraints.
- (n) A record of the resident's discharge, transfer, or transition destination, if applicable; and
13. Monthly documentation of ADL and IADL skills instruction provided to, or made available and refused by, **the resident if the resident is an SPCH resident who is/SPCH residents who are** transitioning to living independently in the community pursuant to 908 KAR 2:065.
- (10) Retention of records. After death or discharge, the completed medical record shall be placed in an inactive file and retained for **at least six (6)[five (5)] years**[-or in case of a minor, three (3) years after the patient reaches the age of majority under state law, whichever is the longest].

Section 4. Provision of Services. (1) Basic health and health related services.

(a) A PCH or SPCH[All personal care homes] shall provide basic health and health related services, including:

- 1.[Continuous] Supervision and monitoring of the resident to assure that the resident's health care needs are[being] met;
- 2.[-(b)] Supervision of self-administration of medications;
- 3.[-(c)] Storage and control of medications; and
4. Arranging[-(d)] when necessary, and making arrangements for[obtaining] therapeutic services ordered by the resident's health care practitioner, if the services[physician which] are not available in the facility.

(b) For a PCH or SPCH, [All personal care homes] **[shall meet the following requirements relating to the provision of basic health and health related services:**

1.[-(a)] the administrator or staff person designated by the administrator[-(a)] The person in charge of the facility shall, **relating to the provision of basic health and health-related services:**

1.[-(a)] Be responsible for obtaining medical care[by a licensed physician] promptly in response to an[cases of] accident, injury, or acute illness of any resident; and

2.[-(b)] Document any accident, injury, illness, incident, medication error, or drug reaction[-(c)] Such instances shall be recorded in the resident's medical record.

(c)[-(b)] Medications or therapeutic services shall not be administered or provided to any resident, except on the order of a licensed physician or other health care practitioner as authorized

under the practitioner's[ordering personnel acting with the limits of their statutory] scope of practice.

(d) Administration of all medications and delivery[provisions] of therapeutic services shall be recorded in the resident's medical record.

(e)[-(c)] If an order is[orders are] received by telephone, the order shall be:

1. Recorded in the resident's[on the individual's] medical record; and

2. Signed by the physician or other health care practitioner as authorized under the practitioner's[ordering personnel acting within the limits of their statutory] scope of practice within fourteen (14) days.

(f)1. The administrator or staff person designated by the administrator shall make[-(d)] a written report of any incident or accident involving a:

a. Resident,[-(f)] including a medication error[errors] or drug reaction;

b.[-(g)] Visitor; or

c. Staff member.

2. The report shall:

a. Identify[-(g)] be made and signed by the administrator, and any staff member who **might[may]** have been witness to the incident; and

b.[-(h)] The report shall be filed in an incident file.

(g)1.[-(e)] Controlled substances. A PCH or SPCH [home] shall not keep any controlled substances or other habit forming drugs, hypodermic needles, or syringes except under the specific direction of a prescribing practitioner[physician].

2. Controlled substances shall be kept under double lock, **for example[-(f)] stored[-(f)] in a locked box in a locked cabinet[-(f)]**.

3. There shall be a controlled substances bound record book with numbered pages **that includes[-(g)] the following:**

a.[-(i)] in which is recorded the Name of the resident;

b.[-(j)] the Date, time, kind, dosage, and method of administration of each[all] controlled substance[substances];

c.[-(k)] the Name of the practitioner[physician] who prescribed the medications; and

d.[-(l)] the Name of the;

(i) Nurse who administered the controlled substance;[-(m)] or

(ii) Staff member who supervised[-(n)] self-administration by a resident whose medical record includes a written determination from a health care practitioner that the resident is able to safely self-administer a controlled substance under supervision.

4. A staff member with access to controlled substances shall be responsible for maintaining[-(o)] In addition, there shall be a recorded and signed:

a. Schedule II controlled substances count daily;[-(p)] and

b. Schedule III, IV, and V controlled substances count **at least one (1) time[once]** per week [by those persons who have access to controlled substances].

5. All expired or unused controlled substances[which are left over after the discharge or death of the resident] shall be disposed of, or destroyed in accordance with 21 C.F.R. Part 1317 no later than thirty (30) days:

a. After expiration of the medication; or

b. From the date the medication was discontinued[-(q)] C.F.R. 1307.21].

6. If controlled substances are destroyed on-site:

a. The method of destruction shall render the drug unavailable and unusable;

b. The administrator or staff person designated by the administrator shall be responsible for destroying the controlled substances with at least one (1) witness present; and

c. A readily retrievable record of the destroyed controlled substances shall be maintained for a minimum of eighteen (18) months from the date of destruction and contain the[following]:

(i) Date of destruction;

(ii) Resident name;

(iii) Drug name;

(iv) Drug strength;

(v) Quantity;

(vi) Method of destruction;

(vii) Name of the person responsible for the destruction; and

(viii) Name of the witness.

7. A PCH or SPCH that stores and administers controlled substances in an emergency medication kit (EMK) shall comply with the:

a. Requirement for licensed personnel established by 201 KAR 2:370, Section 2(4)(i);

b. Requirements for storage and administration established by 902 KAR 55:070, Section 2(2), (5), (7), (8), and (9); and

c. Limitation on the number and quantity of medications established by 902 KAR 55:070, Section 2(6).

(h)(f) All resident medications[medicines] shall be plainly labeled with the following:

1. Resident's name;

2.[-, the] Name of the drug;

3.[-] Strength;

4.[-] Name of the pharmacy;

5.[-] Prescription number;

6.[-] Date;

7. Prescriber's[-, Physician] name; **and**

8.[-] Caution statements and directions for use, unless a[except where accepted] modified unit dose drug distribution system is[systems conforming to federal and state laws are] used.

(i)1. All medicines kept by the PCH or SPCH[home] shall be kept in a locked place.

2. The administrator or staff person designated by the administrator[and the persons in charge] shall:

a. Be responsible for administering or supervising the self-administration of medication;

b. Ensure that all[giving the medicines and keeping them under lock and key-] medications requiring refrigeration are[shall be] kept in a separate locked box[of adequate size] in the refrigerator in the medication area; and

c. Ensure that[-] drugs for external use are [shall be] stored separately from those administered by mouth and injection[-. Provisions shall also be made for the locked separate storage of medications of deceased and discharged patients until such medication is surrendered or destroyed in accordance with existing federal and state laws and regulations].

(j)1. A PCH or SPCH that stores and administers non-controlled substances in an EMK shall comply with the:

a. Requirement for licensed personnel established by 201 KAR 2:370, Section 2(4)(i); and

b. Limitation on the number and quantity of medications established by 201 KAR 2:370, Section 2(4)(b).

2. A PCH or SPCH that stores and administers non-controlled substances from a long-term care facility (LTCF) drug stock shall comply with the limitation on the number and quantity of medications established by 201 KAR 2:370, Section 2(5)(b).

(k)1.[-(g)] If a resident manifests persistent behavior that might[may] require psychiatric treatment, the PCH or SPCH shall notify the resident's physician or health care practitioner acting within the practitioner's scope of practice[shall be notified in order] to evaluate and direct the resident's care.

2. If the resident's condition does not improve[enough] for[his] continued stay in a PCH or SPCH[personal care facility], the physician or health care practitioner shall initiate transfer of the resident to an appropriate facility as soon as possible.

(l)(f) [- (h)] Use of restraints.

1. Chemical and physical[No] restraints shall not be used, except as authorized[permitted] by KRS 216.515(6).

2. Restraints that require a lock and key shall not be used.

3. Emergency use of a manual restraint[Restraints] shall be applied only by appropriately trained personnel if:

a. A resident poses an imminent risk of physical harm to self or others; **and**

b. The emergency manual restraint is the least restrictive intervention to achieve safety.

4. Restraints shall not be used as:

a. [A] Punishment;

b. [- as] Discipline;

c. [- as a] Convenience for[the] staff;[-] or

d. Retaliation [as a mechanism to produce regression].

(m)(f) [- (h)] Each resident shall have an annual medical evaluation by a physician or health care practitioner acting within the practitioner's scope of practice.[The results of this evaluation shall be recorded in the resident's medical record].

(n)(f) [- (h)] Communicable diseases. If a resident or prospective resident is suspected or confirmed as having[known to have] a communicable disease for which a reasonable probability of disease transmission exists in the PCH or SPCH[personal care home], the administrator or staff person designated by the administrator shall:

1. Contact[assure that] a physician; and

2. Ensure[is contacted and] that appropriate measures are taken to treat[on behalf of] the resident with the communicable disease and prevent the disease from spreading[other residents].

(2) Residential care services. A PCH or SPCH[personal care home] shall provide residential care services to all residents, including:

(a) Room accommodations;

(b) [-] Housekeeping and maintenance services;[-] and

(c) Dietary services.

(3) A PCH or SPCH[personal care home] shall meet the following requirements relating to the provisions of residential care services:

(a) Room accommodations.

1. A PCH or SPCH shall provide each resident with:

a. [shall be provided] A bed that is at least thirty-six (36) inches wide;

b. [equipped with substantial spring,] A clean, comfortable mattress with a support mechanism;

c. [-] A mattress cover;

d. [-] Two (2) sheets and a pillow;[-] and

e. [such] Bed covering[as is required] to keep the resident[residents] comfortable.

2. Each bed[Rubber or other impervious sheets shall be placed over the mattress cover whenever necessary. Beds occupied by residents] shall be placed so that a[no] resident does not[may] experience discomfort because of proximity to a radiator, heat outlet, or exposure to a draft[radiators, heat outlets, or by exposure to drafts].

3. Except for married couples or domestic partners, there shall be separate sleeping quarters for males and females.

4. A PCH or SPCH[2. The home] shall provide:

a. Window coverings;

b. [-] Bedside tables with reading lamps;[-(f) if appropriate;

c. [-] Comfortable chairs;

d. A[-] chest or dresser with a mirror for each resident;[dressers with mirrors] and

e. A night light.

5. A resident shall not be housed in a room, detached building, or other enclosure that has not previously been inspected and approved for residential use by the Office of Inspector General and the Department of Housing, Buildings and Construction[3. Residents shall not be housed in unapproved rooms or unapproved detached buildings].

6. [-4.] Basement rooms shall not be used for sleeping rooms for residents.

7. [-5.] Residents may have personal items and furniture, if[when it is physically] feasible.

(b) Housekeeping and maintenance services.

1. A PCH or SPCH[The home] shall:

a. Maintain a clean and safe facility free of unpleasant odors; and

b. Ensure that[-] odors are[shall be] eliminated at their source by prompt and thorough cleaning of commodes, urinals, bedpans, and other[obvious] sources.

2. A PCH or SPCH shall:

a. Have available at all times a quantity[An adequate supply] of clean linen essential to the proper care and comfort of residents;

b. Ensure that[should be on hand at all times-] soiled clothing and linens[shall] receive immediate attention and[should] not be allowed to accumulate;

c. ~~Ensure that~~ clothing or bedding used by one (1) resident shall not be used by another ~~resident unless~~ until it has been laundered or dry cleaned;

d. ~~Ensure that each~~ 3. Laundering of resident's normal personal clothing and bed linens; resident's personal clothing and bed linens ~~are~~ shall be laundered ~~by the home~~ as often as is necessary;

e. Maintain responsibility for laundering each resident's personal clothing ~~shall be laundered by the home~~ unless the resident or the resident's family accepts this responsibility;

f. Provide laundry equipment for each resident who is Residents capable of, and chooses to launder his or her ~~laundrying their own~~ personal clothing; and

g. ~~Label or mark~~ Labels or marks each ~~and wishing to do so may, instead, be provided the facilities to do so~~ resident's personal clothing if laundered by the facility ~~for return~~ shall be marked to identify the resident-owner and returned to the correct resident.

3. [4.] Safety. The ~~condition of the overall environment~~ home shall be maintained in such a manner that the ~~take appropriate precautions to insure~~ safety and well-being of residents, personnel, and visitors is assured ~~and employees~~.

4. [5.] Maintenance. The premises shall be well kept and in good repair as established in clauses a. through d. of this subparagraph, follows. Requirements shall include but not be limited to:

a. The facility shall insure that the grounds are well kept and the exterior of the building, ~~and~~ including the sidewalk, steps, porches, ramps, and fences, are in good repair.

b. The interior of the building, including walls, ceilings, floors, windows, window coverings, doors, plumbing, and electrical fixtures, shall be in good repair. Windows and doors shall be screened.

c. Garbage and trash shall be stored in areas separate from those used for the preparation and storage of food and shall be removed from the premises regularly. Containers shall be cleaned regularly.

d. A pest control program shall be in operation in the facility. Pest control services shall be provided by maintenance personnel of the facility or by contract with a pest control company. Care shall be taken to use the least toxic and least flammable ~~effective~~ insecticides and rodenticides. The compounds shall be stored under lock if stored by the facility.

(c) Dietary services.

1. Dining area. A dining area shall be available for the residents.

2. Therapeutic diets. If the facility provides therapeutic diets, and the ~~staff member~~ designated person responsible for food services is not a ~~license~~ qualified dietician or ~~certified~~ nutritionist, the responsible staff person shall consult with a ~~licensed~~ consultation by a qualified dietician or ~~certified~~ qualified nutritionist ~~shall be provided~~.

3. Menu planning.

a. Menus shall be planned in writing and rotated to avoid repetition.

b. A PCH or SPCH shall meet the nutrition needs of residents ~~shall be met in accordance with the current recommended dietary allowances of the Food and Nutrition Board of the National Research Council adjusted for age, sex and activity and~~ in accordance with physician's orders.

c. ~~b.~~ Except as established in clause e. of this subparagraph, meals shall correspond with the posted menu.

d. Menus shall be planned and posted one (1) week in advance.

e. If ~~When~~ changes in the menu are necessary:

(i) Substitutions shall provide equal nutritive value;

(ii) ~~and~~ The changes shall be recorded on the menu; and

(iii) Menus shall be kept on file for at least thirty (30) days.

4. Food preparation and storage.

a. There shall be at least a three (3) day supply of food to prepare well-balanced, palatable meals.

b. Food shall be prepared with consideration for any individual dietary requirement.

c. Modified diets, nutrient concentrates, and supplements shall be given only on the written ~~order~~ orders of a physician.

d. ~~e.~~ At least three (3) meals per day shall be served with not more than a fifteen (15) hour span between the evening meal and breakfast.

e. Between-meal snacks, ~~including~~ to include an evening snack before bedtime, shall be offered to all residents.

f. Adjustments shall be made ~~if~~ when medically contraindicated.

g. ~~d.~~ Food shall be:

(i) Prepared by methods that conserve nutritive value, flavor, and appearance; and

(ii) ~~shall be attractively~~ Served at the proper temperature ~~temperatures~~ and in a form to meet individual needs.

h. A file of tested recipes, adjusted to appropriate yield, shall be maintained.

i. Food shall be cut, chopped, or ground to meet individual needs.

j. If a resident refuses food served, substitutes shall be offered.

k. ~~e.~~ All opened containers or leftover food items shall be covered and dated when refrigerated.

l. ~~f.~~ Ice water shall be readily available to the residents at all times.

m. Food services shall be provided in accordance with ~~5.~~ Sanitation. Personal care homes shall comply with all applicable provisions of KRS 219.011 to KRS 219.081 and 902 KAR 45:005.

(4) [(3)] Personal care services. All PCHs and SPCHs ~~personal care homes~~ shall provide services to assist residents with activities of daily living to achieve and maintain good personal hygiene, including ~~the level of~~ assistance as needed ~~necessary~~ with:

(a) ~~Bathing~~ Washing and bathing of the body to maintain clean skin and freedom from offensive odors. ~~In addition to assistance with washing and bathing,~~ The facility shall provide soap, clean towels, and wash cloths for each resident and ensure that toilet articles such as towels, brushes, and combs ~~are~~ shall not be used in common;

(b) Shaving;

(c) Cleaning and trimming of fingernails and toenails;

(d) Cleaning of the mouth and teeth to maintain good oral hygiene, and ~~as well as~~ care of the lips to prevent dryness and cracking. The facility shall provide all residents ~~shall be provided~~ with tooth brushes, a dentifrice, and denture containers, ~~if~~ when applicable; and

(e) Washing ~~and~~ grooming, ~~and cutting of hair~~.

(5) [(4)] Activity services.

(a) All PCHs and SPCHs ~~A personal care home~~ shall provide social and recreational activities to:

1. Stimulate physical and mental abilities to the fullest extent;

2. Encourage and develop a sense of usefulness and self-respect;

3. Prevent, inhibit, or correct the development of symptoms of physical and mental regression; and

4. Provide ~~due to illness or old age, be of~~ sufficient variety to ~~that they~~ meet the needs of each resident ~~the various types of residents in the home~~.

(b) All PCHs and SPCHs ~~A personal care home~~ shall meet the ~~following~~ requirements established in subparagraphs 1. through 8. of this paragraph relating to the provision of activity services;

1. Staff. ~~A person designated by~~ The administrator ~~shall~~.

a. Shall designate a staff member to be responsible for the activity program; and

b. May accept services from a volunteer group ~~groups may be enlisted~~ to assist with carrying out the activity ~~activities~~ program;

2. There shall be a planned activity period each day.

3. The schedule shall be current and posted.

4. [3.] The activity program shall be planned for group and individual activities, both within and outside of the facility.

5. [4.] The staff member ~~person~~ responsible for the activity program ~~activities~~ shall maintain a current list of residents ~~in~~ on which precautions are documented ~~noted~~ regarding ~~if whether~~ a

resident's condition ~~might(may)~~[that might] restrict or modify the resident's[his] participation in the program.

6.[5.] A living or recreation room and outdoor recreational space shall be provided for residents and their guests.

7.[6.] The facility shall provide supplies and equipment for the activity[activities] program.

8.[7.] Reading materials, radios, games, and TV sets shall be provided for the residents.

(c) An SPCH shall collaborate with the agency or team that is working with residents transitioning to community living pursuant to 908 KAR 2:065 to offer basic instruction in ADLs and IADLs to each resident who is identified as working to transition to independent community living pursuant to 908 KAR 2:065. ADL and IADL skills training shall include instruction that is integrated into the normal rhythms of life.

(6) For purposes of subsection (5)(c) of this section, the following shall apply:

(a) "Basic instruction" in ADLs and IADLs shall have the same meaning as "assistance with" ADLs and IADLs;

(b) An SPCH shall not be responsible for selecting which residents receive basic instruction in ADLs and IADLs; and

(c) An SPCH shall not be responsible for ensuring that a resident has mastered each task defined as an ADL or IADL.

Section 5. Material Incorporated by Reference. (1) The form, "SMI Screening Form", **August 2019(April 15, 2019 edition)**, is incorporated by reference.

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

STEVEN D. DAVIS, Inspector General

ADAM M. MEIER, Secretary

APPROVED BY AGENCY: July 12, 2019

FILED WITH LRC: July 15, 2019 at 10 a.m.

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CABINET FOR HEALTH AND FAMILY SERVICES

Department for Public Health

Division of Public Health Protection and Safety

(As Amended at IJC on Health, Welfare, and Family Services, September 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[fulfill] 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)[(42)] "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)[(42)] "Minor" is defined by[at] KRS 387.010(1).

(12)[(43)] "Mobile studio" means a tattooing studio that is designed to be readily movable.

(13)[(44)]["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)] "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 [I 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 [I]~~

~~(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 [I] 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;~~
- (k) ~~Be organized to keep clean areas separate from contaminated areas;~~
- (l) ~~Have (1) 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;~~
- (m) Use, clean, and maintain equipment according to manufacturers' recommendations;
- (n) ~~Use an approved (a hard surface high-level EPA registered) disinfectant;~~
- (o) ~~For~~
 - 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;~~
- (p) ~~Have plumbing sized, installed, and maintained in accordance with (the) (Kentucky State Plumbing Code,) 815 KAR Chapter 20;~~
- (q) ~~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
- (r) ~~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).~~
- (s) A workstation shall:
 - (a) Have nonporous (light-colored), smooth, easy-to-clean floors and (, 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) (e) 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) [(e)] 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; ~~and~~

(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)(e) 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)(a)~~~~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~~

(g) [The lot number of instruments and inks used; and

(h) Client's attestation~~[attestation]~~ to the fact that the client ~~[is]~~:

1. Is not intoxicated or under the influence of drugs or alcohol;

2. Is not pregnant; and

3. Has not ingested an anticoagulant that thins~~[Not currently taking medications such as anticoagulants that thin]~~ the blood or interferes~~[interfere]~~ with blood clotting within the past twenty-four (24) hours~~[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) [(4)] 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) [(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 feed 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) [400] 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][40]** 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) ~~[4.]~~ 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[1(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-245, 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~~[47.]~~ 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.~~[(4)] 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. 7-04);~~
~~(b)] DFS-303, "Application for Certification ~~or []~~ Registration", [Te: f] Rev. 2/19[7-03][f]); and~~
~~(c) [(b)] [(e)] DFS-342, "Tattoo and Body Piercing [] Studio Inspection Report", [f] (Rev. 2/19[6-03][f])];~~

- (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 IJC on Health, Welfare, and Family Services,
September 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)[(40)] "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)[(44)] "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)[(42)] "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[~~and~~]40¹~~40~~¹degrees Fahrenheit and[~~and~~]120²~~120~~²degrees Fahrenheit][³ 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)[(43)] "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)[(46)] "Jewelry" means any personal ornament or decoration inserted into a newly-pierced area.

(16)[(47)] "Minor" is defined by[~~at~~] KRS 387.010(1).

(17)[(48)] "Mobile studio" means a body-piercing studio that is designed to be readily movable.

(18)[(49)]["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.

(24)] "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[40:040]**;

(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;
- (k) [Be organized to keep clean areas separate from contaminated areas;
- (l) [Have (1) 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;
- (m) Use, clean, and maintain equipment according to manufacturers' recommendations;
- (n) [Use an approved] a hard surface high-level EPA registered disinfectant;
- (o) [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;
- (p) Have plumbing sized, installed, and maintained in accordance with [the] [Kentucky State Plumbing Code,] 815 KAR Chapter 20;
- (q) [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
- (r) [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 and; 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[feet] high [one-half (1/2) walls] between workstations;
- (f) [Have 100 foot-candles of light at the procedure level;
- (g) [Have unimpeded access to a hand sink; without opening a door];
- (h) [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) [Be designated as a body piercing workstation, and shall not be used for any other purpose;
- (j) [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) [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) [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)(e) 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)(e) 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: 3

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; and

(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

(g) [Lot number of items used; and

(h) Client's attestation [attestment] to the fact that the client [is];

1. Is not intoxicated or under the influence of drugs or alcohol; and

2. Has not ingested an anticoagulant that thins [Not currently taking medications, such as anticoagulants, that thin] the blood or interferes [interfere] with blood clotting within the past twenty-four (24) hours] 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)] [(40)] [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)] [(40)] [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)] [(40)] [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;

(i) ~~[(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 [A] 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)[400] 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[bleed-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 local or district health department inspector shall record the inspection findings 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 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 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 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 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 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 Fiscal Management

(As Amended at ARRS, September 16, 2019)

907 KAR 10:830. Acute care inpatient hospital reimbursement.

RELATES TO: KRS 13B.140, 142.303, 205.510(16), 205.565, 205.637, 205.638, 205.639, 205.640, ~~205.641,~~ 216.380, 42 C.F.R. Parts 412, 413, 440.10, 440.140, 447.250-447.280, 42 U.S.C. 1395f(l), 1395ww(d)(5)(F), 1395x(mm), 1396a, 1396b, 1396d, 1396f-4[, Pub.L. 111-148]

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.560(2), 205.637(3), 205.640(1), ~~205.641(2),~~ 216.380(12), 42 C.F.R. 447.200, 447.250, 447.252, 447.253, 447.271, 447.272, 42 U.S.C. 1396a, 1396r-4

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 a requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes the Department for Medicaid Services' reimbursement provisions and requirements for acute care inpatient hospital services provided to a Medicaid recipient who is not enrolled with a managed care organization.

Section 1. Definitions. (1) "Acute care hospital" is defined by KRS 205.639(1).

(2) "Appalachian Regional Hospital System" means a private, not-for-profit hospital chain operating in a Kentucky county that receives coal severance tax proceeds.

(3) "Capital cost" means capital related expenses including insurance, taxes, interest, and depreciation related to plant and equipment.

(4) "CMS" means the Centers for Medicare and Medicaid Services.

(5) "CMS IPPS Pricer Program" means the software program published on the CMS Web site[website] of <http://www.cms.hhs.gov>, which shows the Medicare rate components and payment rates under the Medicare inpatient prospective payment system for a discharge within a given federal fiscal year.

(6) "Cost outlier" means a claim for which estimated cost exceeds the outlier threshold.

(7) "Critical access hospital" or "CAH" means a hospital:

(a) Meeting the licensure requirements established in 906 KAR 1:110; and

(b) Designated as a critical access hospital by the department.

(8) "Department" means the Department for Medicaid Services or its designated agent.

(9) "Diagnosis code" means a code:

(a) Maintained by the Centers for Medicare and Medicaid Services (CMS) to group and identify a disease, disorder, symptom, or medical sign; and

(b) Used to measure morbidity and mortality.

(10) "Diagnosis related group" or "DRG" means a clinically similar grouping of services that can be expected to consume similar amounts of hospital resources.

(11) "Distinct part unit" means a separate unit within an acute care hospital that meets the qualifications established in 42 C.F.R. 412.25 and is designated as a distinct part unit by the department.

(12) "DRG base payment" means the sum of the operating base payment and capital base payment, calculated as described in Section 2(4)(b) and (c) of this administrative regulation.

(13) "DRG geometric mean length-of-stay" means an average hospital length-of-stay, expressed in days, for each DRG, with the geometric mean calculated by taking the nth (number of values in the set) root of the product of all length-of-stay values within a given DRG.

(14) "Enrollee" means a recipient who is enrolled with a managed care organization.

(15) "Enrollee day" means a day of an inpatient hospital stay of a Medicaid recipient who is enrolled with a managed care organization.

(16) "Federal financial participation" is defined by 42 C.F.R. 400.203.

(17) "Fixed loss cost threshold" means an amount, established annually by CMS, which is combined with the full DRG payment or transfer payment for each DRG to determine the outlier threshold.

(18) "Government entity" means an entity that qualifies as a unit of government for the purposes of 42 U.S.C. 1396b(w)(6)(A).

(19) "Graduate medical education program" means a Medicare-approved education and training program for interns and residents in medicine, osteopathy, dentistry, or podiatry.

(20) "Hospital-acquired condition" means a condition:

(a)1. Associated with a diagnosis code selected by the Secretary of the U.S. Department of Health and Human Services pursuant to 42 U.S.C. 1395ww(d)(4)(D); and

2. Not present upon the recipient's admission to the hospital;

and

(b) ~~That~~[Which] is recognized by the Centers for Medicare and Medicaid Services as a hospital acquired condition.

(21)[(20)] "Indirect medical education costs" means additional costs of serving Medicaid recipients, incurred by teaching hospitals, to provide training and education to interns and residents in graduate medical education programs, which are not reimbursed through direct graduate medical education payments.

(22)[(24)] "Long-term acute care hospital" means a long term care hospital that meets the requirements established in 42 C.F.R. 412.23(e).

(23)[(22)] "Managed care organization" 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.

(24)[(23)] "Medicaid fee-for-service" means a service associated with a Medicaid recipient who is not enrolled with a managed care organization.

(25)[(24)] "Medicaid fee-for-service covered day" means an inpatient hospital day associated with a Medicaid recipient who is not enrolled with a managed care organization.

(26)[(25)] "Medicaid shortfall" means the difference between a provider's allowable cost of providing services to Medicaid recipients and the amount received in accordance with the payment provisions established in Section 2 of this administrative regulation. ~~[(26)] "Medical education costs" means direct and allowable costs that are:~~

(a) ~~Associated with an approved intern and resident program; and~~

(b) ~~Subject to limits established by Medicare.]~~

(27) "Medically necessary" or "medical necessity" means that a covered benefit shall be provided in accordance with 907 KAR 3:130.

(28) "Medicare-dependent hospital" means a hospital designated as a Medicare dependent hospital by the Centers for Medicare and Medicaid Services.

(29) "Medicare IPPS Final Rule Data Files and Tables" means information related to Medicare hospital reimbursement that is:

(a) Published annually by the Centers for Medicare and Medicaid Services; and

(b) Located online at the Centers for Medicare and Medicaid Services acute inpatient PPS Web site located at: <http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/AcuteInpatientPPS/index.html>.

(30) "Medicare operating and capital cost-to-charge ratios" means two (2) hospital-specific calculations:

(a) Completed by Medicare using CMS 2552 cost report information;

(b) In which:

1. Medicare operating costs are divided by total applicable charges to determine a Medicare operating cost-to-charge ratio; and

2. Medicare capital costs are divided by total applicable charges to determine a Medicare capital cost-to-charge ratio; and

(c) That are published annually by CMS in an impact file released with the Medicare IPPS Final Rule Data Files and Tables for a given federal fiscal year.

(31) "Never event" means:

(a) A procedure, service, or hospitalization not reimbursable by Medicare pursuant to CMS Manual System Pub 100-03 Medicare National Coverage Determinations Transmittal 101; or

(b) A hospital-acquired condition.

(32) "Outlier threshold" means the sum of the DRG base payment or transfer payment and the fixed loss cost threshold.

(33) "Pediatric teaching hospital" is defined by[in] KRS 205.565(1).

(34) "Per diem rate" means the per diem rate paid by the department for:

(a) Inpatient care in an in-state psychiatric or rehabilitation hospital;

(b) Inpatient care in a long-term acute care hospital;

(c) Inpatient care in a critical access hospital[.];

(d) Psychiatric, substance use disorder, or rehabilitation

services in an in-state acute care hospital which has a distinct part unit; or

(e) A psychiatric or rehabilitation service in an in-state acute care hospital.

(35) "Psychiatric hospital" means a hospital ~~that~~[which] meets the licensure requirements as established in 902 KAR 20:180.

(36) "Quality improvement organization" or "QIO" means an organization that complies with 42 C.F.R. 475.101.

(37) "Rehabilitation hospital" means a hospital meeting the licensure requirements as established in 902 KAR 20:240.

(38) "Relative weight" means the factor assigned to each Medicare DRG classification that represents the average resources required for a Medicare DRG classification paid under the DRG methodology relative to the average resources required for all DRG discharges paid under the DRG methodology for the same period.

(39) "Resident" means an individual living in Kentucky who is not receiving public assistance in another state.

(40) "Rural hospital" means a hospital located in a rural area pursuant to 42 C.F.R. 412.64(b)(1)(ii)(C).

(41) "Sole community hospital" means a hospital that is currently designated as a sole community hospital by the Centers for Medicare and Medicaid Services.

(42) "State university" means the University of Kentucky or the University of Louisville.

(43) "State university teaching hospital" means[:

(a) a hospital that is owned or operated by a state[Kentucky state-supported] university, or a state university-related party organization, as allowed by 42 C.F.R. 413.17, with a state university affiliated graduate medical education program[with a medical school; or

(b) A hospital:

1. ~~In which three (3) or more departments or major divisions of the University of Kentucky or University of Louisville medical school are physically located and which are used as the primary (greater than fifty (50) percent) medical teaching facility for the medical students at the University of Kentucky or the University of Louisville; and~~

2. ~~That does not possess only a residency program or rotation agreement].~~

(44)[(43)] "Transfer payment" means a payment made for a recipient who is transferred to or from another hospital for a service reimbursed on a prospective discharge basis. ~~[(44)] "Type III hospital" means an in-state disproportionate share state university teaching hospital, owned or operated by either the University of Kentucky or the University of Louisville Medical School.]~~

(45) "Universal rate year" means the twelve (12) month period under the prospective payment system, beginning October 1 of each year, for which a payment rate is established for a hospital regardless of the hospital's fiscal year end.

(46) "Urban hospital" means a hospital located in an urban area pursuant to 42 C.F.R. 412.64(b)(1)(ii).

(47) "Urban trauma center hospital" means an acute care hospital that:

(a) Is designated as a Level I Trauma Center by the American College of Surgeons;

(b) Has a Medicaid utilization rate greater than twenty-five (25) percent; and

(c) Has at least fifty (50) percent of its Medicaid population as residents of the county in which the hospital is located.

Section 2. Payment for an Inpatient Acute Care Service in an In-state Acute Care Hospital. (1)(a) The department shall reimburse an in-state acute care hospital for an inpatient acute care service, except for a service not covered pursuant to 907 KAR 10:012, on a fully-prospective per discharge basis.

(b) The department's reimbursement pursuant to this administrative regulation shall approximate ninety-five (95) percent of a hospital's Medicare reimbursement excluding the following Medicare reimbursement components:

1. A Medicare low-volume hospital payment;
2. A Medicare end stage renal disease payment;
3. A Medicare new technology add-on payment;
4. A Medicare routine pass-through payment;

5. A Medicare ancillary pass-through payment;
6. A Medicare value-based purchasing payment or penalty;
7. A Medicare readmission penalty in accordance with paragraph (c) of this subsection;
8. A Medicare hospital-acquired condition penalty in accordance with paragraph (c) of this subsection;
9. Any type of Medicare payment implemented by Medicare after October 1, 2015; or
10. Any type of Medicare payment not described in this administrative regulation.

(c) The department's:

1. Never event and hospital-acquired condition provisions established in Section 3 of this administrative regulation shall apply to acute care inpatient hospital reimbursement under this administrative regulation; and

2. Readmission provisions established in Section 12 of this administrative regulation shall apply to acute care inpatient hospital reimbursement under this administrative regulation.

(2)(a) For an inpatient acute care service, except for a service not covered pursuant to 907 KAR 10:012, in an in-state acute care hospital, the total hospital-specific per discharge payment shall be the sum of:

1. A DRG base payment; and
2. If applicable, a cost outlier payment.

(b) The resulting payment shall be limited to ninety-five (95) percent of the calculated value.

(c) If applicable, a transplant acquisition fee payment shall be added pursuant to subsection (11)(b) of this section.

(3)(a) The department shall assign a DRG classification to each unique discharge billed by an acute care hospital.

(b)1. The DRG assignment shall be based on the most recent Medicare Severity DRG (MS-DRG) grouping software released by the Centers for Medicare and Medicaid Services beginning with version 32 on October 1, 2015 unless CMS releases version 33 on October 1, 2015.

2. If CMS releases version 33 on October 1, 2015, the department shall make interim payments for dates of service beginning October 1, 2015 based on version 32 and then retroactively adjust claims for dates of service beginning October 1, 2015 using version 33.

3. The grouper version shall be updated in accordance with Section 8 of this administrative regulation.

(c) In assigning a DRG for a claim, the department shall exclude from consideration any secondary diagnosis code associated with a never event.

(4)(a) A DRG base payment shall be the sum of the operating base payment and the capital base payment calculated as described in paragraphs (c) and (d) of this subsection.

(b) All calculations in this subsection shall be subject to special rate-setting provisions for sole community hospitals and Medicare dependent hospitals as described in Sections 5 and 6 of this administrative regulation.

(c)1. The operating base payment shall be determined by multiplying the hospital-specific operating rate by the DRG relative weight.

2. If applicable, the resulting product of subparagraph 1. of this paragraph shall be multiplied by the sum of one (1) and a hospital-specific operating indirect medical education (IME) factor determined in accordance with subparagraph 7₂ of this paragraph.

3. Beginning October 1, 2015, the hospital-specific operating rate referenced in subparagraph 1₂ of this paragraph shall be calculated using inputs from the Federal Fiscal Year 2016 Medicare IPPS Final Rule Data Files and Tables published by CMS as described in subparagraphs 4₂ through 6₂ of this paragraph.

4. The Medicare IPPS standard amount established for operating labor costs shall be multiplied by the wage index associated with the final Core Based Statistical Area (CBSA) assigned to the hospital by Medicare, inclusive of any Section 505 adjustments applied by Medicare.

5. The resulting product of subparagraph 4₂ of this paragraph shall be added to the Medicare IPPS standard amount for non-labor operating costs.

6. The operating rate shall be updated in accordance with Section 8 of this administrative regulation.

7.a. Beginning October 1, 2015, the hospital-specific operating IME factor shall be taken from the Federal Fiscal Year 2016 Medicare Inpatient Prospective Payment System (IPPS) Final Rule Data Files and Tables published by CMS.

b. The operating IME factor shall be updated in accordance with Section 8 of this administrative regulation.

(d)1. The capital base payment shall be determined by multiplying the hospital-specific capital rate by the DRG relative weight.

2. If applicable, the resulting product of subparagraph 1. of this paragraph shall be multiplied by the sum of one (1) and a hospital-specific capital indirect medical education factor determined in accordance with subparagraph 6₂ of this paragraph.

3. Beginning October 1, 2015, the hospital-specific capital rate referenced in subparagraph 1₂ of this paragraph shall be calculated using inputs from the Federal Fiscal Year 2016 Medicare IPPS Final Rule Data Files and Tables published by CMS as described in subparagraphs 4₂ and 5₂ of this paragraph.

4. The Medicare IPPS standard amount established for capital costs shall be multiplied by the geographic adjustment factor (GAF) associated with the final CBSA assigned to the hospital by Medicare.

5. The capital rate shall be updated in accordance with Section 8 of this administrative regulation.

6.a. Beginning October 1, 2015, the hospital-specific capital IME factor shall be taken from the Medicare Inpatient Prospective Payment System (IPPS) Final Rule Data Files and Tables published by CMS.

b. The capital IME factor shall be updated in accordance with Section 8 of this administrative regulation.

(e)1. Effective **beginning May 10, 2019**[during the fiscal year ending on June 30, 2019] pursuant to federal approval, the department shall make an annual IME payment to state university teaching hospitals, in addition to the adjustments specified in paragraphs (c)2. and (d)2. of this subsection, equal to:

a. The total of all operating base payments, as determined under paragraph (c)1. of this subsection, received by the hospital during the previous year multiplied by the sum of one (1) and the adjusted hospital-specific education (IME) factor determined in accordance with subparagraph 2. of this paragraph; plus

b. The total of all capital base payments, as determined under paragraph (d)1. of this subsection, received by the hospital during the previous year multiplied by the sum of one (1) and the adjusted hospital-specific education (IME) factor determined in accordance with subparagraph 2. of this paragraph; plus

c. The total of all inpatient **operating and capital base** hospital payments received from managed care organizations in the previous year multiplied by the sum of one (1) and the adjusted hospital-specific education (IME) factor determined in accordance with **subparagraph 2. of this paragraph**[~~clause b. of this subparagraph~~]; minus

d. The amount of IME adjustments to the operating base rate received during the previous year pursuant to paragraph (c)2. of this subsection; minus

e. The amount of IME adjustments to the capital base rate received during the previous year pursuant to paragraph (d)2. of this subsection; minus

f. The amount of IME adjustments received from managed care organizations during the previous year.

2. The adjusted hospital-specific operating IME factor shall be calculated pursuant to 42 C.F.R. 412.105(d); **however, the count of full-time equivalent (FTE) residents in the resident-to-bed ratio in the formula described within 42 C.F.R. 412.105(d) shall be substituted with the number of FTE residents reported on Worksheet E Part A, Lines 10 and 11, Column 1 of the Medicare cost report**[, except that there shall be no caps on the number of full-time equivalent residents included in the formula].

(5)(a) The department shall make a cost outlier payment for an approved discharge meeting the Medicaid criteria for a cost outlier for each DRG as established in paragraphs (b) to (e) of this

subsection.

(b) A cost outlier shall be subject to QIO review and approval.

(c) A discharge shall qualify for a cost outlier payment if its estimated cost exceeds the DRG's outlier threshold.

(d)1. The department shall calculate the estimated cost of a discharge:

a. For purposes of comparing the discharge cost to the outlier threshold; and

b. By multiplying the sum of the hospital-specific Medicare operating and capital-related cost-to-charge ratios by the Medicaid allowed charges.

2.a. A Medicare operating and capital-related cost-to-charge ratio shall be extracted from the Federal Fiscal Year 2016 Medicare IPPS Final Rule Data Files and Tables published by CMS.

b. The Medicare operating and capital cost-to-charge ratios shall be updated in accordance with Section 8 of this administrative regulation.

(e)1. The department shall calculate an outlier threshold as the sum of a hospital's DRG base payment or transfer payment and the fixed loss cost threshold.

2.a. Beginning October 1, 2015, the fixed loss cost threshold shall equal the Medicare fixed loss cost threshold established for Federal Fiscal Year 2016.

b. The fixed loss cost threshold shall be updated in accordance with Section 8 of this administrative regulation.

(f)1. For specialized burn DRGs as established by Medicare, a cost outlier payment shall equal ninety (90) percent of the amount by which estimated costs exceed a discharge's outlier threshold.

2. For all other DRGs, a cost outlier payment shall equal eighty (80) percent of the amount by which estimated costs exceed a discharge's outlier threshold.

(6)(a) The department shall establish DRG relative weights obtained from the Medicare IPPS Final Rule Data Files and Tables corresponding to the grouper version in effect under subsection (3) of this section.

(b) Relative weights shall be revised to match the grouping software version for updates in accordance with Section 8 of this administrative regulation.

(7) The department shall separately reimburse for a mother's stay and a newborn's stay based on the DRGs assigned to the mother's stay and the newborn's stay.

(8)(a) If a patient is transferred to or from another hospital, the department shall make a transfer payment to the transferring hospital if the initial admission and the transfer are determined to be medically necessary.

(b) For a service reimbursed on a prospective discharge basis, the department shall calculate the transfer payment amount based on the average daily rate of the transferring hospital's payment for each covered day the patient remains in that hospital, plus one (1) day, up to 100 percent of the allowable per discharge reimbursement amount.

(c)1. The department shall calculate an average daily discharge rate by dividing the DRG base payment by the Medicare geometric mean length-of-stay for a patient's DRG classification.

2. The Medicare geometric length-of-stay shall be obtained from the Medicare IPPS Final Rule Data Files and Tables corresponding to the grouper version in effect under subsection (3) of this section.

3. The geometric length-of-stay values shall be revised to match the grouping software version for updates in accordance with Section 8 of this administrative regulation.

(d) Total reimbursement to the transferring hospital shall be the transfer payment amount and, if applicable, a cost outlier payment amount, limited to ninety-five (95) percent of the amount calculated for each.

(e) For a hospital receiving a transferred patient, the department shall reimburse the standard DRG payment established in subsection (2) of this section.

(9)(a) The department shall reimburse a transferring hospital for a transfer from an acute care hospital to a qualifying post-acute care facility for selected DRGs in accordance with paragraphs (b) through (d) of this subsection as a post-acute care transfer.

(b) The following shall qualify as a post-acute care setting:

1. A skilled nursing facility;
2. A cancer or children's hospital;
3. A home health agency;
4. A rehabilitation hospital or rehabilitation distinct part unit located within an acute care hospital;
5. A long-term acute care hospital; or
6. A psychiatric hospital or psychiatric distinct part unit located within an acute care hospital.

(c) A DRG eligible for a post-acute care transfer payment shall be in accordance with 42 U.S.C. 1395ww(d)(5)(4)(J).

(d)1. The department shall pay each transferring hospital an average daily rate for each day of a stay.

2. A transfer-related payment shall not exceed the full DRG payment that would have been made if the patient had been discharged without being transferred.

3. A DRG identified by CMS as being eligible for special payment shall receive fifty (50) percent of the full DRG payment plus the average daily rate for the first day of the stay and fifty (50) percent of the average daily rate for the remaining days of the stay up to the full DRG base payment.

4. A DRG that is referenced in paragraph (b) of this subsection and not referenced in subparagraph 2 of this paragraph shall receive twice the average daily rate for the first day of the stay and the average daily rate for each following day of the stay prior to the transfer.

5. Total reimbursement to the transferring hospital shall be the transfer payment amount and, if applicable, a cost outlier payment amount, limited to ninety-five (95) percent of the amount calculated for each.

(e)1. The average daily rate shall be the base DRG payment allowed divided by the Medicare geometric mean length-of-stay for a patient's DRG classification.

2. The Medicare geometric mean length-of-stay shall be determined and updated in accordance with subsection (8)(c) of this section.

(10) The department shall reimburse a receiving hospital for a transfer to a rehabilitation or psychiatric distinct part unit the facility-specific distinct part unit per diem rate, in accordance with 907 KAR 10:815, for each day the patient remains in the distinct part unit.

(11)(a) The department shall reimburse for an organ transplant on a prospective per discharge method according to the recipient's DRG classification.

(b)1. The department's organ transplant reimbursement shall include an interim reimbursement followed by a final reimbursement.

2. The final reimbursement shall:

- a. Include a cost settlement process based on the Medicare 2552 cost report form; and
- b. Be designed to reimburse hospitals for ninety-five (95) percent of organ acquisition costs.

3.a. An interim organ acquisition payment shall be made using a fixed-rate add-on to the standard DRG payment using the rates established in subclauses (i), (ii), (iii), (iv), and (v) of this clause:

- (i) Kidney Acquisition - \$65,000;
- (ii) Liver Acquisition - \$55,000;
- (iii) Heart Acquisition - \$70,000;
- (iv) Lung Acquisition - \$65,000; or
- (v) Pancreas Acquisition - \$40,000.

b. Upon receipt of a hospital's as-filed Medicare cost report, the department shall calculate a tentative settlement at ninety-five (95) percent of costs for organ acquisition costs utilizing worksheet D-4 of the CMS 2552 cost report for each organ specified in clause a. of this subparagraph.

c. Upon receipt of a hospital's finalized Medicare cost report, the department shall calculate a final reimbursement, which shall be a cost settlement at ninety-five (95) percent of costs for organ acquisition costs utilizing worksheet D-4 of the CMS 2552 cost report for each organ specified in clause a. of this subparagraph.

d. The final cost settlement shall reflect any cost report adjustments made by CMS.

Section 3. Never Events. (1) For each diagnosis on a claim, a hospital shall specify on the claim whether the diagnosis was present upon the individual's admission to the hospital.

(2) In assigning a DRG for a claim, the department shall exclude from the DRG assignment consideration of any secondary diagnosis code associated with a hospital-acquired condition.

(3) A hospital shall not seek payment for treatment for or related to a never event through:

(a) A recipient;

(b) The Cabinet for Health and Family Services for a child in the custody of the cabinet; or

(c) The Department for Juvenile Justice for a child in the custody of the Department for Juvenile Justice.

(4) A recipient, the Cabinet for Health and Family Services, or the Department for Juvenile Justice shall not be liable for treatment for or related to a never event.

Section 4. Preadmission Services for an Inpatient Acute Care Service. A preadmission service provided within three (3) calendar days immediately preceding an inpatient admission reimbursable under the prospective per discharge reimbursement methodology shall:

(1) Be included with the related inpatient billing and shall not be billed separately as an outpatient service; and

(2) Exclude a service furnished by a home health agency, a skilled nursing facility, or hospice, unless it is a diagnostic service related to an inpatient admission or an outpatient maintenance dialysis service.

Section 5. Reimbursement for Sole Community Hospitals. An operating rate for sole community hospitals shall be calculated as described in subsections (1) and (2) of this section.

(1)(a) For each sole community hospital, the department shall utilize the hospital's hospital-specific (HSP) rate calculated by Medicare.

(b) The HSP rate shall be extracted from the Federal Fiscal Year 2016 Medicare IPPS Final Rule Data Files and Tables.

(c) Effective October 1, 2016 and for subsequent years on October 1, the HSP rate shall be updated in accordance with Section 8 of this administrative regulation.

(2)(a) The department shall compare the rate referenced in subsection (1) of this section with the operating rate calculated in Section 2(4)(c) of this administrative regulation.

(b) The higher of the two (2) rates compared in paragraph (a) of this subsection shall be utilized as the operating rate for sole community hospitals.

Section 6. Reimbursement for Medicare Dependent Hospitals.

(1)(a) For a Medicare-dependent hospital, the department shall utilize the hospital's hospital-specific (HSP) rate calculated by Medicare.

(b) The HSP rate shall be extracted from the Federal Fiscal Year 2016 Medicare IPPS Final Rule Data Files and Tables.

(c) Effective October 1, 2016 and for subsequent years on October 1, the HSP rate shall be updated in accordance with Section 8 of this administrative regulation.

(2)(a) The department shall compare the rate referenced in subsection (1) of this section with the operating rate calculated in Section 2(4)(c) of this administrative regulation.

(b) If the Section 2(4)(c) rate is higher, it shall be utilized as the hospital's operating rate for the period.

(c)1. If the rate referenced in subsection (1) of this section is higher, the department shall calculate the arithmetic difference between the two (2) rates.

2. The difference shall be multiplied by seventy-five (75) percent.

3. The resulting product shall be added to the Section 2(4)(c) rate to determine the hospital's operating rate for the period.

(d) If CMS terminates the Medicare-dependent hospital program, a hospital that is a Medicare-dependent hospital at the time that CMS terminates the program shall receive operating rates as calculated in Section 2(4)(c) of this administrative regulation.

Section 7. Direct Graduate Medical Education Costs at In-state Hospitals with ~~[Medicare-approved]~~ Graduate Medical Education Programs. (1) If federal financial participation for direct graduate medical education (DGME) costs is not provided to the department, the department shall not reimburse eligible in-state hospitals for direct graduate medical education costs.

(2) If federal financial participation for direct graduate medical education costs is provided to the department, the department shall provide a base DGME payment to in-state hospitals ~~reimburse~~ for the direct costs of a graduate medical education program approved by Medicare as established in this subsection.

(a) A base DGME payment shall be made:

1. Separately from the per discharge and per diem payment methodologies; and

2. On an annual basis corresponding to the hospital's fiscal year.

(b) The department shall determine an annual base DGME payment amount for a hospital as established in subparagraphs 1. through 4. of this paragraph.

1. Total direct graduate medical education costs shall be obtained from a facility's as-filed CMS 2552 cost report, worksheet E-4, line 25.

2.a. The facility's Medicaid utilization shall be calculated by dividing Medicaid fee-for-service covered days during the cost report period, as reported by the Medicaid Management Information System, by total inpatient hospital days, as reported on worksheet E-4, line 27 of the CMS 2552 cost report.

b. The resulting Medicaid utilization factor shall be rounded to six (6) decimals.

3. The total graduate medical education costs referenced in subparagraph 1. of this paragraph shall be multiplied by the Medicaid utilization factor calculated in subparagraph 2. of this paragraph to determine the total graduate medical education costs related to the fee-for-service Medicaid program.

4. Medicaid program graduate medical education costs shall then be multiplied by ninety-five (95) percent to determine the annual base DGME payment amount.

(3) Effective ~~beginning May 10, 2019~~ during the fiscal year ending on June 30, 2019 pursuant to federal approval, the department shall provide a supplemental direct graduate medical education (supplemental DGME) payment for the direct costs of graduate medical education incurred by eligible in-state hospitals as established in paragraph (a) of this subsection.

(a) In-state hospitals eligible for supplemental DGME shall include:

1. Those hospitals receiving direct graduate medical education payments from the department as of April 1, 2019; and

2. Any hospital that sponsors a graduate medical education program affiliated with a state university on or after April 1, 2019.

(b) A supplemental DGME payment shall be made:

1. Separately from the per discharge and per diem payment methodologies;

2. In addition to any base DGME payment made pursuant to subsection (2) of this section; and

3. On an annual basis corresponding to the hospital's fiscal year.

(c) The annual supplemental DGME payment shall be calculated by the department by subtracting any base DGME payments made by the department pursuant to subsection (2) of this section, any DGME payments received through outpatient cost settlements, and any DGME payments received from Medicaid managed care organizations from the total DGME amount determined under paragraph (d) of this subsection.

(d) The total DGME amount shall equal the product of:

1. Total DGME costs, obtained from Worksheet B, Part 1, Line 118, Columns 21 and 22 ~~(Lines 21 and 22)~~ of the CMS 2552 cost report; and

2. The hospital's Medicaid utilization, calculated by dividing the total number of Medicaid inpatient days, including both fee for service and managed care days, by total inpatient days.

(e) The supplemental DGME payment shall be calculated prior to the determination of applicable supplemental

payments described in Section 14 of this administrative regulation. Only the portion of the supplemental DGME payment associated with Medicaid fee for service days shall count towards the upper payment limit described in Section 18 of this administrative regulation.

Section 8. Reimbursement Updating Procedures. (1)(a) The department shall annually update the Medicare grouper software to the most current version used by the Medicare program. The annual update shall be effective October 1 of each year, except as provided in paragraph (b) of this subsection.

(b) If Medicare does not release a new grouper version effective October 1 of a given year:

1. The current grouper effective prior to October 1 shall remain in effect until a new grouper is released; and

2. When the new grouper is released by Medicare, the department shall update the Medicare grouper software to the most current version used by the Medicare program.

(c) The department shall not update the Medicare grouper software more than once per federal fiscal year, which shall be October 1 through September 30 of the following year.

(2) At the time of the grouper update referenced in subsection (1) of this section, all DRG relative weights and geometric length-of-stay values shall be updated to match the most recent relative weights and geometric length-of-stay values effective for the Medicare program.

(3)(a) Annually, on October 1, all values obtained from the Medicare IPPS Final Rule Data Files and Tables shall be updated to reflect the most current Medicare IPPS final rule in effect.

(b)1. Within thirty (30) days after the Centers for Medicare and Medicaid Services publishes the Medicare IPPS Final Rule Data Files and Tables for a given year, the department shall send a notice to each hospital containing the hospital's data from the Medicare IPPS Final Rule Data Files and Tables to be used by the department to establish diagnosis related group rates on October 1.

2. The notice referenced in subparagraph 1. of this paragraph shall request that the hospital:

a. Review the information; and

b. If the hospital discovers that the data in the notice sent by the department does not match the data published by the Centers for Medicare and Medicaid Services, notify the department of the discrepancy prior to October 1.

(4) All Medicare IPPS final rule values utilized in this administrative regulation shall be updated to reflect any correction notices issued by CMS, if applicable.

(5) Except for an appeal in accordance with Section 22 of this administrative regulation, the department shall make no other adjustment.

Section 9. Universal Rate Year. (1) A universal rate year shall be established as October 1 of one (1) year through September 30 of the following year.

(2) A hospital shall not be required to change its fiscal year to conform with a universal rate year.

Section 10. Cost Reporting Requirements. (1)(a) An in-state hospital participating in the Medicaid Program shall submit to the department, in accordance with the requirements in this section:

1. A copy of each Medicare cost report it submits to CMS;
2. An electronic cost report file (ECR);
3. The Supplemental Medicaid Schedule KMAP-1;
4. The Supplemental Medicaid Schedule KMAP-4; and
5. The Supplemental Medicaid Schedule KMAP-6.

(b) A document listed in paragraph (a) of this subsection shall be submitted:

1. For the fiscal year used by the hospital; and
2. Within five (5) months after the close of the hospital's fiscal year.

(c) Except as provided in subparagraph 1. or 2. of this paragraph, the department shall not grant a cost report submittal extension.

1. If an extension has been granted by Medicare, the cost

report shall be submitted simultaneously with the submittal of the Medicare cost report.[-;øø]

2. If a catastrophic circumstance exists, for example flood, fire, or other equivalent occurrence, the department shall grant a thirty (30) day extension.

(2) If a cost report submittal date lapses and no extension has been granted, the department shall immediately suspend all payments to the hospital until a complete cost report is received.

(3) A cost report submitted by a hospital to the department shall be subject to audit and review.

(4) An in-state hospital shall submit to the department a final Medicare-audited cost report upon completion by the Medicare intermediary along with an electronic cost report file (ECR).

Section 11. Unallowable Costs. (1) The following shall not be allowable costs for Medicaid reimbursement:

(a) A cost associated with a political contribution;

(b) A cost associated with a legal fee for an unsuccessful lawsuit against the Cabinet for Health and Family Services. A legal fee relating to a lawsuit against the Cabinet for Health and Family Services shall only be included as a reimbursable cost in the period in which the suit is settled after a final decision has been made that the lawsuit is successful or if otherwise agreed to by the parties involved or ordered by the court; and

(c) A cost for travel and associated expenses outside the Commonwealth of Kentucky for the purpose of a convention, meeting, assembly, conference, or a related activity, subject to the limitations of subparagraphs 1. and 2. of this paragraph.

1. A cost for a training or educational purpose outside the Commonwealth of Kentucky shall be allowable.

2. If a meeting is not solely educational, the cost, excluding transportation, shall be allowable if an educational or training component is included.

(2) A hospital shall identify an unallowable cost on a Supplemental Medicaid Schedule KMAP-1.

(3) A Supplemental Medicaid Schedule KMAP-1 shall be completed and submitted to the department with an annual cost report.

Section 12. Readmissions. (1) An unplanned inpatient admission within fourteen (14) calendar days of discharge for the same diagnosis shall be considered a readmission and reviewed by the QIO.

(2) Reimbursement for an unplanned readmission with the same diagnosis shall be included in an initial admission payment and shall not be billed separately.

Section 13. Reimbursement for Out-of-State Hospitals. (1) The department shall reimburse an acute care out-of-state hospital for inpatient care on a fully prospective per discharge basis except for the following hospitals:

(a) A children's hospital located in a Metropolitan Statistical Area as defined by the United States Office of Management and Budget whose boundaries overlap Kentucky and a bordering state; and

(b) Vanderbilt Medical Center.

(2) For an inpatient acute care service, except for a service not covered pursuant to 907 KAR 10:012, in an out-of-state acute care hospital the total hospital-specific per discharge payment shall be calculated in the same manner as an in-state hospital as described in Section 2(2) of this administrative regulation with modifications to rates used as described in subsections (3) through (7) of this section.

(3) The DRG payment parameters listed in this subsection shall be modified for out-of-state hospitals not specifically excluded in subsection (1) of this section.

(a) The operating rate used in the calculation of the operating base payment described in Section 2(4)(c)1. of this administrative regulation shall equal the average of all in-state acute care hospital operating rates calculated in accordance with Section 2(4)(c) of this administrative regulation multiplied by eighty (80) percent, excluding any adjustments made for:

1. Sole community hospitals pursuant to Section 5 of this

administrative regulation; or

2. Medicare-dependent hospitals pursuant to Section 6 of this administrative regulation.

(b) The capital rate used in the calculation of the capital base payment described in Section 2(4)(c)1. of this administrative regulation shall equal the average of all in-state acute care hospital capital rates calculated in accordance with Section 2(4)(c) of this administrative regulation multiplied by eighty (80) percent.

(c) The DRG relative weights used in the calculation of the operating base payment described in Section 2(4)(c)1. of this administrative regulation and the calculation of the capital base payment described in Section 2(4)(c)1. of this administrative regulation shall be reduced by twenty (20) percent.

(d) The following provisions shall not be applied:

1. Medicare indirect medical education cost or reimbursement;
2. Organ acquisition cost settlements;
3. Disproportionate share hospital distributions; and
4. Any adjustment mandated for in-state hospitals pursuant to KRS 205.638.

(e) The Medicare operating and capital cost-to-charge ratios used to estimate the cost of each discharge, for purposes of comparing the estimated cost of each discharge to the outlier threshold, shall be determined by calculating the arithmetic mean of all in-state cost-to-charge ratios established in accordance with Section 2(5)(d) of this administrative regulation.

(4) The department shall reimburse for inpatient acute care provided by an out-of-state children's hospital located in a Metropolitan Statistical Area as defined by the United States Office of Management and Budget and whose boundaries overlap Kentucky and a bordering state, and except for Vanderbilt Medical Center, the average operating rate and average capital rate paid to in-state children's hospitals.

(5) The department shall reimburse for inpatient care provided by Vanderbilt Medical Center using the hospital-specific Medicare base rate extracted from the CMS IPPS Pricer Program in effect at the time that the care was provided multiplied by eighty-five (85) percent.

(6) The out-of-state hospitals referenced in subsections (4) and (5) of this section shall not be eligible to receive indirect medical education reimbursement, organ acquisition cost settlements, or disproportionate share hospital payments.

(7)(a) The department shall reimburse a hospital referenced in subsection (4) or (5) of this section a cost outlier payment for an approved discharge meeting Medicaid criteria for a cost outlier for each Medicare DRG.

(b) A cost outlier shall be subject to quality improvement organization review and approval.

(c) The department shall determine the cost outlier threshold for an out-of-state claim regarding a hospital referenced in subsection (4) or (5) of this section using the same method used to determine the cost outlier threshold for an in-state claim.

Section 14. Supplemental Payments. (1) Payment of a supplemental payment established in this section shall be contingent upon the department's receipt of corresponding federal financial participation.

(2) If federal financial participation is not provided to the department for a supplemental payment, the department shall not make the supplemental payment.

(3) In accordance with subsections (1) and (2) of this section, the department shall:

(a) In addition to a payment based on a rate developed under Section 2 of this administrative regulation, make quarterly supplemental payments to:

1. A hospital that qualifies as an in-state non-state owned pediatric teaching hospital in an amount:

a. Equal to the sum of the hospital's Medicaid shortfall for Medicaid fee-for-service recipients under the age of eighteen (18) plus an additional \$250,000 (\$1,000,000 annually); and

b. Prospectively determined by the department with an end of the year settlement based on actual patient days of Medicaid fee-for-service recipients under the age of eighteen (18);

2. A hospital that qualifies as a pediatric teaching hospital and

additionally meets the criteria of a state university teaching hospital~~[Type III hospital]~~ in an amount:

a. Equal to the difference between payments made in accordance with Sections 2 and 7 of this administrative regulation and the amount allowable under 42 C.F.R. 447.272, not to exceed the payment limit as specified in 42 C.F.R. 447.271;

b. That is prospectively determined subject to a year-end reconciliation; and

c. Based on the state matching contribution made available for this purpose by a facility that qualifies under this paragraph; and

3. A hospital that qualifies as an urban trauma center hospital in an amount:

a. Based on the state matching contribution made available for this purpose by a government entity on behalf of a facility that qualifies under this paragraph;

b. Based upon a hospital's proportion of Medicaid patient days to total Medicaid patient days for all hospitals that qualify under this paragraph;

c. That is prospectively determined with an end of the year settlement; and

d. That is consistent with the requirements of 42 C.F.R. 447.271;

(b) Make quarterly supplemental payments to the Appalachian Regional Hospital system:

1. In an amount that is equal to the lesser of:

a. The difference between what the department pays for inpatient services pursuant to Sections 2 and 7 of this administrative regulation and what Medicare would pay for inpatient services to Medicaid eligible individuals; or

b. \$7.5 million per year in aggregate;

2. For a service provided on or after July 1, 2005; and

3. Subject to the availability of coal severance funds, in addition to being subject to the availability of federal financial participation, which supply the state's share to be matched with federal funds; and

(c) Base a quarterly payment to a hospital in the Appalachian Regional Hospital System on its Medicaid claim volume in comparison to the Medicaid claim volume of each hospital within the Appalachian Regional Hospital System.

(4) An overpayment made to a hospital under this section shall be recovered by subtracting the overpayment amount from a succeeding year's payment to be made to the hospital.

(5) For the purpose of this section, Medicaid patient days shall not include enrollee days.

(6) A payment made under this section shall not duplicate a payment made via 907 KAR 10:820.

(7) A payment made in accordance with this section shall be in compliance with the limitations established in 42 C.F.R. 447.272.

Section 15. Certified Public Expenditures. (1)(a) The department shall reimburse an in-state public government-owned or operated hospital the full cost of a Medicaid fee-for-service inpatient service provided during a given state fiscal year via a certified public expenditure (CPE) contingent upon approval by the Centers for Medicare and Medicaid Services (CMS).

(b) A payment referenced in paragraph (a) of this subsection shall be limited to the federal match portion of the hospital's uncompensated care cost for inpatient Medicaid fee-for-service recipients.

(2) To determine the amount of costs eligible for a CPE, a hospital's allowed charges shall be multiplied by cost-center specific cost-to-charge ratios from the hospital's 2552 cost report.

(3) The department shall verify whether or not a given CPE is allowable as a Medicaid cost.

(4)(a) Subsequent to a cost report being submitted to the department and finalized, a CPE shall be reconciled with the actual costs reported to determine the actual CPE for the period.

(b) If any difference between actual cost and submitted costs remains, the department shall reconcile any difference with the provider.

Section 16. Access to Subcontractor's Records. If a hospital has a contract with a subcontractor for services costing or valued

at \$10,000 or more over a twelve (12) month period:

(1) The contract shall contain a provision granting the department access:

- (a) To the subcontractor's financial information; and
- (b) In accordance with 907 KAR 1:672; and

(2) Access shall be granted to the department for a subcontract between the subcontractor and an organization related to the subcontractor.

Section 17. New Provider, Change of Ownership, or Merged Facility. (1)(a) The department shall reimburse a new acute care hospital based on the Medicare IPPS Final Rule Data Files and Tables inputs described in this administrative regulation in effect at the time of the hospital's enrollment with the Medicaid program.

(b) If applicable rate information does not exist in the Medicare IPPS Final Rule Data Files and Tables for a given period for an in-state acute care hospital, the department shall use, for the in-state acute care hospital, the average of all in-state acute care hospitals for the operating rate, capital rate, and outlier cost-to-charge ratio, excluding any adjustments made for sole community hospitals or Medicare dependent hospitals.

(2) If a hospital undergoes a change of ownership, the new owner shall continue to be reimbursed at the rate in effect at the time of the change of ownership.

Section 18. Department reimbursement for inpatient hospital care shall not exceed the upper payment limit established in 42 C.F.R. 447.271 or 447.272.

Section 19. Not Applicable to Managed Care Organizations. A managed care organization shall not be required to reimburse in accordance with this administrative regulation for a service covered pursuant to:

- (1) 907 KAR 10:012; and
- (2) This administrative regulation.

Section 20. Federal Approval and Federal Financial Participation. The department's reimbursement for services pursuant to this administrative regulation shall be contingent upon:

- (1) Receipt of federal financial participation for the reimbursement; and
- (2) Centers for Medicare and Medicaid Services' approval for the reimbursement.

Section 21. Matters Subject to an Appeal. A hospital may appeal whether the Medicare data specific to the hospital that was extracted by the department in establishing the hospital's reimbursement was the correct data.

Section 22. Appeal Process. (1) An appeal shall comply with the requirements and provisions established in this section.

(2)(a) A request for a review of an appealable issue shall be received by the department within sixty (60) calendar days of the date of receipt by the provider of the department's notice of rates set under this administrative regulation.

(b) The request referenced in paragraph (a) of this subsection shall:

- 1. Be sent to the Office of the Commissioner, Department for Medicaid Services, Cabinet for Health and Family Services, 275 East Main Street, 6th Floor, Frankfort, Kentucky 40621-0002; and
- 2. Contain the specific issues to be reviewed with all supporting documentation necessary for the departmental review.

(3)(a) The department shall review the material referenced in subsection (2) of this section and notify the provider of the review results within thirty (30) days of its receipt except as established in paragraph (b) of this subsection.

(b) If the provider requests a review of a non-appealable issue under this administrative regulation, the department shall:

- 1. Not review the request; and
- 2. Notify the provider that the review is outside of the scope of this section.

(4)(a) A provider may appeal the result of the department's review, except for a notification that the review is outside the scope

of this section, by sending a request for an administrative hearing to the Office of the Ombudsman and Administrative Review~~[Division for Administrative Hearings (DAH)]~~ within thirty (30) days of receipt of the department's notification of its review decision.

(b) A provider shall not appeal a notification that a review is outside of the scope of this section.

(5)(a) An administrative hearing shall be conducted in accordance with KRS Chapter 13B.

(b) Pursuant to KRS 13B.030, the secretary of the Cabinet for Health and Family Services delegates to the Cabinet for Health and Family Services, Office of the Ombudsman and Administrative Review~~[Division for Administrative Hearings (DAH)]~~ the authority to conduct administrative hearings under this administrative regulation.

(c) A notice of the administrative hearing shall comply with KRS 13B.050.

(d) The administrative hearing shall be held in Frankfort, Kentucky no later than ninety (90) calendar days from the date the request for the administrative hearing is received by the Office of the Ombudsman and Administrative Review~~[DAH]~~.

(e) The administrative hearing date may be extended beyond the ninety (90) calendar days by:

- 1. A mutual agreement by the provider and the department; or
- 2. A continuance granted by the hearing officer.

(f)1. If the prehearing conference is requested, it shall be held at least thirty (30) calendar days in advance of the hearing date.

2. Conduct of the prehearing conference shall comply with KRS 13B.070.

(g) If a provider does not appear at the hearing on the scheduled date, the hearing officer may find the provider in default pursuant to KRS 13B.050(3)(h).

(h) A hearing request shall be withdrawn only under the following circumstances:

- 1. The hearing officer receives a written statement from a provider stating that the request is withdrawn; or
- 2. A provider makes a statement on the record at the hearing that the provider is withdrawing the request for the hearing.

(i) Documentary evidence to be used at the hearing shall be made available in accordance with KRS 13B.090.

(j) The hearing officer shall:

- 1. Preside over the hearing; and
- 2. Conduct the hearing in accordance with KRS 13B.080 and 13B.090.

(k) The provider shall have the burden of proof concerning the appealable issues under this administrative regulation.

(l)1. The hearing officer shall issue a recommended order in accordance with KRS 13B.110.

2. An extension of time for completing the recommended order shall comply with the requirements of KRS 13B.110(2) and (3).

(m)1. A final order shall be entered in accordance with KRS 13B.120.

2. The cabinet shall maintain an official record of the hearing in compliance with KRS 13B.130.

3. In the correspondence transmitting the final order, clear reference shall be made to the availability of judicial review pursuant to KRS 13B.140, 13B.150, and 13B.160.

Section 23. ~~Effective Date. This administrative regulation shall become effective on October 1, 2015.~~

Section 24. ~~Incorporation by Reference. (1) The following material is incorporated by reference:~~

- (a) "Supplemental Medicaid Schedule KMAP-1"; 2013;
- (b) "Supplemental Medicaid Schedule KMAP-4"; 2013;
- (c) "Supplemental Medicaid Schedule KMAP-6"; 2013; and
- (d) "CMS Manual System Pub 100-03 Medicare National Coverage Determinations Transmittal 101", June 12, 2009.

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

(a) At the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.; or

(b) Online at the department's Web site at <https://chfs.ky.gov/agencies/dms/Pages/regsmaterials.aspx> [<http://www.chfs.ky.gov/dms/incorporated.htm>].

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

APPROVED BY AGENCY: June 17, 2019

FILED WITH LRC: June 19, 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, email CHFSregs@ky.gov.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Aging and Independent Living
Division of Guardianship
(As Amended at ARRS, September 16, 2019)

910 KAR 2:040. Service provisions for adult guardianship.

RELATES TO: KRS 17.500 - 17.540, Chapter 202A, Chapter 202B, 209.030, 209.990, 210.290(3), (4), 311.6225, 311.6231, 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) "DBHDD" 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) [(14)] "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 [an] 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) [(24)] "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 [(4) [(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 the Kentucky Guardianship Fiduciary Information System (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) DBHDD; 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[;

4.] 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.

~~[(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, **incorporated by reference in 201 KAR 9:470,** and available at <https://kbml.ky.gov/board/Documents/MOST%20Form.pdf>; or

(b) The Do Not Resuscitate (DNR) form, **incorporated by reference in 202 KAR 7:401.**

(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

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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, email CHFSregs@ky.gov.

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Community Based Services

Division of Protection and Permanency

**(As Amended at IJC on Health, Welfare, and Family Services
September 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[199.044(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 necessitates 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)[(e)] 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)[(e)] of this subsection shall:

1. Include the circumstance that 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.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Protection and Permanency
(As Amended at ARRS, September 16, 2019)

922 KAR 1:560. Putative father registry and operating procedures.

RELATES TO: KRS 194A.060, 199.011, 199.480, 199.505, 199.990, 620.020(13)[620.020(14)], 625.065

STATUTORY AUTHORITY: KRS 194A.050(1), 199.472, 199.503(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary ~~of~~ the Cabinet for Health and Family Services to promulgate, administer, and enforce administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet. KRS 199.472(1) requires the cabinet to promulgate administrative regulations that establish criteria to be followed for the adoption of children. ~~[Ky. Acts ch. 159, Section 28(3), codified as]~~ KRS 199.503(3) ~~requires~~ the cabinet to establish a putative father registry and promulgate administrative regulations to administer the registry. This administrative regulation establishes the putative father registry and operating procedures.

Section 1. Definitions. (1) "Cabinet" is defined by KRS 199.011(3).

(2) "Child-placing agency" is defined by KRS 199.011(6).

(3) "Department" is defined by KRS 199.011(7).

(4) "Putative father" is defined by KRS 199.503(2).

(5) "Reasonable efforts" is defined by KRS 620.020(13) [620.020(14)].

Section 2. Registry Standards. (1) The cabinet shall establish and maintain a putative father registry in accordance with KRS 199.503, 199.505, and 199.990.

(2) Information received and recorded by the cabinet shall be kept confidential in accordance with KRS 194A.060 and 199.503(11).

(3) An adoption involving a foreign-born child, initiated out-of-state, or obtained through a public agency shall not be subject to this administrative regulation pursuant to KRS 199.505(7).

Section 3. Submission of Registration. (1) A putative father shall request registration on the putative father registry by completing the DPP-1304, Putative Father Registration Form.

(2) A putative father shall submit a DPP-1304 to the cabinet by:

(a) Mail to the Department for Community Based Services, attention: Putative Father Registry, 275 East Main Street, mail-stop 3C-E, Frankfort, Kentucky 40621;

(b) Electronic submission through the online registration system located on the department's website once the online function is available; or

(c) Electronic mail to putativefather@ky.gov.

(3) A putative father shall provide the following information on the DPP-1304 prior to the cabinet accepting and processing a registration request:

(a) The putative father's full name;

(b) The putative father's date of birth;

(c) The putative father's place of birth;

(d) The putative father's place of residence;

(e) An address where the putative father may be served with notice of a petition for termination of parental rights or adoption;

(f) The first and last name of the birth mother;

(g) The birth mother's date of birth, if known;

(h) The birth mother's place of birth, if known;

(i) The birth mother's place of residence, if known;

(j) The birth mother's mailing address, if known;

(k) The child's name, if known;

(l) The child's date of birth, if known; and

(m) The child's place of birth, if known.

(4) A putative father shall sign the DPP-1304 verifying that the information in his registration is accurate subject to penalty in accordance with KRS 199.990.

(5) A putative father who is registered shall submit an amended DPP-1304 each time information about the father changes in accordance with KRS 199.503(4)(b)2.

(6) The cabinet shall not accept and shall attempt to return a DPP-1304 that:

(a) Does not contain the information required by subsection (3) [(2)] of this section; or

(b) Is not accepted in accordance with subsection (8) [(7)] of this section.

(7) The cabinet shall:

(a) Accept a DPP-1304 that contains information required by subsection (3) [(2)] of this section and is submitted within the timeframe specified in subsection (8) [(7)] of this section; and

(b) Provide the putative father with a copy of his registration, including:

1. A registration number; and

2. The date the registration was processed and made effective by the cabinet.

(8) The cabinet shall not accept a registration request that is electronically submitted, electronically mailed, or postmarked more than twenty-one (21) [thirty (30)] days after the birth of the child subject to the registration in accordance with KRS 199.480(1)(b)2. and 625.065(1)(b).

Section 4. Search of the Putative Father Registry. (1) An individual or entity authorized by KRS 199.503(8) or 199.505, to receive a certified copy of a putative father's registration shall:

(a) Complete the DPP-1305, Putative Father Registry Search Request;

(b) Include a copy of the birth mother's consent or adoption petition with the DPP-1305; and

(c) Submit the DPP-1305 to the cabinet in accordance with Section 3(2)(a) through (c) of this administration regulation.

(2) Unless the entity requesting a certified copy of a putative father's registration is a court, a DPP-1305 shall include a twenty-five (25) dollar fee in accordance with KRS 199.503(10), paid by:

(a) Certified or cashier's check or money order made payable to the Kentucky State Treasurer if the DPP-1305 is mailed to the cabinet;

(b) A prepaid account established with the cabinet; or

(c) Credit or debit card through the online registration system once the function becomes available.

(3) Upon submission of a completed DPP-1305 in accordance with this section, KRS

199.503 and 199.505, the cabinet shall issue a DPP-1302, Kentucky Putative Father Registry Affidavit of Diligent Search.

(4) The cabinet may request at any time a search of the putative father registry to establish:

(a) Reasonable efforts in a child protective services case in accordance with 922 KAR 1:330; or

(b) Permanency services in accordance with 922 KAR 1:140.

(5) Pursuant to KRS 199.505, a search of the putative father

registry shall not be required for a public agency adoption in accordance with 922 KAR 1:100.

Section 5. Registration Revocation. (1) A putative father registrant may revoke his registration at any time using the DPP-1304.

(2) The cabinet shall revoke a registration that is found to have been filed with error or false information.

(3) The cabinet shall provide notice of:

(a) Revocation of a registration; and

(b) Appeal rights in accordance with 922 KAR 1:320 if the revocation is performed by the cabinet in accordance with subsection (2) of this section.

Section 6. Notice by a Mother. (1) A mother may notify the cabinet of a potential putative father by completing, at a minimum, Part 1 of the DPP-1303, Birth Mother Notification of Putative Father, and submitting it to the cabinet in accordance with Section 3(2)(a) through (c) of this administrative regulation.

(2) Upon receipt of a completed DPP-1303, the cabinet shall provide the putative father with information regarding the putative father registry by:

(a) Mail to his mailing address; or

(b) Delivery to his place of residence.

(3) The cabinet shall take no action on a DPP-1303 that is received after a putative father's ability to register has expired in accordance with Section 3(8)[3(7)] of this administrative regulation.

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

(a) "DPP-1302, Kentucky Putative Father Registry Affidavit of Diligent Search", 10/19/7/19/9/48;

(b) "DPP-1303, Birth Mother Notification of Putative Father", 10/19/7/19/9/48;

(c) "DPP-1304, Putative Father Registration Form", 10/19/9/48; and

(d) "DPP-1305, Putative Father Registry Search Request", 10/19/7/19/9/48;

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

ERIC T. CLARK, Commissioner

ADAM M. MEIER, Secretary

APPROVED BY AGENCY: June 27, 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
Department for Community Based Services
Division of Protection and Permanency
(As Amended at ARRS, September 16, 2019)

922 KAR 1:565. Service array for a relative or fictive kin caregiver.

RELATES TO: KRS 2.015, 45.237-45.241, 156.496, 194A.005(1), 194A.050(1), 199.011, 199.462, 199.470-199.590, 205.211, Chapter 387, 403.270-403.355, 405.024, 527.100, 527.110, 600.020, 605.120, 605.130(7), 605.150(1), 610.110, 620.020(1), 620.090, 620.140, 620.142, 620.170, 42 U.S.C. 600-619, 671, 673, 675, D.O. v. Glisson, 847 F.3d 374 (6th Cir. 2017), cert. denied, 17-17, 2017 WL 2869916 (U.S. Oct. 10, 2017)

STATUTORY AUTHORITY: KRS 194A.050(1),[605.120(6);] 605.130(7), 605.150(1), 620.142(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary of 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[allows] the cabinet to promulgate administrative regulations to implement provisions of the chapter, including KRS 605.130(7), which authorizes the cabinet to perform such other services as may be deemed necessary for the protection of children. KRS 620.142(5)[605.120(6)] requires the cabinet to promulgate administrative regulations developing custodial, permanency, and service options that shall be available to a relative or fictive kin caregiver[governing programming and other relative caregiver and fictive kin services that support a safe, developmentally appropriate, and more permanent placement with a qualified relative or fictive kin caregiver for a child who would be placed in another out-of-home placement as authorized by KRS 605.120(5)]. This administrative regulation establishes the service array available to[for] a relative or fictive kin caregiver pursuant to KRS 620.142(1)[to the extent funds are available].

Section 1. Definitions. (1) "Absent parent search" means cabinet-initiated efforts to locate a biological or legal parent, or a relative.

(2) "Cabinet" is defined by KRS 194A.005(1), 199.011(3), and 600.020(7).

(3) "Case permanency plan" is defined by KRS 620.020(1).

(4) "Child" means a:

(a) Child defined by KRS 199.011(4) and 600.020(9);

(b) Person age eighteen (18) or older whose commitment to the cabinet has been extended or reinstated by a court in accordance with KRS 610.110(6) or 620.140(1)(e); or

(c) A person under age twenty-one (21) who meets the exceptions to the age of majority in accordance with KRS 2.015.

(5) "Child Care Assistance Program" or "CCAP" means Kentucky's child care subsidy program providing families who meet the eligibility requirements with the financial resources to find and afford quality child care, as established in 922 KAR 2:160.

(6) "Child who is a candidate for foster care" is defined by 42 U.S.C. 675(13).

(7) "Fictive kin" is defined by KRS 199.011(9) and 600.020(28).

(8) "Kentucky Transitional Assistance Program" or "K-TAP" means Kentucky's Temporary Assistance for Needy Families (TANF) money payment program for a child who is deprived of parental support or care, as established in 921 KAR 2:006.

(9) "Parent" is defined by 42 U.S.C. 675(2).

(10) "Relative" means an individual related to a child by blood, marriage, or adoption.

Section 2. Identification of a Relative or Fictive Kin. (1) If a relative or fictive kin placement is in the best interest of a child upon removal from the child's home of origin, the cabinet shall:

(a) Use an absent parent search in accordance with 922 KAR 1:140, Section 3, to locate a relative;[or]

(b) Discuss a prospective relative or fictive kin placement with the:

1. Child's parent; and

2. Child based upon the age and development of the child; or

(c) Require the parent or other person exercising custodial control or supervision to provide a list of possible persons to be considered pursuant to KRS 620.140(1)(c).

(2) Cabinet staff shall make reasonable attempts to:

(a) Contact the relative or fictive kin; and

(b) Assess the relative's or fictive kin's fitness to serve as a placement resource for the child in accordance with Section 3 of this administrative regulation.

(3) The cabinet shall:

(a) Disclose legal and service options available to a prospective relative or fictive kin:

1. Who is being assessed as a placement resource; and

2. Prior to the time a child is placed in the relative's or fictive kin's home; and

(b) Obtain written acknowledgement of the disclosure of legal and service options from the relative or fictive kin.

Section 3. Fitness of the Relative or Fictive Kin. (1) To support a child's health, safety, and wellbeing in placement with a relative or fictive kin caregiver, based upon the legal option selected by the relative or fictive kin, the cabinet shall:

(a) Complete a safety check and review with consideration given to the relative's or fictive kin's:

1. Willingness and ability to:
 - a. Protect the child from abuse or neglect;
 - b. Participate in the child's case permanency plan;
 - c. Access:
 - (i) Transportation;
 - (ii) Telephone;
 - (iii) Medical and dental services;
 - (iv) First aid supplies; and
 - (v) School;
 - d. Provide full-time care;
 - e. Provide for the child's sleeping and eating;
 - f. Maintain adequate heat and ventilation in the home;
 - g. Use active smoke detectors in the home; and
 - h. Assure the child's inaccessibility to:
 - (i) Medication unless an exception consistent with 922 KAR 1:350, Section 3(12), applies;
 - (ii) Alcoholic beverages;
 - (iii) Poisonous materials;
 - (iv) Firearms or ammunition in accordance with KRS 527.100 and 527.110;
 - (v) Unsupervised contact with the birth parent, if prohibited; and
 - (vi) Cleaning materials unless the materials are age or developmentally appropriate for the child or the child is supervised; and
2. Understanding of the impact that familial abuse, neglect, or substance abuse may have on a child and the child's extended family; and
3. Fitness in accordance with 922 KAR 1:490; or

(b) Conduct a home study and background checks in accordance with 922 KAR 1:350 and 922 KAR 1:490 in consideration of the relative or fictive kin as a prospective foster or adoptive home.

(2) A relative or fictive kin caregiver who seeks approval as a foster or adoptive parent shall meet the training requirements established in 922 KAR 1:495.

(3) The cabinet shall:

(a) Document in the case file that the fictive kin has completed training on the prevention and recognition of pediatric abusive head trauma in accordance with KRS 199.462; and

(b) Provide information to the relative or fictive kin on how to recognize and report child abuse and neglect.

(4) To the extent funds are available, the cabinet shall make available to a relative or fictive kin caregiver training:

(a) For foster parents, adoptive parents, and respite care providers in accordance with 922 KAR 1:495; and

(b) Developed to address the needs of relative and fictive kin caregivers, including management of the relationship with the child's parent.

(5) A relative's or fictive kin's decision to pursue approval as a foster parent shall not guarantee the cabinet's approval.

Section 4. Relative Placement Support Benefit. (1) To the extent that funds are available, the cabinet shall provide, if requested, a one (1) time relative placement support benefit:

(a) To facilitate the cabinet's placement of a child with a nonparental relative as an alternative to the child's placement in foster care;

(b) If a court of competent jurisdiction has granted temporary custody of the child to the relative or the cabinet due to:

1. Child abuse or neglect by the child's biological or adoptive parent; or
2. The death of both parents;
- (c) That will provide for a child's immediate needs, such as:

1. Clothing;
2. School supplies;
3. Additional furniture; or
4. A deposit for a larger apartment; and

(d) That is equal to or does not exceed the amount for the appropriate number of eligible children as follows:

Number of Eligible Children	Payment Amount
1	\$350
2	\$700
3	\$1,050
4	\$1,400
5	\$1,750
6 or more	\$2,100

(2)(a) The relative placement support benefit shall be issued by check or electronic fund transfer directly to:

1. The relative with whom the child is placed; or
2. A vendor providing the needed service or item listed in subsection (1)(c) of this section.

(b) Before the provision of the relative placement support benefit, the relative or the vendor shall provide tax status and contact information for accounting of the benefit's disbursement.

(3) In accordance with Kentucky's Title IV-A Temporary Assistance for Needy Families Block Grant state plan, the cabinet shall prioritize a child for the relative placement support benefit if the child is:

(a) Placed with a relative whose household income is at or below 200 percent of the federal poverty level as determined annually by the U.S. Department of Health and Human Services; or

(b) Determined eligible for K-TAP pursuant to 921 KAR 2:006 and 921 KAR 2:016.

(4) A relative shall not be eligible for an initial allowance as a foster parent if the relative receives the relative placement support benefit.

Section 5. Legal Options. (1) The following legal options shall be available to a prospective relative or fictive kin caregiver:

(a) Family-arranged care through:

1. A prevention plan in accordance with 922 KAR 1:330;
2. An affidavit to make health care treatment and school-related decisions for the child in accordance with KRS 405.024; or
3. A power of attorney for temporary delegation of parental rights and responsibilities in accordance with KRS 403.352 and 403.353;

(b) Court-ordered custody to the relative or fictive kin caregiver in accordance with KRS 403.270-403.355, 620.090, or 620.140(1)(c);

(c) Court-ordered custody to the cabinet in accordance with KRS 620.090, 620.140(1)(c), or 620.170;

(d) Adoption in accordance with KRS 199.470-199.590 or 922 KAR 1:100; or

(e) Guardianship in accordance with KRS Chapter 387.

(2) Considerations in assessing the legal options for a relative or fictive kin caregiver shall include:

(a) The likelihood of the child's reunification with the child's home of origin, including the child's permanency goal in accordance with 922 KAR 1:140;

(b) The relationship that the relative or fictive kin caregiver has with the child's home of origin or parent;

(c) The ability of the relative or fictive kin caregiver to:

1. Manage parental visitation; and
2. Ensure the child's safety;

(d) The relative or fictive kin caregiver's financial situation and need for additional resources to support the safety, permanency, and wellbeing of the child;

(e) The level of involvement and types of services that will be needed from the cabinet to the caregiver and the child to ensure the safety, permanency, and wellbeing of the child; and

(f) The level of support and types of services that will be needed if:

1. The caregiver assumes legal responsibility for the child; or
2. Reunification with the child's home of origin is not possible for the child.

(3) Permanency services for a child in the custody of the

cabinet shall be in accordance with 922 KAR 1:140.

Section 6. Service Options. (1) The array of monetary supports on behalf of a child placed with a relative or fictive kin caregiver shall include:

(a) The Relative Placement Support Benefit in accordance with Section 4 of this administrative regulation;

(b) CCAP in accordance with 922 KAR 2:160;

(c) Child support if application is made or intergovernmental process applies in accordance with 921 KAR 1:380;

(d) K-TAP if an application is made in accordance with 921 KAR 2:006 and 921 KAR 2:016;

(e) The Kinship Care Program in accordance with 922 KAR 1:130;

(f) Health benefits for the child:

1. In accordance with 907 KAR 20:005; or

2. If application is made in accordance with 907 KAR 20:015, 907 KAR 4:020, or 907 KAR 4:030;

(g) Foster care per diem in accordance with:

1.a. 922 KAR 1:350; or

b. D.O. v. Glisson, 847 F.3d 374 (6th Cir. 2017), cert. denied, 17-17, 2017 WL 2869916 (U.S. Oct. 10, 2017); and

2. The terms and conditions specified in the individual agreement between the cabinet and the foster parent;

(h) Adoption assistance in accordance with 922 KAR 1:050 or 922 KAR 1:060;

(i) To the extent funds are available, post-permanency services, including:

1. Subsidized guardianship under 42 U.S.C. 671 and 673 once the benefit is available; or

2. Post-adoption placement stabilization services in accordance with 922 KAR 1:530; or

(j) The Supplemental Nutrition Assistance Program if application is made in accordance with 921[922] KAR 3:030.

(2) To the extent funds are available, effective October 1, 2019, the cabinet shall provide prevention and family services and programs in accordance with 42 U.S.C. 671(e) to a child who is a candidate for foster care, including:

(a) Mental health and substance abuse prevention and treatment services; or

(b) In-home parent skill-based programs.

(3) To the extent funds are available, the cabinet or its designee shall provide the following services for a relative or fictive kin caregiver:

(a) A hotline;

(b) Online portal;

(c) Crisis intervention;

(d) Support group;

(e) Advocacy;

(f) Community education; and

(g) Referral to community resource or provider, such as:

1. Family Resource and Youth Service Centers established in accordance with KRS 156.496;

2. The Health Access Nurturing Development Services (HANDS) Program in accordance with 902 KAR 4:120;

3. The Special Supplemental Nutrition Program for Women, Infants, and Children or "WIC program" in accordance with 902 KAR Chapter 18;

4. Kentucky's Early Intervention Program, First Steps, in accordance with 902 KAR Chapter 30;

5. Mental health programming; or

6. Caregiver programming made available through the Department for Aging and Independent Living or its designee.

(4) The cabinet shall recover the amount of an improper payment pursuant to KRS 45.237-45.241 and 205.211, including assistance paid pending the outcome of a hearing, from the claimant-payee.

Section 7. Complaint and Service Appeals. (1) A relative or fictive kin caregiver may submit a service complaint or an appeal concerning a protection and permanency service in accordance with 922 KAR 1:320.

(2) An appeal concerning CCAP shall be made in accordance

with 921 KAR 2:055, 922 KAR 2:020, or 922 KAR 2:260.

(3) An appeal regarding K-TAP shall be made in accordance with 921 KAR 2:055.

(4) An appeal concerning the Supplemental Nutrition Assistance Program shall be made in accordance with 921 KAR 3:060 or 921 KAR 3:070.

ERIC T. CLARK, Commissioner

ADAM M. MEIER, Secretary

APPROVED BY AGENCY: July 2, 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.

ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING
OR RECEIPT OF WRITTEN COMMENTS

GENERAL GOVERNMENT CABINET
Kentucky Board of Dentistry
(Amended After Comments)

201 KAR 8:540. Dental practices and prescription writing.

RELATES TO: KRS 218A.205(3), 313.060, 313.085, 422.317, 42 U.S.C. 300ee-2 note

STATUTORY AUTHORITY: KRS 218A.205(3), 313.060(1)
NECESSITY, FUNCTION, AND CONFORMITY: [42 U.S.C. 300ee-2 note requires each state to institute the guidelines issued by the United States Centers for Disease Control and Prevention or guidelines that are equivalent to those promulgated by the Centers for Disease Control and Prevention concerning recommendations for preventing the transmission of the human immunodeficiency virus and the hepatitis B virus during exposure-prone invasive procedures.] KRS 313.060(1) requires the board to promulgate administrative regulations relating to dental practices that shall include minimal requirements for documentation and Centers for Disease Control and Prevention compliance. 42 U.S.C. 300ee-2 note requires each state to institute the guidelines issued by the United States Centers for Disease Control and Prevention or guidelines that are equivalent to those promulgated by the Centers for Disease Control and Prevention concerning recommendations for preventing the transmission of the human immunodeficiency virus and the hepatitis B virus during exposure-prone invasive procedures. KRS 218A.205(3)(a) and (b) require the board, in consultation with the Kentucky Office of Drug Control Policy, to establish mandatory prescribing and dispensing standards related to controlled substances. This administrative regulation establishes requirements for preventing the transmission of the human immunodeficiency virus and the hepatitis B virus during exposure-prone invasive procedures and includes minimal requirements for documentation and Centers for Disease Control and Prevention compliance. This administrative regulation also establishes mandatory prescribing and dispensing standards related to controlled substances.

Section 1. Applicability. A dentist who is authorized to prescribe, dispense or administer a controlled substance shall comply with the standards of acceptable and prevailing dental practice for prescribing, dispensing or administering a controlled substance established in this administrative regulation. [Definitions: (1) "Invasive procedure" means a procedure that penetrates hard or soft tissue.

(2) "Oral surgery" means any manipulation or cutting of hard or soft tissues of the oral or maxillofacial area and associated procedures, by any means, as defined by the American Dental Association, utilized by a dentist licensed by 201 KAR Chapter 8 and within the dentist's scope of training and practice.]

Section 2. Professional [Minimum Documentation] Standards for Documentation of [all] Dental Patients. (1) Each patient's dental records shall be kept by the dentist for a minimum of:

(a) Seven (7) years from the date of the patient's last treatment;

(b) Seven (7) years after the patient's eighteenth [(18)] birthday, if the patient was seen as a minor; or

(c) Two (2) years following the patient's death.

(2) Each dentist shall comply with KRS 422.317 regarding the release of patient records.

(3) The dentist shall keep accurate, readily accessible, and complete records which include:

(a) The patient's name;

(b) The patient's date of birth;

(c) The patient's medical history and documentation of the physical exam of the oral and perioral tissues;

(d) The date of treatment;

(e) The [tooth number, surfaces, or] areas to be treated;

(f) The material used in treatment;

(g) Local or general anesthetic used, route of administration[the type], and the amount;

(h) Sedation[Sleep or sedation dentistry] medications used, the [type, and the] amount, [;] monitoring techniques, and the names of qualified personnel that monitor the patient;

(i) Diagnostic, therapeutic, and laboratory results, if any;

(j) The findings and recommendations of the dentist and a description of each evaluation or consultation, if any;

(k) Treatment objectives;

(l) Any and all treatments performed and provided;

(m) All medications, including date, type, dosage, and quantity prescribed or dispensed; and

(n)[(m)]Any post treatment instructions.

(4) Prior to prescribing or administering a Schedule II or III controlled substance, the dentist shall obtain the signature of the patient or a legal guardian on a consent form authorizing the treatment plan, including the use of controlled substances.

Section 3. Prescribing and Administration of Controlled Substances[Prescription Writing Privileges]. (1) In accordance with KRS 313.035, a dentist may prescribe, dispense and administer any non-controlled drug necessary within the scope of the dentist's practice if the dentist[;

(a) ~~Is~~ is licensed pursuant to KRS Chapter 313.[201 KAR 8:532;]

(2) In accordance with KRS 313.035, a dentist may administer and prescribe controlled substances necessary within the scope of the dentist's practice if the dentist:

(a)[(b)] Has obtained a registration[license] from the Drug Enforcement Administration; and

(b)[(e)] Has enrolled with and utilizes the Kentucky All Schedule Prescription Electronic Reporting System as required by KRS 218A.202.

(3)[(2)] A dentist shall not compound any scheduled drugs or dispense [any Schedule I, Schedule II, or Schedule III]controlled substances [containing Hydrocodone]for use by the patient outside the office setting.

(4) A dentist shall obtain and document all relevant information in a patient's medical and dental records in a legible manner and in sufficient detail to enable the board to determine whether the dentist is conforming to professional standards.

(5)[Section 4. Prescribing of Controlled Substances by Dentist.

(4)] Prior to the initial prescribing or administration of a Schedule II or III[any] controlled substance, each dentist shall:

(a) Obtain[Except as provided in subsection (2) of this section,] and review a KASPER report for[all available data on the patient;] the twelve (12) month period immediately preceding the patient encounter and appropriately utilize that data in the evaluation and treatment of the patient.

(b) Document relevant information in the patient's record;

(c) Consider the available information to determine if it is medically appropriate and safe to administer or prescribe a controlled substance;

(d) Obtain a complete medical history and conduct a physical examination of the oral or maxillofacial area of the patient and document the information in the patient's medical record;

(e) Make a written treatment plan stating the objectives of the treatment and further diagnostic examinations required;

(f) Discuss the risks and benefits of the use of controlled substances with the patient, the patient's parent if the patient is an unemancipated minor child, or the patient's legal guardian or health care surrogate, including the risk of tolerance and drug dependence; and

(g) Obtain written consent for the treatment.

(6) Pursuant to KRS 218A.172, the requirements set forth within this section shall not apply when prescribing or administering a controlled substance:

(a) As part of the patient's hospice or end of life treatment;

(b) To a patient admitted to a licensed hospital as an inpatient, or observation patient, during and as part of a normal and

expected part of the patient's course of care at that hospital.

(c) For the treatment of pain is associated with cancer or with the treatment of cancer; or

(d) As necessary to treat a patient in an emergency situation; and

(e) To a patient admitted to a long-term care facility.

(7) A dentist shall not issue a prescription for more than a three (3) day supply of a Schedule II or III controlled substance to treat pain as an acute medical condition unless the following conditions have been met:

(a) The dentist, in his or her professional judgment, believes that more than a three (3) day supply of a Schedule II or III controlled substance is medically necessary to treat the patient's pain as an acute medical condition;

(b) The dentist has documented in the patient's dental record the acute medical condition and lack of alternative treatment options which justifies deviation from the three (3) day supply limit established in this subsection; and

(c) The patient and the dentist have attested by signature in the patient's dental record that alternative pain relief methods using non-opioid medications were explained to the patient and that the patient understands the risk of dependency when prescribed more than a three (3) day supply of a Schedule II or III controlled substance. This may occur:

1. During, and in addition to, the patient's original consultation and consent process as described in subsection (5) of this section; or

2. As part of a follow-up consultation after the initial three (3) day supply has been prescribed.

(d) A dentist licensed in Kentucky shall not act to avoid the three (3) day supply limit established in subsection (4) of this section by prescribing or administering a Schedule II or III controlled substance to a patient on consecutive or multiple occasions. (2) A dentist shall not be required to obtain and review a KASPER report if:

(a) 1. The dentist prescribes a Schedule III controlled substance or one (1) of the Schedule IV controlled substances listed in subsection (3) of this section after the performance of oral surgery; and

2. No more than a seventy-two (72) hour supply of the controlled substance is prescribed;

(b) The dentist prescribes or dispenses a Schedule IV or V controlled substance not listed in subsection (3) of this section; or

(c) 1. The dentist prescribes pre-appointment medication for the treatment of procedure anxiety; and

2. The prescription is limited to a two (2) day supply and has no refills.

(3) A dentist shall obtain and review a KASPER report before initially prescribing any of the following Schedule IV controlled substances:

- (a) Ambien;
- (b) Anorexics;
- (c) Ativan;
- (d) Klonopin;
- (e) Librium;
- (f) Nubain;
- (g) Oxazepam;
- (h) Phentermine;
- (i) Soma;
- (j) Stadol;
- (k) Stadol NS;
- (l) Tramadol;
- (m) Versed; and
- (n) Xanax.

(8) [(4)] A dentist may provide one (1) refill within thirty (30) days of the initial prescription for the same controlled substance for the same amount or less or prescribe a lower schedule drug for the same amount without a clinical reevaluation of the patient by the dentist.

(9) [(5)] A patient who requires additional prescriptions for a controlled substance shall be clinically reevaluated by the dentist, and the provisions of this section for the prescription of controlled substances[,] shall be followed. If the course of treatment extends

beyond three (3) months, the dentist shall obtain and review a new KASPER report. The dentist shall provide any new information about the treatment and modify or terminate treatment as appropriate.

(10) Any violation of this section shall be considered a violation of KRS 218A.205(3), KRS 313.060, and KRS 313.085, and shall constitute a legal basis for disciplinary action pursuant to KRS 313.035.

Section 4[5]. Penalties and Investigations. (1) A licensee convicted of a felony offense related to [prescribing and dispensing of] a controlled substance shall, at a minimum, be [permanently] banned from prescribing or dispensing a controlled substance.

(2) A licensee convicted of a misdemeanor offense relating to the prescribing of a controlled substance shall, at a minimum, have a five (5) year ban from prescribing or dispensing a controlled substance.

(3) A licensee disciplined by a licensing board of another state relating to the improper, inappropriate, or illegal prescribing or dispensing of controlled substances shall, at a minimum, have the same disciplinary action imposed by this state or the disciplinary action prescribed in subsection (1) or (2) of this section, whichever is greater.

(4) A licensee who is disciplined in another state or territory for an act or omission which would constitute a violation of Section 4 of this administrative regulation [who holds a Kentucky license] and fails to notify the board in writing of the disciplinary action within thirty (30) days of the finalization of the action shall be subject to a fine of \$1,000 for each failure to report.

(5) If a licensee has been convicted of or has entered a plea of guilt, an Alford plea, or a plea for nolo contendere to any felony offense relating to a controlled substance; has successfully participated in and completed a diversion program; and whose case has been dismissed and the record of that offense expunged; the board may, in its discretion, reinstate the licensee's prescribing and dispensing privileges contingent upon the licensee entering into an agreed order with terms and conditions deemed necessary by the board to implement a minimum five (5) year period of probation.

(6) The board may privately admonish a licensee who fails to register for an account with the Kentucky All Schedule Prescription Electronic Reporting System or who fails to meet the requirements of [Section 4 of] this administrative regulation. If a licensee is privately admonished by the board under this subsection, the licensee shall [receive a private admonishment from the board and] be given no more than thirty (30) days to become compliant after which time the dentist may [shall] be fined up to [a minimum of \$500 to a maximum of] \$10,000 for failure to be registered with KASPER. A licensee who fails to utilize KASPER prior to prescribing a controlled substance may be fined up to \$250 per incident by the board.

(7) [(6)] The Law Enforcement Committee of the Board shall produce a charging decision on the complaint within 120 days of the receipt of the complaint, unless [an extension for a definite period of time is requested by a law enforcement agency due to an ongoing criminal investigation.]

(a) An investigation pertaining to the prescribing or dispensing of a controlled substance make it impossible to timely present the grievance to the designated review committee, person, or Law Enforcement Committee; or

(b) The board holds a complaint pertaining to the prescribing or dispensing of a controlled substance in abeyance to permit a law enforcement agency, upon the agency's request, to perform or complete an investigation.

(c) If a charging decision is not produced within 120 days of the date of receipt of the complaint under this subsection, the investigative report shall plainly state the circumstances pursuant to paragraphs (a) and (b) of this subsection that prevented the timely production of the charging decision.

Section 5[6]. Infection Control Compliance. (1) Each licensed dentist in the Commonwealth of Kentucky shall:

(a) Adhere to the standard precautions outlined in the Guidelines for Infection Control in Dental Health-Care Settings published by the Centers for Disease Control and Prevention; and

(b) Ensure that any person under the direction, control, supervision, or employment of a licensee whose activities involve contact with patients, teeth, blood, body fluids, saliva, instruments, equipment, appliances, or intra-oral devices adheres with those same standard precautions.

(2) The board or its designee shall perform an infection control inspection of a dental practice or office utilizing the Infection Control Inspection Checklist, if the board and its staff become aware of a violation, or a reliable allegation of a violation, of the Guidelines for Infection Control in Dental Health-Care Settings which may pose imminent public risk.

(3)(a) Any dentist who is found deficient upon an initial infection control inspection shall have thirty (30) days to be in compliance with the guidelines and submit a written plan of correction to the board.

(b) The dentist may receive a second inspection after the thirty (30) days have passed and may be required to pay reasonable expenses to the board or its designee to conduct the inspection, not to exceed the amount of the fine required for failure of a second inspection pursuant to this chapter.

(c) If the dentist fails the second inspection, he or she shall be immediately temporarily suspended pursuant to KRS 313.085 until proof of compliance is provided to the board and the dentist pays the fine as prescribed in this chapter[201-KAR-8:520].

(4) Any licensed dentist, licensed dental hygienist, [~~registered dental assistant,~~] or dental assistant [~~in training for registration~~] who performs invasive procedures may seek counsel from the board if he or she tests seropositive for the human immunodeficiency virus or the hepatitis B virus.

(5) Upon the request of a licensee or registrant, the executive director of the board or designee shall convene a confidential expert review panel to offer counsel regarding under what circumstances, if any, the individual may continue to perform invasive procedures.

Section 6[7]. Termination of a Patient-Doctor Relationship. In order for a licensed dentist to terminate the patient-doctor relationship, the dentist shall:

(1) Provide written notice to the patient of the termination;

(2) Provide emergency treatment for the patient for thirty (30) days from the date of termination; and

(3) Retain a copy of the letter of termination in the patient records.

Section 7[8]. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Guidelines for Infection Control in Dental Health-Care Settings", December 2003, or the latest version issued by the Centers for Disease Control on Infection Control in Dental Health Care Setting; and

(b) "Infection Control Inspection Checklist", July 2010.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Dentistry, 312 Whittington Parkway, Suite 101, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. through 4:30 p.m. This material is also available on the board's Web site at <http://dentistry.ky.gov>.

JEFF ALLEN, Executive Director

APPROVED BY AGENCY: September 12, 2019

FILED WITH LRC: September 12, 2019 at 3 p.m.

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REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jeff Allen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements for dental prescribing, administration, and dispensing of substances.

(b) The necessity of this administrative regulation: KRS 313.060 requires the board to promulgate administrative regulations relating to dental practices which shall include conscious sedation of patients and compliance with federal controlled substances regulations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes requirements for dental prescribing, administration, and dispensing of substances in compliance with federal controlled substances regulations.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes requirements for dental prescribing, administration, and dispensing of substances in compliance with state controlled substances law.

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

(a) How the amendment will change this existing administrative regulation: This amendment updates the requirements for dental prescribing, administration, and dispensing of substances.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary in order to bring the administrative regulation up-to-date with the current legal and regulatory requirements and best practices for dental prescribing, administration, and dispensing of substances.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment updates the requirements for dental prescribing, administration, and dispensing of substances in compliance with federal controlled substances regulations.

(d) How the amendment will assist in the effective administration of the statutes: The amendment ensures that the requirements for dental prescribing, administration, and dispensing of substances are up-to-date in compliance with state controlled substances law.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will primarily affect the approximately three thousand prescribing dentists licensed in Kentucky. Patients who receive prescriptions from a Kentucky licensed dentist may also be affected.

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

(a) List the actions that each of the related entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Each entity will be required to prescribe substances and document their prescriptions in accordance with applicable law and administrative regulations.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No costs will be accrued as a result of the amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment will result in a healthier patient population and the avoidance of potentially costly violations of applicable law and administrative regulations.

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

(a) Initially: No cost.

(b) On a continuing basis: No cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? Not applicable.

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

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

(9) TIERING: Is tiering applied? No; this amendment impacts all similarly situated practitioners equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? None.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 218A.205(3), 313.060(1).

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

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

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

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

(d) How much will it cost to administer this program for subsequent years? No cost.

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

Revenues (+/-): None.

Expenditures (+/-): None.

Other explanation: Not applicable.

**PUBLIC PROTECTION CABINET
Kentucky Real Estate Authority
Kentucky Real Estate Commission
(Amended After Comments)**

201 KAR 11:011. Definitions for 201 KAR Chapter 11.

RELATES TO: KRS 324.010(1), 324.046(1), 324.111(1), (2), (3), (4), (6), 324.117(1), (5), 324.160(4)(j), (m), (r), 324.410(1), 324.420(1), (2), (3), (4), (5)

STATUTORY AUTHORITY: KRS 324.117(5), 324.281(5), 324.282

NECESSITY, FUNCTION, AND CONFORMITY: KRS 324.281(5) and KRS 324.282 require[requires] the Real Estate Commission, with the approval of the executive director of the Kentucky Real Estate Authority, to promulgate administrative regulations necessary to implement KRS Chapter 324. This administrative regulation defines terms used in the implementation of KRS Chapter 324.

Section 1. Definitions. (1) "Academic credit hour" means:

(a) One (1) college semester hour; or

(b) Sixteen (16), fifty (50) minute hours of actual classroom attendance.

(2) "Advertising" or "advertisement" means any manner, method, or activity by which a licensee of the commission makes known a specific property for sale or lease or any services for which a real estate license is required. Advertising shall not include:

(a) Private communications between a licensee and a client or prospective client; or

(b) Directional or pointer signs whose sole purpose is to provide directions to a listed property and includes no identifying licensee or brokerage information.

(3) "Agency" means the specific consensual relationship between the principal broker and the client for a contemplated transaction, by oral or written agreement.

(4) "Agency consent agreement" means the form prescribed by

the commission and used by a principal broker and a client to establish the agency relationship in writing.

(5) "Branch office" means a physical place of business for a real estate brokerage company in addition to the main office location that the commission may enter to inspect required documents or allegations of violations of KRS Chapter 324.

(6) "Broker-affiliated training program" means one (1) or more post-license education course offered for post-license educational credit provided or sponsored by a principal broker.

(7) "Business relationship" means any arrangement, other than the current real estate transaction, whereby a licensee and a party have or had a mutual, ongoing financial interest in any company, corporation, or other income-producing venture, including any prior representation by the licensee for the party's purchase, lease, or sale of real estate.

(8) "Client" means a person or persons, or entity or entities, for whom a licensee provides real estate brokerage services and:

(a) Who has entered into a written agreement with a principal broker for provision of real estate brokerage services;

(b) With whom or for whom a licensee completes an offer to purchase or lease for real estate; or

(c) For whom a licensee otherwise by oral agreement performs acts of real estate brokerage;

(d) For the purposes of selling or leasing real estate, the client shall be the person or persons, or entity or entities, authorized to sell or lease the subject real estate.

(9) "Commercial transaction" means a transaction other than the sale of a single-family residential property, multifamily property containing four (4) units or less, or single-family residential lot.

(10) "Company" means an office or firm, headed by a principal broker, formed to offer real estate brokerage services, which is organized as

(a) A registered business entity,

(b) Sole proprietorship, or

(c) Another business arrangement.

(11) "Confidential information" means information received or sent, verbally or in writing including transaction paperwork and files, by a licensee, that could materially compromise the negotiating position of a client or prospective client. Confidential information shall include information that is not required to be disclosed by law and:

(a) Is provided to a licensee by a client or prospective client to a real estate transaction;

(b) Describes or affects the client or prospective client's bargaining position or motivation; or

(c) Is designated in writing as confidential by the client or prospective client.

(12) "Condominium" means means the absolute ownership of a unit in a multiunit building based on a legal description of the airspace the unit actually occupies, or a separate dwelling unit in a multiunit development, plus an undivided interest in the ownership of the common elements in the building or development, which are owned jointly with the other condominium unit owners.

(12) "Consumer" means a person or entity with whom a licensee exchanges information that is public in nature, but otherwise does not perform acts of real estate brokerage and with whom no written or oral agency agreement or fiduciary relationship exists.

(13) "Continuing education course" means a course approved pursuant to the requirements set forth in KRS 324.085(1) and the administrative regulations promulgated thereunder.

(14) "Contract deposit" means earnest money delivered to a licensee in conjunction with real estate sales contract [licensed agent as part of an offer to enter a contract for the sale of real property] after:

(a) The offer or counteroffer is accepted; and

(b) An executory contract exists.

(15) "Delivery" means transmission of an item to a party by:

(a) Mail;

(b) Facsimile transmission;

(c) Electronic mail; **for**

(d) Hand; **or**

(e) Other legal means.

(16) "Designated agency" means a type of agency prescribed by KRS 324.121(2).

(17) "Designated agent" means one, or more, licensee(s) designated by the principal broker in accordance with KRS 324.121(1) to provide real estate brokerage services to a client.

(18) "Distance education course" means a continuing or post-license education course or a pre-license course that:

(a) Is taught in a setting in which the teacher and the student are in separate locations; and

(b) Uses instructional methods that include internet-based training, computer-based training (CBT), satellite transmission, or teleconferencing.

(19) "Dual agency" means a type of agency in which:

(a) The principal broker and all affiliated licensees simultaneously represent, in the same transaction, buyer and seller, or lessor and lessee, as clients of the principal broker in a limited fiduciary capacity; or

(b) In companies that practice designated agency, only the principal broker or a designated manager shall be a dual agent for that transaction pursuant to KRS 324.121(2).

(20) **"Duplex" means two (2) residential units sharing a single roof.**

"Education cycle" means the time period commencing on January 1 of each year and ending at 11:59 p.m. on December 31 of each year.

(21)[(4)] "False, misleading, or deceptive advertising" means an advertisement that is prohibited pursuant to KRS 324.117(1) because the advertisement:

(a) Is contrary to fact;

(b) Leads a person to a mistaken belief or conclusion; or

(c) Knowingly made a representation that is contrary to fact.]

"Fraud" or "fraudulent dealing" means a material misrepresentation that:

(a) Is:

1. Known to be false; or

2. Made recklessly;

(b) Is made to induce an act;

(c) Induces an act in reliance on the misrepresentation; and

(d) Causes injury.

(22) "Family relationship" means any known familial relationship between a licensee and party **regardless of distance of the relationship**.

(23) **"Fourplex" means four (4) residential units sharing a single roof.**

"Guaranteed sales plan" means an offer or solicitation to guarantee the:

(a) Sale of an owner's real estate; or

(b) Purchase of the owner's real estate if the owner's real estate is not sold by the licensee.

(24) "Initial sales associate license" means an original Kentucky sales associate license issued by the commission for the first time or a Kentucky sales associate license re-issued to a person who formerly held a license issued by the commission.

(25) "License recognition" means a licensing process that:

(a) Replaces reciprocal agreements; and

(b) May be used to obtain a Kentucky license by an individual who holds an active and unrestricted out-of-state sales associate's or broker's license, or the equivalent of either.

(26) "Licensee" means a person properly licensed as a broker or sales associate to perform acts of real estate brokerage in accordance with KRS Chapter 324 and the administrative regulations promulgated thereto.

(27) "Personal relationship" means a platonic or nonplatonic friendship between a licensee and a party.

(28) "Post-license education course" means a course approved by the commission that satisfies a portion of the forty-eight (48) hours of education required by KRS 324.085(2).

(29) "Pre-license course" means a course approved by the commission that satisfies an education requirement to obtain a real estate sales associate license.

(30) "Promotional activities" means every solicitation or attempt to bring about the sale, exchange, lease, assignment, license or

award with regard to a timeshare interest in real estate.

(31) "Prospective client" means a person or entity who has not entered into a written or oral agreement with a principal broker to provide real estate brokerage services, but to whom a licensee offers real estate brokerage services or from whom a licensee receives confidential information related to a contemplated real estate transaction.

(32) "Renewal cycle" means the time period commencing on April 1 of each year and ending on March 31 two calendar years thereafter.

(33) "Security deposit" is defined by KRS 383.545(13).

(34) "Single agency" is the type of agency where the principal broker and all affiliated licensees of the real estate brokerage company act as an agent for a buyer or seller, or a lessor or lessee, as the client on the same side of a transaction.

(35) "Single family residential real estate dwelling" means any:

(a) **A stand-alone [Duplex, triplex, fourplex, condominium, townhouse, or] residential unit;**

(b) Manufactured home permanently attached to land; or

(c) Residential unit otherwise conveyed on a unit-by-unit basis, even if the unit is part of a larger **[building or]** parcel of real estate containing more than **two (2) detached [four (4)]** residential units.

(36) "Team" or "teams" is a group of more than one licensee working together who are:

(a) Affiliated with the same principal broker;

(b) Led by a team leader; and

(c) Representing themselves to the public utilizing the same authorized alternate or assumed name to brand, advertise and broker real estate.

(37) "Team leader" means an individual who is designated by his or her principal broker to be the head of the team.

(38) "Timeshare" means an arrangement under which one may acquire, for a period of time, the right to use and occupy property, for a recurring block of time. A timeshare may be:

(a) A timeshare estate, wherein a freehold estate or an estate for years is conveyed;

(b) A vacation lease, wherein a buyer purchases the right to occupy a specific accommodation for a specified time period over a specified number of years;

(c) A vacation license or club membership, wherein a buyer acquires the right to occupy an undesignated unit at certain real property(ies) during a specific time each year for a specific number of years; or

(d) Variations of the above that result in the acquisition of the right to use real property for a limited period of time in recurring intervals for a number of years.

(39) **"Townhouse" means a type of residential dwelling with two (2) floors that is connected to one (1) or more dwellings by a common wall or walls. Title to the unit and lot vest in the owner who shares a fractional interest with other owners in any common areas.**

"Transactional brokerage" means a form of brokerage service(s) provided to either or both parties to a transaction wherein the licensee owes to the parties only the duties owed to a consumer and wherein confidential information is not relayed between the parties by the licensee, unless so directed by the sending party.

(40) **"Triplex" means three (3) residential units sharing a single roof.**

"Unrestricted license" means a license that is not under any order of limitation or discipline by another jurisdiction's regulatory body.

(41)[(5)] "Without delay" means as soon as reasonably possible based on the availability of the licensee and the client and subject to any written agreement between them as to how and when written offers will be submitted.

(42) "Without unreasonable delay" means:

(a) For contract deposits or money belonging to others, within three (3) business days of the receipt by the principal broker or an affiliated licensee of the principal broker; or

(b) For notice required by KRS 324.360(8), within seventy-two (72) hours of the listing agent's receipt of the prospective purchaser's written and signed offer to purchase **[within three (3)]**

~~business days of the creation of an executory contract for the sale or lease of real property].~~

LOIS ANN DISPONETT, Chair
H.E. CORDER II, Executive Director
K. GAIL RUSSELL, Secretary

APPROVED BY AGENCY: September 13, 2019

FILED WITH LRC: September 13, 2019 at 11 a.m.

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REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Marc Manley, email Marc.Manley@ky.gov; and
Heather Becker

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the definitions to be used in 201 KAR Chapter 11.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure consistent use of terminology by licensees and the commission when referencing 201 KAR Chapter 11.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 324.281(5) and KRS 324.282 authorize the Kentucky Real Estate Commission to promulgate administrative regulations to carry out and enforce the provisions of KRS Chapter 324.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By setting definitions, this administrative regulation ensures consistency in administration and enforcement by the commission.

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

(a) How the amendment will change this existing administrative regulation: The amendments proposed by this administrative regulation will change the existing administrative regulation by locating all of the commonly defined terms applicable to KRS Chapter 324 and 201 KAR Chapter 11 in one administrative regulation.

(b) The necessity of the amendment to this administrative regulation: Amendment to this administrative regulation is necessary to provide consistent and predictable definitions for the terms referenced in KRS Chapter 324 and 201 KAR Chapter 11.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 324.281(5) and KRS 324.282 require the Real Estate Commission, with the approval of the executive director of the Kentucky Real Estate Authority, to promulgate administrative regulations necessary to implement KRS Chapter 324. This administrative regulation defines terms used in the implementation of KRS Chapter 324 and 201 KAR Chapter 11.

(d) How the amendment will assist in the effective administration of the statutes: Amendment to this administrative regulation is necessary to provide consistent and predictable definitions for the terms referenced in KRS Chapter 324 and 201 KAR Chapter 11.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect all of the Real Estate Commission's current licensees, as well as prospective license applicants. The Commission currently licenses approximately 23,000 real estate agents. Additionally, this administrative regulation will affect all of the Real Estate Commission's current preclicensing, post licensing, and continuing education providers. Lastly, this administrative regulation will affect the general public to the extent they interact with licensed real estate professionals.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Prospective licensees and members of the general public are not required to take any action to be in compliance with this administrative regulation. Current licensees may have to augment their business models to comply with new licensing terminology. Education providers will be required to amend their instruction materials to comply with the new terminology and content of this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no costs associated for any of the regulated entities or the general public to comply with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, all those effected will benefit from the consistent and predictable usage of language to minimize compliance pitfalls.

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

(a) Initially: There will be no initial costs associated with implementing this administrative regulation.

(b) On a continuing basis: There will be no continuing costs associated with implementing this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is necessary to implement and enforce this administrative regulation.

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

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

(9) TIERING: Is tiering applied? No, tiering is not applied because this administrative regulation applies equally to all regulated entities.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments or school districts) will be impacted by this administrative regulation? The Kentucky Real Estate Commission will be impacted by this administrative regulation. Also, local real estate boards may be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 324.281(5), KRS 324.282, and KRS 324.117 require the Real Estate Commission to promulgate administrative regulations.

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

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

(c) How much will it cost to administer this program for the first year? There is no cost associated with administering this administrative regulation for the first year.

(d) How much will it cost to administer this program for subsequent years? There is no cost associated with administering this administrative regulation for subsequent years.

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

Revenues (+/-): Neutral
Expenditures (+/-): Neutral

Other Explanation: This administrative regulation is not expected to have a fiscal impact.

**PUBLIC PROTECTION CABINET
Kentucky Real Estate Authority
Kentucky Real Estate Commission
(Amended After Comments)**

201 KAR 11:105. Advertising~~[listed property; advertising public information about specific property; under what conditions consent and authorization of owner or principal broker is required]~~.

RELATES TO: KRS 324.117, 324.160(4)(d), [(4)(w)](6)

STATUTORY AUTHORITY: KRS 324.117, 324.281(5), 324.282

NECESSITY, FUNCTION, AND CONFORMITY: KRS 324.281(5) and KRS 324.282 require the Kentucky Real Estate Commission, with the approval of the executive director of the Kentucky Real Estate Authority, to promulgate regulations[KRS 324.282 requires the Kentucky Real Estate Commission to promulgate administrative regulations] to carry out and enforce the provisions of KRS Chapter 324. KRS 324.117(5) requires the commission to promulgate administrative regulations to define false, misleading, or deceptive advertising. KRS 324.117(6) requires the commission to promulgate administrative regulations to define the manner in which licensees may utilize any internet electronic communications for advertising or marketing. This administrative regulation establishes certain standards for real estate advertising practices, including internet advertising[real estate].

Section 1. Consent Required to Advertise a Specific Property.

(1) A licensee [real-estate-broker] shall not:

(a) Advertise [offer] real estate for sale or lease without the written consent of the owner;[-]

(b) Place signage or another advertisement on any private or listed property without the written consent of the owner; or

(c)1. Promote or advertise a specific property listed by another principal broker unless the licensee has requested and obtained written consent from the listing principal broker.

2. Nothing in subsection (c)1. of this Section shall prohibit a licensee from utilizing public information, including information regarding real estate **closed[sold]** by another licensee, to market his or her real estate brokerage services to consumers.

(2) A licensee who served as a buyer's agent may advertise his or her role in a sale after a closing has occurred if the advertisement clearly and visibly states that the licensee's participation was as the buyer's agent.[-](1) If promoting or advertising the real estate to the general public, the broker shall have a written listing agreement signed by the owner.

(2)(a) After a closing has occurred, a buyer's agent may advertise his or her role in the sale.

(b) The advertisement shall conspicuously state that his or her participation was as the buyer's agent.[-]

Section 2. Content Required. (1)(a) The principal broker, or his or her designee, shall establish written standards for review and approval of advertising activity of the real estate company and affiliated licensees to ensure compliance with KRS Chapter 324 and 201 KAR Chapter 11.

(b) Pursuant to KRS 324.160(6), a principal broker shall be held liable for **acts[repeated violations]** by affiliated licensee(s) **that the principal broker knew or should have known about that are** in violation of either the principal broker's standards for review and approval or KRS Chapter 324 and 201 KAR Chapter 11.

(2) All advertisements shall include:

(a) The full name of the real estate brokerage company registered with the commission; or

(b) The full name of the principal broker registered with the commission, with a clear designation of principal broker status.

(3)(a) An advertisement may include in written text an affiliated licensee's first and last name, or an alternate or assumed name as set forth in Section 4 of this administrative regulation, as registered with the commission, so long as the principal broker has informed the commission of the affiliated licensee's first and last name, or alternate or assumed name being used.

(b) Each affiliated licensee shall be limited to the use of one (1) nickname in place of, or along with, the licensee's first name, and it shall be the responsibility of each individual licensee to inform the commission of the nickname being used. A nickname shall not be used unless the nickname is reflected on the licensee's online services portal before use.

Section 3. Display of Content Required. (1) The content required by Section 2(2) shall be displayed in written text. The content must:

(a) Be clear and visible to a typical observer of the advertisement; and

(b) Not be false, misleading, or deceptive.

(2)(a) The content permitted by Section 2(3) of this administrative regulation shall not appear larger than the content required by Section 2(2) of this administrative regulation.

(b) The requirements of subsection (2)(a) of this section shall not apply to the following promotional materials that advertise a licensee: hats, pens, notepads, apparel, name tags, and the sponsorship of charitable and community events.

(c) The commission, in its discretion, may waive the requirements of subsection (2)(a) of this section for specific promotional materials not stated in subsection (2)(b) upon finding the proposed promotional material would not constitute false, misleading, or deceptive advertising.

(3)(a) For purposes of real estate company or licensee advertisement via internet, social media, or other digital or online forms of advertisement, every individual viewable page or post shall constitute a separate advertisement; and

(b) Each advertisement shall contain the content required by Section 2(2) in the page or post header, or visible on the page or post without the observer scrolling or otherwise navigating the page or post to view the content required; or

(c) If a page or post cannot reasonably comply with subsection (2)(b) of this Section, the advertisement shall include a clickable direct link, that is clear, visible, and identifiable as a link, to a page, post or user account profile that contains the content required displayed in accordance with subsection **(3)(2)(b)** of this section.

(4) Advertisements that include an audiovisual presentation shall include an audible announcement **or written display** of the content required by Section 2(2) of this administrative regulation at the beginning of the advertisement.

(5) Any internet, social media, and other digital or online form of advertising that was true and accurate at the time it was made shall not be in violation.

(6) A logo that does not contain written text of the content required by Section 2(2) shall not constitute a substitute for the content required.

(7) If the licensee's principal business location is outside Kentucky, the advertisement shall:

(a) Indicate that the licensee holds a Kentucky license to broker real estate; and

(b) Include the regulatory jurisdiction of the licensee's principal business location.

(8) The requirements established by this administrative regulation shall not apply to logos, brands, or directional and open house signs so long as the logo, brand, directional, and open house signs do not contain the name of a sales associate.

Section 4. Use of Alternate or Assumed Names. (1) More than one licensee, whether a team, group, other business arrangement, or real estate brokerage company, may collectively use an alternate or assumed name for advertising with the written

approval of the principal broker.

(2) Prior to allowing the use of an alternate or assumed name in advertising, a principal broker shall:

(a) Register, or ensure the registration of, the alternate or assumed name with the commission; and

(b) Ensure that the alternate or assumed name is populated in the principal broker's or affiliated licensee's online services portal.

(3) An alternate or assumed name shall not:

(a) Contain terms that could lead the public to believe the licensee(s) approved to use the alternate or assumed name is offering real estate brokerage services independent of the principal broker, unless the alternate or assumed name is for the real estate brokerage company;

(b) Be used more than once by licensees within the principal broker's brokerage company; or ~~(c) Contain the word "company", "firm", or "realty" unless the alternate or assumed name is being used by a real estate brokerage company.~~

(4) An alternate or assumed name may include reference to a name or person, so long as the name or person has not lost the ability to engage in real estate brokerage through administrative discipline or by operation of law.

(5) If the alternate or assumed name applies to a team or group, the alternate or assumed name shall ~~end with~~**[include]** the word "team" or "group."

Section 5. False, Misleading, or Deceptive Advertising. (1) False, misleading, or deceptive advertising is prohibited pursuant to KRS 324.117(1).

(2) An advertisement is false, misleading, or deceptive, if the advertisement:

(a) Is known or reasonably should have been known to be false or contrary to fact at the time of placement of the advertisement;

(b) Misleads or misinforms the general public in any manner; or

(c) Would lead a reasonable observer to believe that real estate brokerage services were being offered by an affiliated licensee(s) independent of their real estate brokerage company or principal broker.

Section 6. Guaranteed Sales Plans. (1) If a licensee advertises a guaranteed sales plan, the licensee shall disclose in writing whether:

(a) A fee is charged for participation;

(b) The real estate shall meet qualifications for participation;

(c) The purchase price under a guarantee of purchase of the owner's real estate shall be determined by the licensee or a third party;**[and]**

(d) The owner of the real estate shall purchase other real estate listed for sale by the licensee or his or her designee; **and**

(e) An exclusive buyer agency agreement is required.

(2) The advertisement may be in print or electronic display, on radio, or on television and shall be clear and understandable.

(a) For print or electronic display advertising, the letters that shall be at least twenty-five (25) percent the size of the largest letter in the advertisement;

(b) For television advertising, written communication shall appear on the screen at least three (3) seconds for the first line of lettering and at least one (1) second for each additional line of lettering and in letters that shall be at least eighteen (18) video scan lines in size for uppercase letters or at least twenty-four (24) video scan lines for uppercase capital letters if uppercase capitals and lowercase letters are used.

Section 7. Client Advertising. Consistent with KRS 324.117(4), a licensee shall advise his or her client of the advertising obligations contained in this administrative regulation.

Section 8. Effective Dates. The commission shall begin enforcement of Section 3 ~~six (6) months~~**[sixty (60) days]** after the effective date of this administrative regulation. ~~[A sign shall not be placed on any property by a real estate licensee without the written consent of the owner.]~~

~~Section 3. (1) In accordance with KRS 324.117(4), a real estate property print advertisement of a licensee, or an offer or solicitation to provide brokerage services by a licensee, related to marketing or identifying real property for sale or lease, shall include the name of the real estate company where the licensee's license is held or the name of the real estate company's principal broker with whom the licensee is affiliated.~~

~~(2) If the advertisement includes the name of the real estate company's principal broker, the principal broker's name shall include his or her title as principal broker or be followed by any other clear designation of his or her status as a broker.~~

~~(3) The requirements in this section shall apply to advertisements for listed property only.~~

~~Section 4. (1) An advertisement by a licensee shall be approved by:~~

~~(a) The principal broker with whom the licensee is affiliated; or~~

~~(b) An individual designated by the principal broker to approve the advertisement.~~

~~(2) A principal broker shall require his or her licensee to:~~

~~(a) Discuss with the property owner-client the advertising requirements of KRS 324.117;~~

~~(b) Provide the owner-client with written notice of these advertising requirements; and~~

~~(c) Obtain the owner-client's written agreement to comply with the advertising requirements.~~

~~Section 5. A licensee may advertise public information, such as sales price, of properties that have sold and closed, even if the licensee did not have a written listing agreement on the property.~~

~~Section 6. A licensee may advertise the listings of another real estate brokerage company if:~~

~~(1) The licensee has requested and obtained the listing broker's consent to advertise the other company's listing or listings; and~~

~~(2) The licensee's advertisement of the other company's listings includes the complete name of the other real estate brokerage company.]~~

LOIS ANN DISPONETT, Chair
H.E. CORDER II, Executive Director
K. GAIL RUSSELL, Secretary

APPROVED BY AGENCY: September 13, 2019

FILED WITH LRC: September 13, 2019 at 11 a.m.

CONTACT PERSON: Heather L. Becker, General Counsel,
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REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Marc Manley, email Marc.Manley@ky.gov; and Heather Becker

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation modernizes advertising standards for licensees of the Kentucky Real Estate Commission.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to clarify the regulatory regime governing advertising by licensees of the Kentucky Real Estate Commission.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 324.281 requires the commission to promulgate administrative regulations with the approval of the executive director of the Kentucky Real Estate Authority to fulfill the duties and functions assigned to the commission by KRS Chapter 324. KRS 324.117(5) requires the commission to promulgate administrative regulations to define false, misleading, or deceptive advertising. KRS 324.117(6) requires the commission to promulgate administrative regulations to define the manner in which licensees may utilize any internet electronic communications for advertising or marketing. This administrative regulation

establishes certain standards for real estate advertising practices, including internet advertising.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The Real Estate Commission is charged with licensing and regulating real estate brokers and sales associates in Kentucky. This administrative regulation consolidates and clarifies the rules that will govern advertising for all licensees in Kentucky.

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

(a) How the amendment will change this existing administrative regulation: This administrative regulation consolidates and clarifies the rules that will govern advertising for Real Estate Commission licensees in Kentucky. This proposed administrative regulation amendment includes new provisions relating to advertising by teams and advertising on the internet, including social media.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation is necessary to establish certain standards for real estate advertising practices, including internet advertising.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 324.117(5) requires the commission to promulgate administrative regulations to define false, misleading, or deceptive advertising. KRS 324.117(6) requires the commission to promulgate administrative regulations to define the manner in which licensees may utilize any internet electronic communications for advertising or marketing. This administrative regulation establishes certain standards for real estate advertising practices, including internet advertising.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation consolidates and clarifies the rules that will govern advertising for Real Estate Commission licensees in Kentucky.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect all of the Real Estate Commission's current licensees, as well as prospective license applicants. The Commission currently licenses approximately 23,000 licensees. Additionally, this administrative regulation will affect all of the Real Estate Commission's current prelicensing, post licensing, and continuing education providers. Lastly, this administrative regulation will affect the general public to the extent they interact with licensed real estate professionals.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Prospective licensees and members of the general public are not required to take any action to be in compliance with this administrative regulation. Current licensees may be required to reprint non-compliant advertising and redevelop websites and social media accounts to comply with the Sections 2 and 3 of this administrative regulation. Additionally, active real estate brokerage companies will have to augment their business models to comply with new licensing terminology. Education providers will be required to amend their instruction materials to comply with the new advertising rules contained in this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no compliance costs for prospective licensees and members of the general public. Current licensees and active real estate brokerage companies will likely incur significant expense reprinting and redeveloping all facets of their business advertisement. Costs will vary for each licensee and real estate brokerage company. Education providers may incur incidental expenses in amending their instruction materials to comply with the new advertising rules contained in this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance,

licensees will adequately apprise the public of all information required in a print or social media advertisement.

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

(a) Initially: There is no initial cost to implement this administrative regulation.

(b) On a continuing basis: There is no cost to implement this administrative regulation on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There is no funding necessary to implement this administrative regulation.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. This administrative regulation neither directly nor indirectly increases any fees.

(9) TIERING: Is tiering applied? No. Tiering is not applied because this administrative regulation applies equally to all regulated entities.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Real Estate Commission will be impacted.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 324.281(5), KRS 324.282, and KRS 324.117 require the Real Estate Commission to promulgate administrative regulations with the approval of the executive director of the Kentucky Real Estate Authority to fulfill the duties and functions outlined in KRS Chapter 324. KRS 324.117 requires the commission to promulgate administrative regulations to define advertising practices, including internet electronic communications for advertising or marketing.

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

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

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

(c) How much will it cost to administer this program for the first year? There is no cost to administer this administrative regulation for the first year.

(d) How much will it cost to administer this program for subsequent years? There is no cost to administer this administrative regulation for subsequent years.

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

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: This administrative regulation is not expected to have a fiscal impact.

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Water
(Amended After Comments)

401 KAR 10:001. Definitions for 401 KAR Chapter 10.

RELATES TO: KRS ~~146.200 through 146.360~~[146.200-146.360], ~~146.410 through 146.535~~[146.410-146.535], ~~146.550 through 146.570~~[146.550-146.570], ~~146.600 through 146.619~~[146.600-146.619], ~~146.990, 224.1-010~~[224.01-010], ~~224.1-400~~[224.01-400], ~~224.16-050, 224.16-070, 224.70-100 through 22.70-150~~[224.70-100 – 224.70-140], ~~224.71-100 through 224.71-145~~[224.71-100 – 224.71-145], ~~224.73-100 through 224.73-120~~[224.73-100 – 224.73-120], 40 C.F.R. 136

STATUTORY AUTHORITY: KRS 224.10-100, 224.70-100, 224.70-110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 authorizes the cabinet to promulgate administrative regulations for the prevention, abatement, and control of all water pollution. ~~KRS 224.70-100 establishes the policy of the Commonwealth to protect, prevent, and abate new and existing water pollution. KRS 224.70-110 prohibits the direct or indirect pollution of waters of the Commonwealth.~~ This administrative regulation establishes definitions for terms used in 401 KAR Chapter 10.

Section 1. Definitions. (1) **"Acute criteria" means the highest instream concentration of a toxic substance or an effluent to which an organism can be exposed for one (1) hour without causing an unacceptable harmful effect.**

(2) **"Acute to chronic ratio" ["Acute-chronic ratio"] means the ratio of the acute toxicity, expressed as an LC₅₀, of an effluent or a toxic substance, to its chronic toxicity. It is used as a factor to estimate chronic toxicity from acute toxicity data.** ~~[(2) "Acute criteria" means the highest instream concentration of a toxic substance or an effluent to which an organism can be exposed for one (1) hour without causing an unacceptable harmful effect.]~~

(3) "Acute toxicity" means lethality or other harmful effect sustained by either an indigenous aquatic organism or a representative indicator organism used in a toxicity test, due to a short-term exposure, of ninety-six (96) hours or less, to a specific toxic substance or mixture of toxic substances.

(4) "Acute toxicity unit" means the reciprocal of the effluent dilution that causes the acute effect, or LC₅₀, by the end of the acute exposure period.

(5) "Adversely affect" or "adversely change" means to alter or change the community structure or function, to reduce the number or proportion of sensitive species, or to increase the number or proportion of pollution tolerant aquatic species so that aquatic life use support or aquatic habitat is impaired.

(6) "Balanced indigenous community" means a biotic community typically characterized by diversity, the capacity to sustain itself through cyclic seasonal changes, presence of necessary food chain species, and a lack of domination by pollution tolerant species. The community may include historically nonnative species introduced in connection with a program of wildlife management and species whose presence or abundance results from substantial, irreversible environmental modification. Normally, such a community does not include species whose presence or abundance is attributable to the introduction of pollutants that will be eliminated by compliance of all sources with 401 KAR 5:065, and may not include species whose presence or abundance is attributable to alternative effluent limitations imposed pursuant to 401 KAR 5:055.

(7) **"Bathing area" means those surface waters that are:**

(a) Are frequented by bathers for swimming;

(b) Have a lifeguard; or

(c) Have a bathhouse facility.

(8) "Best management practices" or "BMPs" means:

(a) For agriculture operations, as defined by KRS 224.71-100(3); or

(b) For all other purposes:

1. Schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the commonwealth; and

2. Treatment requirements; operating procedures; and practices to control site run-off, pollution of surface water and groundwater from nonpoint sources, spillage or leaks, sludge or waste disposal, or drainage from raw material storage. ~~[(8) "Biochemical oxygen demand", "BOD", or "BOD₅" means the amount of oxygen required to stabilize biodegradable organic matter under aerobic conditions within a five (5) day period. Other time periods may be measured, and if so, are indicated where the term is used.~~

~~(9) "Carbonaceous biochemical oxygen demand" or "CBOD" means BOD, not including the nitrogenous oxygen demand of the wastewater.]~~

~~(9) [(40)] "Chronic criteria" means the highest instream concentration of a toxic substance or an effluent to which organisms are able to be exposed for ninety-six (96) hours without causing an unacceptable harmful effect.~~

~~(10) [(41)] "Chronic toxicity" means lethality, reduced growth or reproduction, or other harmful effect sustained by either indigenous aquatic organisms or representative indicator organisms used in toxicity tests due to long-term exposures, relative to the life span of the organisms or a significant portion of their life span, to toxic substances or mixtures of toxic substances.~~

~~(11) [(42)] "Chronic toxicity unit" means the reciprocal of the effluent dilution that causes twenty-five (25) percent inhibition of growth or reproduction to the test organisms by the end of the chronic exposure period.~~

~~(12) [(43)] "Clean Water Act" or "CWA" means the Clean Water Act as subsequently amended, 33 U.S.C. Section 1251 through 1387, otherwise known as the Federal Water Pollution Control Act.~~ ~~[(14) "Coal remining operation" means:~~

~~(a) A surface coal mining operation, which begins after July 11, 1990, at a site on which a coal mining operation was conducted before August 3, 1977; and~~

~~(b) A surface coal mining operation existing on July 11, 1990, which receives a permit revision from the Department for Surface Mining Reclamation and Enforcement (DSMRE) in accordance with 405 KAR 8:010, Section 20, for a site on which a coal mining operation was conducted before August 3, 1977.]~~

~~(13) [(45)] "Cold water aquatic habitat" or "CAH" means surface waters and associated substrate that are able to support indigenous aquatic life or self-sustaining or reproducing trout populations on a year-round basis.~~

~~(14) "Combined sewer" or "combined sewer line" means a sewer or sewer line designed to carry stormwater runoff as well as sanitary wastewater.~~

~~(15) "Combined sewer overflow" or "CSO" means the flow from a combined sewer in excess of the interceptor or regulator capacity that is discharged into a receiving water without going to a POTW.~~ ~~[(16) "Concentrated animal feeding operation" means one (1) of the following:~~

~~(a) "Large concentrated animal feeding operation" as defined in subsection (45) of this section;~~

~~(b) "Medium concentrated animal feeding operation" as defined in subsection (50) of this section; or~~

~~(c) "Small concentrated animal feeding operation" as defined in subsection (76) of this section.]~~

~~(16) [(47)] "Conventional domestic water supply treatment" means or includes coagulation, sedimentation, filtration, and disinfection.~~ ~~[(18) "Conventional pollutant" means biochemical oxygen demand (BOD), chemical oxygen demand (COD), total organic carbon (TOC), total suspended solids (TSS), ammonia (as N), bromide, chlorine (total residual), color, fecal coliform, fluoride, nitrate, kjeldahl nitrogen, oil and grease, and phosphorus.]~~

~~(17) [(49)] "Criteria" or "water quality criteria" means elements of state water quality standards expressed as constituent concentrations, levels, or narrative statements, that represent a quality of water that supports a particular designated use [specific concentrations or ranges of values, or narrative statements of~~

~~water constituents that represent a quality of water expected to result in an aquatic ecosystem protective of designated uses of surface waters. Criteria are derived to protect legitimate uses such as aquatic life, domestic water supply, and recreation and to protect human health.~~

(18)(20) "Day" means a twenty-four (24) hour period.

(19)(21) "Discharge" or "discharge of a pollutant" means the addition of a pollutant or combination of pollutants to waters of the commonwealth from a point source.

(20)(22) "Division" means the Kentucky Division of Water, within the Department for Environmental Protection, Energy and Environment Cabinet.

(21)(23) "Domestic" means relating to household wastes or other similar wastes. It is used to distinguish municipal, household, or commercial water or wastewater services from industrial water or wastewater services.~~[(24) "Domestic sewage" means sewage devoid of industrial or other wastes and that is typical of waste received from residential facilities. It may include wastes from commercial developments, schools, restaurants, and other similar developments.]~~

(22)(25) "Domestic water supply" or "DWS" means surface waters that with conventional domestic water supply treatment are suitable for human consumption through a public water system as defined by 40 C.F.R. 141.2[in 401 KAR 8:040], culinary purposes, or for use in a food or beverage processing industry; and meet state and federal regulations promulgated pursuant to the Safe Drinking Water Act, as amended, 42 U.S.C. 300f - 300j-26.

(23)(26) "Effluent limitations" is defined by KRS 224.1-010(11)~~224.01-010(12)~~.

(24)(27) "Environmental Protection Agency", [æf] "EPA", or "U.S. EPA" means the United States Environmental Protection Agency.

(25)(28) "Epilimnion" means the thermally homogeneous water layer overlying the metalimnion of a thermally stratified lake or reservoir.

(26)(29) "E. coli" or "Escherichia coli" means an aerobic and facultative anaerobic gram negative, nonspore forming, rod shaped bacterium that~~can grow at forty-four and five tenths (44.5) degrees Celsius, that~~ is ortho-nitrophenyl-B-D-galactopyranoside (ONPG) positive, and Methylumbelliferyl glucuronide (MUG) positive. It is a member of the indigenous fecal flora of warm-blooded animals.

(27)(30) "Eutrophication" means the enrichment of a surface water with nutrients nitrogen and phosphorus resulting in adverse effects on water chemistry and the indigenous aquatic community. Resulting adverse effects on water chemistry manifest by daily dissolved oxygen supersaturation followed by low dissolved oxygen concentrations and diurnal increase in pH. Resulting adverse effects on the indigenous aquatic community include:

(a) Nuisance algae blooms;

(b) Proliferation of nuisance aquatic plants;

(c) Displacement of diverse fish or ~~macroinvertebrate~~~~macroinvertebrate~~ community by species tolerant of nutrient-enriched environments; or

(d) Fish kills brought on by severe, sudden episodes of plant nutrient enrichment.

(28)(31) "Exceptional water" means a surface water categorized as exceptional by the cabinet pursuant to 401 KAR 10:030.

(29)(32) "Existing use" means a legitimate use being attained **where the quality or habitat to support the legitimate use was achieved** in or on a surface water of the commonwealth on or after November 28, 1975, irrespective of its use designation.

(30)(33) "Expanded discharge" means an increase in pollutant loading of twenty (20) percent or greater.

(31)(34) "°F" means degrees Fahrenheit.

(32)(35) "General permit" means a:

(a) "General permit" as defined by 40 C.F.R. 122.2; or

(b) KPDES permit issued pursuant to 401 KAR 5:055 authorizing a category of discharges or non-discharging facilities pursuant to KRS Chapter 224 within a geographical area~~, issued pursuant to 401 KAR 5:055~~.

(33)(36) "Harmonic mean flow" means the reciprocal of the mean of the reciprocal daily flow values.

(34)(37) "High quality water" means a surface water categorized as high quality by the cabinet pursuant to 401 KAR 10:030.

(35)(38) "Impact" means a change in the chemical, physical, or biological quality or condition of a surface water.

(36)(39) "Impairment" means a detrimental impact to a surface water that prevents attainment of a designated use.

(37)(40) "Indigenous aquatic community" means naturally occurring aquatic organisms including bacteria, fungi, algae, aquatic insects, other aquatic invertebrates, reptiles, amphibians, and fishes. Under some natural conditions one (1) or more of the above groups may be absent from a surface water.

(38)(41) "Inhibition concentration of twenty-five (25) percent" or "IC₂₅" means the concentration that is determined by a linear interpolation method for estimating the concentration at which a twenty-five (25) percent reduction is shown in reproduction or growth in test organisms, and which statistically approximates the concentration at which an unacceptable chronic effect is not observed.

(39)(42) "Intermittent water" means a stream that flows only at certain times of the year.

(40)(43) "Kentucky Pollutant Discharge Elimination System" or "KPDES" means the Kentucky program for issuing, modifying, revoking and reissuing, revoking, monitoring, and enforcing permits to discharge, and imposing and enforcing pretreatment requirements.

(41)(44) "KPDES permit" means a Kentucky Pollutant Discharge Elimination System permit issued to a facility, including a POTW, or activity pursuant to KRS Chapter 224 for the purpose of operating the facility or activity.

~~[(45) "Large concentrated animal feeding operation" is defined by 40 C.F.R. 122.23(b)(4), effective July 1, 2007.]~~

(42)(46) "LC₁" means that concentration of a toxic substance or mixture of toxic substances that is lethal, or immobilizing if appropriate, to one (1) percent of the organisms tested in a toxicity test during a specified exposure period.

(43)(47) "LC₅₀" means that concentration of a toxic substance or mixture of toxic substances that is lethal, or immobilizing if appropriate, to fifty (50) percent of the species tested in a toxicity test during a specified exposure period.

(44) "Long-term CSO control plan" means a control plan that complies with the Combined Sewer Overflow Control Policy issued by the U.S. EPA and published in the Federal Register on April 19, 1994 (59 FR 18688).

(45)(48) "Maintain" means to preserve or keep in present condition by not allowing an adverse permanent or long-term change to water quality or to a population of an aquatic organism or its habitat.

(46)(49) "Measurement" means the ability of the analytical method or protocol to quantify as well as identify the presence of the substance in question.~~[(50) "Medium concentrated animal feeding operation" is defined by 40 C.F.R. 122.23(b)(6), effective July 1, 2007.]~~

(47) "µg/L"[(51)] means micrograms per liter, same as ppb, assuming unit density.~~[(52) "mgd" or "MGD" means million gallons per day.]~~

(48)(53) "Milligrams per liter" or "mg/L" means the milligrams of substance per liter of solution, and is equivalent to parts per million in water, assuming unit density.

(49)(54) "Mixing zone" means a domain of a water body contiguous to a treated or untreated wastewater discharge with quality characteristics different from those of the receiving water. The discharge is in transit and progressively diluted from the source to the receiving system. The mixing zone is the domain where wastewater and receiving water mix.~~[(55) "Natural temperature" means the temperature that would exist in waters of the commonwealth without the change of enthalpy of artificial origin, as contrasted with that caused by climatic change or naturally occurring variable temperature associated with riparian vegetation and seasonal changes.]~~

(50)(56) "Natural water quality" means those naturally occurring physical, chemical, and biological properties of waters.~~[(57) "Net discharge" means the amount of substance~~

released to a surface water by excluding the influent value from the effluent value if both the intake and discharge are from and to the same or similar body of water.

(58) ~~"Nonconventional pollutant" means a pollutant not considered to be a conventional pollutant, including priority pollutants identified in 401 KAR 5:060.~~

(51) ~~(69)~~ "Nonpoint" means a source of pollutants not defined by a point source.

(52) "Normal temperature" means the temperature that would exist in waters of the commonwealth without the change of enthalpy of artificial origin.

(53) ~~(60)~~ "Other wastes" means sawdust, bark or other wood debris, garbage, refuse, ashes, offal, tar, oil, chemicals, acid drainage, wastes from agricultural enterprises, and other foreign substances not included within the definitions of industrial wastes and sewage that may cause or contribute to the pollution of waters of the Commonwealth.

(54) ~~(64)~~ "Outstanding national resource water" means a surface water categorized by the cabinet as an outstanding national resource water pursuant to 401 KAR 10:030.

(55) ~~(62)~~ "Outstanding state resource water" means a surface water designated by the cabinet as an outstanding state resource water pursuant to 401 KAR 10:031.

(56) ~~(63)~~ "pCi/L" means picocuries per liter.

(57) ~~(64)~~ "PCR" means primary contact recreation.

(58) ~~(65)~~ "Point source" is defined by 33 U.S.C. 1362(14). The term does not include agricultural ~~stormwater~~ ~~storm water~~ run-off or return flows from irrigated agriculture.

(59) "Pollutant" is defined by KRS 224.1-010.

(60) ~~(66)~~ "POTW" means publicly owned ~~[publicly-owned]~~ treatment works as defined by KRS 224.1-010 ~~[224.01-010]~~.

(61) ~~(67)~~ "Primary contact recreation water" means those waters suitable for full body contact recreation during the recreation season of May 1 through October 31.

(62) ~~(68)~~ "Productive aquatic community" means an assemblage of indigenous aquatic life capable of reproduction and growth.

(63) ~~(69)~~ "Propagation" means the continuance of a species by successful spawning, hatching, and development or natural generation in the natural environment, as opposed to the maintenance of the species by artificial culture and stocking.

(64) ~~(70)~~ "Regional facility plan" means a type of water quality management plan addressing point sources of pollution for the purpose of areawide waste treatment management planning prepared by the designated regional planning agency pursuant to ~~Sections~~ ~~[Section]~~ 201, 205, and 208 of the Clean Water Act, 33 U.S.C. 1251-1387, to control point sources of pollution within a planning area. ~~(74) "Remined area" means only that area of a coal remining operation on which a coal mining operation was conducted before August 3, 1977.~~

(65) ~~(72)~~ "Representative indicator organism" means an aquatic organism designated for use in toxicity testing because of its relative sensitivity to toxicants and its widespread distribution in the aquatic environment.

(66) ~~(73)~~ "SCR" means secondary contact recreation.

(67) ~~(74)~~ "Secondary contact recreation waters" means those waters suitable for partial body contact recreation, with minimal threat to public health due to water quality.

(68) ~~(75)~~ "Seven-Q-ten" or "7Q₁₀" means that minimum average flow that occurs for seven (7) consecutive days with a recurrence interval of ten (10) years. ~~(76) "Small concentrated animal feeding operation" is defined by 40 C.F.R. 122.23(b)(9), effective July 1, 2007.~~

(69) ~~(77)~~ "Source" means a building, structure, facility, or installation from which there is or may be a discharge of pollutants.

(70) ~~(78)~~ "Standard" or "water quality standard" means the designated uses of a surface water of the commonwealth and the water quality criteria ~~[and antidegradation requirements]~~ necessary to maintain and protect the designated uses as established in 401 KAR Chapter 10 ~~[means a water quality standard]~~.

(71) ~~(79)~~ "Stormwater" is defined by 40 C.F.R. 122.26(b)(13) ~~[means stormwater run-off, snow melt run-off, and~~

surface run-off and drainage].

(72) ~~(80)~~ "Surface waters" means those waters having well-defined banks and beds, either constantly or intermittently flowing; lakes and impounded waters; marshes and wetlands; and any subterranean waters flowing in well-defined channels and having a demonstrable hydrologic connection with the surface. Lagoons used for waste treatment and effluent ditches that are situated on property owned, leased, or under valid easement by a permitted discharger are not considered to be surface waters of the commonwealth.

(73) ~~(84)~~ "Total dissolved solids" or "TDS" is defined by 40 C.F.R. 122.2 ~~[means the total dissolved solids (filterable residue) as determined by use of the method specified in 40 C.F.R. Part 136]~~.

(74) ~~(82)~~ "Total suspended solids" or "TSS" means the total suspended solids (nonfilterable residue) as determined by use of the method specified in 40 C.F.R. Part 136.

(75) ~~(83)~~ "Toxic substance" means a substance that is bioaccumulative, synergistic, antagonistic, teratogenic, mutagenic, or carcinogenic and causes death, disease, a behavioral abnormality, a physiological malfunction, or a physical deformity in an organism or its offspring or interferes with normal propagation. ~~(84) "U.S. EPA" means the United States Environmental Protection Agency.~~

(76) ~~(85)~~ "Warm water aquatic habitat" or "WAH" means a surface water and associated substrate capable of supporting indigenous warm water aquatic life.

(77) ~~(86)~~ "Wetlands" is defined by 40 C.F.R. 122.2 ~~[means land that has a predominance of hydric soils and that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions]~~.

(78) ~~(87)~~ "Zone of initial dilution" means the limited area permitted by the cabinet surrounding or downstream from a discharge location where rapid, first-stage mixing occurs. The zone of initial dilution is the domain where wastewater and receiving water initially mix.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: September 13, 2019

FILED WITH LRC: September 13, 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 10.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to define terms used in 401 KAR Chapter 10.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100 authorizes the cabinet to promulgate administrative regulations for the prevention, abatement, and control of all water pollution. KRS 224.70-100 establishes the policy of the Commonwealth to protect, prevent, and abate new and existing water pollution. KRS 224.70-110 prohibits the direct or indirect pollution of waters of the Commonwealth. This administrative regulation establishes definitions for terms used in 401 KAR Chapter 10.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides definitions for terms used throughout 401 KAR Chapter 10 for proper interpretation and enforcement.

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

(a) How the amendment will change this existing administrative

regulation: The amendment removes proposed language from Necessity, Form, and Conformity, corrects alphabetization, and clarifies definitions for "bathing area", "existing use", and "standard" or "water quality standard".

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary for alphabetization and clarification of terms used in 401 KAR Chapter 10.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100 authorizes the cabinet to promulgate administrative regulations for the prevention, abatement, and control of all water pollution. KRS 224.70-100 establishes the policy of the Commonwealth to protect, prevent, and abate new and existing water pollution. KRS 224.70-110 prohibits the direct or indirect pollution of waters of the Commonwealth. This administrative regulation establishes definitions for terms used in 401 KAR Chapter 10.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation is necessary for alphabetization and clarification of terms used in 401 KAR Chapter 10.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All individuals, businesses, organizations, and governments that use the Commonwealth's surface waters for residential, commercial, industrial, or recreational purposes could be impacted by this regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This administrative regulation establishes definitions only. No further actions will be needed to comply.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This administrative regulation establishes definitions only. No additional costs will be incurred.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Affected entities will have clear definitions for understanding the terms used throughout 401 KAR Chapter 10.

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

(a) Initially: This administrative regulation will not result in additional costs.

(b) On a continuing basis: This administrative regulation will not result in additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This administrative regulation establishes definitions only. No changes in funding are necessary.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied because definitions do not require tiering.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Government entities using the regulations in 401 KAR Chapter 10 will have clear definitions for terms used throughout the chapter.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.10-100 authorizes the cabinet to promulgate administrative regulations for the prevention, abatement, and control of all water pollution. KRS 224.70-100 establishes the policy of the Commonwealth to protect, prevent, and abate new and existing water pollution. KRS 224.70-110 prohibits the direct or indirect pollution of waters of the Commonwealth. This administrative regulation establishes definitions for terms used in 401 KAR Chapter 10.

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

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

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation establishes definitions. It will not generate revenue.

(c) How much will it cost to administer this program for the first year? This administrative regulation establishes definitions. It will not result in additional costs.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation establishes definitions. It will not result in additional costs.

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

Revenues (+/-): NA

Expenditures (+/-): NA

Other Explanation: This administrative regulation establishes definitions. It will not result in additional costs or generate revenue.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal mandate regarding the establishment of definitions.

2. State compliance standards. KRS 224.10-100, 70-100, and 70-110.

3. Minimum or uniform standards contained in the federal mandate. There is no federal mandate regarding the establishment of definitions.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate? There is no federal mandate regarding the establishment of definitions.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There is no federal mandate regarding the establishment of definitions.

ENERGY AND ENVIRONMENT CABINET

Department for Environmental Protection

Division of Water

(Amended After Comments)

401 KAR 10:026. Designation of uses of surface waters.

RELATES TO: KRS 146.200 through 146.360[146.200-146.360], 146.410 through 146.535[146.410-146.535], 146.550 through 146.570[146.550-146.570], 146.600 through 146.619[146.600-146.619], 146.990, 224.1-010, 224.1-400, 224.16-050, 224.16-070, 224.70-100 through 224.70-140[224.70-100-224.70-140], 224.71-100 through 224.71-145[224.71-100-224.71-145], 224.73-100 through 224.73-120[224.73-100-224.73-120]

STATUTORY AUTHORITY: KRS 146.220, 146.241, 146.270,

146.410, 146.450, 146.460, 146.465, 224.10-100, 224.16-050, 224.16-060, 224.70-100, 224.70-110, 40 C.F.R. Part 131, 16 U.S.C. 1271 through 1287[1271-1287], 1531 through 1544[1531-1544], 33 U.S.C. 1311, 1313, 1314, 1316, 1341

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the cabinet to develop and conduct a comprehensive program for the management of water resources and to provide for the prevention, abatement, and control of pollution. This administrative regulation and 401 KAR 10:001, 10:029, 10:030, and 10:031 establish procedures to protect the surface waters of the Commonwealth, and thus protect water resources. This administrative regulation applies the designated uses described in 401 KAR 10:031 to the surface waters of the Commonwealth. This administrative regulation also establishes that all surface waters shall be subject to the general criteria specified in 401 KAR 10:031, Section 2.

Section 1. Scope of Designation. (1) All surface waters of the Commonwealth listed in this administrative regulation shall be designated for all legitimate uses contained in KRS 224.70-100(1);

(a) Except as established[specified] in 401 KAR 10:031, Sections 5 and 8[-] and listed in Tables B and C of this administrative regulation; or

(b) Unless[until] redesignated in accordance with the procedures established in Section 2 of this administrative regulation and listed in Table D of this administrative regulation.

(2) Designated uses are:

- (a) Warm water aquatic habitat;
- (b) Cold water aquatic habitat;
- (c) Primary contact recreation;
- (d) Secondary contact recreation;
- (e) Domestic water supply; and
- (f) Outstanding state resource water.

(3)[Listed] Waters listed in this administrative regulation shall meet all criteria applicable to their designated uses and those criteria listed in 401 KAR 10:031, Section 2, unless the:

(a) Cabinet grants an exception pursuant to 401 KAR 10:031, Section 10 or 11; or

(b) Uses for a listed water have been redesignated pursuant to Section 2 of this administrative regulation.

(4) Outstanding state resource waters may have unique water quality characteristics that shall be protected by additional criteria established in 401 KAR 10:031, Section 8.

Section 2. Redesignation of Surface Water Uses. (1)(a) Surface waters shall not be redesignated except upon affirmative findings by the cabinet pursuant to Sections 3 and 4 of this administrative regulation and consistent with 40 C.F.R. 131.10(g).

(b) Before redesignating a surface water, the cabinet shall provide notice and an opportunity for a public hearing.

(2) In redesignating a surface water, the cabinet shall ensure that its water quality standards provide for the[attainment and] maintenance of downstream[the] water quality and shall[do] not preclude the attainment of designated uses[standards] of downstream surface waters.

(3) A designated use shall not be removed for a surface water if:

(a) That use is an existing use; or

(b) The use may be attained by implementing effluent limitations required under Sections 301(b) and 306 of the Clean Water Act, 33 U.S.C. 1311(b) and 1316, and by implementing cost-effective best management practices for nonpoint source control.

(4) If a surface water is designated for a use that is not an existing use, the cabinet shall redesignate the surface water upon demonstration and consistent with 40 C.F.R. 131.10(g) that the designated use is unattainable because:

(a) Naturally occurring pollutant concentrations prevent the attainment of the use;

(b) Natural, ephemeral, intermittent, or low flow conditions or water levels prevent the attainment of the use, unless these conditions may be compensated for by the discharge of sufficient volume of effluent discharges;

(c) Human caused conditions or sources of pollution prevent

the attainment of the use and cannot be remedied or would cause more environmental damage to correct than to leave in place;

(d) Dams, diversions, or other types of hydrologic modifications preclude the attainment of the use, and it is not feasible to restore the surface water to its original condition or to operate the modification in a way that would result in the attainment of the use;

(e) Physical conditions related to the natural features of the surface water, but unrelated to water quality, preclude attainment of the aquatic life use, such as the lack of a proper substrate, cover, flow, depth, pools, or riffles; or

(f) Controls more stringent than those required by Sections 301(b) and 306 of the Clean Water Act, 33 U.S.C. 1311(b) and 1316, would result in substantial and widespread economic and social impact as determined by:

1. The guidelines in Interim Economic Guidance for Water Quality Standards Workbook, EPA, March 1995; or

2.a. An updated Combined Sewer Overflow Long Term Control Plan Financial Capability Assessment developed in accordance with the Combined Sewer Overflows Guidance for Financial Capability Assessment and Schedule Development (EPA, February 1997); and

b. An updated Combined Sewer Overflow Long Term Control Plan alternatives analysis developed in accordance with the Combined Sewer Overflow Control Policy (EPA, 1994) if the cabinet determines it necessary.

(5) The cabinet shall re-examine any waterbody with water quality standards that do not include the uses established[specified] in this administrative regulation every three (3) years to determine if any new information has become available as established in 40 C.F.R. 131.20(a).

(6) Redesignations shall be consistent with the antidegradation provisions of 401 KAR 10:029 and 10:030.

Section 3. Documentation for Redesignations. (1)(a) A person may request redesignation of surface water uses by petition to the cabinet.

(b) The petitioner shall provide the cabinet with the documentation required in subsection (3) of this section and shall have the burden of proof that the redesignation is appropriate.

(2)(a) The cabinet may propose redesignations of surface water uses.

(b) The cabinet shall provide documentation for those surface waters that it proposes for use redesignation.

(3) Except for waters identified pursuant to 401 KAR 10:031, Section 8(1)(a), documentation to support the redesignation of a surface water of the Commonwealth shall be:

(a) A United States Geological Survey 7.5 minute topographic map or its equivalent showing those surface waters to be redesignated, with a description consisting of a river mile index with existing and proposed discharge points;

(b) Existing uses and water quality data for the surface waters for which the redesignation is proposed. If adequate data are unavailable, additional studies shall be required by the cabinet;

(c) Descriptions of general land uses and specific land uses adjacent to the surface waters for which the redesignation is proposed;

(d) The existing and designated uses of the downstream waters into which the surface water under consideration discharges;

(e) General physical characteristics of the surface water including width, depth, bottom composition, and slope;

(f) The frequency of occasions if there is no natural flow in the surface water and the 7Q₁₀ and harmonic mean flow values for the surface water and adjacent surface waters;

(g) An assessment of the existing and potential aquatic life habitat in the surface waters under consideration and the adjacent upstream surface waters.

1. The existing aquatic life shall be documented and livestock and natural wildlife dependence on the surface water shall be assessed; and

2. The occurrence of individuals or populations, indices of diversity and well-being, and abundance of species of unique native biota shall be documented;

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(h) The proposed designated uses for the surface water in question; and

(i) An explanation of the irretrievable person-induced, or natural conditions that preclude attainment of a higher use designation or an assessment of the substantial and widespread social and economic impacts resulting from the imposition of additional controls necessary for existing point sources, beyond the most stringent effluent limitation levels normally required for the sources. This explanation shall be in accordance with the:

1. Interim Economic Guidance for Water Quality Standards Workbook (EPA, 1995); or

2. Combined Sewer Overflows Guidance for Financial Capability Assessment and Schedule Development (EPA, February 1997).

Section 4. Procedures for Redesignation. (1) For each of the surface waters for which a redesignation is proposed, the cabinet or petitioner shall prepare a fact sheet containing:

(a) The name and address of the petitioner;

(b) The name and sketch or description of the surface water proposed for specified use redesignations, including the location of existing and proposed dischargers;

(c) The proposed use redesignations;

(d) A brief abstract of the supportive documentation, which demonstrates that the redesignation is appropriate;

(e) The appropriate water quality criteria for the surface water based on the proposed designated use;

(f) The treatment requirements proposed for discharges to the surface water in question if designated for the proposed use; and

(g) A "plain English" summary of the implications of the designation for the community and other users or potential users of the surface water in question.

(2) The cabinet shall document the determination to propose or deny redesignation as a result of a petition, and shall provide a copy of the decision to the petitioner and other interested parties.

Section 5. Surface Water Use Designations. (1) Listed in the tables in this administrative regulation are the use designations for specific surface waters of the Commonwealth. [The county column indicates the county in which the mouth or outlet of the surface water is located.] The identifying symbols for use designations are listed in table A of this section.

Table A: Use Designation Symbols	
WAH	Warm Water Aquatic Habitat
CAH	Cold Water Aquatic Habitat
PCR	Primary Contact Recreation
SCR	Secondary Contact Recreation
DWS	Domestic Water Supply, applicable at existing points of public water supply intake
OSRW	Outstanding State Resource Water

~~(2) [(2)(a) Surface waters not specifically listed in this section are designated for the uses of warm water aquatic habitat, primary contact recreation, secondary contact recreation, and domestic water supply in accordance with Section 1 of this administrative regulation.~~

~~(b)] Domestic water supply criteria in 401 KAR 10:031, Section 6, are implemented at locations listed in Table B in this paragraph.~~

Table B: SURFACE WATER INTAKES FOR DOMESTIC WATER SUPPLY USE

<u>Facility</u>	<u>WWID</u>	<u>PWSID</u>	<u>Location of Withdrawal (Waterbody; Latitude/Longitude; Decimal Degrees)</u>	<u>County</u>
BIG SANDY RIVER BASIN				
<u>Jenkins Water Works</u>	<u>0794</u>	<u>0670213</u>	<u>Little Elkhorn Creek (Elkhorn Lake); 37.16837/-82.63473</u>	<u>Letcher</u>
<u>Jenkins Water Works</u>	<u>1069</u>	<u>0670213</u>	<u>Elkhorn Creek; 37.17066/-82.63652</u>	<u>Letcher</u>
<u>Louisa Municipal Water Works</u>	<u>0284</u>	<u>0640257</u>	<u>Levisa Fork;</u> <u>38.10972/-82.5989</u>	<u>Lawrence</u>
<u>Martin County Water District #1</u>	<u>0683</u>	<u>0800273</u>	<u>Lick Branch (Martin County Reservoir); 37.878854/-</u> <u>82.518931</u>	<u>Martin</u>
<u>Martin County Water District #1</u>	<u>1060</u>	<u>0800273</u>	<u>Tug Fork;</u> <u>37.91628/-82.48585</u>	<u>Martin</u>
<u>Mother Nature</u>	<u>-</u>	<u>0980327</u>	<u>UT of Elkhorn Creek (Mother Nature Spring); 37.255278/-</u> <u>82.460833</u>	<u>Pike</u>
<u>Mountain Water District</u>	<u>0941</u>	<u>0980575</u>	<u>Russell Fork;</u> <u>37.363931/-82.40928</u>	<u>Pike</u>
<u>Paintsville Municipal Water Works</u>	<u>1657</u>	<u>0580340</u>	<u>Paint Creek (Paintsville Lake);</u> <u>37.840141/-82.88384</u>	<u>Johnson</u>
<u>Pikeville Water Works/US Filter</u>	<u>0638</u>	<u>0980350</u>	<u>Levisa Fork;</u> <u>37.46457/-82.52492</u>	<u>Pike</u>
<u>Prestonsburg City Utilities Commission</u>	<u>0626</u>	<u>0360358</u>	<u>Levisa Fork;</u> <u>37.667489/-82.743964</u>	<u>Floyd</u>
<u>US Filter/Southern Water & Sewer District</u>	<u>0776</u>	<u>0360026</u>	<u>Levisa Fork;</u> <u>37.61306/-82.72667</u>	<u>Floyd</u>
GREEN RIVER BASIN				
<u>Bowling Green Municipal Utilities</u>	<u>0134</u>	<u>1140038</u>	<u>Barren River;</u> <u>36.999269/-86.426747</u>	<u>Warren</u>
<u>Butler County Water System</u>	<u>1271</u>	<u>0160052</u>	<u>Green River;</u> <u>37.23833/-86.67528</u>	<u>Butler</u>
<u>Calvert Spring Water Co</u>	<u>-</u>	<u>0021006</u>	<u>UT of Long Creek (Calvert Spring); 36.720556/-86.090833</u>	<u>Allen</u>
<u>Campbellsville Water Works</u>	<u>0027</u>	<u>1090060</u>	<u>Trace Fork (Campbellsville City Reservoir);</u> <u>37.356822/-85.342436</u>	<u>Taylor</u>
<u>Campbellsville Water Works</u>	<u>0664</u>	<u>1090060</u>	<u>UT of Stone Quarry Creek (Green River Lake); 37.29528/-</u> <u>85.32</u>	<u>Taylor</u>
<u>Central City Municipal Water & Sewer</u>	<u>0217</u>	<u>0890071</u>	<u>Green River;</u> <u>37.32445/-87.115163</u>	<u>Muhlenberg</u>
<u>Century Aluminum Sebree LLC</u>	<u>0659</u>	<u>0512406</u>	<u>UT of Green River; 37.657085/-87.489554</u>	<u>Henderson</u>
<u>Columbia Adair County Water Commission</u>	<u>1617</u>	<u>0011016</u>	<u>Green River (Green River Lake);</u> <u>37.215771/-85.328655</u>	<u>Adair</u>
<u>Edmonson County Water District</u>	<u>0681</u>	<u>0310114</u>	<u>Green River;</u> <u>37.20278/-86.25944</u>	<u>Edmonson</u>
<u>Edmonson County Water District</u>	<u>1279</u>	<u>0310114</u>	<u>Nolin River (Nolin River Lake);</u>	<u>Grayson</u>

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			<u>37.342563/-86.125596</u>	
<u>Franklin Water Plant</u>	<u>0632</u>	<u>1070144</u>	<u>West Fork Drakes Creek; 36.72222/-86.5525</u>	<u>Simpson</u>
<u>Glasgow Water Co/Plant A</u>	<u>0639</u>	<u>0050929</u>	<u>Barren River (Barren River Lake);</u> <u>36.89901/-86.06528</u>	<u>Allen</u>
<u>Glasgow Water Co/Plant B</u>	<u>0044</u>	<u>0050929</u>	<u>Beaver Creek;</u> <u>37.03139/-85.91111</u>	<u>Barren</u>
<u>Grayson County Water District</u>	<u>1502</u>	<u>0430616</u>	<u>Rough River (Rough River Lake);</u> <u>37.589085/-86.464849</u>	<u>Grayson</u>
<u>Green River Valley Water District</u>	<u>0168</u>	<u>0500166</u>	<u>UT of UT of Green River (Rio Verde Springs); 37.32466/-</u> <u>85.77136</u>	<u>Hart</u>
<u>Green River Valley Water District</u>	<u>1155</u>	<u>0500166</u>	<u>Green River;</u> <u>37.31722/-85.7675</u>	<u>Hart</u>
<u>Greensburg Municipal Water Works</u>	<u>0046</u>	<u>0440168</u>	<u>Green River;</u> <u>37.25333/-85.50083</u>	<u>Green</u>
<u>Greenville Utilities Commission</u>	<u>0340</u>	<u>0890170</u>	<u>UT of UT of Caney Creek (Lake Luzerne); 37.21069/-</u> <u>87.1945</u>	<u>Muhlenberg</u>
<u>Hardin County Water District #1</u>	<u>1162</u>	<u>0470393</u>	<u>Rough River (Head of Rough Spring);</u> <u>37.718372/-86.081995</u>	<u>Hardin</u>
<u>Hardin County Water District #1 A</u>	<u>0924</u>	<u>0470393</u>	<u>UT of Rough River (Pirtle Spring);</u> <u>37.696194/-86.108605</u>	<u>Hardin</u>
<u>Hardin County Water District #2</u>	<u>0123</u>	<u>0470175</u>	<u>Valley Creek (Gaithers Station Spring);</u> <u>37.65747/-85.90138</u>	<u>Hardin</u>
<u>Hardin County Water District #2</u>	<u>1125</u>	<u>0470175</u>	<u>Nolin River (White Mills Spring);</u> <u>37.56208/-86.0361</u>	<u>Hardin</u>
<u>Hardin County Water District 2</u> <u>Elizabethtown</u>	<u>0122</u>	<u>0470175</u>	<u>Valley Creek (Old City Spring);</u> <u>37.678905/-85.874747</u>	<u>Hardin</u>
<u>Hartford Municipal Water Works</u>	<u>0330</u>	<u>0920181</u>	<u>Rough River;</u> <u>37.453341/-86.91035</u>	<u>Ohio</u>
<u>Henderson Water Utility South</u>	<u>1382</u>	<u>0510510</u>	<u>UT of Grane Creek (Raw Storage Lake); 37.648778/-</u> <u>87.512639</u>	<u>Henderson</u>
<u>Hodgenville Water Works</u>	<u>0174</u>	<u>0620200</u>	<u>North Fork Nolin River; 37.57518/-85.73868</u>	<u>Larue</u>
<u>Hodgenville Water Works</u>	<u>1457</u>	<u>0620200</u>	<u>Salem Creek (Hodgenville City Reservoir); 37.58889/-</u> <u>85.71111</u>	<u>Larue</u>
<u>La Fayette Water District, Macon Co</u> <u>Tennessee</u>	<u>1062</u>	<u>-</u>	<u>Barren River; 36.66694/-85.94361</u>	<u>Monroe</u>
<u>Leitchfield Municipal Water Works</u>	<u>0643</u>	<u>0430244</u>	<u>Rough River (Rough River Lake);</u> <u>37.565559/-86.385604</u>	<u>Grayson</u>
<u>Liberty Water Works</u>	<u>0833</u>	<u>0230987</u>	<u>Hickman Creek (Liberty City Lake);</u> <u>37.3233/-84.89503</u>	<u>Casey</u>
<u>Madisonville Municipal Water Works</u>	<u>0828</u>	<u>0540936</u>	<u>Green River;</u> <u>37.53773/-87.36527</u>	<u>Hopkins</u>
<u>Morgantown Utilities Commission</u>	<u>0012</u>	<u>0160294</u>	<u>Green River;</u> <u>37.22528/-86.67778</u>	<u>Butler</u>
<u>Ohio County Water Plant</u>	<u>0403</u>	<u>0920332</u>	<u>Green River;</u> <u>37.333925/-86.793706</u>	<u>Ohio</u>
<u>Perdue Farms Inc</u>	<u>1352</u>	<u>0920631</u>	<u>Green River;</u> <u>37.334638/-86.796192</u>	<u>Ohio</u>
<u>Scottsville Municipal Water Works</u>	<u>1236</u>	<u>0020386</u>	<u>Barren River (Barren River Lake);</u> <u>36.85634/-86.07816</u>	<u>Allen</u>
<u>Stanford Water Works</u>	<u>1108</u>	<u>0690417</u>	<u>UT of Green River (James C Harris Reservoir); 37.46234/-</u> <u>84.69513</u>	<u>Lincoln</u>
<u>Tompkinsville Municipal Water Works</u>	<u>0720</u>	<u>0860426</u>	<u>Mill Creek (Mill Creek Lake (Monroe Co)); 36.68228/-</u> <u>85.70176</u>	<u>Monroe</u>
<u>Webster County Water District</u>	<u>1433</u>	<u>1170995</u>	<u>Green River;</u> <u>37.59147/-87.43526</u>	<u>Webster</u>
KENTUCKY RIVER BASIN				
<u>Beattyville Water Works</u>	<u>0474</u>	<u>0650024</u>	<u>North Fork Kentucky River (Pool 14); 37.579536/-83.667657</u>	<u>Lee</u>
<u>Beech Fork Water Commission</u>	<u>1061</u>	<u>0990281</u>	<u>Beech Fork (Stanton Reservoir);</u> <u>37.8645/-83.89295</u>	<u>Powell</u>
<u>Beech Fork Water Commission</u>	<u>1466</u>	<u>0990281</u>	<u>Red River;</u> <u>37.864165/-83.868919</u>	<u>Powell</u>
<u>Berea Municipal Utilities</u>	<u>0068</u>	<u>0760030</u>	<u>Cowbell Creek (Berea Reservoir);</u> <u>37.53893/-84.2276</u>	<u>Madison</u>
<u>Berea Municipal Utilities</u>	<u>1076</u>	<u>0760030</u>	<u>East Fork Silver Creek (Lower Berea City Lake); 37.54325/-</u> <u>84.24184</u>	<u>Madison</u>
<u>Berea Municipal Utilities</u>	<u>1077</u>	<u>0760030</u>	<u>East Fork Silver Creek (Upper Berea City Lake); 37.53418/-</u> <u>84.24437</u>	<u>Madison</u>
<u>Berea Municipal Utilities</u>	<u>1078</u>	<u>0760030</u>	<u>Owsley Fork (Owsley Fork Reservoir); 37.5458/-84.18222</u>	<u>Madison</u>
<u>Bluegrass Army Depot</u>	<u>1013</u>	<u>0762637</u>	<u>Little Muddy Creek (Lake Vega);</u> <u>37.70098/-84.21787</u>	<u>Madison</u>
<u>Booneville Water & Sewer District</u>	<u>0752</u>	<u>0950036</u>	<u>South Fork Kentucky River;</u>	<u>Owsley</u>

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<u>Bullock Pen Water District</u>	<u>0486</u>	<u>0410047</u>	<u>37.46977/-83.67561</u> <u>Bullock Pen Creek (Bullock Pen Lake);</u> <u>38.798588/-84.640871</u>	<u>Grant</u>
<u>Campton Water Works</u>	<u>0640</u>	<u>1190061</u>	<u>Hiram Branch (Campton Lake);</u> <u>37.744818/-83.545495</u>	<u>Wolfe</u>
<u>Danville Water Works</u>	<u>0213</u>	<u>0110097</u>	<u>Dix River (Herrington Lake);</u> <u>37.694373/-84.735017</u>	<u>Boyle</u>
<u>Frankfort Electric & Water Plant Board</u>	<u>0024</u>	<u>0370143</u>	<u>Kentucky River (Pool 4);</u> <u>38.17092/-84.86551</u>	<u>Franklin</u>
<u>Georgetown Municipal Water & Sewer</u>	<u>0797</u>	<u>1050157</u>	<u>UT of North Elkhorn Creek (Royal Spring);</u> <u>38.20879/-84.5621</u>	<u>Scott</u>
<u>Gladie Cultural Center</u>	<u>-</u>	<u>0833498</u>	<u>Gladie Spring; 37.833907/-83.608346</u>	<u>Menifee</u>
<u>Harrodsburg Municipal Water Works</u>	<u>0264</u>	<u>0840180</u>	<u>Kentucky River (Pool 7);</u> <u>37.81778/-84.72194</u>	<u>Mercer</u>
<u>Hazard Water Department</u>	<u>0026</u>	<u>0970184</u>	<u>North Fork Kentucky River;</u> <u>37.24633/-83.18187</u>	<u>Perry</u>
<u>Highbridge Springwater</u>	<u>1403</u>	<u>0570495</u>	<u>Highbridge Spring;</u> <u>37.82381/-84.71356</u>	<u>Jessamine</u>
<u>Hyden-Leslie County Water District</u>	<u>0650</u>	<u>0660204</u>	<u>Middle Fork Kentucky River;</u> <u>37.1414/-83.37921</u>	<u>Leslie</u>
<u>Irvine Municipal Utilities</u>	<u>0882</u>	<u>0330205</u>	<u>Kentucky River (Pool 11); 37.69556/-83.9725</u>	<u>Estill</u>
<u>Jackson Municipal Water Works</u>	<u>0163</u>	<u>0130208</u>	<u>North Fork Kentucky River;</u> <u>37.545612/-83.370096</u>	<u>Breathitt</u>
<u>Kentucky-American Water Company River Station</u>	<u>0200</u>	<u>0340250</u>	<u>Kentucky River (Pool 9);</u> <u>37.902089/-84.376561</u>	<u>Fayette</u>
<u>Kentucky-American Water Company Richmond Road Station</u>	<u>0201</u>	<u>0340250</u>	<u>East Hickman Creek (Lexington Reservoir No. 4);</u> <u>37.978246/-84.449875</u>	<u>Fayette</u>
<u>Kentucky-American Water Company River Station II/Hardins Landing Plant</u>	<u>1572</u>	<u>0340250</u>	<u>Kentucky River: 38.35616/-84.87497</u>	<u>Franklin</u>
<u>Knott County Water and Sewer District</u>	<u>1629</u>	<u>0600062</u>	<u>Carr Fork (Carr Creek Lake);</u> <u>37.23277/-82.99865</u>	<u>Knott</u>
<u>Lancaster Municipal Water Works</u>	<u>0013</u>	<u>0400233</u>	<u>Kentucky River (Pool 8);</u> <u>37.728206/-84.571527</u>	<u>Garrard</u>
<u>Lancaster Municipal Water Works</u>	<u>TBD</u>	<u>0400233</u>	<u>Reservoir #1;</u> <u>37.606667/-84.594722</u>	<u>Garrard</u>
<u>Lawrenceburg Municipal Water Works</u>	<u>0229</u>	<u>0030239</u>	<u>Kentucky River;</u> <u>38.041184/-84.847706</u>	<u>Anderson</u>
<u>Manchester Water Works</u>	<u>0418</u>	<u>0260737</u>	<u>Beech Creek (Bert T Combs Lake);</u> <u>37.16738/-83.70802</u>	<u>Clay</u>
<u>Manchester Water Works</u>	<u>1217</u>	<u>0260737</u>	<u>Goose Creek;</u> <u>37.16828/-83.75055</u>	<u>Clay</u>
<u>Nicholasville Water Works</u>	<u>0050</u>	<u>0570315</u>	<u>Kentucky River (Pool 8);</u> <u>37.84027/-84.48528</u>	<u>Jessamine</u>
<u>Pine Mountain Settlement School</u>	<u>-</u>	<u>0483135</u>	<u>Pine Mountain Settlement School Spring; 36.947778/-</u> <u>83.181111</u>	<u>Harlan</u>
<u>Richmond Utilities Board</u>	<u>0310</u>	<u>0760370</u>	<u>Kentucky River (Pool 11);</u> <u>37.7808/-84.10969</u>	<u>Madison</u>
<u>Stanford Water Works</u>	<u>0267</u>	<u>0690417</u>	<u>UT of Neals Creak (Stanford Reservoir);</u> <u>37.487622/-84.677564</u>	<u>Lincoln</u>
<u>Versailles Municipal Water Works</u>	<u>0258</u>	<u>1200439</u>	<u>Kentucky River (Pool 5);</u> <u>38.02607/-84.82943</u>	<u>Letcher</u>
<u>Whitesburg Municipal Water Works/Veolia Water</u>	<u>0353</u>	<u>0670466</u>	<u>North Fork Kentucky River;</u> <u>37.115055/-82.813942</u>	<u>Letcher</u>
<u>Wilmore Utilities System</u>	<u>0045</u>	<u>0570010</u>	<u>Kentucky River (Pool 6);</u> <u>37.85476/-84.68887</u>	<u>Jessamine</u>
<u>Winchester Municipal Utilities</u>	<u>0622</u>	<u>0250473</u>	<u>UT of Lower Howard Creek (Winchester Reservoir);</u> <u>37.949068/-84.229938</u>	<u>Clark</u>
<u>Winchester Municipal Utilities</u>	<u>0623</u>	<u>0250473</u>	<u>Kentucky River (Pool 10);</u> <u>37.89465/-84.26084</u>	<u>Clark</u>
LICKING RIVER BASIN				
<u>Carlisle Water Department</u>	<u>1040</u>	<u>0910065</u>	<u>Licking River;</u> <u>38.359408/-83.949295</u>	<u>Nicholas</u>
<u>Carlisle Water Department</u>	<u>0488</u>	<u>0910065</u>	<u>UT of Brushy Fork (Carlisle Pond 1);</u> <u>38.31/-84.04</u>	<u>Nicholas</u>
<u>Cave Run Water Commission</u>	<u>1550</u>	<u>0831010</u>	<u>Licking River (Cave Run Lake);</u> <u>38.02284/-83.44927</u>	<u>Menifee</u>
<u>Cynthiana Municipal Water Works</u>	<u>0256</u>	<u>0490096</u>	<u>South Fork Licking River;</u> <u>38.37667/-84.30417</u>	<u>Harrison</u>
<u>Cynthiana Municipal Water Works</u>	<u>1018</u>	<u>0490096</u>	<u>Licking River;</u> <u>38.48613/-84.17127</u>	<u>Harrison</u>
<u>Falmouth Water Plant</u>	<u>0625</u>	<u>0960126</u>	<u>Licking River;</u>	<u>Pendleton</u>

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			<u>38.67556/-84.325</u>	
<u>Flemingsburg Utilities</u>	<u>0265</u>	<u>0350134</u>	<u>UT of Town Branch (Flemingsburg Reservoir (New));</u> <u>38.428335/-83.75212</u>	<u>Fleming</u>
<u>Morehead State University Water Plant</u>	<u>0387</u>	<u>1030480</u>	<u>Evans Branch (Eagle Lake);</u> <u>38.19321/-83.43373</u>	<u>Rowan</u>
<u>Morehead State University Water Plant</u>	<u>0388</u>	<u>1030480</u>	<u>Triplett Creek;</u> <u>38.18409/-83.42995</u>	<u>Rowan</u>
<u>Morehead Utility Plant Board</u>	<u>0637</u>	<u>1030292</u>	<u>Licking River;</u> <u>38.13138/-83.54941</u>	<u>Rowan</u>
<u>Mt Sterling Water & Sewer System</u>	<u>0191</u>	<u>0870298</u>	<u>Slate Creek (Reservoir);</u> <u>38.0628/-83.8478</u>	<u>Montgomery</u>
<u>Northern Ky Water Service District Plant A</u>	<u>0126</u>	<u>0590220</u>	<u>Licking River;</u> <u>39.031587/-84.490282</u>	<u>Kenton</u>
<u>Paris Municipal Water Works</u>	<u>0076</u>	<u>0090343</u>	<u>Stoner Creek;</u> <u>38.2046/-84.23809</u>	<u>Bourbon</u>
<u>Salversville Municipal Water Works</u>	<u>0916</u>	<u>0770566</u>	<u>Licking River;</u> <u>37.73684/-83.07163</u>	<u>Magoffin</u>
<u>West Liberty Water Company</u>	<u>1402</u>	<u>0880452</u>	<u>North Fork Licking River (Cave Run Lake);</u> <u>38.039151/-83.400272</u>	<u>Morgan</u>
<u>Western Fleming Water District</u>	<u>0748</u>	<u>0910675</u>	<u>Licking River;</u> <u>38.424429/-83.981407</u>	<u>Nicholas</u>
<u>Williamstown Municipal Water</u>	<u>0333</u>	<u>0410472</u>	<u>Goose Creek (Williamstown Lake);</u> <u>38.655888/-84.537148</u>	<u>Grant</u>
<u>LITTLE SANDY RIVER BASIN</u>				
<u>Grayson Utility Commission</u>	<u>0315</u>	<u>0220164</u>	<u>Little Sandy River;</u> <u>38.322443/-82.951303</u>	<u>Carter</u>
<u>Greenup Water Plant</u>	<u>0715</u>	<u>0450169</u>	<u>Little Sandy River;</u> <u>38.57416/-82.84471</u>	<u>Greenup</u>
<u>Rattlesnake Ridge Water District</u>	<u>1494</u>	<u>0220555</u>	<u>UT of Little Sandy River (Grayson Lake);</u> <u>38.20015/-83.01784</u>	<u>Elliott</u>
<u>LOWER CUMBERLAND RIVER BASIN</u>				
<u>Barkley Lake Water District</u>	<u>0648</u>	<u>1110019</u>	<u>Hopson Creek (Lake Barkley);</u> <u>36.807408/-87.959462</u>	<u>Trigg</u>
<u>Cadiz Water Company</u>	<u>1263</u>	<u>1110054</u>	<u>UT of Little River (Cadiz Spring);</u> <u>36.861677/-87.836395</u>	<u>Trigg</u>
<u>Crittenden-Livingston Co Water District</u>	<u>0932</u>	<u>0700532</u>	<u>Cumberland River;</u> <u>37.18574/-88.23974</u>	<u>Livingston</u>
<u>Eddyville Municipal Water Works</u>	<u>0268</u>	<u>0720113</u>	<u>Knob Creek (Lake Barkley);</u> <u>37.07476/-88.09773</u>	<u>Lyon</u>
<u>Eddyville Municipal Water Works</u>	<u>1540</u>	<u>0720113</u>	<u>Cumberland River (Lake Barkley);</u> <u>37.04538/-88.07513</u>	<u>Lyon</u>
<u>Hopkinsville Water Environmental Authority</u>	<u>1118</u>	<u>0240201</u>	<u>North Fork Little River (Hopkinsville Stone Quarry No. 1 (South Quarry));</u> <u>36.88361/-87.47611</u>	<u>Christian</u>
<u>Hopkinsville Water Environmental Authority</u>	<u>1327</u>	<u>0240201</u>	<u>White Creek (Hopkinsville Stone Quarry No. 2 (North Quarry));</u> <u>36.88694/-87.47639</u>	<u>Christian</u>
<u>Hopkinsville Water Environmental Authority</u>	<u>1591</u>	<u>0240201</u>	<u>Little River (Lake Barkley);</u> <u>36.88158/-87.85449</u>	<u>Trigg</u>
<u>Kentucky State Penitentiary</u>	<u>0028</u>	<u>0720552</u>	<u>Cumberland River (Lake Barkley);</u> <u>37.04583/-88.07556</u>	<u>Lyon</u>
<u>Kuttawa Municipal Water Plant</u>	<u>0553</u>	<u>0720227</u>	<u>UT of Cumberland River (Lake Barkley);</u> <u>37.05515/-88.12678</u>	<u>Lyon</u>
<u>Princeton Water Department</u>	<u>0519</u>	<u>0170360</u>	<u>Eddy Creek (Lake Barkley);</u> <u>37.02464/-88.05554</u>	<u>Lyon</u>
<u>OHIO RIVER BASIN (MAIN STEM AND MINOR TRIBUTARIES)</u>				
<u>Ashland Municipal Water Works</u>	<u>0071</u>	<u>0100011</u>	<u>Ohio River;</u> <u>38.453432/-82.607551</u>	<u>Boyd</u>
<u>Four Rivers Nuclear Partnership - Paducah Gaseous Diffusion</u>	<u>0900</u>	<u>0732457</u>	<u>Ohio River;</u> <u>37.152955/-88.775182</u>	<u>McCracken</u>
<u>Henderson Water & Sewer Department</u>	<u>0113</u>	<u>0510188</u>	<u>Ohio River;</u> <u>37.84692/-87.59153</u>	<u>Henderson</u>
<u>Louisville Water Company BEPWTP B</u>	<u>0786</u>	<u>0560258</u>	<u>Ohio River;</u> <u>38.34833/-85.63722</u>	<u>Jefferson</u>
<u>Louisville Water Company ZPS A</u>	<u>0100</u>	<u>0560258</u>	<u>Ohio River;</u> <u>38.28127/-85.70231</u>	<u>Jefferson</u>
<u>Marion Municipal Water Works</u>	<u>0478</u>	<u>0280267</u>	<u>Crooked Creek (Marion City Lake);</u> <u>37.310582/-88.091216</u>	<u>Crittenden</u>
<u>Maysville Utility Commission</u>	<u>0043</u>	<u>0810275</u>	<u>Ohio River;</u> <u>38.64556/-83.75167</u>	<u>Mason</u>
<u>Morganfield Municipal Water Works</u>	<u>0263</u>	<u>1130293</u>	<u>Ohio River;</u>	<u>Union</u>

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			<u>37.79886/-87.91645</u>	
<u>Northern Ky Water Service District Newport Plant</u>	<u>0086</u>	<u>0590220</u>	<u>Ohio River;</u> <u>39.0806/-84.4372</u>	<u>Campbell</u>
<u>Northern Ky Water Service District Plant B</u>	<u>0176</u>	<u>0590220</u>	<u>Ohio River;</u> <u>39.07024/-84.43646</u>	<u>Campbell</u>
<u>Paducah Water Works</u>	<u>0098</u>	<u>0730533</u>	<u>Ohio River;</u> <u>37.09919/-88.6073</u>	<u>McCracken</u>
<u>Russell Water Plant</u>	<u>0269</u>	<u>0450376</u>	<u>Ohio River;</u> <u>38.53832/-82.69659</u>	<u>Greenup</u>
<u>Sturgis Municipal Water Works</u>	<u>1717</u>	<u>1130422</u>	<u>Ohio River;</u> <u>37.53472/-88.07</u>	<u>Union</u>
SALT RIVER BASIN				
<u>Bardstown Municipal Water Works</u>	<u>0004</u>	<u>0900017</u>	<u>Buffalo Creek (Sympson Lake);</u> <u>37.80672/-85.50918</u>	<u>Nelson</u>
<u>Bardstown Municipal Water Works</u>	<u>1747</u>	<u>0900017</u>	<u>Beech Fork;</u> <u>37.795089/-85.478597</u>	<u>Nelson</u>
<u>Lebanon Water Works Company</u>	<u>0230</u>	<u>0780241</u>	<u>Rolling Fork;</u> <u>37.512632/-85.261361</u>	<u>Marion</u>
<u>Lebanon Water Works Company</u>	<u>1240</u>	<u>0780241</u>	<u>Fagan Branch (Fagan Branch Lake);</u> <u>37.52072/-85.23982</u>	<u>Marion</u>
<u>Shelbyville Municipal Water & Sewer Commission</u>	<u>0001</u>	<u>1060394</u>	<u>Guist Creek (Guist Creek Lake);</u> <u>38.2078/-85.15798</u>	<u>Shelby</u>
<u>Sleepy Hollow Association</u>	<u>-</u>	<u>0933314</u>	<u>Sleepy Hollow Association Spring; 38.345833/-85.556667</u>	<u>Oldham</u>
<u>Springfield Water Works</u>	<u>0928</u>	<u>1150415</u>	<u>Lick Creek (Willisburg Lake);</u> <u>37.82735/-85.16276</u>	<u>Washington</u>
<u>Springfield Water Works</u>	<u>1578</u>	<u>1150415</u>	<u>Allen Branch (New Springfield Reservoir);</u> <u>37.672658/-85.253698</u>	<u>Washington</u>
<u>Springfield Water Works</u>	<u>1723</u>	<u>1150415</u>	<u>Beech Fork;</u> <u>37.72667/-85.19305</u>	<u>Washington</u>
<u>US Army Ft Knox A</u>	<u>0493</u>	<u>0470990</u>	<u>Otter Creek;</u> <u>37.89558/-86.02574</u>	<u>Meade</u>
TRADEWATER RIVER BASIN				
<u>Dawson Springs City Water & Sewer</u>	<u>0822</u>	<u>0540958</u>	<u>Piney Creek (Lake Beshear);</u> <u>37.14842/-87.68233</u>	<u>Caldwell</u>
<u>Madisonville Municipal Water Works</u>	<u>0210</u>	<u>0540936</u>	<u>Greasy Creek (Lake Peewee);</u> <u>37.34889/-87.52771</u>	<u>Hopkins</u>
<u>Providence Municipal Water Works</u>	<u>1073</u>	<u>1170361</u>	<u>Tradewater River;</u> <u>37.37828/-87.8014</u>	<u>Webster</u>
<u>Providence Water Works</u>	<u>0159</u>	<u>1170361</u>	<u>UT to Owens Creek (Providence New City Lake);</u> <u>37.37583/-87.79639</u>	<u>Webster</u>
TYGARTS CREEK BASIN				
<u>Olive Hill Water Works</u>	<u>0490</u>	<u>0220335</u>	<u>Perry Branch (Olive Hill Reservoir);</u> <u>38.31203/-83.21328</u>	<u>Carter</u>
<u>Olive Hill Water Works</u>	<u>1059</u>	<u>0220335</u>	<u>Tygarts Creek;</u> <u>38.29037/-83.19062</u>	<u>Carter</u>
UPPER CUMBERLAND RIVER BASIN				
<u>Barbourville Utility Commission</u>	<u>0953</u>	<u>0610016</u>	<u>Indian Camp Creek (Laurel River Lake);</u> <u>37.00134/-84.20062</u>	<u>Laurel</u>
<u>Barbourville Utility Commission</u>	<u>1333</u>	<u>0610016</u>	<u>Cumberland River;</u> <u>36.86361/-83.88361</u>	<u>Knox</u>
<u>Bell County Forestry Camp</u>	<u>1539</u>	<u>0070729</u>	<u>Clear Creek (Chenoa Lake);</u> <u>36.674883/-83.852413</u>	<u>Bell</u>
<u>Benham Water Works</u>	<u>0781</u>	<u>0480028</u>	<u>Looney Creek (Benham City Spring);</u> <u>36.96571/-82.9328</u>	<u>Harlan</u>
<u>Burkesville Municipal Water Works</u>	<u>0501</u>	<u>0290049</u>	<u>Cumberland River;</u> <u>36.787424/-85.364434</u>	<u>Cumberland</u>
<u>Burnside Water Company</u>	<u>0053</u>	<u>1000050</u>	<u>Cumberland River (Lake Cumberland);</u> <u>36.992543/-84.589573</u>	<u>Pulaski</u>
<u>Cawood Water District</u>	<u>1216</u>	<u>0480565</u>	<u>Martins Fork Cumberland River;</u> <u>36.781842/-83.236429</u>	<u>Harlan</u>
<u>City of Albany</u>	<u>1590</u>	<u>0270003</u>	<u>Indian Creek (Lake Cumberland);</u> <u>36.803137/-85.111049</u>	<u>Clinton</u>
<u>Corbin City Utilities Commission</u>	<u>0020</u>	<u>1180085</u>	<u>Laurel River (Corbin City Reservoir);</u> <u>36.970016/-84.119910</u>	<u>Laurel</u>
<u>Cumberland Water Works</u>	<u>0761</u>	<u>0480092</u>	<u>Poor Fork Cumberland River;</u> <u>36.979714/-82.987377</u>	<u>Harlan</u>
<u>Harlan Municipal Water Works</u>	<u>0242</u>	<u>0480178</u>	<u>Poor Fork Cumberland River;</u> <u>36.86192/-83.32558</u>	<u>Harlan</u>
<u>Jackson County Water Association Inc</u>	<u>0686</u>	<u>0550209</u>	<u>Flat Lick Creek (Beulah Lake);</u> <u>37.37861/-83.9125</u>	<u>Jackson</u>
<u>Jackson County Water Association Inc</u>	<u>1609</u>	<u>0550209</u>	<u>South Fork Rockcastle River;</u>	<u>Jackson</u>

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<u>Jamestown Municipal Water Works</u>	<u>0654</u>	<u>1040210</u>	<u>37.29637/-84.09296</u> <u>Greasy Creek (Lake Cumberland);</u> <u>36.96704/-85.06397</u>	<u>Russell</u>
<u>Kettle Island Water System</u>	<u>-</u>	<u>0070325</u>	<u>Kettle Island Spring;</u> <u>36.784305/-83.593745</u>	<u>Bell</u>
<u>King Bottling Inc</u>	<u>-</u>	<u>1021014</u>	<u>Rockcastle Spring (UT of Brush Creek);</u> <u>37.45333/-84.23611</u>	<u>Rockcastle</u>
<u>Kingdom Come State Park</u>	<u>-</u>	<u>0482399</u>	<u>UT of Poor Fork Cumberland River (Kingdom Come Lake);</u> <u>36.99/-82.986389</u>	<u>Harlan</u>
<u>Knox County Utility Commission</u>	<u>0724</u>	<u>0610110</u>	<u>Cumberland River;</u> <u>36.8358/-83.81198</u>	<u>Knox</u>
<u>Laurel County Water District #2</u>	<u>0467</u>	<u>0630238</u>	<u>Laurel River;</u> <u>37.00167/-84.09972</u>	<u>Laurel</u>
<u>Laurel County Water District #2</u>	<u>1613</u>	<u>0630238</u>	<u>Indian Camp Creek (Laurel River Lake);</u> <u>36.99868/-84.20452</u>	<u>Laurel</u>
<u>London Utility Commission</u>	<u>0196</u>	<u>0630255</u>	<u>Indian Camp Creek (Laurel River Lake);</u> <u>37.00055/-84.20156</u>	<u>Laurel</u>
<u>Lynch Municipal Water Works</u>	<u>1147</u>	<u>0480262</u>	<u>Looney Creek (underground storage reservoir);</u> <u>36.96417/-82.92028</u>	<u>Harlan</u>
<u>McCreary County Water District Plant A</u>	<u>0498</u>	<u>0740276</u>	<u>Laurel Creek (Laurel Creek Reservoir);</u> <u>36.69271/-84.4433</u>	<u>McCreary</u>
<u>McCreary County Water District Plant B</u>	<u>1495</u>	<u>0740276</u>	<u>Big South Fork Cumberland River (Lake Cumberland);</u> <u>36.791521/-84.528349</u>	<u>McCreary</u>
<u>McKee Municipal Water Works</u>	<u>0621</u>	<u>0550784</u>	<u>Bills Branch (McKee City Reservoir);</u> <u>37.45692/-83.97863</u>	<u>Jackson</u>
<u>Monroe County Water District</u>	<u>1652</u>	<u>0860150</u>	<u>Cumberland River; 36.69083/-85.56834</u>	<u>Monroe</u>
<u>Monticello Water & Sewer Commission</u>	<u>0125</u>	<u>1160291</u>	<u>Cumberland River (Lake Cumberland);</u> <u>36.93654/-84.787257</u>	<u>Wayne</u>
<u>Mt Vernon Municipal Water Works</u>	<u>0356</u>	<u>1020299</u>	<u>Renfro Creek (Lake Linville);</u> <u>37.385/-84.3375</u>	<u>Rockcastle</u>
<u>Pineville Water System</u>	<u>0772</u>	<u>0070353</u>	<u>Cannon Creek (Cannon Creek Lake);</u> <u>36.68486/-83.69215</u>	<u>Bell</u>
<u>Somerset Water Service</u>	<u>0015</u>	<u>1000403</u>	<u>Cumberland River (Lake Cumberland);</u> <u>37.01444/-84.63278</u>	<u>Pulaski</u>
<u>Stanford Water Works</u>	<u>1597</u>	<u>0690417</u>	<u>Buck Creek;</u> <u>37.39352/-84.60845</u>	<u>Lincoln</u>
<u>Water Service Corporation of KY</u>	<u>0008</u>	<u>0070282</u>	<u>Little Yellow Creek (Fern Lake);</u> <u>36.59059/-83.70666</u>	<u>Bell</u>
<u>Williamsburg Water Works</u>	<u>0634</u>	<u>1180471</u>	<u>Cumberland River;</u> <u>36.74548/-84.1703</u>	<u>Whitley</u>
<u>Wood Creek Water District</u>	<u>0753</u>	<u>0630477</u>	<u>Wood Creek (Wood Creek Lake);</u> <u>37.195406/-84.181362</u>	<u>Laurel</u>
<u>Woodson Bend Resort</u>	<u>0922</u>	<u>1000973</u>	<u>Big South Fork Cumberland River (Lake Cumberland);</u> <u>36.94968/-84.60043</u>	<u>Pulaski</u>

[Table B: SURFACE WATER INTAKES FOR DOMESTIC WATER SUPPLY USE		
Name	Description	County
BIG SANDY RIVER BASIN		
Paintsville Municipal Water Works	Mile 9.3 of Paint Creek	Johnson
Paintsville Utilities Commission	Mile 38.8 of Levisa Fork	Johnson
Louisa Municipal Water Works	Mile .06 of Levisa Fork	Lawrence
Prestonsburg City Utilities Commission	Mile 57.3 of Levisa Fork	Floyd
Pikeville Water Works/US Filter	Mile 87.9 of Levisa Fork	Pike
Martin County Water District #1	Mile 23.8 of Tug Fork	Martin
US Filter/Southern Water & Sewer District	Mile 65.42 of Levisa Fork	Floyd
Jenkins Water Works	Mile 0.2 of Little Elkhorn Creek (Elkhorn Lake)	Letcher
Mountain Water District	Mile 4.6 of Russell Fork	Pike
Martin County Water District #1	Mile 1.3 of Lick Branch (Crum Reservoir)	Martin
Jenkins Water Works	Mile 24.4 of Elkhorn Creek	Letcher
Little Sandy River Basin		
Grayson Utility Commission	Mile 39.03 of Little Sandy River	Carter
Greenup Water Plant	Mile 0.7 of Little Sandy River	Greenup
Rattlesnake Ridge Water District	Mile 58.2 of Little Sandy River (Grayson Lake)	Elliott
Tygarts Creek Basin		
Olive Hill Water Works	Mile 2.2 of Perry Branch (Olive Hill Reservoir)	Carter
Olive Hill Water Works	Mile 81.3 of Tygarts Creek	Carter
Upper Cumberland River Basin		
Water Service Corporation of KY	Mile 3.2 of Little Yellow Creek (Fern Lake)	Bell
Somerset Water Service	Mile 504.5 of Cumberland River (Lake Cumberland)	Pulaski
Corbin City Utilities Commission	Mile 18.6 of Laurel River (City Reservoir)	Laurel

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Burnside Water Company	Mile 508.4 of Cumberland River (Lake Cumberland)	Pulaski
City of Albany	Mile 4.5 of Indian Creek (Lake Cumberland)	Clinton
Monticello Water & Sewer Commission	Mile 493.5 of Cumberland River (Lake Cumberland)	Wayne
London Utility Commission	Mile 1.3 of Indian Camp Creek (Laurel River Reservoir)	Laurel
Harlan Municipal Water Works	Mile 0.2 of Poor Fork	Harlan
Mt Vernon Municipal Water Works	Mile 3.3 of Renfro Creek (Lake Linville)	Rockcastle
Laurel County Water District #2	Mile 1.0 of Indian Camp Creek (Laurel River Lake)	Laurel
Laurel County Water District #2	Mile 25.2 of Laurel River	Laurel
McCreary County Water District Plant A	Mile 8.9 of Laurel Creek (Laurel Creek Reservoir)	McCreary
Burkesville Municipal Water Works	Mile 421.95 of Cumberland River	Cumberland
McKee Municipal Water Works	Mile 2.35 of Bills Branch (McKee City Reservoir)	Jackson
Williamsburg Water Works	Mile 581.35 of Cumberland River	Whitley
Jamestown Municipal Water Works	Mile 3.75 of Greasy Creek Branch (Lake Cumberland)	Russell
Jamestown Municipal Water Works	Mile Point 4.3 of Greasy Creek Branch (Lake Cumberland due to the lowering)	Russell
Jackson County Water Association Inc	Mile 2.1 of Flat Lick Creek (Beulah Lake)	Jackson
Knox County Utility Commission	Mile 635.6 of Cumberland River	Knox
Wood Creek Water District	Mile 4.15 of Wood Creek (Wood Creek Lake)	Laurel
Cumberland Water Works	Mile 25.0 of Poor Fork	Harlan
Pineville Water System	Mile 3.2 of Cannon Creek (Cannon Creek Lake)	Bell
Benham Water Works	Mile 3.5 of Looney Creek	Harlan
Woodson Bend Resort	Mile 2.98 of South Fk. Cumberland River (Lake Cumberland)	Pulaski
Barbourville Utility Commission	Mile 1.3 of Indian Camp Creek (Laurel River Lake)	Laurel
Cawood Water District	Mile 10.2 of Martins Fork	Harlan
Barbourville Utility Commission	Mile 628.45 of Cumberland River	Knox
McCreary County Water District Plant B	Mile 31.1 of South Fork Cumberland River (Lake Cumberland)	McCreary
Bell County Forestry Camp	Mile 13.9 of Clear Creek (Chenoo Lake)	Bell
Stanford Water Works	Mile 58.1 Buck Creek (Buck Creek Lake)	Lincoln
Licking River Basin		
Paris Municipal Water Works	Mile 16.7 of Stoner Creek	Bourbon
Northern Ky Water Service District Plant A	Mile 4.7 of Licking River	Kenton
Mt Sterling Water & Sewer System	Slate Creek at mile 36.1 (Reservoir)	Montgomery
Mt Sterling Water & Sewer System	Mile 36.5 of Slate Creek	Montgomery
Cynthiana Municipal Water Works	Mile 51.1 of South Fork Licking River	Harrison
Flemingsburg Utilities	Mile 0.7 of UT of Town Branch (Flemingsburg Lake)	Fleming
Williamstown Municipal Water	Mile 1.89 of Lake Branch (Lake Williamstown)	Grant
Morehead State University Water Plant	Mile 0.7 of Evans Branch (Evans Branch Impoundment)	Rowan
Morehead State University Water Plant	Mile 13.7 of Triplets Creek	Rowan
Carlisle Municipal Water Plant	Mile 3.5 of UT to Brushy Fork (City Lake)	Nicholas
Falmouth Water Plant	Mile 52.6 of Licking River	Pendleton
Morehead Utility Plant Board	Mile 176.4 of Licking River	Rowan
Western Fleming Water District	Mile 102.3 of Licking River	Nicholas
Salyersville Municipal Water Works	Mile 271.9 of Licking River	Magoffin
Cynthiana Municipal Water Works	Mile 84.3 of Licking River	Harrison
Carlisle Municipal Water Department	Mile 110.0 Licking River	Nicholas
West Liberty Water Company	Mile 227.4 Licking River	Morgan
West Liberty Water Company	Mile 3.7 of North Fork Licking River	Morgan/Rowan
Cave Run Water Commission	Mile 196.2 of Licking River (Cave Run Lake)	Menifee
Kentucky River Basin		
Lancaster Municipal Water Works	Mile 145.0 of Kentucky River (Pool #8)	Garrard
Northpoint Training Center	Mile 17.3 of Dix River (Herrington Lake)	Boyle
Frankfort Electric & Water Plant Board	Mile 71.5 of Kentucky River (Pool #4)	Franklin
Hazard Water Department	Mile 104.1 of North Fork Kentucky River	Perry
Wilmore Utilities System	Mile 117.0 of Kentucky River (Pool #6)	Jessamine
Nicholasville Water Works	Mile 157.7 of Kentucky River (Pool #8)	Jessamine
Berea Municipal Utilities	Mile 3.6 of Cowbell Creek Cowbell Lake	Madison
Jackson Municipal Water Works	Mile 47.2 of North Fork Kentucky River	Breathitt
Kentucky American Water Company Plant A	Mile 171.25 of Kentucky River (Pool #9)	Fayette
Kentucky American Water Company Plant B	Mile 10.6 of East Hickman Creek (Reservoir #4)	Fayette
Kentucky American Water Company	Reservoir #1 (Lake Ellerslie) (Primarily used as emergency backup)	Fayette
Danville Water Works	Mile 18.9 of Dix River (Herrington Lake)	Boyle
Lawrenceburg Municipal Water Works	Mile 85.9 of Kentucky River	Anderson
Versailles Municipal Water Works	Mile 87.5 of Kentucky River (Pool 5)	Woodford
Harrodsburg Municipal Water Works	Mile 120.8 of Kentucky River (Pool 7)	Mercer
Stanford Water Works	Mile 6.0 of Neals Creek (Stanford Reservoir)	Lincoln
Richmond Utilities Board	Mile 206.2 of Kentucky River (Pool 11)	Madison
Whitesburg Municipal Water Works/Veolia Water	Mile 150.95 of North Fork Kentucky River	Letcher
Manchester Water Works	Mile 3.9 of Beech Creek (Bert Combs Lake)	Clay

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Georgetown Municipal Water & Sewer	Mile 50.9 of North Elkhorn Creek (Royal Springs)	Scott
Beattyville Water Works	Mile 3.4 of North Fork Kentucky River (Pool #14)	Lee
Bullock Pen Water District	Mile 2.8 Of Bullock Pen Creek (Bullock Pen Lake)	Grant
Winchester Municipal Utilities	Mile 6.5 of Lower Howard Creek (Winchester Reservoir (Carol E. Ecton Reservoir))	Clark
Winchester Municipal Utilities	Mile 180.5 of Kentucky River (Pool #10)	Clark
Campton Water Works	Mile 0.2 of Hiram Branch (Campton Lake)	Wolfe
Hyden-Leslie County Water District	Mile 76.6 of Middle Fork Kentucky River	Leslie
Booneville Water & Sewer District	Mile 12.8 of South Fork Kentucky River	Owsley
Georgetown Municipal Water & Sewer	Mile 0.61 of UT (Royal Springs) at mile 33.5 of North Elkhorn Creek	Scott
Kentucky American Northern Division	Mile 0.55 of Severn Creek	Owen
Kentucky American Northern Division	Mile 6.3 of North Fork of North Severn Creek (Lower Thomas Lake)	Owen
Irvine Municipal Utilities	Mile 223.1 of Kentucky River (Pool #11)	Estill
Bluegrass Army Depot	Mile 0.25 of Little Muddy Creek (Lake Vega)	Madison
Beech Fork Water Commission	Mile 0.3 of Beech Fork (Beech Fork Reservoir)	Powell
Berea Municipal Utilities	Mile 2.15 of East Fork Silver Creek (Lower Silver Creek Lake)	Madison
Berea Municipal Utilities	Mile 2.8 of East Fork Silver Creek (Upper Silver Creek Lake)	Madison
Berea Municipal Utilities	Mile 2.5 of Owsley Fork (Owsley Fork Lake)	Madison
Manchester Water Works	Mile 18.9 of Goose Creek	Clay
Beech Fork Water Commission	Mile 31.0 of Red River	Powell
Kentucky American Water Co (Plant C	Mile 47.8 of Kentucky River	Franklin
Knott County Water and Sewer District	Mile 11.6 of Carr Fork Lake	Knott
Salt River Basin		
Shelbyville Municipal Water & Sewer Commission	Mile 27.5 of Guist Creek (Guist Creek Lake)	Shelby
Bardstown Municipal Water Works	Mile 1.1 of Buffalo Creek (Lake Sympson)	Nelson
Lebanon Water Works Company	Mile 98.2 of Rolling Fork River	Marion
Springfield Water Works	Mile 4.2 of Long Lick Creek (Willisburg Lake)	Washington
Lebanon Water Works Company	Mile 2.0 of Fagan Branch (Fagan Branch Reservoir)	Marion
Springfield Water Works	Mile 1.3 of Allen Branch (Springfield Reservoir)	Washington
Green River Basin		
Morgantown Utilities Commission	Mile 144.6 of Green River	Butler
Campbellsville Water Works	Mile 1.3 of Trace Fork (City Reservoir)	Taylor
Columbia/Adair Co Water Commission	Mile 317.4 of Green River (Green River Lake)	Adair
Glasgow Water Co/Plant B	Mile 21.5 of Beaver Creek	Barren
Greensburg Municipal Water Works	Mile 283.3 of Green River	Green
Livermore Water Works	Mile 71.7 of Green River	McLean
Bowling Green Municipal Utilities	Mile 38.1 of Barren River	Warren
Green River Valley Water District	Rio Springs at UT to Green River at mile 240.5	Hart
Hodgenville Water Works	Mile 5.85 of North Fork Nolin River	Larue
Central City Municipal Water & Sewer	Mile 85.9 of Green River	Muhlenberg
Calhoun Water Works	Mile 63.75 of Green River	McLean
Hartford Municipal Water Works	Mile 29.8 of Rough River	Ohio
Greenville Utilities Commission	Luzerne Lake (Luzerne Lake no longer connected to Caney Creek at mile 2.3	Muhlenberg
Ohio County Water Plant	Mile 131.8 of Green River	Ohio
Franklin Water Plant	Mile 23.4 of West Fork Drake's Creek	Simpson
Glasgow Water Co/Plant A	Embayment of Barren River Lake upstream of mouth of Skaggs Creek	Barren
Leitchfield Municipal Water Works	Mile 107.7 of Rough River (Reservoir)	Grayson
Campbellsville Water Works	Mile 5.3 of Robinson Creek (Green River Reservoir)	Taylor
Campbellsville Water Works	Mile 2.1 of Stone Quarry Creek	Taylor
Edmonson County Water District	Mile 183.6 of Green River	Edmonson
Hardin County Water District 2 Elizabethtown	Mile 2.1 of Freeman Creek (Freeman Lake)	Hardin
Tompkinsville Municipal Water Works	Mile 6.0 of Mill Creek (Mill Creek Reservoir)	Monroe
Madisonville Municipal Water Works	Mile 53.9 of Green River	Hopkins
Liberty Water Works	Mile 1.4 of Hickman Creek (Lake Liberty)	Casey
Stanford Water Works	Mile 0.6 of UT to Green River (James C. Harris Reservoir)	Lincoln
Hardin County Water District #2	Nolin River at mile 80.4 (White Mills Spring)	Hardin
Green River Valley Water District	Mile 240.5 of Green River	Hart
Scottsville Municipal Water Works	Mile 88.5 of Barren River (Barren River Lake)	Allen
Butler County Water System	Mile 143.6 of Green River	Butler
Edmonson County Water District	Mile 23.6 of Nolin River (Nolin Lake)	Grayson
Henderson Water & Sewer Department	Raw Storage Lake	Henderson
Webster Cnty Water District	Mile 47.3 of Green River	Webster
Hodgenville Water Works	Mile 0.3 of UT at mile 116.9 of North Fork Nolin River (Salem Lake)	Larue
Grayson County Water District	Mile 97.7 of Rough River (Rough River Reservoir)	Grayson
Lower Cumberland River Basin		
Kentucky State Penitentiary	Mile 40.1 of Cumberland River (Lake Barkley)	Lyon
Hopkinsville Water Environmental Authority	Mile 74.83 of North Fork Little River	Christian

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Hopkinsville Water Environmental Authority	Mile 14.2 of Little River (Lake Barkley)	Christian
Princeton Water Department	Mile 41.8 of Cumberland River (Lake Barkley)	Lyon
Kuttawa Municipal Water Plant	Mile 37.5 of Cumberland River (Lake Barkley)	Lyon
Barkley Lake Water District	Mile 1.3 of Hopson Creek (Lake Barkley)	Trigg
Crittenden-Livingston Co Water District	Mile 13.95 of Cumberland River	Livingston
Hopkinsville Water Environmental Authority	From Hopkinsville Stone Quarry No. 1 (South Quarry) adjacent to North Fork Little River at mile 14.8	Christian
Hopkinsville Water Environmental Authority	Hopkinsville Stone Quarry No. 2 (North Quarry) adjacent to White Creek at mile 0.2	Christian
Eddyville Municipal Water Works	Mile 40.2 of Cumberland River (Lake Barkley)	Lyon
Logan Todd Regional Water Commission	Cumberland River at Clarksville TN	TN
Tradewater River Basin		
Providence Water Works	New Providence City Lake (mile 0.3 of Owens Creek)	Webster
Madisonville Municipal Water Works	Mile 6.3 of Greasy Creek (Lake Pewee)	Hopkins
Dawson Springs City Water & Sewer	Mile 0.1 of Piney Creek (Lake Beshear)	Caldwell
Providence Municipal Water Works	Mile 41.3 of Tradewater River	Webster
Ohio River Basin (Main Stem And Minor Tributaries)		
Maysville Utility Commission	Mile 408.0 of Ohio River	Mason
Ashland Municipal Water Works	Mile 320.3 of Ohio River	Boyd
Northern Ky Water Service District -- Newport Plant	Mile 464.0 of Ohio River	Campbell
Paducah Water Works	Mile 935.6 of Ohio River	McCracken
Louisville Water Company /ZPS-A	Mile 600.6 of Ohio River	Jefferson
Henderson Water & Sewer Department	Mile 803.6 of Ohio River	Henderson
Northern Ky Water Service District Plant B	Mile 462.9 of Ohio River	Campbell
Morganfield Municipal Water Works	Mile 840.0 of Ohio River	Union
Russell Water Plant	Mile 327.7 of Ohio River	Greenup
Marion Municipal Water Works	Mile 25.6 of Crooked Creek (City Lake)	Crittenden
US Army Ft Knox A	Mile 8.5 of Otter Creek	Meade
Louisville Water Company BEPWTP B	Mile 594.7 of Ohio River	Jefferson
Sturgis Municipal Water Works	Mile 868.8 of Ohio River	Union

(3)[(3)(a)] Table C in this subsection lists waters that have an added[]:

1. A] designated use of CAH or OSRW. The WAH designated use does not apply to waters designated as CAH unless both WAH and CAH are indicated in Table C[]-or

2. Exceptions to specific criteria in 401 KAR 10:031.

(b) All other criteria in 401 KAR 10:031 applicable to the listed use designations shall apply to surface waters listed in Table C in this subsection.

(c)1. DWS use shall apply to all waters listed in Table C in this section.

2. DWS use criteria found in 401 KAR 10:031, Section 6, shall apply only at the surface water intakes listed in Table B of this section[].

Table C WATERS WITH ADDED DESIGNATED USES

<u>Waterbody and Receiving Water</u>	<u>Boundary Description</u>	<u>Latitude, Longitude (Downstream/ Upstream; Decimal Degrees)</u>	<u>County</u>	<u>Designated Uses</u>
BIG SANDY RIVER BASIN				
Blackberry Creek of Tug Fork*	Mouth to Left and Right Fork Blackberry Creek	37.60787, -82.16325/ 37.55270, -82.20019	Pike	OSRW
Elkhorn Creek of Russel Fork*	Mouth to Lower Pigeon Branch	37.30106, -82.35480/ 37.24900, -82.49153	Pike	OSRW
Hobbs Fork of Pigeonroost Fork	Mouth to Headwaters	37.70738, -82.43272/ Headwaters	Martin	OSRW
Knox Creek of Tug Fork*	Mouth to Virginia State Line	37.53601, -82.05993/ 37.47100, -82.06294	Pike	OSRW
Levisa Fork of Big Sandy River*	Johns Creek to Abbott Creek	37.74193, -82.76698/ 37.68716, -82.78300	Floyd	OSRW
Levisa Fork of Big Sandy River*	KY-1426 Cedar Hills Road to Russel Fork	37.46442, -82.52603/ 37.40715, -82.44037	Pike	OSRW
Long Fork of Shelby Creek*	Mouth to Left and Right Fork Long Fork	37.33899, -82.58588/ 37.28648, -82.66347	Pike	OSRW
Lower Pigeon Branch of Elkhorn Creek	Left Fork Lower Pigeon Branch to Headwaters	37.24194, -82.48681/ Headwaters	Pike	OSRW
Paint Creek of Levisa Fork	Mouth to Paintville Lake Dam	37.81444, -82.79142/ 37.83823, -82.87146	Johnson	CAH
Paintsville Lake of Paint Creek	From Dam to 0.18 River Miles Upstream of Gullett Branch	37.84032, -82.87137/ 37.87501, -82.91378	Johnson, Morgan	WAH, CAH
Peter Creek of Tug Fork*	Mouth to Left and Right Fork Peter Creek	37.56663, -82.14491/ 37.51424, -82.15258	Pike	OSRW
Russell Fork of Levisa Fork*	Mouth to Virginia State Line	37.40704, -82.44006/ 37.29579, -82.31462	Pike	OSRW
Shelby Creek of Levisa Fork*	Mouth to Beefhide Creek	37.42698, -82.49738/ 37.28949, -82.59865	Pike	OSRW
Thompson Fork of Souders Branch	Mouth to Headwaters	37.68474, -82.66775/ Headwaters	Floyd	OSRW

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<u>Toms Branch of Elkhorn Creek</u>	<u>Mouth to Headwaters</u>	<u>37.26119, -82.45249/ Headwaters</u>	<u>Pike</u>	<u>OSRW</u>
<u>Tug Fork of Big Sandy River*</u>	<u>Big Elk Creek to Chaffin Branch</u>	<u>37.89945, -82.47094/ 37.90368, -82.44690</u>	<u>Martin</u>	<u>OSRW</u>
<u>Tug Fork of Big Sandy River*</u>	<u>Blackberry Creek to Virginia/West Virginia State Line</u>	<u>37.60818, -82.16339/ 37.53822, -81.96754</u>	<u>Pike</u>	<u>OSRW</u>
<u>Unnamed Tributary of Hobbs Fork of Pigeonroost Fork</u>	<u>Mouth to Headwaters</u>	<u>37.68319, -82.40511/ Headwaters</u>	<u>Martin</u>	<u>OSRW</u>
<u>Unnamed Tributary of Open Fork Paint Creek of Paintsville Lake (Paint Creek)</u>	<u>Mouth to Headwaters</u>	<u>37.97373, -83.05614/ Headwaters</u>	<u>Morgan</u>	<u>OSRW</u>
GREEN RIVER BASIN				
<u>Barren River of Green River*</u>	<u>Green River to Lock and Dam #1</u>	<u>37.18112, -86.62376/ 37.08677, -86.50316</u>	<u>Butler, Warren</u>	<u>OSRW</u>
<u>Beaverdam Creek of Green River</u>	<u>Mouth to Headwaters</u>	<u>37.19637, -86.27598/ Headwaters</u>	<u>Edmonson</u>	<u>CAH, OSRW</u>
<u>Big Brush Creek of Green River</u>	<u>Brush Creek to Poplar Grove Branch</u>	<u>37.38472, -85.59302/ 37.42787, -85.57944</u>	<u>Green</u>	<u>OSRW</u>
<u>Cane Run of Nolin River Lake (Nolin River)</u>	<u>Nolin River Lake Backwaters to Headwaters</u>	<u>37.33240, -86.07132/ Headwaters</u>	<u>Hart</u>	<u>OSRW</u>
<u>Caney Fork of Peter Creek</u>	<u>Mouth to Headwaters</u>	<u>36.84608, -85.97090/ Headwaters</u>	<u>Barren</u>	<u>OSRW</u>
<u>Clifty Creek of Rough River</u>	<u>Barton Run to Western Kentucky Parkway</u>	<u>37.54800, -86.23505/ 37.51366, -86.15115</u>	<u>Grayson</u>	<u>OSRW</u>
<u>Clifty Creek of Wolf Lick Creek</u>	<u>Little Clifty Creek to Sulphur Lick</u>	<u>36.99759, -87.05518/ 36.98189, -87.12934</u>	<u>Todd</u>	<u>OSRW</u>
<u>Double Sink (Sandhouse Cave Spring) of Green River*</u>	<u>Groundwater Basin</u>	<u>37.16583, -86.15863/ Groundwater Basin Extent</u>	<u>Barren, Edmonson</u>	<u>CAH, OSRW</u>
<u>East Fork Little Barren River of Little Barren River</u>	<u>Leatherwood Creek to Flat Rock Creek</u>	<u>37.00149, -85.52277/ 36.98390, -85.52892</u>	<u>Metcalfe</u>	<u>OSRW</u>
<u>Echo River of Green River*</u>	<u>Groundwater Basin</u>	<u>37.17909, -86.10842/ Groundwater Basin Extent</u>	<u>Edmonson</u>	<u>CAH, OSRW</u>
<u>Elk Lick Creek of Wolf Lick Creek</u>	<u>Duck Lick Creek to Barren Fork and Edger Creek</u>	<u>36.96003, -86.98838/ 36.91651, -86.97280</u>	<u>Logan</u>	<u>OSRW</u>
<u>Ellis Fork of Damron Creek</u>	<u>Mouth to Headwaters</u>	<u>37.15744, -85.06621/ Headwaters</u>	<u>Adair, Russell</u>	<u>OSRW</u>
<u>Falling Timber Creek of Skaggs Creek</u>	<u>Land Use Change (0.1 River Miles Upstream of Taylor Branch) to Headwaters</u>	<u>36.93680, -85.74424/ Headwaters</u>	<u>Metcalfe</u>	<u>OSRW</u>
<u>Fiddlers Creek of North Fork Rough River</u>	<u>Mouth to Headwaters</u>	<u>37.70782, -86.34660/ Headwaters</u>	<u>Breckinridge</u>	<u>OSRW</u>
<u>Forbes Creek of Buck Creek</u>	<u>Mouth to Unnamed Tributary (0.3 River Miles Downstream of CR-1021 Owen West Road)</u>	<u>36.98832, -87.32847/ 36.95495, -87.34872</u>	<u>Christian</u>	<u>OSRW</u>
<u>Ganter Bluehole of Green River*</u>	<u>Groundwater Basin</u>	<u>37.18741, -86.14763/ Groundwater Basin Extent</u>	<u>Edmonson</u>	<u>CAH, OSRW</u>
<u>Gaspar River of Barren River</u>	<u>Clear Fork Creek to Wigginton Creek</u>	<u>36.98618, -86.63216/ 36.91698, -86.74175</u>	<u>Logan, Warren</u>	<u>OSRW</u>
<u>Goose Creek of Green River</u>	<u>Mouth to Little Goose Creek</u>	<u>37.20311, -85.01074/ 37.11575, -84.99617</u>	<u>Casey, Russell</u>	<u>OSRW</u>
<u>Green River of Ohio River*</u>	<u>1 River Mile Downstream of Lock and Dam #4 to Lock and Dam #5</u>	<u>37.19532, -86.63151/ 37.16870, -86.40334</u>	<u>Butler, Warren</u>	<u>OSRW</u>
<u>Green River of Ohio River*</u>	<u>0.5 River Miles Upstream of Davenport Landing to 0.75 River Miles Downstream of Lock & Dam #3</u>	<u>37.23620, -86.91085/ 37.22238, -86.90769</u>	<u>Muhlenberg, Ohio</u>	<u>OSRW</u>
<u>Green River of Ohio River*</u>	<u>0.9 River Miles Upstream of I-65/I-651 to 2.0 River Miles Downstream of US-231</u>	<u>37.27954, -86.73226/ 37.25580, -86.71360</u>	<u>Butler</u>	<u>OSRW</u>
<u>[Green River of Ohio River*]</u>	<u>Eastern Mammoth Cave National Park Boundary to</u>	<u>37.24995, -86.02769/</u>	<u>Hart,</u>	<u>OSRW]</u>
<u>Green River of Ohio River*</u>	<u>Western Mammoth Cave National Park Boundary to Green River Lake Dam</u>	<u>37.21698, -86.26334/ 37.24560, -85.34149</u>	<u>Edmonson, Green, Hart, Taylor</u>	<u>OSRW</u>
<u>Halls Creek of Rough River</u>	<u>Unnamed Tributary (Downstream of Wolf Creek)</u>	<u>37.51441, -86.79138/ Headwaters</u>	<u>Ohio</u>	<u>OSRW</u>

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	<u>to Headwaters</u>			
<u>Lick Creek of West Fork Drakes Creek</u>	<u>Mouth to Headwaters</u>	<u>36.80165, -86.49463/ Headwaters</u>	<u>Simpson</u>	<u>CAH, OSRW</u>
<u>Linders Creek of Rough River</u>	<u>Mouth to Sutzer Creek</u>	<u>37.63677, -86.20180/ 37.63368, -86.14513</u>	<u>Hardin</u>	<u>OSRW</u>
<u>Little Beaverdam Creek of Green River</u>	<u>Mouth to KY-743 Boiling Springs Road</u>	<u>37.17474, -86.34748/ 37.09866, -86.31160</u>	<u>Edmonson, Warren</u>	<u>OSRW</u>
<u>Little Short Creek of Rough River</u>	<u>Mouth to Headwaters</u>	<u>37.55200, -86.57632/ Headwaters</u>	<u>Grayson</u>	<u>OSRW</u>
<u>Lynn Camp Creek of Green River</u>	<u>Lindy Creek to Headwaters</u>	<u>37.39027, -85.70372/ Headwaters</u>	<u>Hart</u>	<u>CAH</u>
<u>Lynn Camp Creek of Green River</u>	<u>Mouth to Lindy Creek</u>	<u>37.31994, -85.71503/ 37.39027, -85.70372</u>	<u>Hart</u>	<u>CAH, OSRW</u>
<u>McCoy Spring of Green River*</u>	<u>Groundwater Basin</u>	<u>37.24996, -86.00975/ Groundwater Basin Extent</u>	<u>Hart</u>	<u>CAH, OSRW</u>
<u>McFarland Creek of West Fork Pond River</u>	<u>Grays Branch to Unnamed Tributary</u>	<u>37.13299, -87.38653/ 37.11248, -87.40630</u>	<u>Christian</u>	<u>OSRW</u>
<u>Meeting Creek of Rough River</u>	<u>Little Meeting Creek to Petty Branch</u>	<u>37.58021, -86.22663/ 37.56328, -86.15925</u>	<u>Grayson, Hardin</u>	<u>OSRW</u>
<u>Mile 205.7 Spring of Green River*</u>	<u>Groundwater Basin</u>	<u>37.22587, -86.03956/ Groundwater Basin Extent</u>	<u>Hart</u>	<u>CAH, OSRW</u>
<u>Muddy Creek of Rough River</u>	<u>Land Use Change (1.2 River Miles Upstream of CR-1125 Mt Pleasant Road) to Headwaters</u>	<u>37.42276, -86.73440/ Headwaters</u>	<u>Ohio</u>	<u>OSRW</u>
<u>Nolin River of Green River</u>	<u>Mouth to Nolin River Reservoir Dam</u>	<u>37.21540, -86.24918/ 37.27672, -86.24798</u>	<u>Edmonson</u>	<u>CAH</u>
<u>North Fork Rough River of Rough River Lake</u>	<u>Buffalo Creek to Reservoir Dam</u>	<u>37.70023, -86.38206/ 37.71212, -86.32604</u>	<u>Breckinridge</u>	<u>OSRW</u>
<u>Peter Creek of Barren River</u>	<u>Caney Fork to Dry Fork</u>	<u>36.84608, -85.97090/ 36.80042, -85.90772</u>	<u>Barren</u>	<u>OSRW</u>
<u>Pike Spring of Green River*</u>	<u>Groundwater Basin</u>	<u>37.21436, -86.05560/ Groundwater Basin Extent</u>	<u>Edmonson</u>	<u>CAH, OSRW</u>
<u>Pond Run of Rough River</u>	<u>Land Use Change (0.2 River Miles Downstream of CR-1503 White Road) to Headwaters</u>	<u>37.57381, -86.60506/ Headwaters</u>	<u>Breckinridge, Ohio</u>	<u>OSRW</u>
<u>Puncheon Creek of Figure Eight Branch</u>	<u>Mouth to Tennessee State Line</u>	<u>36.67503, -85.99483/ 36.62953, -86.00534</u>	<u>Allen</u>	<u>OSRW</u>
<u>Rough River of Green River</u>	<u>Big Slough to KY-54 Owensboro Road</u>	<u>37.53770, -86.59739/ 37.54196, -86.59707</u>	<u>Grayson, Ohio</u>	<u>CAH</u>
<u>Rough River of Green River</u>	<u>Linders Creek to Vertrees Creek</u>	<u>37.63677, -86.20180/ 37.69001, -86.13664</u>	<u>Hardin</u>	<u>OSRW</u>
<u>Rough River of Green River</u>	<u>Unnamed Tributary (on Right Descending Bank) to Rough River Lake Dam</u>	<u>37.62313, -86.50975/ 37.62109, -86.50111</u>	<u>Breckinridge, Grayson</u>	<u>CAH</u>
<u>Round Stone Creek of Nolin River Lake (Nolin River)</u>	<u>KY-1140 Raider Hollow Road to Headwaters</u>	<u>37.41002, -86.00232/ Headwaters</u>	<u>Hart</u>	<u>CAH</u>
<u>Running Branch Spring of Green River*</u>	<u>Groundwater Basin</u>	<u>37.18990, -86.12567/ Groundwater Basin Extent</u>	<u>Edmonson</u>	<u>CAH, OSRW</u>
<u>Russell Creek of Green River</u>	<u>Mouth to Columbia Waste Water Treatment Plant</u>	<u>37.22938, -85.51040/ 37.10942, -85.30532</u>	<u>Adair, Green</u>	<u>OSRW</u>
<u>Russell Creek of Green River</u>	<u>Reynolds Creek to Hudson Creek and Mount Olive Creek</u>	<u>37.04137, -85.18825/ 37.09160, -85.10334</u>	<u>Adair, Russell</u>	<u>OSRW</u>
<u>Sixes Creek of Wild Branch</u>	<u>Mouth to Headwaters</u>	<u>37.34154, -86.69993/ Headwaters</u>	<u>Ohio</u>	<u>OSRW</u>
<u>Suds Spring of Green River*</u>	<u>Groundwater Basin</u>	<u>37.23862, -86.01611/ Groundwater Basin Extent</u>	<u>Hart</u>	<u>CAH, OSRW</u>
<u>Sulphur Branch of Alexander Creek</u>	<u>Mouth to Headwaters</u>	<u>37.12892, -86.26930/ Headwaters</u>	<u>Edmonson</u>	<u>OSRW</u>
<u>Thompson Branch of West Fork Drakes Creek</u>	<u>Webb Branch to Tennessee State Line</u>	<u>36.65809, -86.49862/ 36.65202, -86.47973</u>	<u>Simpson</u>	<u>OSRW</u>
<u>Trammel Creek of Drakes Creek</u>	<u>Mouth to Tennessee State Line</u>	<u>36.87579, -86.37443/ 36.63973, -86.19775</u>	<u>Allen, Warren</u>	<u>CAH, OSRW</u>
<u>Turnhole Spring of Green River*</u>	<u>Groundwater Basin</u>	<u>37.16558, -86.15771/ Groundwater Basin Extent</u>	<u>Barren, Edmonson</u>	<u>CAH, OSRW</u>
<u>Underground River System</u>	<u>Within Mammoth Cave National Park</u>	<u>Not Applicable</u>	<u>Edmonson, Hart, Barren</u>	<u>CAH, OSRW</u>
<u>Unnamed Tributary of Green River of Ohio River</u>	<u>Mouth to Headwaters.</u>	<u>37.19160, -85.12732/ Headwaters</u>	<u>Adair</u>	<u>OSRW</u>
<u>Unnamed Tributary of White Oak Creek of Green River Lake</u>	<u>CR-1073 Hovious Ridge Road to KY-76 Elkhorn Road</u>	<u>37.23736, -85.22392/ 37.26178, -85.19616</u>	<u>Adair</u>	<u>OSRW</u>

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West Fork Pond River of Pond River	Unnamed Tributary (0.8 River Miles Downstream of CR-1078 J P Grace Road) to East Branch Pond River	37.09098, -87.36698/ 37.03070, -87.40602	Christian	OSRW
KENTUCKY RIVER BASIN				
Backbone Creek of Sixmile Creek	Mouth to Scrabble Creek	38.33978, -84.99690/ 38.32025, -84.99355	Franklin, Henry, Shelby	OSRW
Bear Branch of North Fork Kentucky River	Upstream of Sediment Pond to Headwaters	37.13248, -83.10152/ Headwaters	Perry	OSRW
Big Double Creek of Red Bird River*	Basin Upstream of Mouth	37.14045, -83.58768/ Upstream Basin Extent	Clay	OSRW
Big Laurel Creek of Greasy Creek*	Basin Upstream of Mouth	36.97893, -83.21906/ Upstream Basin Extent	Harlan	OSRW
Bill Branch of Laurel Fork	Mouth to Right and Left Fork Bill Branch	36.93025, -83.30921/ 36.93249, -83.30578	Harlan	OSRW
Bill Oak Branch of Laurel Fork*	Mouth to Headwaters	37.33478, -83.56541/ Headwaters	Owsley	OSRW
Billey Fork of Millers Creek	Land Use Change (1.0 River Mile Upstream of Woodward Creek) to Headwaters	37.67957, -83.79653/ Headwaters	Estill, Lee	OSRW
Blue Hole Creek of Red Bird Creek*	Basin Upstream of Mouth	36.99288, -83.53679/ Upstream Basin Extent	Clay	OSRW
Bowen Creek of Red Bird River*	Basin Upstream of Mouth	37.06668, -83.53803/ Upstream Basin Extent	Leslie	OSRW
Boyd Run of North Elkhorn Creek	Mouth to Cherry Run	38.21316, -84.48529/ 38.21731, -84.47430	Scott	OSRW
Buckhorn Creek of Troublesome Creek*	Basin Upstream of Emory Branch and Downstream of Pond on Fallenrock Branch	37.42006, -83.07758/ 37.41953, -83.06109	Knott	OSRW
Buffalo Creek of South Fork Kentucky River*	Basin Upstream of Mouth	37.35051, -83.65233/ Upstream Basin Extent	Owsley	OSRW
Bullskin Creek of South Fork Kentucky River*	Basin Upstream of Mouth	37.27322, -83.64441/ Upstream Basin Extent	Clay, Leslie	OSRW
Cavanaugh Creek of South Fork Station Camp Creek	Mouth to Headwaters	37.55370, -83.94222/ Headwaters	Jackson	OSRW
Chester Creek of Middle Fork Red River	Mouth to Headwaters	37.72746, -83.65906/ Headwaters	Wolfe	OSRW
Chimney Top Creek of Red River	Basin Upstream of Mouth	37.82314, -83.62673/ Upstream Basin Extent	Wolfe	CAH
Clear Creek of Kentucky River	Mouth to East Fork Clear Creek	37.93654, -84.79613/ 37.92667, -84.72576	Woodford	OSRW
Clemons Fork of Buckhorn Creek*	Basin Upstream of Mouth	37.45511, -83.16582/ Upstream Basin Extent	Breathitt	OSRW
Coles Fork of Buckhorn Creek*	Basin Upstream of Mouth	37.45720, -83.13468/ Upstream Basin Extent	Breathitt, Knott	OSRW
Combs Lake of Beech Creek	Entire Reservoir	37.16765, -83.70832/ Upstream Lake Extent	Clay	WAH, CAH
Craig Creek of Kentucky River	Mouth to Unnamed Tributary	37.97902, -84.82058/ 37.98133, -84.78474	Woodford	OSRW
Deep Ford Branch of Cutshin Creek	Upstream of Pond to Headwaters	37.19085, -83.34793/ Headwaters	Leslie	OSRW
Dix River of Kentucky River	Mouth to Herrington Lake Dam	37.81489, -84.71642/ 37.78539, -84.70388	Garrard, Mercer	CAH
Dog Fork of Swift Camp Creek	Basin Upstream of Mouth	37.78481, -83.56667/ Upstream Basin Extent	Wolfe	CAH
Drennon Creek of Kentucky River	Fivemile Creek to Town Creek	38.46577, -85.09825/ 38.43094, -85.11912	Henry	OSRW
East Fork Indian Creek of Indian Creek	Mouth to Headwaters	37.86030, -83.67480/ Headwaters	Menifee	CAH, OSRW
Eli Fork of Elisha Fork*	Basin Upstream of Mouth	37.43271, -83.05620/ Upstream Basin Extent	Knott	OSRW
Elisha Creek of Red Bird River*	Basin Upstream of Mouth	37.08769, -83.54680/ Upstream Basin Extent	Leslie	OSRW
Emily Run of Drennon Creek	Mouth to Unnamed Tributary (0.5 River Miles Downstream of CR-1010 New Cut Road)	38.50114, -85.07706/ 38.51135, -85.12727	Henry	OSRW
Evans Fork of Billey Fork	Mouth to Headwaters	37.69659, -83.77567/ Headwaters	Estill	OSRW
Falling Rock Branch of Clemons Fork*	Mouth to Headwaters	37.47650, -83.14005/ Headwaters	Breathitt	OSRW
Fishpond Lake of Fishpond Branch	Entire Reservoir	37.15714, -82.67861/ Upstream Lake Extent	Letcher	WAH, CAH

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<u>Frozen Creek of North Fork Kentucky River*</u>	<u>Basin Upstream of and Including (Lower) Negro Branch</u>	<u>37.62940, -83.38253/ Upstream Basin Extent</u>	<u>Breathitt</u>	<u>OSRW</u>
<u>Gilbert Creek of Kentucky River</u>	<u>Mouth to Unnamed Tributary (at Milepost 7.06 KY-513 Gilberts Creek Road)</u>	<u>37.97571, -84.85305/ 37.97570, -84.85305</u>	<u>Anderson</u>	<u>OSRW</u>
<u>Gilberts Big Creek of Red Bird River*</u>	<u>Basin Upstream of Mouth</u>	<u>37.10785, -83.55591/ Upstream Basin Extent</u>	<u>Clay, Leslie</u>	<u>OSRW</u>
<u>Gladie Creek of Red River</u>	<u>Basin Upstream of Mouth</u>	<u>37.83425, -83.61231/ Upstream Basin Extent</u>	<u>Menifee</u>	<u>CAH</u>
<u>Gladie Creek of Red River</u>	<u>Land Use Change (Downstream of Sargent Branch) to Long Branch</u>	<u>37.83977, -83.60773/ 37.86994, -83.53192</u>	<u>Menifee</u>	<u>CAH, OSRW</u>
<u>Goose Creek of Red Bird River</u>	<u>Mouth to Laurel Creek</u>	<u>37.26982, -83.64347/ 37.21607, -83.71750</u>	<u>Clay</u>	<u>OSRW</u>
<u>Granny Dismal Creek of Sturgeon Creek*</u>	<u>Basin Upstream of Mouth</u>	<u>37.49587, -83.81628/ Upstream Basin Extent</u>	<u>Jackson, Lee, Owsley</u>	<u>OSRW</u>
<u>Grier Creek of Kentucky River</u>	<u>Kentucky River Backwaters to Unnamed Tributary</u>	<u>38.02224, -84.82900/ 38.01901, -84.78975</u>	<u>Woodford</u>	<u>OSRW</u>
<u>Grindstone Creek of Kentucky River</u>	<u>Kentucky River Backwaters to Pond</u>	<u>38.27095, -84.87841/ 38.25169, -84.86151</u>	<u>Franklin</u>	<u>OSRW</u>
<u>Hardwick Creek of Red River</u>	<u>Mouth to Little Hardwick Creek</u>	<u>37.83287, -83.92629/ 37.80637, -83.91057</u>	<u>Powell</u>	<u>OSRW</u>
<u>Hell Creek of North Fork Kentucky River*</u>	<u>Basin Upstream of Mouth to Reservoir</u>	<u>37.60498, -83.65443/ 37.64906, -83.68880</u>	<u>Lee</u>	<u>OSRW</u>
<u>Hell For Certain Creek of Middle Fork Kentucky River*</u>	<u>Basin Upstream of Mouth</u>	<u>37.24590, -83.38193/ Upstream Basin Extent</u>	<u>Leslie</u>	<u>OSRW</u>
<u>Hines Creek of Kentucky River</u>	<u>Kentucky River Backwaters to Unnamed Tributary</u>	<u>37.87669, -84.37216/ 37.87346, -84.35034</u>	<u>Madison</u>	<u>OSRW</u>
<u>Holly Creek of North Fork Kentucky River*</u>	<u>Basin Upstream of Mouth</u>	<u>37.62268, -83.49947/ Upstream Basin Extent</u>	<u>Breathitt, Wolfe</u>	<u>OSRW</u>
<u>Honey Branch of Greasy Creek</u>	<u>Mouth to Headwaters</u>	<u>37.01785, -83.35630/ Headwaters</u>	<u>Leslie</u>	<u>OSRW</u>
<u>Hopper Cave Branch of Cavanaugh Creek</u>	<u>Mouth to Headwaters</u>	<u>37.54046, -83.96364/ Headwaters</u>	<u>Jackson</u>	<u>OSRW</u>
<u>Horse Creek of of Goose Creek*</u>	<u>Basin Upstream of Pigeon Roost Branch</u>	<u>37.09917, -83.84599/ Upstream Basin Extent</u>	<u>Clay, Laurel</u>	<u>OSRW</u>
<u>Hunting Creek of Quicksand Creek*</u>	<u>Basin Upstream of Mouth</u>	<u>37.59235, -83.22803/ Upstream Basin Extent</u>	<u>Breathitt</u>	<u>OSRW</u>
<u>Indian Creek of Eagle Creek</u>	<u>Mouth to Headwaters</u>	<u>38.64460, -84.97133/ Headwaters</u>	<u>Carroll</u>	<u>OSRW</u>
<u>Indian Creek of Red River</u>	<u>East Fork Indian Creek to 0.3 River Miles Downstream of Bear Branch</u>	<u>37.86041, -83.67498/ 37.90919, -83.67233</u>	<u>Menifee</u>	<u>CAH</u>
<u>Indian Fork of Sixmile Creek</u>	<u>Mouth to Headwaters</u>	<u>38.30060, -85.04584/ Headwaters</u>	<u>Shelby</u>	<u>OSRW</u>
<u>Jacks Creek of Red Bird River*</u>	<u>Basin Upstream of Mouth</u>	<u>37.19116, -83.59160/ Upstream Basin Extent</u>	<u>Clay</u>	<u>OSRW</u>
<u>Jessamine Creek of Kentucky River</u>	<u>Stream Segment Within the R. J. Corman Natural Area</u>	<u>37.87160, -84.61153/ 37.88356, -84.60430</u>	<u>Jessamine</u>	<u>OSRW</u>
<u>John Carpenter Fork of Clemons Fork*</u>	<u>Mouth to Headwaters</u>	<u>37.48191, -83.13306/ Headwaters</u>	<u>Breathitt</u>	<u>OSRW</u>
<u>Joyce Fork of Cortland Fork*</u>	<u>Mouth to Headwaters</u>	<u>37.35043, -83.55770/ Headwaters</u>	<u>Owsley</u>	<u>OSRW</u>
<u>Katies Creek of Red Bird River*</u>	<u>Basin Upstream of Mouth</u>	<u>37.03516, -83.54001/ Upstream Basin Extent</u>	<u>Clay</u>	<u>OSRW</u>
<u>Laurel Creek of Left Fork Rockhouse Creek*</u>	<u>Basin Upstream of Mouth</u>	<u>37.13092, -83.43722/ Upstream Basin Extent</u>	<u>Leslie</u>	<u>OSRW</u>
<u>Laurel Fork of Left Fork Buffalo Creek*</u>	<u>Cortland Fork to Big Branch</u>	<u>37.34758, -83.56464/ 37.32795, -83.56754</u>	<u>Owsley</u>	<u>OSRW</u>
<u>Laurel Fork Quicksand Creek of Quicksand Creek*</u>	<u>Basin Upstream of Patten Fork</u>	<u>37.45106, -83.02310/ Upstream Basin Extent</u>	<u>Knott</u>	<u>OSRW</u>
<u>Left Fork Big Double Creek of Big Double Creek*</u>	<u>Mouth to Headwaters</u>	<u>37.09053, -83.60245/ Headwaters</u>	<u>Clay</u>	<u>OSRW</u>
<u>Line Fork of North Fork Kentucky River</u>	<u>Defeated Creek to Headwaters</u>	<u>37.05325, -82.98858/ Headwaters</u>	<u>Letcher</u>	<u>OSRW</u>
<u>Little Double Creek of Red Bird River*</u>	<u>Basin Upstream of Mouth</u>	<u>37.14012, -83.59198/ Upstream Basin Extent</u>	<u>Clay</u>	<u>OSRW</u>
<u>Little Fork of Lower Devil Creek*</u>	<u>Basin Upstream of Mouth</u>	<u>37.66154, -83.59962/ Upstream Basin Extent</u>	<u>Lee, Wolfe</u>	<u>OSRW</u>
<u>Little Middle Fork Elisha Creek of Big Middle Fork Elisha Creek*</u>	<u>Mouth to Headwaters</u>	<u>37.08174, -83.51566/ Headwaters</u>	<u>Leslie</u>	<u>OSRW</u>
<u>Little Millseat Branch of Clemons Fork*</u>	<u>Mouth to Headwaters</u>	<u>37.47206, -83.14624/ Headwaters</u>	<u>Breathitt</u>	<u>OSRW</u>

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<u>Little Sixmile Creek of Sixmile Creek</u>	<u>Mouth to Headwaters</u>	<u>38.38438, -85.00254/ Headwaters</u>	<u>Henry</u>	<u>OSRW</u>
<u>Little Sturgeon Creek of Sturgeon Creek</u>	<u>Mouth to Warren Chapel Branch</u>	<u>37.47837, -83.81345/ 37.44863, -83.78872</u>	<u>Owsley</u>	<u>OSRW</u>
<u>Long Fork of Hector Branch*</u>	<u>Basin Upstream of Mouth</u>	<u>37.17743, -83.63474/ Upstream Basin Extent</u>	<u>Clay</u>	<u>OSRW</u>
<u>Low Gap Branch of Elk Creek</u>	<u>Mouth to Headwaters</u>	<u>37.15340, -82.98357/ Headwaters</u>	<u>Letcher</u>	<u>OSRW</u>
<u>Lower Buffalo Creek of South Fork Kentucky River*</u>	<u>Basin Upstream of Mouth</u>	<u>37.53161, -83.68702/ Upstream Basin Extent</u>	<u>Lee, Owsley</u>	<u>OSRW</u>
<u>Lower Devil Creek of North Fork Kentucky River</u>	<u>Mouth to Middle Fork Lower Devil Creek</u>	<u>37.64419, -83.60972/ 37.68891, -83.60403</u>	<u>Lee, Wolfe</u>	<u>OSRW</u>
<u>Lower Howard Creek of Kentucky River</u>	<u>Mouth to West Fork Lower Howard Creek</u>	<u>37.91807, -84.27256/ 37.93369, -84.26952</u>	<u>Clark</u>	<u>OSRW</u>
<u>Lulbeugrud Creek of Red River</u>	<u>Mouth to Falls Branch</u>	<u>37.83781, -84.00193/ 37.88288, -83.99603</u>	<u>Clark, Powell</u>	<u>OSRW</u>
<u>Middle Fork Kentucky River of North Fork Kentucky River</u>	<u>Hurts Creek to Greasy Creek</u>	<u>37.15444, -83.37052/ 37.07658, -83.39234</u>	<u>Leslie</u>	<u>OSRW</u>
<u>Middle Fork Kentucky River of North Fork Kentucky River</u>	<u>Mouth to Upper Twin Creek</u>	<u>37.58669, -83.67003/ 37.54597, -83.56307</u>	<u>Lee, Breathitt</u>	<u>OSRW</u>
<u>Middle Fork Quicksand Creek of Quicksand Creek*</u>	<u>Basin Upstream of Mouth</u>	<u>37.49826, -83.09294/ Upstream Basin Extent</u>	<u>Knott</u>	<u>OSRW</u>
<u>Middle Fork Red River of Kentucky River</u>	<u>0.7 River Miles Downstream of Sinking Fork to Headwaters</u>	<u>37.75452, -83.66588/ Headwaters</u>	<u>Wolfe</u>	<u>CAH</u>
<u>Middle Fork Red River of Red River</u>	<u>South Fork Red River to Natural Bridge State Park Lake</u>	<u>37.82360, -83.75245/ 37.77769, -83.67745</u>	<u>Powell</u>	<u>CAH, OSRW</u>
<u>Mike Branch of Laurel Fork*</u>	<u>Mouth to Headwaters</u>	<u>37.33908, -83.56338/ Headwaters</u>	<u>Owsley</u>	<u>OSRW</u>
<u>Mill Creek Lake of Mill Creek</u>	<u>Entire Reservoir</u>	<u>37.76750, -83.67341/ Upstream Lake Extent</u>	<u>Wolfe, Powell</u>	<u>WAH, CAH</u>
<u>Mill Creek of Kentucky River</u>	<u>0.05 River Miles Upstream of PS-1306 Perry Park Road to Headwaters</u>	<u>38.54565, -84.99933/ Headwaters</u>	<u>Owen</u>	<u>OSRW</u>
<u>Millseat Branch of Clemons Fork*</u>	<u>Mouth to Headwaters</u>	<u>37.47440, -83.14367/ Headwaters</u>	<u>Breathitt</u>	<u>OSRW</u>
<u>Muddy Creek of Kentucky River</u>	<u>0.1 River Mile Upstream of KY-52 Irvine Road to Viny Fork</u>	<u>37.74039, -84.15691/ 37.70998, -84.18205</u>	<u>Madison</u>	<u>OSRW</u>
<u>Musselman Creek of Eagle Creek</u>	<u>Mouth to Headwaters</u>	<u>38.56845, -84.67732/ Headwaters</u>	<u>Grant</u>	<u>OSRW</u>
<u>Parched Corn Creek of Red River</u>	<u>Mouth to Headwaters</u>	<u>37.81819, -83.59009/ Headwaters</u>	<u>Wolfe</u>	<u>CAH</u>
<u>Red Bird River of South Fork Kentucky River</u>	<u>Mouth to Big Creek</u>	<u>37.26973, -83.64341/ 37.16648, -83.58233</u>	<u>Clay</u>	<u>OSRW</u>
<u>Red River of Kentucky River</u>	<u>Schoolhouse Branch to KY-746</u>	<u>37.84422, -83.67583/ 37.79871, -83.48947</u>	<u>Menifee, Powell, Wolfe</u>	<u>OSRW</u>
<u>Right Fork Buffalo Creek of Buffalo Creek*</u>	<u>Mouth to Headwaters</u>	<u>37.35163, -83.63575/ Headwaters</u>	<u>Owsley</u>	<u>OSRW</u>
<u>Right Fork Elisha Creek of Elisha Creek*</u>	<u>Mouth to Headwaters</u>	<u>37.08165, -83.51802/ Headwaters</u>	<u>Leslie</u>	<u>OSRW</u>
<u>Roaring Fork of Lewis Fork</u>	<u>Mouth to Headwaters</u>	<u>37.46327, -83.17081/ Headwaters</u>	<u>Breathitt</u>	<u>OSRW</u>
<u>Rock Lick Creek of South Fork Station Camp Creek</u>	<u>Mouth to Headwaters</u>	<u>37.53951, -84.01077/ Headwaters</u>	<u>Jackson</u>	<u>OSRW</u>
<u>Rockbridge Fork of Swift Camp Creek*</u>	<u>Basin Upstream of Mouth</u>	<u>37.76941, -83.56135/ Upstream Basin Extent</u>	<u>Wolfe</u>	<u>OSRW</u>
<u>Sand Ripple Creek of Kentucky River</u>	<u>Kentucky River Backwaters to Headwaters</u>	<u>38.37772, -84.89991/ Headwaters</u>	<u>Franklin, Henry</u>	<u>OSRW</u>
<u>Severn Creek of Kentucky River</u>	<u>Kentucky River Backwaters to North Fork Severn Creek</u>	<u>38.46397, -84.91060/ 38.46646, -84.89242</u>	<u>Owen</u>	<u>OSRW</u>
<u>Shaker Creek of Kentucky River</u>	<u>Kentucky River Backwaters to Shawnee Run</u>	<u>37.84717, -84.76738/ 37.84378, -84.76810</u>	<u>Mercer</u>	<u>OSRW</u>
<u>Shelly Rock Fork of Millseat Branch*</u>	<u>Mouth to Headwaters</u>	<u>37.48162, -83.15038/ Headwaters</u>	<u>Breathitt</u>	<u>OSRW</u>
<u>Silver Creek of Kentucky River*</u>	<u>Basin Upstream of Mouth</u>	<u>37.57276, -83.71234/ Upstream Basin Extent</u>	<u>Lee</u>	<u>OSRW</u>
<u>Sixmile Creek of Kentucky River</u>	<u>Little Sixmile Creek to Cedarmore Lake Dam</u>	<u>38.38448, -85.00261/ 38.32816, -85.01600</u>	<u>Henry, Shelby</u>	<u>OSRW</u>
<u>South Fork Kentucky River</u>	<u>Mouth to Sexton Creek</u>	<u>37.56996, -83.71085/ 37.35900, -83.68198</u>	<u>Lee, Owsley</u>	<u>OSRW</u>

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of Kentucky River				
South Fork Red River of Middle Fork Kentucky River	Mouth to Sand Lick Fork	37.82360, -83.75245/ 37.78067, -83.73355	Powell	OSRW
South Fork Station Camp Creek of Station Camp Creek	Mouth to Rock Lick Creek	37.53286, -83.90931/ 37.55370, -83.94222	Jackson	OSRW
Spring Creek of Red Bird River*	Basin Upstream of Mouth	37.06192, -83.54144/ Upstream Basin Extent	Clay	OSRW
Spring Fork Quicksand Creek of Quicksand Creek*	Basin from 0.3 River Miles Upstream of Laurel Fork to Headwaters	37.51567, -82.98484/ Headwaters	Breathitt	OSRW
Spruce Branch of Red Bird Creek	Mouth to Headwaters	36.95696, -83.53108/ Headwaters	Clay	OSRW
Squabble Creek of Middle Fork Kentucky River*	Basin Upstream of Mouth	37.34604, -83.46895/ Upstream Basin Extent	Perry	OSRW
Station Camp Creek of Kentucky River	Land Use Change (1.25 River Miles Upstream of Sparks Branch) to South Fork Station Camp Creek	37.58261, -83.92802/ 37.53287, -83.90929	Estill	OSRW
Steeles Run of South Elkhorn Creek	Mouth to Unnamed Tributary (0.1 River Miles Upstream of PV-3002 Miss Alleged Drive)	38.11099, -84.62871/ 38.06735, -84.59554	Fayette, Woodford	OSRW
Steer Fork of War Fork	Mouth to Headwaters	37.45466, -83.92700/ Headwaters	Jackson	CAH, OSRW
Sturgeon Creek of Kentucky River	Duck Fork to Little Sturgeon Creek	37.53576, -83.78177/ 37.47850, -83.81356	Lee, Owsley	OSRW
Sugar Creek of Red Bird River*	Basin Upstream of Mouth	37.11807, -83.55952/ Upstream Basin Extent	Clay, Leslie	OSRW
Sulphur Lick Creek of Elkhorn Creek	Mouth to Headwaters	38.28765, -84.80211/ Headwaters	Franklin	OSRW
Swift Camp Creek of Red River	Mouth to Headwaters	37.82010, -83.57341/ Headwaters	Wolfe	CAH
Travis Creek of Sturgeon Creek*	Basin Upstream of Mouth	37.43601, -83.84609/ Upstream Basin Extent	Jackson	OSRW
Unnamed Tributary of Cawood Branch of Beech Fork	Mouth to Headwaters	36.93676, -83.37278/ Headwaters	Leslie	OSRW
Unnamed Tributary of Cedar Creek of Kentucky River	Mouth to Headwaters	38.37196, -84.79664/ Headwaters	Owen	OSRW
Unnamed Tributary of Glenns Creek of Kentucky River	Mouth to Headwaters	38.14826, -84.83651/ Headwaters	Woodford	OSRW
Unnamed Tributary of Jacks Creek of Kentucky River	Mouth to Headwaters	37.85200, -84.36529/ Headwaters	Madison	OSRW
Unnamed Tributary of Kentucky River of Ohio River	Mouth to Land Use Change	38.21913, -84.87712/ 38.23174, -84.86242	Franklin	OSRW
Unnamed Tributary of Line Fork of North Fork Kentucky River	Mouth to Headwaters	37.07769, -82.99241/ Headwaters	Letcher	OSRW
Upper Bear Creek of Red Bird River*	Basin Upstream of Mouth	37.02103, -83.53428/ Upstream Basin Extent	Clay	OSRW
Walker Creek of North Fork Kentucky River*	Basin Upstream of Mouth	37.60700, -83.64678/ Upstream Basin Extent	Lee, Wolfe	OSRW
War Fork of Station Camp Creek	Basin Including all Tributaries from 0.3 River Miles Downstream of Tarpin Lick Branch to Steer Fork	37.51193, -83.91470/ 37.45467, -83.92699	Jackson	CAH, OSRW
War Fork of Station Camp Creek	Basin Including all Tributaries from Mouth to 0.3 River Miles Downstream of Tarpin Lick Branch	37.53264, -83.90929/ 37.51193, -83.91470	Jackson	OSRW
War Fork of Station Camp Creek	Steer Fork to Headwaters	37.45467, -83.92699/ Headwaters	Jackson	CAH, OSRW
Watches Fork of Laurel Fork*	Mouth to Headwaters	37.34456, -83.56203/ Headwaters	Owsley	OSRW
Wild Dog Creek of Sturgeon Creek*	Basin Upstream of Mouth	37.48729, -83.82329/ Upstream Basin Extent	Jackson, Owsley	OSRW
Wolfpen Creek of Red River	Mouth to Headwaters	37.82549, -83.63094/ Headwaters	Menifee	OSRW
LICKING RIVER BASIN				
Blackwater Creek of Licking	Eaton Creek to Greasy Fork	37.94073, -83.41328/ 37.87922, -83.43981	Morgan	OSRW

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River				
Blanket Creek of Licking River	Mouth to Unnamed Tributary	38.65560, -84.28532/ 38.64266, -84.29929	Pendleton	OSRW
Botts Fork of Brushy Fork	Mouth to Land Use Change	37.94933, -83.50601/ 37.93022, -83.53288	Menifee	OSRW
Bowman Creek of Licking River	Mouth to Unnamed Tributary at CR-1135 Martin Road	38.89246, -84.44237/ 38.89404, -84.50217	Kenton	OSRW
Brushy Fork of Beaver Creek	Cave Run Lake Backwaters to Headwaters	37.98439, -83.50523/ Headwaters	Menifee	OSRW
Brushy Fork of South Fork Grassy Creek	Mouth to Headwaters	38.70106, -84.44697/ Headwaters	Pendleton	OSRW
Bucket Branch of North Fork Licking River	Mouth to Headwaters	38.05169, -83.31594/ Headwaters	Morgan	OSRW
Cedar Creek of Licking River	Mouth to North Branch Cedar Creek	38.47637, -84.12301/ 38.49051, -84.10732	Robertson	OSRW
Craney Creek of North Fork Licking River	Mouth to Headwaters	38.06493, -83.35154/ Headwaters	Morgan, Rowan	CAH, OSRW
Devils Fork of North Fork Licking River	Mouth to Headwaters	38.04413, -83.30378/ Headwaters	Elliott, Morgan	OSRW
Flour Creek of Licking River	Mouth to Unnamed Tributary (0.05 River Miles Upstream of CR-1021 Vater Road)	38.78982, -84.34388/ 38.80192, -84.32458	Pendleton	OSRW
Grovers Creek of Kincaid Lake	Kincaid Lake Backwaters to Unnamed Tributary	38.70547, -84.25273/ 38.70795, -84.21217	Bracken, Pendleton	OSRW
Licking River of Ohio River	US-60 to Cave Run Lake Dam	38.13995, -83.55773/ 38.11777, -83.53434	Bath, Rowan	CAH
Licking River of Ohio River*	1 River Mile Downstream of Fox Creek to 0.75 River Miles Downstream of Haven Branch	38.25141, -83.69320/ 38.24770, -83.69193	Bath, Fleming	OSRW
Licking River of Ohio River*	End of KY-211 Auora Road to 0.6 River Miles Downstream of Salt Lick Creek	38.17659, -83.61805/ 38.13064, -83.60581	Bath, Rowan	OSRW
Licking River of Ohio River*	KY-536 Creektrace Road to 1.3 River Miles Upstream of Fishtrap Creek	38.92019, -84.44823/ 38.35982, -83.88405	Bracken, Campbell, Fleming, Harrison, Kenton, Nicholas, Pendleton, Robertson	OSRW
Licking River of Ohio River*	Unnamed Tributary to 0.1 River Miles Upstream of Turkey Run	38.27224, -83.73700/ 38.26861, -83.71665	Bath, Fleming	OSRW
Minor Creek of Craney Creek	Mouth to River Mile 2.9	38.08552, -83.32772/ 38.10070, -83.29392	Morgan, Rowan	CAH
North Fork Licking River of Cave Run Lake	Cave Run Lake Backwaters (0.25 River Miles Downstream of Lick Branch) to Devils Fork	38.06587, -83.36149/ 38.04413, -83.30378	Morgan, Rowan	OSRW
Sawyers Fork of Cruises Creek	Mouth to Headwaters	38.84833, -84.54035/ Headwaters	Kenton	OSRW
Slabcamp Creek of Craney Creek	Mouth to Headwaters	38.09987, -83.32893/ Headwaters	Rowan	CAH, OSRW
Slate Creek of Licking River	Mouth to Mill Creek	38.21841, -83.69863/ 38.11220, -83.74665	Bath	OSRW
South Fork Grassy Creek of Middle Fork Grassy Creek	Mouth to Greasy Creek	38.79193, -84.42895/ 38.68302, -84.48375	Pendleton	OSRW
Unnamed Tributary of Shannon Creek of North Fork Licking River	Mouth to Headwaters	38.55443, -83.93335/ Headwaters	Mason	OSRW
Welch Fork of Brushy Fork	Mouth to Unnamed Tributary (Downstream of CR-1160 Fox Chase Road)	37.94405, -83.50360/ 37.93209, -83.51361	Menifee	OSRW
West Creek of Licking River	Mouth to Headwaters	38.53643, -84.20046/ Headwaters	Harrison, Robertson	OSRW
LITTLE SANDY RIVER BASIN				
Arabs Fork of Big Sinking Creek	Mouth to Headwaters	38.22358, -83.15918/ Headwaters	Elliott	OSRW
Big Caney Creek of Grayson Lake (Little Sandy River)	Grayson Lake Backwaters to Headwaters	38.15880, -83.09431/ Headwaters	Elliott, Rowan	CAH, OSRW
Big Sinking Creek of Little	KY-986 to Arabs Fork	38.24972, -83.11729/ 38.22360, -83.15915	Carter, Elliott	OSRW

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<u>Sandy River</u>				
<u>Greenbo Lake</u>	<u>Entire Reservoir</u>	<u>38.49152, -82.86667/ Upstream Lake Extent</u>	<u>Greenup</u>	<u>WAH, CAH</u>
<u>Laurel Creek of Little Sandy River</u>	<u>CR-1352 Stegall Cold Spring Road to Headwaters</u>	<u>38.12912, -83.18963/ Headwaters</u>	<u>Elliott, Rowan</u>	<u>CAH, OSRW</u>
<u>Laurel Creek of Little Sandy River</u>	<u>Mouth to CR-1352 Stegall Cold Spring Road</u>	<u>38.11806, -83.10726/ 38.12912, -83.18963</u>	<u>Elliott, Rowan</u>	<u>CAH</u>
<u>Meadow Branch of Little Fork Little Sandy River</u>	<u>Mouth to Headwaters</u>	<u>38.07711, -82.99544/ Headwaters</u>	<u>Elliott</u>	<u>OSRW</u>
<u>Middle Fork Little Sandy River of Little Sandy River</u>	<u>Mouth to Sheepskin Branch</u>	<u>38.12135, -83.09262/ 38.09139, -83.09075</u>	<u>Elliott</u>	<u>OSRW</u>
<u>Nichols Fork of Little Fork Little Sandy River</u>	<u>Green Branch to Headwaters</u>	<u>38.08073, -83.00200/ Headwaters</u>	<u>Elliott</u>	<u>OSRW</u>
LOWER CUMBERLAND RIVER BASIN				
<u>Casey Creek of Little River</u>	<u>Mouth to Headwaters</u>	<u>36.77793, -87.72181/ Headwaters</u>	<u>Trigg</u>	<u>CAH</u>
<u>Crooked Creek of Energy Lake</u>	<u>Energy Lake Backwaters to Headwaters</u>	<u>36.85193, -88.03311/ Headwaters</u>	<u>Trigg</u>	<u>OSRW</u>
<u>Cumberland River of Ohio River*</u>	<u>0.2 River Miles Downstream of Hickory Creek to 0.6 River Miles Upstream of Sugar Creek</u>	<u>37.18554, -88.30832/ 37.18578, -88.26806</u>	<u>Livingston</u>	<u>OSRW</u>
<u>Donaldson Creek of Lake Barkley</u>	<u>Lake Barkley Backwaters to Unnamed Tributary</u>	<u>36.74924, -87.91006/ 36.74970, -87.86754</u>	<u>Trigg</u>	<u>OSRW</u>
<u>Elk Fork of Red River</u>	<u>Tennessee State Line to Dry Branch</u>	<u>36.64264, -87.08560/ 36.74638, -87.13221</u>	<u>Todd</u>	<u>OSRW</u>
<u>Skinframe Creek of Livingston Creek</u>	<u>Mouth to Headwaters</u>	<u>37.15463, -88.12204/ Headwaters</u>	<u>Lyon</u>	<u>CAH</u>
<u>Sugar Creek of Cumberland River</u>	<u>Lick Creek to Left Descending Unnamed Tributary (Upstream of KY-2232 Sugar Creek Road)</u>	<u>37.17547, -88.26578/ 37.13054, -88.28340</u>	<u>Livingston</u>	<u>OSRW</u>
<u>Sulphur Spring Creek of Red River</u>	<u>Mouth to Headwaters</u>	<u>36.69054, -86.74797/ Headwaters</u>	<u>Simpson</u>	<u>CAH</u>
<u>West Fork Red River of Red River</u>	<u>Montgomery Creek to 0.5 River Miles Downstream of US-41 Dixie Beeline Highway</u>	<u>36.70964, -87.32988/ 36.74547, -87.30999</u>	<u>Christian</u>	<u>CAH</u>
<u>West Fork Red River of Red River</u>	<u>Tennessee State Line to Montgomery Creek</u>	<u>36.64154, -87.35589/ 36.70964, -87.32988</u>	<u>Christian</u>	<u>CAH, OSRW</u>
<u>Whippoorwill Creek of Red River*</u>	<u>Mouth to Headwaters</u>	<u>36.66568, -86.96368/ Headwaters</u>	<u>Logan, Todd</u>	<u>OSRW</u>
MISSISSIPPI RIVER BASIN				
<u>Bayou de Chien of Obion Creek*</u>	<u>Midway Between KY-239 and US-51 Bridges to Headwaters</u>	<u>36.62284, -88.99961/ Headwaters</u>	<u>Graves, Hickman</u>	<u>OSRW</u>
<u>Cane Creek of Bayou de Chien*</u>	<u>Basin Upstream of Mouth</u>	<u>36.62393, -88.98208/ Upstream Basin Extent</u>	<u>Fulton, Hickman</u>	<u>OSRW</u>
<u>Jackson Creek of Bayou de Chien*</u>	<u>Basin Upstream of Mouth</u>	<u>36.58204, -88.80298/ Upstream Basin Extent</u>	<u>Graves</u>	<u>OSRW</u>
<u>Mississippi River of Gulf of Mexico*</u>	<u>Mississippi River Miles 930 to 935</u>	<u>36.67834, -89.15372/ 36.74116, -89.12826</u>	<u>Hickman</u>	<u>OSRW</u>
<u>Mississippi River of Gulf of Mexico*</u>	<u>Mississippi River Miles 945 to 947</u>	<u>36.87387, -89.12754/ 36.90093, -89.11782</u>	<u>Carlisle</u>	<u>OSRW</u>
<u>Murphy Pond</u>	<u>Entire Pond and Preserve Area</u>	<u>Not Applicable</u>	<u>Hickman</u>	<u>OSRW</u>
<u>Obion Creek of Mississippi River</u>	<u>Hurricane Creek to Little Creek</u>	<u>36.75483, -89.01154/ 36.76673, -88.91258</u>	<u>Carlisle, Hickman</u>	<u>OSRW</u>
<u>Reelfoot Lake</u>	<u>Surface Waters Within the National Wildlife Refuge Proclamation Boundary in Kentucky</u>	<u>Not Applicable</u>	<u>Fulton</u>	<u>OSRW</u>
<u>Sand Creek of Bayou de Chien*</u>	<u>Basin Upstream of Mouth</u>	<u>36.61179, -88.87892/ Upstream Basin Extent</u>	<u>Hickman</u>	<u>OSRW</u>
<u>South Fork Bayou de Chien of Bayou de Chien*</u>	<u>Basin Upstream of Mouth</u>	<u>36.58094, -88.80311/ Upstream Basin Extent</u>	<u>Graves</u>	<u>OSRW</u>
<u>Swan Pond</u>	<u>Entire Lake</u>	<u>Not Applicable</u>	<u>Ballard</u>	<u>OSRW</u>
<u>Terrapin Creek of North Fork Obion River</u>	<u>Tennessee State Line to East and West Forks Terrapin Creek</u>	<u>36.50113, -88.49244/ 36.55040, -88.52493</u>	<u>Graves</u>	<u>OSRW</u>
OHIO RIVER BASIN				
<u>Ashbys Fork of Woolper Creek</u>	<u>Mouth to KY-20 Petersburg Road</u>	<u>39.03846, -84.81574/ 39.07729, -84.79534</u>	<u>Boone</u>	<u>OSRW</u>

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Blue Fork of Sinking Creek	Mouth to Headwaters	37.76832, -86.26254/ Headwaters	Breckinridge, Hardin	CAH
Crooked Creek of Ohio River	Rush Creek to Marion City Lake Dam	37.35915, -88.06775/ 37.31055, -88.09185	Crittenden	OSRW
Doe Run Creek of Doe Valley Lake	KY-1638 Old Mill Road to Headwaters	37.95830, -86.12196/ Headwaters	Meade	CAH
Double Lick Creek of Woolper Creek	Mouth to Headwaters	39.03416, -84.78650/ Headwaters	Boone	OSRW
Garrison Creek of Ohio River	Mouth to Headwaters	39.10565, -84.80643/ Headwaters	Boone	OSRW
Kinniconick Creek of Ohio River	McDowell Creek to Headwaters	38.57479, -83.18862/ Headwaters	Lewis	OSRW
Little South Fork of Big South Fork	Land Use Change to Headwaters	38.82216, -84.74115/ Headwaters	Boone	OSRW
Metropolis Lake of Ohio River	Entire Lake	37.15096, -88.77076/ 37.14475, -88.76100	McCracken	OSRW
Middle Fork Massac Creek of Massac Creek	CR-1207 Hines Road to Pond	37.01626, -88.74480/ 36.97538, -88.72982	McCracken	OSRW
Ohio River of Mississippi River*	Ohio River Mile 343.3 to 341.3	38.67798, -82.87151/ 38.65117, -82.85916	Greenup	OSRW
Ohio River of Mississippi River*	Ohio River Mile 438.0 to 436.25	38.80040, -84.20307/ 38.79490, -84.17168	Bracken	OSRW
Ohio River of Mississippi River*	Ohio River Mile 461.7 to 459.6	39.05467, -84.42783/ 39.04288, -84.39398	Campbell	OSRW
Ohio River of Mississippi River*	Ohio River Mile 562.0 to 559.7	38.71397, -85.44516/ 38.73441, -85.41449	Trimble	OSRW
Ohio River of Mississippi River*	Ohio River Mile 727.1 to 725.2	37.94561, -86.77691/ 37.92197, -86.75912	Hancock	OSRW
Ohio River of Mississippi River*	Ohio River Mile 736.0 to 732.9	37.96209, -86.88316/ 37.99066, -86.84099	Hancock	OSRW
Ohio River of Mississippi River*	Ohio River Mile 760.7 to 758.7	37.82156, -87.14861/ 37.79466, -87.14007	Daviess	OSRW
Ohio River of Mississippi River*	Ohio River Mile 786.6 to 784.7	37.90503, -87.54663/ 37.90370, -87.51220	Henderson	OSRW
Ohio River of Mississippi River*	Ohio River Mile 850.0 to 848.0	37.77224, -88.03829/ 37.79841, -88.02688	Union	OSRW
Ohio River of Mississippi River*	Ohio River Mile 861.0 to 852.0	37.65719, -88.15864/ 37.74592, -88.05353	Union	OSRW
Ohio River of Mississippi River*	Ohio River Mile 867.0 to 865.0	37.57648, -88.12541/ 37.60261, -88.13862	Union	OSRW
Ohio River of Mississippi River*	Ohio River Mile 926.0 to 918.6	37.07565, -88.45613/ 37.16628, -88.42400	Livingston	OSRW
Ohio River of Mississippi River*	Ohio River Mile 930.0 to 927.0	37.06268, -88.52132/ 37.06746, -88.47053	Livingston	OSRW
Ohio River of Mississippi River*	Ohio River Mile 943.4 to 933.0	37.14058, -88.73044/ 37.07656, -88.57154	McCracken	OSRW
Ohio River of Mississippi River*	Ohio River Mile 949.5 to 946.8	37.19063, -88.81825/ 37.16742, -88.78193	McCracken	OSRW
Ohio River of Mississippi River*	Ohio River Mile 974.1 to 952.7	37.07197, -89.16240/ 37.20664, -88.87221	Ballard, McCracken	OSRW
Otter Creek of Ohio River	Mouth to 1.8 River Miles Upstream of US-60 Owensboro Highway	37.96401, -86.03019/ 37.88584, -86.01741	Meade	CAH
Second Creek of Ohio River	Ohio River Backwaters to Headwaters	39.08518, -84.84280/ Headwaters	Boone	OSRW
Sinking Creek of Ohio River	KY-259 to Blue and Stony Fork	37.89513, -86.48439/ 37.76832, -86.26254	Breckinridge	CAH
Stony Fork of Sinking Creek	Mouth to Headwaters	37.76832, -86.26254/ Headwaters	Breckinridge	CAH
Unnamed Tributary of Big Sugar Creek of Ohio River	I-71 to Headwaters	38.74961, -84.81112/ Headwaters	Gallatin	OSRW
Unnamed Tributary of Corn Creek of Ohio River	Mouth to Headwaters	38.60284, -85.42320/ Headwaters	Trimble	OSRW
Unnamed Tributary of Massac Creek of Ohio River	Mouth to Headwaters	36.99350, -88.69103/ Headwaters	McCracken	OSRW
West Fork Massac Creek of Massac Creek	KY-724 Woodville Road to Little Massac Creek	37.08238, -88.77790/ 37.06021, -88.79830	McCracken	OSRW
Yellowbank Creek of Ohio River	KY-259 to Headwaters	37.98102, -86.50810/ Headwaters	Breckinridge	OSRW
SALT RIVER BASIN				
Brashears Creek of Salt River	Guist Creek to Bullskin and Clear Creeks	38.09923, -85.28643/ 38.16191, -85.28012	Shelby, Spencer	OSRW

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Cedar Creek of Salt River	Mouth to Greens Branch	38.00214, -85.66327/ 37.98224, -85.60071	Bullitt	OSRW
Chaplin River of Beech Fork	Thompson Creek to Cornishville, KY	37.85567, -85.03830/ 37.80423, -84.98705	Mercer, Washington	OSRW
Doctors Fork of Chaplin River	Mouth to Begley Branch	37.67567, -84.96085/ 37.64612, -84.99949	Boyle	OSRW
Guist Creek of Brashears Creek	Mouth to Jephtha Creek	38.09920, -85.28615/ 38.13244, -85.19651	Spencer	OSRW
Harts Run of Wilson Creek	Mouth to Headwaters	37.86326, -85.61160/ Headwaters	Bullitt	OSRW
Indian Creek of Thompson Creek	Mouth to Unnamed Tributary	37.85118, -84.97889/ 37.87350, -84.94786	Mercer	OSRW
Lick Creek of Long Lick Creek	Mouth to 0.1 River Miles Downstream of Dam	37.81851, -85.21553/ 37.82616, -85.16402	Washington	OSRW
Otter Creek of Rolling Fork	Land Use Change (0.04 River Miles Downstream of West Fork Otter Creek) to East and Middle Fork Otter Creek	37.50830, -85.58171/ 37.49520, -85.57644	Larue	OSRW
Overalls Creek of Wilson Creek	Mouth to West Fork Overalls Creek	37.87053, -85.60352/ 37.88749, -85.60604	Bullitt	OSRW
Plum Run of Glens Creek	Mouth to Headwaters	37.85773, -85.12186/ Headwaters	Washington	OSRW
Rolling Fork of Salt River*	0.8 River Mile Upstream of KY-84 Stiles Road/Howardstown Road to 0.5 River Mile Upstream of Otter Creek	37.56323, -85.60776/ 37.52819, -85.57651	Larue, Nelson	OSRW
Salt Lick Creek of Rolling Fork	Mouth to Headwaters	37.55415, -85.52125/ Headwaters	Larue, Marion	OSRW
Sulphur Creek of Chaplin River	Mouth to Cheese Lick and Brush Creek	37.88144, -85.09987/ 37.88844, -85.02061	Anderson, Mercer, Washington	OSRW
West Fork Otter Creek of Otter Creek	Mouth to Headwaters	37.50770, -85.58158/ Headwaters	Larue	OSRW
Wilson Creek of Rolling Fork	Mouth to Headwaters	37.81170, -85.73756/ Headwaters	Bullitt, Nelson	OSRW
TENNESSEE RIVER BASIN				
Blood River of Kentucky Lake	McCullough Fork to Tennessee State Line	36.52538, -88.17089/ 36.49911, -88.17594	Calloway	OSRW
Clarks River of Tennessee River	Persimmon Slough Creek to Middle Fork Creek	36.91438, -88.42009/ 36.90303, -88.40517	Marshall	OSRW
Clarks River of Tennessee River*	Mouth to Horse Branch	37.04760, -88.54247/ 37.02132, -88.55686	McCracken	OSRW
Grindstone Creek of Kentucky Lake	Kentucky Lake Backwaters to Headwaters	36.58230, -88.11886/ Headwaters	Calloway	OSRW
Panther Creek of Kentucky Lake (Blood River)	Kentucky Lake Backwaters (0.05 River Miles Downstream From End of CR-1137 Deerberry Lane) to Headwaters	36.56275, -88.15697/ Headwaters	Calloway	OSRW
Soldier Creek of West Fork Clarks River	Mouth to North Fork and South Fork Soldier Creek	36.79642, -88.47535/ 36.78881, -88.39095	Marshall	OSRW
Sugar Creek of Kentucky Lake (Blood River)	Kentucky Lake Backwaters (0.05 River Miles Upstream of KY-732 Irvine Cobb Road) to CR-1014 Old Newburg Road	36.65222, -88.15062/ 36.65780, -88.15776	Calloway	OSRW
Sugar Creek of West Fork Clarks River	Mouth to Unnamed Reservoir	36.90001, -88.54781/ 36.87609, -88.49180	Graves	OSRW
Tennessee River of Ohio River*	Island Creek to Kentucky Lake Dam	37.07328, -88.58419/ 37.01558, -88.26650	Livingston, Marshall, McCracken	OSRW
Trace Creek of West Fork of Clarks River	Mouth to Neely Branch	36.84213, -88.53168/ 36.80975, -88.56009	Graves	OSRW
Unnamed Tributary of Unnamed Tributary of Panther Creek of West Fork Clarks River	Mouth to Headwaters	36.79894, -88.53176/ Headwaters	Graves	OSRW
West Fork Clarks River of Clarks River	Soldier Creek to Duncan Creek	36.79646, -88.47554/ 36.76359, -88.45642	Marshall	OSRW
Wildcat Creek of Blood River	CR-1131 Wright Road to Headwaters	36.61320, -88.18308/ Headwaters	Calloway	OSRW
TRADEWATER RIVER BASIN				

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East Fork Flynn Fork of Flynn Fork	US-62 Dawson Road to Headwaters	37.14805, -87.76320/ Headwaters	Caldwell	OSRW
Piney Creek of Lake Beshear	Lake Beshear Backwaters to Headwaters	37.10253, -87.70751/ Headwaters	Caldwell, Christian	OSRW
Sandlick Creek of Tradewater River	Camp Creek to Headwaters	37.02761, -87.59583/ Headwaters	Christian	OSRW
Tradewater River of Ohio River	Drippings Spring Branch to Buntin Lake Dam	37.03680, -87.52727/ 36.95621, -87.48714	Christian	OSRW
Unnamed Tributary of Piney Creek of Lake Beshear	Mouth to Headwaters	37.08000, -87.71066/ Headwaters	Caldwell	OSRW
Unnamed Tributary of Sandlick Creek of Tradewater River	Mouth to Headwaters	37.00769, -87.59282/ Headwaters	Christian	OSRW
UPPER CUMBERLAND RIVER BASIN				
Acorn Fork of Stinking Creek*	Basin Upstream of River Mile 1.0	36.93545, -83.63816/ Upstream Basin Extent	Knox	OSRW
Adams Branch of Pigeon Roost Creek*	Basin Upstream of Mouth	36.61499, -84.13273/ Upstream Basin Extent	Whitley	OSRW
Archers Creek of Cumberland River*	Basin Upstream of Mouth	36.75944, -84.28923/ Upstream Basin Extent	Whitley	OSRW
Bad Branch of Poor Fork Cumberland River*	Basin Upstream of Mouth	37.06615, -82.77128/ Upstream Basin Extent	Letcher	CAH, OSRW
Bain Branch of Hubbs Creek*	Basin Upstream of Mouth	36.77756, -83.88968/ Upstream Basin Extent	Knox	OSRW
Bark Camp Creek of Cumberland River	Basin Upstream of Cumberland River Backwaters	36.90856, -84.30678/ Upstream Basin Extent	Whitley	CAH, OSRW
Barren Fork of Indian Creek*	Basin Upstream of Mouth	36.78654, -84.41626/ Upstream Basin Extent	McCreary	OSRW
Beaver Creek of Cumberland River*	Basin Upstream of Mouth	36.94623, -84.41643/ Upstream Basin Extent	McCreary	CAH, OSRW
Bee Lick Creek of Brushy Creek	Mouth to Warren Branch	37.26772, -84.43760/ 37.30223, -84.49337	Pulaski	OSRW
Bens Fork of Little Clear Creek*	Basin Upstream of Mouth	36.67945, -83.77275/ Upstream Basin Extent	Bell	OSRW
Beulah Lake	Entire Reservoir	37.37680, -83.91197/ Upstream Lake Extent	Jackson	WAH, CAH
Big Branch of Marsh Creek*	Basin Upstream of River Mile 0.8	36.69604, -84.35589/ Upstream Basin Extent	McCreary	OSRW
Big Lick Branch of Lake Cumberland (Cumberland River)*	Basin Upstream of Lake Cumberland Backwaters	36.96682, -84.37200/ Upstream Basin Extent	Pulaski	OSRW
Big South Fork Cumberland River of Lake Cumberland (Cumberland River)*	Wild River Boundary at Blue Heron to Tennessee State Line	36.66769, -84.54570/ 36.59880, -84.60518	McCreary	OSRW
Blacksnake Branch of Brownies Creek*	Basin Upstream of Mouth	36.70310, -83.51607/ Upstream Basin Extent	Bell	OSRW
Breedens Creek of Clover Fork Cumberland River*	Basin Upstream of Mouth	36.88389, -83.01497/ Upstream Basin Extent	Harlan	OSRW
Brices Creek of Road Fork Creek*	Basin Upstream of Mouth	36.88992, -83.73561/ Upstream Basin Extent	Knox	OSRW
Brownies Creek of Cumberland River*	Basin Upstream of Blacksnake Branch	36.70309, -83.51605/ Upstream Basin Extent	Bell, Harlan	OSRW
Brush Creek of Roundstone Creek	Wolf Creek to Reemergence of Sinking Creek	37.38934, -84.26451/ 37.46557, -84.22675	Rockcastle	OSRW
Brushy Creek of Buck Creek	Mouth to Headwaters	37.21223, -84.46737/ Headwaters	Pulaski, Rockcastle	OSRW
Buck Creek of Clear Fork*	Basin Upstream of Mouth	36.64657, -84.10477/ Upstream Basin Extent	Whitley	OSRW
Buck Creek of Lake Cumberland (Cumberland River)*	Backwaters of Lake Cumberland to 0.8 River Miles Upstream of Hurricane Creek	37.04922, -84.42953/ 37.35997, -84.59522	Lincoln, Pulaski	OSRW
Bucks Branch of Jellico Creek*	Basin Upstream of Mouth	36.66358, -84.26444/ Upstream Basin Extent	McCreary, Whitley	OSRW
Buffalo Creek of Clear Fork*	Basin Upstream of Tennessee State Line	36.58833, -83.95070/ Upstream Basin Extent	Whitley	OSRW
Bunches Creek of Cumberland River*	Basin Upstream of Mouth	36.83271, -84.31786/ Upstream Basin Extent	Whitley	CAH, OSRW
Campbell Branch of Jellico Creek*	Basin Upstream of Mouth	36.64277, -84.24080/ Upstream Basin Extent	Whitley	OSRW
Cane Creek of Rockcastle River	Mouth to Dam/Pond in Headwaters	37.02646, -84.30837/ 37.05336, -84.17792	Laurel	OSRW

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Caney Creek of Left Fork of Straight Creek*	Basin Upstream of Mouth	36.81124, -83.64638/ Upstream Basin Extent	Bell	OSRW
Cannon Creek Lake of Yellow Creek	Entire Reservoir	36.68471, -83.69184/ Upstream Lake Extent	Bell	WAH, CAH
Cannon Creek of Yellow Creek*	Basin Upstream of Cannon Creek Lake	36.67978, -83.72075/ Upstream Basin Extent	Bell	OSRW
Capuchin Creek of Jellico Creek*	Basin Upstream of Mouth to Tennessee State Line	36.60528, -84.23493/ 36.59205, -84.22764	McCreary, Whitley	OSRW
Clear Creek of Roundstone Creek	Scaffold Cane Branch to Davis Branch	37.44240, -84.27859/ 37.48595, -84.25532	Rockcastle	OSRW
Clifty Creek of Brushy Creek	Mouth to Rocky Branch	37.21642, -84.46933/ 37.24147, -84.48323	Pulaski	OSRW
Clover Bottom Creek of Horse Lick Creek	Mouth to River Mile 1.4	37.40908, -84.12219/ 37.41811, -84.10529	Jackson	CAH
Cogur Fork of Indian Creek*	Basin Upstream of Mouth	36.79972, -84.39768/ Upstream Basin Extent	McCreary	CAH, OSRW
Coles Branch of Road Fork Creek*	Basin Upstream of Mouth	36.93807, -83.74180/ Upstream Basin Extent	Knox	OSRW
Colliers Creek of Poor Fork Cumberland River*	Basin Upstream of Mouth	37.01476, -82.88105/ Upstream Basin Extent	Letcher	OSRW
Criscillis Branch of Jellico Creek*	Basin Upstream of Mouth	36.62993, -84.23245/ Upstream Basin Extent	McCreary, Whitley	OSRW
Cumberland River of Lake Cumberland	Kentucky Wild River Boundaries	36.87220, -84.32413/ 36.75173, -84.28413	McCreary, Whitley	OSRW
Cumberland River of Ohio River	Tennessee State Line to Wolf Creek Dam	36.61486, -85.50216/ 36.86870, -85.14743	Clinton, Cumberland, Monroe, Russell	CAH
Davis Branch of Little Yellow Creek*	Basin Upstream of Mouth	36.60574, -83.69090/ Upstream Basin Extent	Bell	OSRW
Dog Slaughter Creek of Cumberland River*	Basin Upstream of Mouth	36.85996, -84.31441/ Upstream Basin Extent	Whitley	CAH, OSRW
Dolen Branch of Rock Creek*	Basin Upstream of Mouth	36.66133, -84.66299/ Upstream Basin Extent	McCreary	OSRW
Eagle Creek of Cumberland River*	Basin Upstream of Mouth	36.84359, -84.34359/ Upstream Basin Extent	McCreary	OSRW
Elisha Branch of Laurel Creek*	Basin Upstream of Mouth	36.71662, -84.40795/ Upstream Basin Extent	McCreary	OSRW
Fish Trap Branch of Lake Cumberland*	Basin Upstream of Lake Cumberland Backwaters	36.94073, -84.37039/ Upstream Basin Extent	McCreary	OSRW
Four Mile Creek of Cumberland River*	Basin from 0.05 River Miles Downstream of Buffalo Branch	36.80768, -83.71526/ Upstream Basin Extent	Bell	OSRW
Fourmile Run of Yellow Creek Bypass*	Basin Upstream of Land Use Change (at River Mile 1.0)	36.64389, -83.72786/ Upstream Basin Extent	Bell	OSRW
Fugitt Creek of Clover Fork Cumberland River*	Basin Upstream of Mouth	36.91136, -83.08647/ Upstream Basin Extent	Harlan	CAH, OSRW
Hale Fork of Road Fork Creek*	Basin Upstream of Mouth	36.89875, -83.74720/ Upstream Basin Extent	Knox	OSRW
Hawk Creek of Rockcastle River	Basin Upstream of Mouth	37.17702, -84.27770/ Upstream Basin Extent	Laurel	CAH
Hinkle Branch of Road Fork Creek*	Basin Upstream of Mouth	36.92360, -83.74351/ Upstream Basin Extent	Knox	OSRW
Honeycutt Branch of Turkey Creek*	Basin Upstream of Mouth	36.87018, -83.79030/ Upstream Basin Extent	Knox	OSRW
Horse Lick Creek of Rockcastle River*	Mouth to Clover Bottom Creek	37.31994, -84.13808/ 37.40908, -84.12219	Jackson, Rockcastle	OSRW
Howard Branch of Left Fork Straight Creek*	Basin Upstream of Mouth	36.79492, -83.66440/ Upstream Basin Extent	Bell	OSRW
Howards Creek of Dale Hollow Lake	Dale Hollow Lake Backwaters to Headwaters	36.69404, -85.22579/ Headwaters	Clinton	OSRW
Hunting Shirt Branch of Richland Creek*	Basin Upstream of Mouth	36.98273, -83.88465/ Upstream Basin Extent	Knox	OSRW
Indian Creek of Cumberland River*	Basin Upstream of and Including Barren Fork	36.78655, -84.41622/ Upstream Basin Extent	McCreary	CAH, OSRW
Indian Creek of Cumberland River*	Kilburn Fork to Barren Fork	36.80492, -84.37957/ 36.78654, -84.41624	McCreary	OSRW
Jackie Branch of Bark Camp Creek	Mouth to Headwaters	36.90449, -84.27945/ Headwaters	Whitley	CAH, OSRW
Jellico Creek of Cumberland River*	Basin from Capuchin Creek to Tennessee State Line	36.60528, -84.23493/ 36.59171, -84.27089	McCreary	OSRW
Jenneys Branch of Laurel	Basin Upstream of Mouth	36.73481, -84.39945/ Upstream Basin Extent	McCreary	OSRW

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Creek*				
Kelly Branch of Clover Fork Cumberland River*	Basin Upstream of Mouth	36.88349, -83.02086/ Upstream Basin Extent	Harlan	OSRW
Kennedy Creek of Little South Fork*	Mouth to River Mile 1.0	36.73904, -84.69372/ 36.74025, -84.69890	Wayne	OSRW
Kettle Creek of Cumberland River	Tennessee State Line to Wells Creek	36.61526, -85.49117/ 36.65104, -85.44504	Monroe	OSRW
Kilburn Fork of Indian Creek*	Basin Upstream of Mouth	36.80503, -84.37958/ Upstream Basin Extent	McCreary	OSRW
Laurel Creek of Marsh Creek*	Basin Upstream of Jenneys Branch to Laurel Creek Lake Dam	36.73481, -84.39944/ 36.69308, -84.44385	McCreary	OSRW
Laurel Creek of Marsh Creek*	Jenneys Branch to Laurel Creek Lake Dam	36.73481, -84.39944/ 36.69308, -84.44385	McCreary	CAH, OSRW
Laurel Fork of Clear Fork*	Basin Upstream of CR-1232 John Partin Road	36.64180, -83.92494/ Upstream Basin Extent	Bell	OSRW
Laurel Fork of Clear Fork*	Tennessee State Line to CR-1232 John Partin Road	36.58947, -83.98760/ 36.64180, -83.92494	Bell, Whitley	OSRW
Laurel Fork of Kilburn Fork*	Basin Upstream of Mouth	36.81514, -84.38294/ Upstream Basin Extent	McCreary	OSRW
Laurel Fork of Middle Fork Rockcastle River*	Mouth to Headwaters	37.36733, -84.04829/ Headwaters	Jackson	OSRW
Laurel River Lake of Laurel River	Entire Reservoir	36.96153, -84.26760/ Upstream Lake Extent	Laurel, Whitley	WAH, CAH
Laurel River of Lake Cumberland	0.2 River Miles Downstream of Fall Creek to Laurel River Lake Dam	36.95416, -84.28790/ 36.96166, -84.27035	Laurel, Whitley	CAH
Lick Fork of Yellow Creek Bypass*	Basin Upstream of Mouth	36.62865, -83.73387/ Upstream Basin Extent	Bell	OSRW
Little Poplar Creek of Cumberland River*	Basin Upstream of Hubbs Creek	36.77122, -83.92088/ Upstream Basin Extent	Knox	OSRW
Little South Fork of Cumberland River*	Backwaters of Lake Cumberland to Langham Branch	36.80583, -84.59556/ 36.64854, -84.78912	McCreary, Wayne	OSRW
Little White Oak Creek of White Oak Creek	Mouth to Headwaters	37.10204, -84.19978/ Headwaters	Laurel	CAH, OSRW
Long Branch of Left Fork of Straight Creek*	Basin Upstream of Mouth	36.82239, -83.64199/ Upstream Basin Extent	Bell	OSRW
Looney Creek of Poor Fork Cumberland River	Basin Upstream of and Including Long Rock Branch	36.96008, -82.89345/ Upstream Basin Extent	Harlan	CAH
Marsh Creek of Cumberland River*	Basin Upstream of Murphy Creek to Tennessee State Line	36.61826, -84.39374/ 36.59540, -84.40845	McCreary	OSRW
Marsh Creek of Cumberland River*	Mouth to Murphy Creek	36.77776, -84.34903/ 36.61826, -84.39374	McCreary	OSRW
Martins Fork of Cumberland River	Basin Upstream of Cumberland Gap National Historical Park Boundary	36.68496, -83.44376/ Upstream Basin Extent	Bell	CAH
Martins Fork of Cumberland River	Eastern Boundary of Cumberland Gap National Historical Park to Headwaters	36.68496, -83.44376/ Headwaters	Bell, Harlan	CAH
Martins Fork of Cumberland River	Rough Branch to Eastern Boundary of Cumberland Gap National Historical Park	36.69766, -83.39220/ 36.68496, -83.44376	Harlan	CAH, OSRW
McFarland Creek of Cumberland River	Poore Branch to Tennessee State Line	36.63276, -85.50960/ 36.61585, -85.55184	Monroe	OSRW
McFarland Creek of Cumberland River	Tennessee State Line to Tennessee State Line	36.61628, -85.57728/ 36.61646, -85.58620	Monroe	OSRW
Meadow Branch of Poor Fork Cumberland River*	Mouth to Headwaters	37.06908, -82.76151/ Headwaters	Letcher	OSRW
Meadow Fork of Franks Creek*	Basin Upstream of Mouth	37.05288, -82.79381/ Upstream Basin Extent	Letcher	OSRW
Meshack Creek of Cumberland River	Mouth to Pitcock Branch	36.70211, -85.53507/ 36.73160, -85.54153	Monroe	OSRW
Middle Fork Rockcastle River of Rockcastle River*	Mouth to Indian Creek and Laurel Fork	37.33585, -84.11898/ 37.36739, -84.04838	Jackson	OSRW
Mill Branch of Stinking Creek*	Basin Upstream of Mouth	36.87342, -83.73238/ Upstream Basin Extent	Knox	OSRW
Mill Creek of Lake Cumberland (Cumberland River)*	Basin Upstream of Reservoir Backwaters	36.92980, -84.35567/ Upstream Basin Extent	McCreary	OSRW
Mill Creek of Straight Creek*	Basin Upstream of Mouth	36.79634, -83.57596/ Upstream Basin Extent	Bell	OSRW

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Moore Creek of Stinking Creek*	Basin Upstream of Mouth	36.85653, -83.75554/ Upstream Basin Extent	Knox	OSRW
Mud Camp Creek of Cumberland River	Mouth to Collins Branch	36.76461, -85.51225/ 36.77858, -85.51607	Cumberland	OSRW
Mud Camp Creek of Cumberland River	Unnamed Tributary (at Milepost 0.25 of CR-1335 Sawmill Hollow Road) to Headwaters	36.78298, -85.55654/ Headwaters	Cumberland, Monroe	OSRW
Mud Creek of Clear Fork*	Basin Upstream of Unnamed Tributary (Near Milepost 4.35 of CR-1221 Mud Creek - Lot Road)	36.61075, -84.03320/ Upstream Basin Extent	Whitley	OSRW
Mud Lick of Stinking Creek*	Basin Upstream of Mouth	36.86077, -83.75270/ Upstream Basin Extent	Knox	OSRW
Ned Branch of Rockcastle River*	Basin Upstream of Backwaters (Upstream of First Tributary)	36.96743, -84.34134/ Upstream Basin Extent	Laurel	OSRW
Otter Creek of Lake Cumberland	0.75 River Miles Upstream of Gap Creek to Carpenter Fork	36.76911, -84.96678/ 36.70801, -84.95672	Wayne	OSRW
Paint Gap Branch of Pigeon Fork*	Basin Upstream of Mouth	36.93402, -83.60110/ Upstream Basin Extent	Knox	OSRW
Patterson Creek of Cumberland River*	Basin Upstream of Rose Creek	36.65785, -84.04232/ Upstream Basin Extent	Whitley	OSRW
Poor Fork Cumberland River of Cumberland River	Franks Creek to CR-1530 Joseph Road	37.05547, -82.80558/ 37.07179, -82.73044	Letcher	OSRW
Poor Fork Cumberland River of Cumberland River*	Basin Upstream of CR-1530 Joseph Road	37.07179, -82.73044/ Upstream Basin Extent	Letcher	CAH, OSRW
Presley House Branch of Poor Fork Cumberland River	Mouth to Headwaters	37.06433, -82.79065/ Headwaters	Letcher	OSRW
Puncheoncamp Branch of Rock Creek	Mouth to Headwaters	36.65874, -84.64042/ Headwaters	McCreary	OSRW
Richland Creek of Cumberland River*	Basin Upstream of CR-1549 Golden Oak Drive	36.99443, -83.88040/ Upstream Basin Extent	Knox	OSRW
Roaring Fork of Stinking Creek*	Basin Upstream of Mouth	36.88204, -83.69234/ Upstream Basin Extent	Knox	OSRW
Rock Creek of Big South Fork Cumberland River*	CR-1236 Rock Creek Road to Tennessee State Line	36.70306, -84.59619/ 36.60241, -84.73999	McCreary	CAH, OSRW
Rock Creek of Jellico Creek*	Basin Upstream of Mouth	36.59548, -84.27000/ Upstream Basin Extent	McCreary	OSRW
Rockcastle River of Lake Cumberland*	Lower End of The Narrows (0.25 River Miles Upstream of Cane Creek) to Middle and South Fork Rockcastle River	37.03017, -84.30832/ 337.33577, -84.11906	Jackson, Laurel, Pulaski, Rockcastle	OSRW
Ross Branch of Jellico Creek*	Basin Upstream of Mouth	36.62966, -84.23068/ Upstream Basin Extent	Whitley	OSRW
Roundstone Creek of Rockcastle River*	Renfro Creek to Interstate-75	37.38296, -84.29197/ 37.51810, -84.31923	Rockcastle	OSRW
Ryans Creek of Jellico Creek*	Basin Upstream of Mouth	36.64587, -84.25140/ Upstream Basin Extent	McCreary, Whitley	OSRW
Sanders Creek of Cumberland River*	Basin Upstream of Mouth	36.76365, -84.23232/ Upstream Basin Extent	Whitley	OSRW
Seng Branch of Poplar Creek*	Basin Upstream of Mouth	36.68130, -83.95908/ Upstream Basin Extent	Whitley	OSRW
Shilalah Creek of Clear Fork*	Cumberland Gap National Historical Park Boundary to Headwaters	36.64890, -83.57973/ Headwaters	Bell	CAH, OSRW
Shilalah Creek of Clear Fork*	Mouth to Cumberland Gap National Historical Park Boundary	36.66632, -83.59259/ 36.64890, -83.57973	Bell	OSRW
Shut-in Branch of Jellico Creek*	Basin Upstream of Mouth	36.60402, -84.25813/ Upstream Basin Extent	McCreary	OSRW
Sims Fork of Left Fork Straight Creek*	Basin Upstream of Mouth	36.83066, -83.63028/ Upstream Basin Extent	Bell	OSRW
Sinking Creek of Rockcastle River*	Mouth to Headwaters	37.10193, -84.27981/ Headwaters	Laurel	OSRW
Smith Creek of Franks Creek*	Basin Upstream of Mouth	37.05103, -82.79217/ Upstream Basin Extent	Letcher	OSRW
South Fork Rockcastle River of Rockcastle River	0.15 River Miles Upstream of Black Lick Branch to White Oak Creek	37.31595, -84.10113/ 37.29097, -84.08801	Jackson, Laurel	OSRW
South Fork Rockcastle River of Rockcastle River*	Mouth to 0.15 River Miles Upstream of Black Lick Branch	37.33576, -84.11903/ 37.31595, -84.10113	Jackson, Laurel	OSRW

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Stevenson Branch of Yellow Creek Bypass*	Basin Upstream of Mouth	36.62513, -83.73543/ Upstream Basin Extent	Bell	OSRW
Sulphur Creek of Dale Hollow Lake (Wolf River)	Dale Hollow Reservoir Backwaters to Headwaters	36.64784, -85.20342/ Headwaters	Clinton	OSRW
Trace Branch of Stinking Creek*	Basin Upstream of Mouth	36.91912, -83.64859/ Upstream Basin Extent	Knox	OSRW
Trammel Fork of Marsh Creek*	Basin Upstream of Mouth	36.62326, -84.39085/ Upstream Basin Extent	McCreary	OSRW
Turkey Creek of Stinking Creek*	Basin Upstream of Mouth	36.85630, -83.79854/ Upstream Basin Extent	Knox	OSRW
Tyes Fork of Bennetts Branch*	Basin Upstream of Mouth	36.68434, -84.03062/ Upstream Basin Extent	Whitley	OSRW
Unnamed Tributary of Buffalo Creek of Clear Fork*	Basin Upstream of Tennessee State Line	36.58854, -83.95749/ Upstream Basin Extent	Whitley	OSRW
Unnamed Tributary of Cane Creek of Rockcastle River	Mouth to Headwaters	37.05162, -84.19761/ Headwaters	Laurel	OSRW
Unnamed Tributary of Meadow Branch of Poor Fork Cumberland River*	Basin Upstream of Mouth	37.06055, -82.75766/ Upstream Basin Extent	Letcher	OSRW
Unnamed Tributary of Rock Creek of Big South Fork Cumberland River	Mouth to Headwaters	36.66420, -84.62917/ Headwaters	McCreary	OSRW
Unnamed Tributary of Rock Creek of Big South Fork Cumberland River	Mouth to Headwaters	36.64450, -84.71115/ Headwaters	McCreary	OSRW
Watts Branch of Rock Creek*	Basin Upstream of Mouth	36.65759, -84.65619/ Upstream Basin Extent	McCreary	OSRW
Watts Creek of Cumberland River*	Basin Upstream of Camp Blanton Lake	36.86035, -83.37971/ Upstream Basin Extent	Harlan	OSRW
White Oak Creek of Jones Branch*	Basin Upstream of Mouth	36.70228, -84.59731/ Upstream Basin Extent	McCreary	OSRW
White Oak Creek of Sinking Creek	Basin from 0.05 River Miles Downstream of Little White Oak Creek (Includes Little White Oak Creek)	37.10105, -84.20010/ Upstream Basin Extent	Laurel	CAH
Wolf Creek of Clear Fork*	Basin Upstream of Little Wolf Creek	36.65715, -84.15624/ Upstream Basin Extent	Whitley	OSRW
Wood Creek Lake of Wood Creek	Entire Reservoir	37.21479, -84.19935/ Upstream Lake Extent	Laurel	WAH, CAH
Wood Creek of Little Rockcastle River	Mouth to Wood Creek Lake Dam	37.23233, -84.19928/ 37.21479, -84.19935	Laurel	CAH
Youngs Creek of Cumberland River*	Basin Upstream of Mouth	36.77668, -84.20617/ Upstream Basin Extent	Whitley	OSRW

* Waters that support federally recognized endangered or threatened species pursuant to the Endangered Species Act of 1973, [as amended,] 16 U.S.C. 1531-1544.

Table C: SURFACE WATER USE DESIGNATIONS				
Stream	Zone (Descriptive and water body or segment river miles)	County	Use Designation	Exceptions to Specific Criteria
BIG SANDY RIVER BASIN				
Hobbs Fork of Pigeonroost Fork of Wolf Creek	Mouth to Headwaters (0.0-3.9)	Martin	WAH, PCR, SCR, OSRW	
Lower Pigeon Branch of Elkhorn Creek	Left Fork to Headwaters (0.6-1.9)	Pike	WAH, PCR, SCR, OSRW	
Paint Creek of Levisa Fork	Levisa Fork to Paintsville Dam (0.0-8.3)	Johnson	CAH, PCR, SCR	
Russell Fork of Levisa Fork of Big Sandy River	Clinch Field RR Yard off HWY 80 to Virginia State Line (15.0-16.5)	Pike	WAH, PCR, SCR, OSRW	
Thompson Fork of Souders Branch	Mouth to Headwaters (0.0-1.0)	Floyd	WAH, PCR, SCR, OSRW	
Toms Branch of Elkhorn Creek	Mouth to Headwaters (0.0-1.6)	Pike	WAH, PCR, SCR, OSRW	
Unidentified Tributary of Hobbs Fork	Hobbs Fork of Pigeonroost Fork to Headwaters (0.0-0.55)	Martin	WAH, PCR, SCR, OSRW	
Unidentified Tributary of Open Fork Paint Creek	Mouth to Headwaters (0.0-0.8)	Morgan	WAH, PCR, SCR, OSRW	
LAKES AND RESERVOIRS				
Paintsville	Entire reservoir	Johnson	WAH, CAH, PCR, SCR	
LITTLE SANDY RIVER BASIN				
Arabs Fork of Big Sinking Creek	Clay Fork to Headwaters (0.0-5.1)	Elliott	WAH, PCR, SCR, OSRW	
Big Caney Creek	Grayson Lake to source (1.8-15.3)	Elliott/ Rowan	CAH, PCR, SCR, OSRW	

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Big Sinking Creek of Little Sandy River	SR 986 to Clay Fork and Arab Fork (11.0-15.9)	Carter/ Elliott	WAH, PCR, SCR, OSRW	
Laurel Creek of Little Sandy River	Little Sandy River to Carter School Rd (0.0-7.6)	Elliott/ Rowan	CAH, PCR, SCR,	
Laurel Creek of Little Sandy River	Carter School Rd Bridge to Headwaters (7.6-14.7)	Elliott/ Rowan	CAH, PCR, SCR, OSRW	
Meadow Branch of Little Fork of Little Sandy River	Mouth to Headwaters (0.0-1.4)	Elliott	WAH, PCR, SCR, OSRW	
Middle Fork of Little Sandy River	Mouth to Sheepskin Branch (0.0-3.4)	Elliott	WAH, PCR, SCR, OSRW	
Nichols Fork of Little Fork of Little Sandy River	Green Branch to Headwaters (0.0-2.0)	Elliott	WAH, PCR, SCR, OSRW	
LAKES AND RESERVOIRS				
Greenbo	Entire Reservoir	Greenup	WAH, CAH, PCR, SCR	
LICKING RIVER BASIN				
Blackwater Creek of Licking River	Eaton Creek to Greasy Fork (3.8-11.7)	Morgan	WAH, PCR, SCR, OSRW	
Blanket Creek of Licking River	Mouth to Unidentified Tributary (0.0-1.9)	Pendleton	WAH, PCR, SCR, OSRW	
Botts Fork of Brushy Fork of Licking River	Mouth to Landuse Change (0.0-2.1)	Menifee	WAH, PCR, SCR, OSRW	
Bowman Creek	Mouth to Unidentified Tributary (0.0-6.0)	Kenton	WAH, PCR, SCR, OSRW	
Brushy Fork of Meyers Creek	Cave Run Lake Backwaters to Headwaters (0.7-5.6)	Menifee	WAH, PCR, SCR, OSRW	
Bucket Branch of North Fork of Licking River	Mouth to Headwaters (0.0-1.9)	Morgan	WAH, PCR, SCR, OSRW	
Cedar Creek of Licking River	Mouth to North Branch of Cedar Creek (0.0-1.7)	Robertson	WAH, PCR, SCR, OSRW	
Craney Creek	Source to North Fork of Licking River (0.0-11.2)	Rowan/ Morgan	CAH, PCR, SCR, OSRW	
Devils Fork of North Fork of Licking River	Mouth to Headwaters (0.0-8.5)	Elliott/ Morgan	WAH, PCR, SCR, OSRW	
Flour Creek of Licking River	Mouth to Unidentified Tributary (0.0-2.2)	Pendleton	WAH, PCR, SCR, OSRW	
Grovers Creek of Kincaid Creek	Kincaid Lake Backwaters to Unidentified Tributary (0.5-3.4)	Bracken/ Pendleton	WAH, PCR, SCR, OSRW	
Licking River	Mouth of UT entering on the right descending bank to 0.1 mile upstream of Turkey Run (River mile 138.3-140.3)	Bath/Fleming	WAH, PCR, SCR, OSRW	
Licking River	River Mile 144.0 (38.25141-83.6932) to River Mile 146.1 (0.75 mile downstream of Haven Branch)	Bath/Fleming	WAH, PCR, SCR, OSRW	
Licking River	River Mile 175.6 (U.S. Highway 60 Bridge) to River Mile 180.8 (Cave Run Lake Dam (175.6-180.8)	Bath/ Rowan	CAH, PCR, SCR	
Licking River	River Mile 159.3 (SR 211) to River Mile 170.5 (Unnamed Road off Slate Point Road)	Bath/ Rowan/ Fleming	WAH, PCR, SCR, OSRW	
Licking River	River Mile 19.3 (Hwy 536 Bridge) to River Mile 117.6 (1.3 miles above Fishtrap Creek)	Kenton/ Campbell/ Pendleton/ Harrison/ Robertson/ Fleming	WAH, PCR, SCR, OSRW	
Minor Creek of Craney Creek	Mouth to river mile 2.8 (0.0-2.8)	Morgan/ Rowan	CAH, PCR, SCR	
North Fork of Licking River	Cave Run Lake Backwaters to Devils Fork (8.4-13.4)	Morgan	WAH, PCR, SCR, OSRW	
Sawyers Fork of Cruises Creek	Mouth to Headwaters (0.0-3.3)	Kenton	WAH, PCR, SCR, OSRW	
Slabcamp Creek of Craney Creek of Licking River	Mouth to Headwaters (0.0-3.7)	Rowan	CAH, PCR, SCR, OSRW	
Slate Creek of Licking River	Mouth to Mill Creek (0.0-13.55)	Bath	WAH, PCR, SCR, OSRW	
South Fork Grassy Creek of Grassy Creek of Licking River	Mouth to Greasy Creek (0.0-19.8)	Kenton/ Pendleton	WAH, PCR, SCR, OSRW	
Unidentified Tributary of Shannon Creek of North Fork of Licking River	Mouth to Headwaters 0.0-2.2)	Mason	WAH, PCR, SCR, OSRW	
Welch Fork of Brushy Fork of Licking River	Mouth to First Unnamed Tributary (0.0-1.0)	Menifee	WAH, PCR, SCR, OSRW	
West Creek of Licking River	Mouth to Headwaters (0.0-9.8)	Harrison/ Robertson	WAH, PCR, SCR, OSRW	
KENTUCKY RIVER BASIN				

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Backbone Creek of Sixmile Creek of Kentucky River	Mouth to Scrabble Creek (0.0-1.65)	Franklin/ Henry/ Shelby	WAH, PCR, SCR, OSRW	
Bear Branch of North Fork of Kentucky River	Above Sediment Pond to Headwaters (0.3-1.2)	Perry	WAH, PCR, SCR, OSRW	
Big Double Creek of Red Bird River	Mouth to Confluence of Left and Right Forks of Big Double Creek (0.0-4.4)	Clay	WAH, PCR, SCR, OSRW	
Bill Branch of Laurel Fork of Greasy Creek	Mouth to Right Fork and Left Fork Creek (0.0-0.3)	Leslie	WAH, PCR, SCR, OSRW	
Billey Fork of Millers Creek	Land Use Change to Headwaters (2.6-8.8)	Lee/Elliott	WAH, PCR, SCR, OSRW	
Bill Oak Branch of Left Fork of Buffalo Creek	Mouth to Headwaters (0.0-0.3)	Owsley	WAH, PCR, SCR, OSRW	
Buffalo Creek of South Fork of Kentucky River	Mouth to Right Fork and Left Fork (0.0-1.6)	Owsley	WAH, PCR, SCR, OSRW	
Bullskin Creek of South Fork Kentucky River	Mouth to Headwaters (0.0-14.55)	Clay	WAH, PCR, SCR, OSRW	
Cavanaugh Creek	South Fork of Station Camp Creek to Foxtown Rd (0.0-8.3)	Jackson	WAH, PCR, SCR, OSRW	
Cherry Run of Boyd Run of North Elkhorn Creek	Mouth to Boyd Run (0.0-0.9)	Scott	WAH, PCR, SCR, OSRW	
Chester Creek of Middle Fork of Red River	Mouth to Headwaters (0.0-2.8)	Wolfe	WAH, PCR, SCR, OSRW	
Chimney Top Creek of Red River	Basin (0.0-4.6)	Wolfe	CAH, PCR, SCR	
Clear Creek of Kentucky River	Mouth to East Fork Clear Creek (0.0-9.0)	Woodford	WAH, PCR, SCR, OSRW	
Clemons Fork of Buckhorn Creek	Mouth to Headwaters (0.0-4.8)	Breathitt	WAH, PCR, SCR, OSRW	
Coles Fork of Buckhorn Creek	Mouth to Headwaters (0.0-6.2)	Breathitt	WAH, PCR, SCR, OSRW	
Craig Creek of Kentucky River	Mouth (Kentucky River Backwaters) to Unidentified Tributary (0.0-2.7)	Woodford	WAH, PCR, SCR, OSRW	
Deep Ford Branch of Cutshin Creek	Above Pond to Headwaters (0.3-1.35)	Leslie	WAH, PCR, SCR, OSRW	
Dix River	Mouth (Kentucky River) to River Mile 3.1 (Herrington Lake Dam) (0.0-3.1)	Garrard/ Mercer	CAH, PCR, SCR	
Dog Fork of Swift Camp Creek	Basin	Wolfe	CAH, PCR, SCR	
Drennon Creek of Kentucky River	Fivemile Creek to Town Branch (8.7-12.2)	Henry	WAH, PCR, SCR, OSRW	
East Fork of Indian Creek of Indian Creek of Red River	Headwaters East Fork of Indian Creek to Indian Creek (0.0-9.0)	Menifee	CAH, PCR, SCR OSRW	
Elisha Creek of Red Bird River	Land Use Change (Residential) to the confluence of Right Fork and Middle Fork Elisha Creek (0.8-1.8)	Leslie	WAH, PCR, SCR, OSRW	
Emily Run of Drennon Creek	Mouth to Unidentified Tributary (0.0-4.0)	Henry	WAH, PCR, SCR, OSRW	
Evans Fork of Billey Fork of Millers Creek	Mouth to Headwaters (0.0-3.0)	Estill	WAH, PCR, SCR, OSRW	
Falling Rock Branch of Clemons Fork of Buckhorn Creek	Mouth to Headwaters (0.0-0.7)	Breathitt	WAH, PCR, SCR, OSRW	
Gilberts Creek of Kentucky River	Mouth to Unidentified Tributary (0.0-2.6)	Anderson	WAH, PCR, SCR, OSRW	
Gladie Creek of Red River	Basin	Menifee	CAH, PCR, SCR	
Gladie Creek of Red River	Land Use Change to Long Branch (0.5-7.25)	Menifee	CAH, PCR, SCR, OSRW	
Goose Creek of South Fork of Kentucky River	Mouth to Laurel Creek (0.0-9.1)	Clay/Leslie	WAH, PCR, SCR, OSRW	
Griers Creek of Kentucky River	Kentucky River Backwaters to Unidentified Tributary (0.1-3.5)	Woodford	WAH, PCR, SCR, OSRW	
Grindstone Creek of Kentucky River	Kentucky River Backwaters to Headwaters (0.1-1.9)	Franklin	WAH, PCR, SCR, OSRW	
Hardwick Creek of Red River	Mouth to Little Hardwick Creek (0.0-3.25)	Powell	WAH, PCR, SCR, OSRW	
Hell For Certain of Middle Fork of Red River	Mouth to Big Fork (0.0-2.1)	Leslie	WAH, PCR, SCR, OSRW	
Hines Creek of Kentucky River	Kentucky River Backwaters to confluence with Unidentified Tributary (0.1-1.9)	Madison	WAH, PCR, SCR, OSRW	
Honey Branch of Greasy Creek of Middle Fork of Kentucky River	Mouth to Headwaters (0.0-1.35)	Leslie	WAH, PCR, SCR, OSRW	
Hopper Cave Branch of Cavanaugh Creek	Mouth to Headwaters (0.0-1.8)	Jackson	WAH, PCR, SCR, OSRW	

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Indian Creek of Eagle Creek	Mouth to Headwaters (0.0-5.4)	Carroll	WAH, PCR, SCR, OSRW	
Indian Creek of Red River	River Mile 1.25 (East Fork of Indian Creek) to River Mile 5.2 (0.3 miles below Bear Branch)	Menifee	CAH, PCR, SCR	
Indian Fork of Sixmile Creek of Kentucky River	Mouth to Headwaters (0.0-3.3)	Shelby	WAH, PCR, SCR, OSRW	
Jessamine Creek of Kentucky River	Stream segment within the R.J. Corman Natural Area (12.3-13.55)	Jessamine	WAH, PCR, SCR, OSRW	
John Carpenter Fork of Clemons Fork of Buckhorn Creek	Mouth to Headwaters (0.0-1.2)	Breathitt	WAH, PCR, SCR, OSRW	
Joyce Fork of Cortland Fork	Mouth to Headwaters (0.0-1.2)	Owsley	WAH, PCR, SCR, OSRW	
Katies Creek of Red Bird River	Mouth to Headwaters (0.0-4.0)	Clay	WAH, PCR, SCR, OSRW	
Laurel Fork of Left Fork Buffalo Creek of Buffalo Creek	Cortland Fork to Big Branch (0.0-3.75)	Owsley	WAH, PCR, SCR, OSRW	
Left Fork of Big Double Creek of Kentucky River	Mouth to Headwaters (0.0-1.5)	Clay	WAH, PCR, SCR, OSRW	
Line Fork of North Fork of Kentucky River	Defeated Creek to Headwaters (12.2-28.6)	Letcher	WAH, PCR, SCR, OSRW	
Little Middle Fork of Elisha Creek of Red Bird River	Mouth to Headwaters (0.0-0.75)	Leslie	WAH, PCR, SCR, OSRW	
Little Millseat Branch of Clemons Fork of Buckhorn Creek	Mouth to Headwaters (0.0-1.2)	Breathitt	WAH, PCR, SCR, OSRW	
Little Sixmile Creek of Sixmile Creek of Kentucky River	Mouth to Headwaters (0.0-5.3)	Henry	WAH, PCR, SCR, OSRW	
Little Sturgeon Creek of Sturgeon Creek	Mouth to Warren Chapel Branch (0.0-3.0)	Owsley	WAH, PCR, SCR, OSRW	
Low Gap Branch of Elk Creek	Mouth to Headwaters (0.0-0.8)	Letcher	WAH, PCR, SCR, OSRW	
Lower Devil Creek of North Fork Kentucky River	Mouth to Middle Fork Lower Devil Creek (0.0-4.65)	Lee	WAH, PCR, SCR, OSRW	
Lower Howard Creek of Kentucky River	Mouth to West Fork (0.5-6.6)	Clark	WAH, PCR, SCR, OSRW	
Lulbegrud Creek of Red River	Mouth to Falls Branch (0.0-7.3)	Clark/ Powell	WAH, PCR, SCR, OSRW	
Middle Fork of Kentucky River	Mouth to Upper Twin Creek (0.0-12.7)	Lee/ Owsley	WAH, PCR, SCR, OSRW	
Middle Fork of Kentucky River	Hurts Creek to Greasy Creek (75.2-85.5)	Leslie	WAH, PCR, SCR, OSRW	
Middle Fork of Red River	River Mile 10.7 (0.7 miles below Sinking Fork) to Headwaters (15.3)	Powell	CAH, PCR, SCR	
Middle Fork of Red River	South Fork of Red River to Natural Bridge State Park Lake (1.8-7.2)	Powell	CAH, PCR, SCR, OSRW	
Mikes Branch of Laurel Fork of Left Fork of Buffalo Creek	Mouth to Headwaters (0.0-0.7)	Owsley	WAH, PCR, SCR, OSRW	
Mill Creek of Kentucky River	Near Mouth to Headwaters (0.0-1.85)	Owen	WAH, PCR, SCR, OSRW	
Millseat Branch of Clemons Fork of Buckhorn Creek	Mouth to Headwaters (0.0-1.85)	Breathitt	WAH, PCR, SCR, OSRW	
Muddy Creek of Kentucky River	Elliston, Kentucky to Viney Fork (13.8-20.65)	Madison	WAH, PCR, SCR, OSRW	
Musselman Creek of Eagle Creek	Mouth to Headwaters (0.0-9.0)	Grant	WAH, PCR, SCR, OSRW	
Parched Corn Creek	Source to Red River (0.0-2.25)	Wolfe	CAH, PCR, SCR	
Red River	River Mile 70.4 (SR 746) to River Mile 50.3 (0.1 miles below Auxier Branch)	Menifee/ Wolfe	WAH, PCR, SCR, OSRW	
Red Bird River of South Fork of Kentucky River	Mouth to Big Creek (0.0-15.3)	Clay	WAH, PCR, SCR, OSRW	
Right Fork of Buffalo Creek of Kentucky River	Mouth to Headwaters (0.0-2.1)	Owsley	WAH, PCR, SCR, OSRW	
Right Fork of Elisha Creek of Redbird River	Mouth to Headwaters (0.0-3.3)	Leslie	WAH, PCR, SCR, OSRW	
Roaring Fork of Lewis Fork of Buckhorn Creek	Mouth to Headwaters (0.0-0.9)	Breathitt	WAH, PCR, SCR, OSRW	
Rock Lick Creek	Mouth to Headwaters (0.0-9.6)	Jackson	WAH, PCR, SCR, OSRW	
Sand Ripple Creek of Kentucky River	Kentucky River Backwaters to Headwaters (0.1-3.9)	Henry	WAH, PCR, SCR, OSRW	
Severn Creek of Kentucky River	Kentucky River Backwaters to North Fork of Severn Creek (1.35-3.0)	Owen	WAH, PCR, SCR, OSRW	
Shaker Creek of Kentucky River	Near Mouth to Shawnee Run (0.1-1.4)	Mercer	WAH, PCR, SCR, OSRW	
Shelly Rock Fork of Millseat Branch of Clemons Fork	Mouth to Headwaters (0.0-0.6)	Breathitt	WAH, PCR, SCR, OSRW	

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Sixmile Creek of Kentucky River	Little Sixmile Creek to Dam (7.1-15.3)	Henry	WAH, PCR, SCR, OSRW	
South Fork of Kentucky River	Mouth to Sexton Creek (0.0-27.8)	Owsley	WAH, PCR, SCR, OSRW	
South Fork of Red River	Mouth to Sandlick Fork (0.0-4.2)	Powell	WAH, PCR, SCR, OSRW	
South Fork of Station Camp Creek of Kentucky River	Mouth to Rock Lick Creek (0.0-9.7)	Jackson	WAH, PCR, SCR, OSRW	
Spruce Branch of Redbird River	Mouth to Headwaters (0.0-1.0)	Clay	WAH, PCR, SCR, OSRW	
Station Camp Creek of Kentucky River	Landuse Change (Crooked Cr.) to South Fork of Station Camp Creek (3.3-22.7)	Estill	WAH, PCR, SCR, OSRW	
Steeles Run of Elkhorn Creek	Mouth to Unidentified Tributary (0.0-4.2)	Fayette	WAH, PCR, SCR, OSRW	
Steer Fork of War Fork of Station Camp Creek	Mouth to Headwaters (0.0-2.7)	Jackson	CAH, PCR, SCR, OSRW	
Sturgeon Creek of Kentucky River	Duck Fork to Little Sturgeon Creek (1.3-13.7)	Lee/ Owsley	WAH, PCR, SCR, OSRW	
Sugar Creek of Redbird River	Landuse Change to Headwaters (0.6-5.4)	Leslie	WAH, PCR, SCR, OSRW	
Sulphur Lick Creek of Elkhorn Creek	Mouth to Headwaters (0.0-5.2)	Franklin	WAH, PCR, SCR, OSRW	
Swift Camp Creek	Red River to Source (0.0-13.9)	Wolfe	CAH, PCR, SCR	
Unidentified Tributary of Cawood Branch of Beech Fork	Mouth to Headwaters (0.0-2.1)	Leslie	WAH, PCR, SCR, OSRW	
Unidentified Tributary of Cedar Creek of Kentucky River	Mouth to Headwaters (0.0-1.4)	Owen	WAH, PCR, SCR, OSRW	
Unidentified Tributary of Glenns Creek of Kentucky River	Mouth to Headwaters (0.0-1.9)	Woodford	WAH, PCR, SCR, OSRW	
Unidentified Tributary of Jacks Creek of Kentucky River	Mouth to Headwaters (0.0-1.15)	Madison	WAH, PCR, SCR, OSRW	
Unidentified Tributary of Kentucky River	Mouth at Kentucky River Backwaters to Land Use Change (0.1-1.4)	Franklin	WAH, PCR, SCR, OSRW	
Unidentified Tributary of Line Fork of North Fork of Kentucky River (LCW)	Mouth to Headwaters (0.0-0.6)	Letcher	WAH, PCR, SCR, OSRW	
War Fork of Station Camp Creek	Mouth to Headwaters (0.0-13.8)	Jackson	CAH, PCR, SCR, OSRW	
War Fork of Station Camp Creek	Basin above River Mile 1.9 (0.3 miles below Tarpin Lick Branch (2.5))	Jackson	CAH, PCR, SCR	
Watches Fork of Laurel Fork of Left Fork of Buffalo Creek	Mouth to Headwaters (0.0-1.0)	Owsley	WAH, PCR, SCR, OSRW	
Wolfpen Creek of Red River	Mouth to Headwaters (0.0-3.6)	Meniffee	WAH, PCR, SCR, OSRW	
LAKES AND RESERVOIRS				
Bert Combs	Entire Reservoir	Clay	WAH, CAH, PCR, SCR	
Fishpond	Entire Reservoir	Letcher	WAH, CAH, PCR, SCR	
Mill Creek	Entire Reservoir	Wolfe	WAH, CAH, PCR, SCR	
SALT RIVER BASIN				
Brashears Creek of Salt River	Guist Creek to Bullskin and Clear Creek (13.0-25.9)	Shelby/ Spencer	WAH, PCR, SCR, OSRW	
Cedar Creek of Salt River	Mouth to Greens Branch (0.0-5.2)	Bullitt	WAH, PCR, SCR, OSRW	
Chaplin River of Salt River	Thompson Creek to Cornishville, Kentucky (40.9-54.2)	Washington	WAH, PCR, SCR, OSRW	
Doctors Fork of Chaplin River	Mouth to Begley Branch (0.0-3.8)	Boyle	WAH, PCR, SCR, OSRW	
Guist Creek of Brashears Creek	Mouth to Jephtha Creek (0.0-15.7)	Spencer	WAH, PCR, SCR, OSRW	
Harts Run of Wilson Creek of Rolling Fork of Salt River	Mouth to Headwaters (0.0-1.8)	Bullitt	WAH, PCR, SCR, OSRW	
Indian Creek of Thompson Creek of Chaplin River of Salt River	Mouth to Unidentified Tributary (0.0-2.9)	Mercer	WAH, PCR, SCR, OSRW	
Lick Creek of Long Lick Creek of Beech Fork of Salt River	Mouth to 0.1 miles below Dam (0.0-4.1)	Washington	WAH, PCR, SCR, OSRW	
Otter Creek of Rolling Fork of Salt River	Landuse Change to confluence of East Fork and Middle Fork Otter Creek (1.7-2.9)	Larue	WAH, PCR, SCR, OSRW	
Overalls Creek of Wilson Creek of Rolling Fork of Salt River	Mouth to Headwaters of Middle Fork of Overalls Creek (0.0-3.2)	Bullitt	WAH, PCR, SCR, OSRW	
Paddy's Run	Mouth (Ohio River) to headwaters	Jefferson	PCR, SCR	401 KAR 10:031, Section 2(1)(d) and 2(3)[2(2)] – do not apply.

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Rolling Fork of Salt River	River Mile 53.6 (0.8 mi upstream of Stiles Rd Bridge) to River Mile 62.5 (0.5 mi upstream of Otter Cr)	Larue/ Nelson	WAH, PCR, SCR, OSRW	
Salt Lick Creek of Rolling Fork of Salt River	Mouth to Headwaters (0.0-8.6)	Larue/ Marion	WAH, PCR, SCR, OSRW	
Sulphur Creek of Chaplin River	Mouth to confluence of Cheese Lick and Brush Creek (0.0-10.0)	Anderson/ Mercer/ Washington	WAH, PCR, SCR, OSRW	
Unidentified Tributary of Glens Creek of Chaplin River	Mouth to Headwaters (0.0-2.3)	Washington	WAH, PCR, SCR, OSRW	
West Fork of Otter Creek of Rolling Fork of Salt River	Mouth to Headwaters (0.0– 5.4)	Larue	WAH, PCR, SCR, OSRW	
Wilson Creek of Rolling Fork of Salt River	Mouth to Headwaters (0.0-18.4)	Bullitt/ Nelson	WAH, PCR, SCR, OSRW	
GREEN RIVER BASIN				
Barren River	Green River to River Mile Lock and Dam #1 to Green River (0.0-15.1)	Butler/ Warren	WAH, PCR, SCR, OSRW	
Beaverdam Creek	Source to Green River (14.5-0.0)	Edmonson	CAH, PCR, SCR, OSRW	
Big Brush Creek	Brush Creek to Poplar Grove Branch (13.0-17.3)	Green	WAH, PCR, SCR, OSRW	
Cane Run of Nolin River	Nolin River Lake Backwaters to Headwaters (0.8-6.5)	Hart	WAH, PCR, SCR, OSRW	
Caney Fork of Peter Creek	Mouth to Headwaters (0.0-6.7)	Barren	WAH, PCR, SCR, OSRW	
Clifty Creek of Rough River	Barton Run to Western Kentucky Parkway (7.5-17.3)	Grayson	WAH, PCR, SCR, OSRW	
Clifty Creek of Wolf Lick Creek	Little Clifty Creek to Sulphur Lick 0.0-13.4)	Todd	WAH, PCR, SCR, OSRW	
Double Sink Spring	Basin Outside Mammoth Cave National Park Boundary	Edmonson/ Barren	CAH, PCR, SCR, OSRW	
East Fork of Little Barren River	Red Lick Creek to Flat Creek (18.9-20.6)	Metcalfe	WAH, PCR, SCR, OSRW	
Echo River	Basin Outside Mammoth Cave National Park Boundary (underground system)	Edmonson	CAH, PCR, SCR, OSRW	
Elk Lick Creek	0.1 mile Downstream of Mouth of Duck Lick Creek to Barren Fork Creek and Edger Creek (3.6-11.8)	Logan	WAH, PCR, SCR, OSRW	
Ellis Fork of Damron Creek	Mouth to Headwaters (0.0-2.2)	Adair/ Russell	WAH, PCR, SCR, OSRW	
Falling Timber Creek of Skaggs Creek	Landuse Change to Headwaters (10.8-15.2)	Barren/ Metcalfe	WAH, PCR, SCR, OSRW	
Fiddlers Creek of North Fork of Rough River	Mouth to Headwaters (0.0-5.9)	Breckinridge	WAH, PCR, SCR, OSRW	
Forbes Creek of Buck Creek of East Fork of Pond River	Mouth to Unidentified Tributary (0.0-4.1)	Christian	WAH, PCR, SCR, OSRW	
Ganter Spring	Basin Outside Mammoth Cave National Park Boundary	Edmonson	CAH, PCR, SCR, OSRW	
Gasper River of Barren River	Clear Fork to Wiggington Creek (17.2-35.6)	Logan/ Warren	WAH, PCR, SCR, OSRW	
Goose Creek of Green River	Mouth to Little Goose Creek (0.0-8.5)	Casey/ Russell	WAH, PCR, SCR, OSRW	
Green River	0.5 miles upstream of Davenport Landing to 0.75 miles downstream of Lock & Dam #3 (105.9-108.4)	Muhlenburg /Ohio	WAH, PCR, SCR, OSRW	
Green River	0.9 miles upstream of William Natcher Parkway to 0.1 miles upstream of Unidentified Tributary on right descending bank (139.7-140.7)	Butler	WAH, PCR, SCR, OSRW	
Green River	River Mile 210.6 (eastern Mammoth Cave National Park Boundary to River Mile 309.1 (Green River Lake Dam)	Hart/Taylor/ Green	WAH, PCR, SCR, OSRW	
Green River	River Mile 185.0 (western Mammoth Cave National Park Boundary) to River Mile 210.6 (eastern Mammoth Cave National Park Boundary)	Edmonson/ Hart	WAH, PCR, SCR, OSRW	
Green River	Downstream Mammoth Cave National Park Boundary to Lynn Camp Creek (185.0-250.3)	Edmonson/ Hart	WAH, PCR, SCR, OSRW	
Green River	River Mile 148.5 (1.0 river mile below Lock and Dam #4) to River Mile 170.0 (Lock and Dam #5)	Butler/ Warren	WAH, PCR, SCR, OSRW	
Halls Creek of Rough River	Unidentified Tributary to Headwaters (4.8-9.6)	Ohio	WAH, PCR, SCR, OSRW	

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Lick Creek of West Fork of Drakes Creek	Mouth to Headwaters (0.0-10.2)	Simpson	CAH, PCR, SCR, OSRW	
Linders Creek of Rough River	Mouth to Sutzer Creek (0.0-7.9)	Hardin	WAH, PCR, SCR, OSRW	
Little Beaverdam Creek of Green River	Mouth to SR 743 (0.0-11.4)	Edmonson/ Warren	WAH, PCR, SCR, OSRW	
Little Short Creek of Rough River	Mouth to Headwaters (0.0-3.1)	Grayson	WAH, PCR, SCR, OSRW	
Lynn Camp Creek	Green River to Source (0.0-8.3)	Hart	CAH, PCR, SCR	
Lynn Camp Creek of Green River	Mouth to Lindy Creek (0.0-8.5)	Hart	CAH, PCR, SCR, OSRW	
McFarland Creek of West Fork of Pond River	Grays Branch to Unidentified Tributary (1.5-5.0)	Christian	WAH, PCR, SCR, OSRW	
McCoy Spring	Basin Outside Mammoth Cave National Park Boundary	Hart	CAH, PCR, SCR, OSRW	
Meeting Creek of Rough River	Little Meeting Creek to Petty Branch (5.2-14.0)	Grayson/ Hardin	WAH, PCR, SCR, OSRW	
Mile 205.7 Spring	Basin Outside Mammoth Cave National Park Boundary	Hart	CAH, PCR, SCR, OSRW	
Muddy Creek of Caney Creek of Rough River	Landuse Change to Headwaters (13.5-15.5)	Ohio	WAH, PCR, SCR, OSRW	
Nolin River	River Mile 7.7 (Nolin Lake Dam) to Green River (0.0-7.7)	Edmonson	CAH, WAH, PCR, SCR	
North Fork of Rough River	Buffalo Creek to Reservoir Dam (22.1-26.9)	Breckinridge	WAH, PCR, SCR, OSRW	
Peter Creek of Barren River	Caney Fork to Dry Fork (11.6-18.5)	Barren	WAH, PCR, SCR, OSRW	
Pike Spring	Basin Outside Mammoth Cave National Park Boundary	Edmonson	CAH, PCR, SCR, OSRW	
Pond Run of Rough River	Landuse Change to Headwaters (1.4-6.8)	Breckinridge/Ohio	WAH, PCR, SCR, OSRW	
Puncheon Creek	Mouth to state line	Allen	WAH, PCR, SCR, OSRW	
Rough River	Linders Creek to Vertrees Creek (138.0-149.4)	Hardin	WAH, PCR, SCR, OSRW	
Rough River	River Mile 89.6 to Rough River Lake Dam to 90.4	Ohio/ Grayson	CAH, WAH, PCR, SCR	
Rough River	River Mile 74.5 to River Mile 74.2 (Hwy 54 Bridge)	McLean/ Ohio	CAH, PCR, SCR	
Roundstone Creek of Nolin River	Hwy 1140 (River Mile 3.8) to Headwaters (River Mile 10.25)	Hart	CAH, PCR, SCR	
Running Spring	Basin Outside Mammoth Cave National Park Boundary	Edmonson	CAH, PCR, SCR, OSRW	
Russell Creek of Green River	Mouth to Columbia WWTP (0.0-40.0)	Green/ Adair	WAH, PCR, SCR, OSRW	
Russell Creek of Green River	Reynolds Creek to confluence with Hudson Creek and Mount Olive Creek (56.9-66.3)	Adair, Russell	WAH, PCR, SCR, OSRW	
Sixes Creek of Indian Camp Creek	Wild Branch to Headwaters (2.0-7.5)	Ohio	WAH, PCR, SCR, OSRW	
Suds Spring	Basin Outside Mammoth Cave National Park Boundary	Hart/ Barren	CAH, PCR, SCR, OSRW	
Sulphur Branch of Alexander Creek	Mouth to Headwaters (0.0-3.0)	Edmonson	WAH, PCR, SCR, OSRW	
Thompson Branch	Webb Branch to Tennessee State Line (0.3-1.5)	Simpson	WAH, PCR, SCR, OSRW	
Trammel Fork of West Fork of Drakes Creek	River Mile 30.6 (Kentucky/Tennessee State Line) to Hwy 31E (River Mile 23.8)	Allen	CAH, PCR, SCR,	
Trammel Fork of West Fork of Drakes Creek	Mouth to Tennessee State Line (0.0-30.6)	Allen/Warren	CAH, PCR, SCR, OSRW	
Turnhole Spring	Basin Outside Mammoth Cave National Park Boundary	Edmonson/ Barren	CAH, PCR, SCR, OSRW	
Underground River System	Mammoth Cave National Park	Edmonson/ Hart/Barren	CAH, PCR, SCR, OSRW	
Unidentified Tributary of Green River	Landuse Change to Headwaters (1.7-3.2)	Adair	WAH, PCR, SCR, OSRW	
Unidentified Tributary of White Oak Creek	Hovious Rd Crossing to SR 76 (0.0-2.1)	Adair	WAH, PCR, SCR, OSRW	
West Fork of Pond River	Unidentified Tributary to East Branch of Pond River (12.45-22.5)	Christian	WAH, PCR, SCR, OSRW	
TRADEWATER RIVER BASIN				
East Fork of Flynn Fork of Tradewater River	Landuse Change (US Hwy 62) to Headwaters (2.15-4.6)	Caldwell	WAH, PCR, SCR, OSRW	

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Piney Creek of Tradewater River	Lake Beshear Backwaters to Headwaters (4.5-10.2)	Caldwell, Christian	WAH, PCR, SCR, OSRW	
Sandlick Creek of Tradewater River	Camp Creek to Headwaters (4.5-8.6)	Christian	WAH, PCR, SCR, OSRW	
Tradewater River	Dripping Springs Branch to Buntin Lake Dam (126.2-133.9)	Christian	WAH, PCR, SCR, OSRW	
Unidentified Tributary of Piney Creek of Tradewater River	Mouth to Headwaters (0.0-2.9)	Caldwell	WAH, PCR, SCR, OSRW	
Unidentified Tributary of Sandlick Creek of Tradewater River	Mouth to Headwaters (0.0-1.4)	Christian	WAH, PCR, SCR, OSRW	
LOWER CUMBERLAND RIVER BASIN				
Casey Creek	Mouth to headwaters (0.0-10.5)	Trigg	CAH, PCR, SCR	
Crooked Creek of Cumberland River	Energy Lake Backwaters to Headwaters (3.0-9.1)	Trigg	WAH, PCR, SCR, OSRW	
Cumberland River	0.2 Mile Downstream of Hickory Creek to 0.6 mile Upstream of Sugar Creek (10.2-11.9)	Livingston	WAH, PCR, SCR, OSRW	
Donaldson Creek of Cumberland River	Barkley Lake Backwaters to Unnamed Tributary (4.0-7.2)	Trigg	WAH, PCR, SCR, OSRW	
Elk Fork of Red River of Cumberland River	Tennessee State Line to Dry Branch (7.5-23.1)	Todd	WAH, PCR, SCR, OSRW	
Skinframe Creek	Livingston Creek to Headwaters (0.0-7.8)	Lyon	CAH, PCR, SCR	
Sugar Creek of Cumberland River	Lick Creek to Unidentified Tributary (2.2-6.9)	Livingston	WAH, PCR, SCR, OSRW	
Sulphur Spring Creek	Red River to Headwaters (0.0-9.1)	Simpson	CAH, PCR, SCR	
West Fork Red River	State Line to River Mile 32.2 (14.75-32.2)	Christian	CAH, PCR, SCR,	
West Fork Red River	State Line to mouth of Montgomery Creek (14.75-26.85)	Christian	CAH,[FC,] PCR, SCR, OSRW	
Whipporwill Creek	Red River to Headwaters (0.0-45.4)	Logan/Todd	WAH, PCR, SCR, OSRW	
UPPER CUMBERLAND RIVER BASIN				
Acorn Fork of Stinking Creek	Basin above River Mile 1.0	Knox	WAH, PCR, SCR, OSRW	
Adams Branch of Pigeon Roost Creek	Basin	Whitley	WAH, PCR, SCR, OSRW	
Archers Creek of Cumberland River	Basin (above RM 0.05 mi backwater at mouth)	Whitley	WAH, PCR, SCR, OSRW	
Bad Branch of Poor Fork of Cumberland River	Basin	Letcher	CAH, PCR, SCR, OSRW	
Bain Branch	Basin	Knox	WAH, PCR, SCR, OSRW	
Bark Camp Creek of Cumberland River	Basin (above RM 0.1 backwater at mouth)	Whitley	CAH, PCR, SCR, OSRW	
Barren Fork of Indian Creek	Basin	McCreary	WAH, PCR, SCR, OSRW	
Beaver Creek of Cumberland River	Basin	McCreary	CAH, PCR, SCR, OSRW	
Bee Lick Creek of Brushy Creek of Buck Creek	Mouth to Warren Branch (0.0-5.7)	Pulaski	WAH, PCR, SCR, OSRW	
Bens Fork of Little Clear Creek	Basin	Bell	WAH, PCR, SCR, OSRW	
Big Branch of Marsh Creek	Basin above River Mile 0.8	McCreary	WAH, PCR, SCR, OSRW	
Big Lick Branch of Cumberland River	Basin (above 1.1, Cumberland River backwaters)	Pulaski	WAH, PCR, SCR, OSRW	
Blacksnake Branch of Brownies Creek	Basin	Bell	WAH, PCR, SCR, OSRW	
Breedens Creek of Clover Fork of Cumberland River	Basin	Harlan	WAH, PCR, SCR, OSRW	
Brices Creek of Road Fork of Stinking Creek	Basin	Knox	WAH, PCR, SCR, OSRW	
Brownies Creek of Cumberland River	Basin above Blacksnake Branch (river mile 10.3)	Harlan	WAH, PCR, SCR, OSRW	
Brush Creek of Roundstone Creek	Wolf Creek to Reemergence of Sinking Creek (1.1-7.6)	Rockcastle	WAH, PCR, SCR, OSRW	
Brushy Creek of Buck Creek	Mouth to Headwaters (0.0-16.5)	Pulaski	WAH, PCR, SCR, OSRW	
Buck Creek of Cumberland River	River Mile 11.7 (Backwaters of Lake Cumberland) to RM 55.0 (0.8 miles upstream of confluence of Hurricane Creek)	Pulaski	WAH, PCR, SCR, OSRW	
Buck Creek of Clear Fork of Cumberland River	Basin	Whitley	WAH, PCR, SCR, OSRW	
Bucks Branch of Jellico Creek	Basin	Whitley	WAH, PCR, SCR, OSRW	
Buffalo Creek of Laurel Fork of Clear Fork of Cumberland River	Basin (including the unidentified tributary to the west) above Kentucky/ Tennessee State Line	Whitley	WAH, PCR, SCR, OSRW	

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Bunches Creek of Cumberland River	Basin	Whitley	CAH, PCR, SCR, OSRW	
Campbell Branch of Jellico Creek	Basin	Whitley	WAH, PCR, SCR, OSRW	
Cane Creek of Rockcastle River	Mouth to Dam (0.0-11.85)	Laurel	WAH, PCR, SCR, OSRW	
Caney Creek of Left Fork of Straight Creek	Basin	Bell	WAH, PCR, SCR, OSRW	
Cannon Creek of Yellow Creek	Basin above Cannon Creek Lake (RM 5.1)	Bell	WAH, PCR, SCR, OSRW	
Capuchin Creek of Jellico Creek	Basin from Mouth to Kentucky/Tennessee State Line (0.0-1.25)	McCreary	WAH, PCR, SCR, OSRW	
Clear Creek of Roundstone Creek	Scaffold Cane Branch to Davis Branch (3.45-7.8)	Rockcastle	WAH, PCR, SCR, OSRW	
Clifty Creek of Brushy Creek of Buck Creek	Mouth to Rocky Branch (0.0-2.7)	Pulaski	WAH, PCR, SCR, OSRW	
Clover Bottom Creek	Horse Lick Creek to River Mile 1.4	Jackson	CAH, PCR, SCR	
Cogur Fork of Indian Creek	Basin	McCreary	CAH, PCR, SCR, OSRW	
Coles Branch of Road Fork of Stinking Creek	Basin	Knox	WAH, PCR, SCR, OSRW	
Colliers Creek of Poor Fork of Cumberland River	Basin	Bell	WAH, PCR, SCR, OSRW	
Crisillis Branch of Jellico Creek	Basin	Whitley	WAH, PCR, SCR, OSRW	
Cumberland River	River Mile 549.65 (Backwaters Lake Cumberland) to River Mile 566.1 (0.2 mile below Summer Shoals)	McCreary/ Whitley	WAH, PCR, SCR, OSRW	
Cumberland River	Kentucky/Tennessee state line (River Mile 379.8) to River Mile 456.7 (Lake Cumberland Dam)	Clinton, Cumberland, Russell, Monroe	CAH, PCR, SCR	
Davis Branch of Little Yellow Creek	Basin	Bell	WAH, PCR, SCR, OSRW	
Dog Slaughter Creek of Cumberland River	Basin	Whitley	CAH, PCR, SCR, OSRW	
Dolen Branch of Rock Creek	Basin	McCreary	WAH, PCR, SCR, OSRW	
Eagle Creek of Cumberland River	Basin	McCreary	WAH, PCR, SCR, OSRW	
Elisha Branch of Laurel Creek	Basin	McCreary	WAH, PCR, SCR, OSRW	
FishTrap Branch	Basin above River Mile 0.5 (Lake Cumberland backwaters)	McCreary	WAH, PCR, SCR, OSRW	
Four Mile Creek of Cumberland River	Basin above River Mile 2.5	Bell	WAH, PCR, SCR, OSRW	
Four Mile Run of Yellow Creek Bypass	Basin above River Mile 1.0	Bell	WAH, PCR, SCR, OSRW	
Fugitt Creek of Clover Fork of Cumberland River	Basin	Harlan	CAH, PCR, SCR, OSRW	
Hale Fork of Road Fork of Stinking Creek	Basin	Knox	WAH, PCR, SCR, OSRW	
Hawk Creek of Rockcastle River	Basin	Laurel	CAH, PCR, SCR	
Hinkle Branch of Road Fork of Stinking Creek	Basin	Knox	WAH, PCR, SCR, OSRW	
Honeycutt Branch of Turkey Creek of Stinking Creek	Basin	Knox	WAH, PCR, SCR, OSRW	
Horse Lick Creek	Mouth (0.0) at Middle Fork of Rockcastle River to River Mile 12.3 (Clover Bottom Creek)	Jackson/ Rockcastle	WAH, PCR, SCR, OSRW	
Howards Creek of Illwill Creek of Wolf River	Dale Hollow Reservoir Backwaters to Headwaters	Clinton	WAH, PCR, SCR, OSRW	
Hunting Shirt Branch of Richland Creek	Basin	Knox	WAH, PCR, SCR, OSRW	
Indian Creek of Cumberland River	Kilburn Fork to Barren Fork (2.4-6.8)	McCreary	WAH, PCR, SCR, OSRW	
Indian Creek of Cumberland River	Basin above and including Barren Fork	McCreary	CAH, PCR, SCR, OSRW	
Jackie Branch of Bark Camp Creek	Mouth to Headwaters (0.0-1.65)	Whitley	CAH, PCR, SCR, OSRW	

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Jellico Creek of Cumberland River	River Mile 22.5 (confluence with Capuchin Creek) to River Mile 25.25 (Kentucky/Tennessee State Line)	McCreary	WAH, PCR, SCR, OSRW	
Jellico Creek of Cumberland River	Basin From and Including Capuchin Creek to the Kentucky/Tennessee State Line (22.5 to 25.25)	McCreary	WAH, PCR, SCR, OSRW	
Jennys Branch of Laurel Creek of Marsh Creek	Basin	McCreary	WAH, PCR, SCR, OSRW	
Kelly Branch of Clover Fork of Cumberland River	Basin	Harlan	WAH, PCR, SCR, OSRW	
Kennedy Creek of Little South Fork of Cumberland River	Little South Fork of Cumberland River to River Mile 1.0	Wayne	WAH, PCR, SCR, OSRW	
Kettle Creek	Kentucky/Tennessee State Line to Wells Creek (1.75-6.1)	Monroe	WAH, PCR, SCR, OSRW	
Kilburn Fork of Indian Creek	Basin	McCreary	WAH, PCR, SCR, OSRW	
Laurel Creek of Marsh Creek	River Mile 3.1 (Jennys Branch) to River Mile 9.0 (Dam)	McCreary	CAH, PCR, SCR, OSRW	
Laurel Creek of Marsh Creek	Basin above Mouth of Jennys Branch to Laurel Creek Lake Dam (3.2-9.0)	McCreary	WAH, CAH, PCR, SCR, OSRW	
Laurel Fork of Clear Fork of Cumberland River	Basin above River Mile 16.0 (John Partin Road off Hwy 190)	Bell	WAH, PCR, SCR, OSRW	
Laurel Fork of Clear Fork of Cumberland River	River Mile 4.3 (Kentucky/Tennessee state line) to River Mile 16.0 (John Partin Road off Hwy 90)	Whitley	WAH, PCR, SCR, OSRW	
Laurel Fork of Kilburn Fork	Basin	McCreary	WAH, PCR, SCR, OSRW	
Laurel Fork of Middle Fork Rockcastle River	Middle Fork of Rockcastle River to Headwaters (0.0-12.3)	Jackson	WAH, PCR, SCR, OSRW	
Laurel River	River Mile 0.9 to Laurel River Lake Dam (0.9-2.4)	Laurel, Whitley	CAH, PCR, SCR	
Lick Fork of Yellow Creek By-Pass of Yellow Creek	Basin	Bell	WAH, PCR, SCR, OSRW	
Little Popular Creek of Cumberland River	Basin above Hubbs Creek (4.4)	Knox	WAH, PCR, SCR, OSRW	
Little South Fork of Cumberland River	River Mile 4.4 (backwaters of Lake Cumberland) to River Mile 35.5 (Confluence with Langham Branch)	Wayne, McCreary	WAH, PCR, SCR, OSRW	
Little White Oak Creek	Mouth to Headwaters (0.0-2.6)	Laurel	WAH, PCR, SCR, OSRW	
Long Branch of Left Fork of Straight Creek	Basin	Bell	WAH, PCR, SCR, OSRW	
Looney Creek of Poor Fork of Cumberland River	Basin above River Mile 5.9 (Lynch City Limits)	Harlan	CAH, PCR, SCR	
Marsh Creek	Basin above River Mile 24.6 (Confluence with Murphy Creek) to River Mile 26.5 (within Kentucky)	McCreary	WAH, PCR, SCR, OSRW	
Marsh Creek	River Mile 0.05 (confluence with Cumberland River) to River Mile 24.6 (confluence with Murphy Creek)	McCreary	WAH, PCR, SCR, OSRW	
Martins Fork	Basin above River Mile 32.7 (Cumberland Gap National Historical Park Boundary)	Bell	CAH, PCR, SCR	
Martins Fork	River Mile 27.2 to River Mile 32.7 (Cumberland Gap National Historical Park Boundary)	Bell, Harlan	CAH, PCR, SCR, OSRW	
McFarland Creek of Cumberland River	Little McFarland Creek to Spring Branch (0.8-6.2)	Monroe	WAH, PCR, SCR, OSRW	
Meadow Branch of Poor Fork Cumberland River	Mouth to River Mile 1.95 and Basin above the East-Southeast Unnamed Tributary	Harlan	WAH, PCR, SCR, OSRW	
Meadow Fork of Franks Creek	Basin	Letcher	WAH, PCR, SCR, OSRW	
Meshack Creek of Cumberland River	Mouth to Pitcock Branch (0.0-2.8)	Monroe	WAH, PCR, SCR, OSRW	
Middle Fork of Rockcastle River	Confluence of Middle and South Forks of Rockcastle River (River Mile 0.0) to River Mile 7.9 (confluence of Indian Creek and Laurel Fork)	Jackson	WAH, PCR, SCR, OSRW	
Mill Branch of Stinking Creek	Basin above reservoir backwaters (0.8)	Knox	WAH, PCR, SCR, OSRW	
Mill Creek of Straight Creek	Basin	Bell	WAH, PCR, SCR, OSRW	
Mill Creek of Cumberland River	Basin	McCreary	WAH, PCR, SCR, OSRW	
Moore Creek of Stinking Creek	Basin	Knox	WAH, PCR, SCR, OSRW	
Mud Creek of Clear Fork of Cumberland River	Basin above River Mile 6.5 (0.3 miles above Siler Cemetery Road Bridge)	Whitley	WAH, PCR, SCR, OSRW	

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Mud Camp Creek of Cumberland River	Mouth to Collins Branch (0.0-1.2)	Cumberland	WAH, PCR, SCR, OSRW	
Mud Camp Creek of Cumberland River	Unidentified Tributary to Headwaters (3.8-8.8)	Cumberland/Monroe	WAH, PCR, SCR, OSRW	
Mud Lick of Stinking Creek	Basin	Knox	WAH, PCR, SCR, OSRW	
Ned Branch of Rockcastle River	Basin above backwaters (RM 0.45)	Laurel	WAH, PCR, SCR, OSRW	
Otter Creek of Cumberland River	Lake Cumberland Backwaters to Carpenter Fork (14.0-22.1)	Wayne	WAH, PCR, SCR, OSRW	
Paint Gap Branch of Sinking Creek	Basin	Knox	WAH, PCR, SCR, OSRW	
Patterson Creek of Cumberland River	Basin above River Mile 7.3 (confluence with Rose Creek)	Whitley	WAH, PCR, SCR, OSRW	
Poor Fork of Cumberland River	Franks Creek to Headwaters (41.4-51.7)	Letcher	WAH, PCR, SCR, OSRW	
Poor Fork of Cumberland River	Basin above River Mile 48.1 (at Joseph Road off of Hwy 932)	Letcher	CAH, PCR, SCR, OSRW	
Presley House Branch of Poor Fork of Cumberland River	Mouth to Headwaters (0.0-1.5)	Letcher	WAH, PCR, SCR, OSRW	
Puncheoncamp Branch of Rock Creek of South Fork of Cumberland River	Mouth to Headwaters (0.0-1.85)	McCreary	WAH, PCR, SCR, OSRW	
Richland Creek of Cumberland River	Basin above River Mile 15.8 (0.5 miles above Hubbard Branch) to River Mile 21.4	Knox	WAH, PCR, SCR, OSRW	
Roaring Fork of Stinking Creek	Basin	Knox	WAH, PCR, SCR, OSRW	
Rock Creek of South Fork of Cumberland River	Kentucky/Tennessee State Line (River Mile 21.5) to White Oak Creek	McCreary	CAH, PCR, SCR, OSRW	
Rock Creek of Jellico Creek	Basin	McCreary	WAH, PCR, SCR, OSRW	
Rockcastle River	River Mile 8.95 (backwaters of Lake Cumberland) to River Mile 54.7 (confluence of Middle Fork and South Fork Rockcastle River)	Laurel/Pulaski	WAH, PCR, SCR, OSRW	
Ross Branch of Jellico Creek	Basin	Whitley	WAH, PCR, SCR, OSRW	
Roundstone Creek of Rockcastle River	River Mile 13.5 (confluence of Renfro Creek) to River Mile 26.4 (Interstate -75)	Rockcastle	WAH, PCR, SCR, OSRW	
Ryans Creek of Jellico Creek	Basin	Whitley	WAH, PCR, SCR, OSRW	
Sanders Creek of Cumberland River	Basin	Whitley	WAH, PCR, SCR, OSRW	
Seng Branch	Basin	Whitley	WAH, PCR, SCR, OSRW	
Shillalah Creek of Clear Fork of Yellow Creek	Cumberland Gap National Historical Park Boundary to Headwaters (1.5-5.5)	Bell	CAH, PCR, SCR, OSRW	
Shillalah Creek of Clear Fork of Yellow Creek	Mouth to Cumberland Gap National Historical Park Boundary (0.0-1.5)	Bell	WAH, PCR, SCR, OSRW	
Shut-in Branch of Jellico Creek	Basin	McCreary	WAH, PCR, SCR, OSRW	
Sinking Creek	Headwaters to Rockcastle River (0.0-20.3)	Laurel	WAH, PCR, SCR, OSRW	
Sims Fork of Left Fork of Straight Creek	Basin	Bell	WAH, PCR, SCR, OSRW	
Smith Creek of Franks Creek	Basin	Letcher	WAH, PCR, SCR, OSRW	
South Fork of Cumberland River	River Mile 44.3 (Blue Heron) to River Mile 54.8 (Kentucky/Tennessee State Line)	McCreary	WAH, PCR, SCR, OSRW	
South Fork of Rockcastle River	River Mile 2.1 to White Oak Creek (River Mile 5.8)	Laurel	WAH, PCR, SCR, OSRW	
South Fork of Rockcastle River	Rockcastle River (River Mile 0.0) to River Mile 2.1	Rockcastle	WAH, PCR, SCR, OSRW	
Stevenson Branch of Bennetts Fork of Yellow Creek	Basin	Bell	WAH, PCR, SCR, OSRW	
Sulphur Creek of Wolf River of Obey River	Dale Hollow Reservoir Backwaters to Headwaters (1.7-5.4)	Clinton	WAH, PCR, SCR, OSRW	
Trace Branch of Stinking Creek	Basin	Knox	WAH, PCR, SCR, OSRW	
Trammel Fork of Marsh Creek	Basin	McCreary	WAH, PCR, SCR, OSRW	
Turkey Creek of Stinking Creek	Basin	Knox	WAH, PCR, SCR, OSRW	
Tyes Fork of Bennetts Fork of Patterson Creek	Basin	Whitley	WAH, PCR, SCR, OSRW	
Unidentified Tributary of Cane Creek of Rockcastle River	Mouth to Headwaters (0.0-1.2)	Laurel	WAH, PCR, SCR, OSRW	

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Unidentified Tributary (across from Hemlock Grove at river mile 9.3 of Rock Creek) of Rock Creek of South Fork of Cumberland River	Mouth to Headwaters (0.0-1.2)	McCreary	WAH, PCR, SCR, OSRW	
Unidentified Tributary (RMI 17.05 of Rock Creek) of Rock Creek of South Fork of Cumberland River	Mouth to Headwaters (0.0-1.9)	McCreary	WAH, PCR, SCR, OSRW	
Watts Branch of Rock Creek	Basin	McCreary	WAH, PCR, SCR, OSRW	
Watts Creek of Cumberland River	Basin above Camp Blanton Lake (2.4)	Harlan	WAH, PCR, SCR, OSRW	
White Oak Creek of Rock Creek	Basin	McCreary	WAH, PCR, SCR, OSRW	
White Oak Creek of Sinking Creek	Basin above River Mile 0.9 (includes Little White Oak Creek)	Laurel	CAH, PCR, SCR	
Wolf Creek of Clear Fork	Basin above Little Wolf Creek (2.0-5.9)	Whitley	WAH, PCR, PSCR, OSRW	
Wood Creek of Little Rockcastle River	Confluence with Hazel Patch Creek (0.0) to River Mile 1.9 (Wood Creek Lake Dam)	Laurel	CAH, PCR, SCR	
Youngs Creek of Cumberland River	Basin	Whitley	WAH, PCR, SCR, OSRW	
LAKES AND RESERVOIRS				
Beulah (=Tyner)	Entire Reservoir	Jackson	WAH, CAH, PCR, SCR	
Cannon Creek	Entire Reservoir	Bell	WAH, CAH, PCR, SCR	
Laurel River	Entire Reservoir	Laurel/ Whitley	WAH, CAH, PCR, SCR	
Wood Creek	Entire Reservoir	Laurel	WAH, CAH, PCR, SCR	
TENNESSEE RIVER BASIN				
Blood River of Kentucky Lake (Tennessee River)	McCullough Fork to Tennessee State Line (15.15-18.7)	Galloway	WAH, PCR, SCR, OSRW	
Clarks River of Tennessee River	Persimmon Slough to Middle Fork Creek (28.6-30.6)	Marshall	WAH, PCR, SCR, OSRW	
Grindstone Creek of Kentucky Lake (Blood River of Tennessee River)	Kentucky Lake Backwaters to Headwaters (0.7-2.9)	Galloway	WAH, PCR, SCR, OSRW	
Panther Creek of Kentucky Lake (Blood River of Tennessee River)	Kentucky Lake Backwaters to Headwaters (0.5-5.7)	Galloway	WAH, PCR, SCR, OSRW	
Soldier Creek of West Fork of Clarks River	Mouth to South Fork of Soldier Creek (0.0-5.7)	Marshall	WAH, PCR, SCR, OSRW	
Sugar Creek of Kentucky Lake (Tennessee River)	Kentucky Lake Backwaters to Buzzard Roost Road (2.5-3.2)	Galloway	WAH, PCR, SCR, OSRW	
Sugar Creek of West Fork Clarks River	Mouth to Unnamed Reservoir (0.0-3.9)	Graves	WAH, PCR, SCR, OSRW	
Tennessee River	0.4 miles upstream of White Oak Creek to 12.0 (approximately 0.4 miles above Mud Creek) (4.2-12.0)	Livingston/ Marshall	WAH, PCR, SCR, OSRW	
Tennessee River	River 12.0 (approximately 0.4 miles above Mud Creek) to 22.8 (Kentucky Lake Dam)	Livingston/ Marshall	WAH, PCR, SCR, OSRW	
Tennessee River	River Mile 23.1 (Kentucky Lake Dam) to River Mile 12.4 (12.4-23.1)	Livingston/ McCracken/ Marshall	WAH, PCR, SCR, OSRW	
Trace Creek of West Fork of Clarks River	Mouth to Neeley Branch (0.0-3.35)	Graves	WAH, PCR, SCR, OSRW	
Unidentified Tributary of Unidentified Tributary of Panther Creek of West Fork of Clarks River	Mouth to Headwaters (0.0-1.7)	Graves	WAH, PCR, SCR, OSRW	
West Fork of Clarks River	Soldier Creek to Duncan Creek (20.1-23.5)	Graves	WAH, PCR, SCR, OSRW	
Wildcat Creek of Kentucky Lake (Blood River of Tennessee River)	Ralph Wright Road Crossing to Headwaters (3.6-6.8)	Galloway	WAH, PCR, SCR, OSRW	
OHIO RIVER BASIN (Main Stem and Minor Tributaries)				
Ashbys Fork	Mouth to Petersburg Road (SR 20) (0.0-3.7)	Boone	WAH, PCR, SCR, OSRW	

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Crooked Creek	Rush Creek to City Lake Dam (17.9-26.2)	Crittenden	WAH, PCR, SCR, OSRW	
Doe Run Creek	Hwy 1638 to Headwaters (5.2-8.3)	Meade	CAH, PCR, SCR	
Double Lick Creek of Woolper Creek	Mouth to Headwaters (0.0-3.5)	Boone	WAH, PCR, SCR, OSRW	
Garrison Creek	Mouth to Headwaters (0.0-4.85)	Boone	WAH, PCR, SCR, OSRW	
Kinniconick Creek	McDowell Creek to Headwaters (5.05-50.9)	Lewis	WAH, PCR, SCR, OSRW	
Little South Fork of Big South Fork	Land Use Change to Headwaters (1.2-5.9)	Boone	WAH, PCR, SCR, OSRW	
Middle Fork of Massac Creek	Hines Road to Headwaters (3.1-6.4)	McCracken	WAH, PCR, SCR, OSRW	
Ohio River	River Mile 341.3 to 343.3	Greenup	WAH, PCR, SCR, OSRW	
Ohio River	River Mile 436.25 to 438.0	Bracken	WAH, PCR, SCR, OSRW	
Ohio River	River Mile 459.6 to 461.7	Campbell	WAH, PCR, SCR, OSRW	
Ohio River	River Mile 559.7 to 562.0	Trimble	WAH, PCR, SCR, OSRW	
Ohio River	River Mile 725.2 to 727.1	Hancock	WAH, PCR, SCR, OSRW	
Ohio River	River Mile 732.9 to 734.9	Hancock	WAH, PCR, SCR, OSRW	
Ohio River	River Mile 758.7 to 760.7	Daviess	WAH, PCR, SCR, OSRW	
Ohio River	River Mile 784.7 to 786.6	Henderson	WAH, PCR, SCR, OSRW	
Ohio River	River Mile 848.0 to River Mile 850.0	Union	WAH, PCR, SCR, OSRW	
Ohio River	River Mile 856.4-852.0	Union	WAH, PCR, SCR, OSRW	
Ohio River	River Mile 859.0 to River Mile 861.0	Union	WAH, PCR, SCR, OSRW	
Ohio River	River Mile 865.0 to River Mile 867.0	Union	WAH, PCR, SCR, OSRW	
Ohio River	River Mile 923.5 to River Mile 926.0	Livingston	WAH, PCR, SCR, OSRW	
Ohio River	River Mile 927.0 to River Mile 930.0	Livingston	WAH, PCR, SCR, OSRW	
Ohio River	River Mile 933.0 to 937.0	McCracken	WAH, PCR, SCR, OSRW	
Ohio River	River Mile 937.0 to River Mile 939.8	McCracken	WAH, PCR, SCR, OSRW	
Ohio River	River Mile 933.1 to 943.4	McCracken	WAH, PCR, SCR, OSRW	
Ohio River	River Mile 948.2 to River Mile 949.5	McCracken	WAH, PCR, SCR, OSRW	
Ohio River	River Mile 946.8 to 949.1	McCracken	WAH, PCR, SCR, OSRW	
Ohio River	River Mile 952.7 to 956.1	McCracken	WAH, PCR, SCR, OSRW	
Ohio River	River Mile 960.0 to River Mile 962.7 (above Lock and Dam 53)	Ballard	WAH, PCR, SCR, OSRW	
Ohio River	River Mile 966.3 to River Mile 969.5	Ballard	WAH, PCR, SCR, OSRW	
Ohio River	River Mile 922.0 to River Mile 923.5 (Channel East of Towhead Island)	Livingston	WAH, PCR, SCR, OSRW	
Ohio River	River Mile 956.1 to 974.1	Ballard/McCracken	WAH, PCR, SCR, OSRW	
Otter Creek	Ohio River to River Mile 9.7	Meade	CAH, PCR, SCR	
Second Creek	Ohio River Backwaters to Headwaters (0.2-2.7)	Boone	WAH, PCR, SCR, OSRW	
Sinking Creek	Hwy 259 to Headwaters (includes Blue & Stony Forks)	Breckinridge	CAH, PCR, SCR	
Unidentified Tributary of Big Sugar Creek	I-71 to Headwaters (1.0-3.4)	Gallatin	WAH, PCR, SCR, OSRW	
Unidentified Tributary of Corn Creek	Mouth to Headwaters (0.0-2.3)	Trimble	WAH, PCR, SCR, OSRW	
Unidentified Tributary of Massac Creek	Mouth to Headwaters (0.0-1.7)	McCracken	WAH, PCR, SCR, OSRW	
West Fork of Massac Creek	SR 724 to Little Massac Creek (1.0-6.2)	McCracken	WAH, PCR, SCR, OSRW	
White Oak Creek	Mouth (Ohio River) to River Mile 1.08	Greenup	SCR	401 KAR 10:031, Section 2(1)(d) and 2(3)[2(2)] do not apply.
Yellowbank Creek	Ohio River Backwaters to Headwaters (1.5-11.8)	Breckinridge	WAH, PCR, SCR, OSRW	
LAKES AND RESERVOIRS				
Metropolis	Entire Lake	McCracken	WAH, PCR, SCR, OSRW	
MISSISSIPPI RIVER BASIN (Main Stem and Minor Tributaries)				
Bayou de Chien	River Mile 15.4 to Headwaters (River Mile 32.9)	Hickman/Graves	WAH, PCR, SCR, OSRW	
Cane Creek of Bayou de Chien	Basin	Graves	WAH, PCR, SCR, OSRW	
Jackson Creek of Bayou de Chien	Basin	Graves	WAH, PCR, SCR, OSRW	
Jackson Creek	Mouth to Headwaters	Graves	WAH, PCR, SCR, OSRW	
Mississippi River	River Mile 947.0 to River Mile 942.3	Hickman	WAH, PCR, SCR, OSRW	
Mississippi River	River Mile 959.1 to River Mile 957.1	Carlisle	WAH, PCR, SCR, OSRW	

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Obion Creek	Hurricane Creek to Little Creek (26.35-36.55)	Hickman	WAH, PCR, SCR, OSRW	
Sand Creek of Bayou de Chien	Basin	Graves	WAH, PCR, SCR, OSRW	
South Fork of Bayou de Chien	Basin	Graves	WAH, PCR, SCR, OSRW	
Terrapin Creek	Tennessee State Line to Headwaters (2-7-6-0)	Graves	WAH, PCR, SCR, OSRW	
LAKES AND RESERVOIRS				
Murphy's Pond	Entire Pond and Preserve Area	Hickman	WAH, PCR, SCR, OSRW	
Swan Pond	Entire Lake	Ballard	WAH, PCR, SCR, OSRW	

(b) Table D in this subsection lists waters that have been redesignated pursuant to Section 2 of this administrative regulation or have approved exceptions to criteria pursuant to 401 KAR 10:031 **Sections 10 or [Section 10 or Section] 11.**

Table D WATERS WITH DESIGNATED USES REMOVED OR EXCEPTIONS TO CRITERIA				
Waterbody and Receiving Water	Boundary Description	Latitude, Longitude (Downstream/Upstream; Decimal Degrees)	County	Uses Removed and Exceptions to Criteria
OHIO RIVER BASIN				
White Oak Creek of Ohio River	Mouth to Culvert Along KY-693 Diederick Boulevard	38.51661, -82.68142/ 38.50421, -82.68801	Greenup	Designated Uses Removed: WAH, PCR. Exceptions to Criteria: 401 KAR 10:031, Section 2(1)(d) and 2(3) do not apply.
SALT RIVER BASIN				
Paddy Run of Ohio River	Mouth to Headwaters	38.21944, -85.84961/ Headwaters	Jefferson	Designated Uses Removed: WAH. Exceptions to Criteria: 401 KAR 10:031, Sections 2(1)(d) and 2(3) do not apply.

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

(a) "Interim Economic Guidance for Water Quality Standards Workbook", EPA, March 1995 Publication EPA-823-B-95-002. U.S. Environmental Protection Agency, Office of Water, Washington, D.C.; is incorporated by reference.

(b) "Combined Sewer Overflows - Guidance for Financial Capability Assessment and Schedule Development", EPA, February 1997; and

(c) "Combined Sewer Overflow (CSO) Control Policy", U.S. EPA, 59 Federal Register 18688, April 1994.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Division of Water, 300 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(3)(a) "Interim Economic Guidance for Water Quality Standards Workbook", EPA, March 1995 may also be obtained at <https://www.epa.gov/sites/production/files/2016-03/documents/econworkbook-complete.pdf>;

(b) "Combined Sewer Overflows - Guidance for Financial Capability Assessment and Schedule Development", EPA, February 1997 may also be obtained at https://www.epa.gov/sites/production/files/2015-10/documents/csofc_0.pdf; and

(c) "Combined Sewer Overflow (CSO) Control Policy", U.S. EPA, 59 Federal Register 18688, April 1994 may also be obtained at <https://www3.epa.gov/npdes/pubs/owm0111.pdf>.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: September 13, 2019

FILED WITH LRC: September 13, 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 lists the types of designated uses for surface waters of the Commonwealth, provides and describes the process of redesignation of surface waters, and lists designated uses for specific surface waters of the Commonwealth that have been assigned.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to inform the public of the

types of and provisions for redesignation of, and lists the designated uses assigned, to surface waters of the Commonwealth. The list of designated uses is a reference tool necessary for the public to identify which designated uses apply to specific surface waters of the Commonwealth.

Additionally, in order for Kentucky to maintain its delegation authority over the National Pollution Discharge Elimination System permit program, the Clean Water Act requires that Kentucky review its water quality standards every three years (known as the "Triennial Review") and comply with the programmatic requirements of 40 C.F.R. Part 131, including implementing the antidegradation policy.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100 requires the cabinet to develop and conduct a comprehensive program for the management of water resources and to provide for the prevention, abatement, and control of pollution. This administrative regulation and 401 KAR 10:001, 10:029, 10:030, and 10:031 establish procedures to protect the surface waters of the Commonwealth, and thus protect water resources. This administrative regulation applies the designated uses described in 401 KAR 10:031 to the surface waters of the Commonwealth. This administrative regulation also establishes that all surface waters shall be subject to the general criteria specified in 401 KAR 10:031, Section 2.

Additionally, in order for Kentucky to maintain its delegation authority over the National Pollution Discharge Elimination System permit program, the Clean Water Act requires that Kentucky review its water quality standards every three years (known as the "Triennial Review") and comply with the programmatic requirements of 40 C.F.R. Part 131, including implementing the antidegradation policy.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the administration of the statutes by providing for redesignation of surface waters and by listing those uses assigned to specific waters of the Commonwealth. This enables the public to know which regulatory criteria relate to specific waters and supports compliance with the administrative regulations.

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

(a) How the amendment will change this existing administrative regulation: This amendment corrects an identifying landmark in Table C, removes a redundant column in Table C, and makes technical changes to comply with the drafting rules of KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to correct an identifying

landmark in Table C, remove a redundant column in Table C, and to comply with the drafting rules of KRS Chapter 13A.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100 requires the cabinet to develop and conduct a comprehensive program for the management of water resources and to provide for the prevention, abatement, and control of pollution. This administrative regulation and 401 KAR 10:001, 10:029, 10:030, and 10:031 establish procedures to protect the surface waters of the Commonwealth, and thus protect water resources. This administrative regulation applies the designated uses described in 401 KAR 10:031 to the surface waters of the Commonwealth. This administrative regulation also establishes that all surface waters shall be subject to the general criteria specified in 401 KAR 10:031, Section 2.

Additionally, in order for Kentucky to maintain its delegation authority over the National Pollution Discharge Elimination System permit program, the Clean Water Act requires that Kentucky review its water quality standards every three years (known as the "Triennial Review") and comply with the programmatic requirements of 40 C.F.R. Part 131, including implementing the antidegradation policy.

(d) How the amendment will assist in the effective administration of the statutes: This amendment corrects an identifying landmark in Table C, removes a redundant column in Table C, and makes technical changes to comply with the drafting rules of KRS Chapter 13A.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation applies to designated uses of the surface waters of the Commonwealth. All individuals, businesses, organizations, and governments that use the Commonwealth's surface waters for residential, commercial, industrial, or recreational purposes could be impacted by this regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This amendment corrects an identifying landmark in Table C, removes a redundant column in Table C, and makes technical changes to comply with the drafting rules of KRS Chapter 13A. No additional actions will be necessary to comply with the regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment corrects an identifying landmark in Table C, removes a redundant column in Table C, and makes technical changes to comply with the drafting rules of KRS Chapter 13A. No additional actions will be necessary to comply with the regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Direct and indirect savings may be realized through reduced drinking water treatment costs, maintenance of good agricultural water, maintenance of fisheries, and healthy recreational waters.

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

(a) Initially: This administrative regulation will not result in additional costs.

(b) On a continuing basis: This administrative regulation will not result in additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue are a combination of General Funds appropriated by the Kentucky General Assembly, and federal funds from the US EPA.

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

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

(9) TIERING: Is tiering applied? Yes, tiering is applied in this administrative regulation. The discharge requirements of 401 KAR 10:031 into a water designated as a cold water aquatic habitat are more stringent than those designated for warm water aquatic habitats. 401 KAR 10:031 also establishes special requirements for any discharge into a designated OSRW under this regulation. Waters listed in Table B that have a surface water intake are subject to the Domestic Water Supply criteria of 401 KAR 10:031.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation applies to designated uses of the surface waters of the Commonwealth. All governments that use those waters for residential, commercial, industrial, or recreational purposes could be impacted by this regulation. This administrative regulation may affect the wastewater treatment operations of local governments if they discharge into surface waters of the Commonwealth that have been redesignated by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 146.220, 146.241, 146.270, 146.410, 146.450, 146.460, 146.465, 224.10-100, 224.16-050, 224.16-060, 224.70-100, 224.70-110, 40 C.F.R. Part 131, 16 U.S.C. 1271-1287, 1531-1544, 33 U.S.C. 1311, 1313, 1314, 1316, 1341

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

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

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

(c) How much will it cost to administer this program for the first year? This administrative regulation will not result in additional costs.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation will not result in additional costs.

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

Revenues (+/-): NA

Expenditures (+/-): NA

Other Explanation: This amendment corrects an identifying landmark in Table C, and makes technical changes to comply with the drafting rules of KRS Chapter 13A.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal mandate to implement a water pollution control program. For Kentucky to maintain its delegation authority over the National Pollution Discharge Elimination System permit program, the Clean Water Act requires that Kentucky review its water quality standards every three years (known as the "Triennial Review") and comply with the programmatic requirements of 40 C.F.R. Part 131, including implementing the antidegradation policy.

2. State compliance standards. KRS 146.220, 146.241, 146.270, 146.410, 146.450, 146.460, 146.465, 224.10-100, 224.16-050, 224.16-060, 224.70-100, 224.70-110

3. Minimum or uniform standards contained in the federal mandate. 40 C.F.R. Part 131, 16 U.S.C. 1271-1287, 1531-1544, 33 U.S.C. 1311, 1313, 1314, 1316, 1341

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate? No.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There are no stricter standards or additional or different responsibilities or requirements.

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Water
(Amended After Comments)

401 KAR 10:029. General provisions.

RELATES TO: KRS 146.200 through 146.360~~[146.200-146.360]~~, 146.410 through 146.535~~[146.410-146.535]~~, 146.550 through 146.570~~[146.550-146.570]~~, 146.600 through 146.619~~[146.600-146.619]~~, 146.990, 224.1-010, 224.1-400, 224.16-050, 224.16-070, 224.70-100 through 224.70-140~~[224.70-100-224.70-140]~~, 224.71-100 through 224.71-145~~[224.71-100-224.71-145]~~, 224.73-100 through 224.73-120~~[224.73-100-224.73-120]~~, 40 C.F.R. 136, 33 U.S.C. 1326(a)

STATUTORY AUTHORITY: KRS 146.220, 146.241, 146.270, 146.410, 146.450, 146.460, 146.465, 224.10-100, 224.16-050, 224.16-060, 224.70-100, 224.70-110, 40 C.F.R. 131, 136, 16 U.S.C. 1531 through 1544~~[1531-1544]~~, 33 U.S.C. 1311, 1312, 1313, 1314, 1316, 1341

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the cabinet to develop and conduct a comprehensive program for the management of water resources and to provide for the prevention, abatement, and control of water pollution. This administrative regulation and 401 KAR 10:001, 10:026, 10:030, and 10:031 establish procedures to protect the surface waters of the commonwealth, and thus protect water resources. This administrative regulation establishes the commonwealth's surface water antidegradation policy, provides for withdrawals of waters not meeting water quality standards, and addresses sample collection and analytical methodology and mixing zones.

Section 1. Antidegradation Policy. (1) The purpose of 401 KAR 10:026 through 401 KAR 10:031 is to safeguard the surface waters of the commonwealth for their existing and designated uses, to prevent the creation of new pollution of these waters, and to abate existing pollution.

(2) Where the quality of surface waters exceeds that necessary to support propagation of fish, shellfish, wildlife and recreation in and on the water, that quality shall be maintained and protected unless the cabinet finds, after full satisfaction of the intergovernmental coordination and public participation provisions of the cabinet's continuing planning process required by 33 U.S.C. 1313 and 40 C.F.R. 130.5, that allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located.

(a) For point source discharges, water quality shall be maintained and protected in these waters according to the procedures specified in 401 KAR 10:030, Section 1(2)(b) or (3)(b).

(b) In allowing degradation or lower water quality, the cabinet shall assure water quality adequate to protect existing uses fully.

(c) The cabinet shall assure that there shall be achieved the highest statutory and regulatory requirements for waste treatment by all new and existing point sources and that nonpoint sources of pollutants be controlled by application of all cost effective and reasonable best management practices.

(3) Water quality shall be maintained and protected in a water categorized as an outstanding national resource water according to the procedures specified in 401 KAR 10:030, Section 1(1)(b).

(4) Water quality shall be maintained and protected in those waters designated as outstanding state resource waters according

to the procedures specified in 401 KAR 10:031, Section 8.

(5) If potential water quality impairment associated with a thermal discharge is involved, a successful demonstration conducted under Section 316 of the Clean Water Act, 33 U.S.C. 1326, shall be in compliance with this section.

Section 2. Withdrawal of Contaminated Water. Surface waters occasionally do not meet the criteria established in 401 KAR 10:031.

(1) Withdrawal and subsequent discharge of these waters without alteration of the physical or chemical characteristics into the same or similar surface water shall not be considered a violation of water quality standards.

(2) The cabinet shall determine KPDES permit limitations in these situations based on the quality of the raw and receiving waters.

(3) The cabinet retains the right to require permit modification under the provisions of 401 KAR 5:035, 5:065, 5:070, 5:075, and 5:080.

Section 3. Sample Collection and Analytical Methodology. (1) All methods of preservation and analysis used to determine conformity or nonconformity with water quality standards shall be governed by 40 C.F.R. 136, as amended, if applicable.

(2) Sample collection and other methods not established in subsection (1) of this section may be used as appropriate if they:

(a) Meet commonly accepted quality assurance and quality control principles;

(b) Are within the accuracy required for determining conformity or nonconformity with water quality standards; and

(c) Receive prior written approval by the cabinet.

Section 4. Mixing Zones. (1) The cabinet may assign definable geometric limits for mixing zones for a discharge of a pollutant or pollutants within a discharge based on the following criteria:

(a) Applicable limits shall include the linear distances from the point of discharge, surface area involvement, volume of receiving water, and shall take into account other nearby mixing zones;

(b) Dilution provided by assigned mixing zones shall not be allowed until applicable limits are assigned by the cabinet in accordance with this section;

(c) In a stream or river, unless assigned on or before December 8, 1999, an assigned mixing zone, from the point of discharge in a spatial direction, shall not exceed one-third (1/3) of the width of the receiving stream or one-half (1/2) of the cross-sectional area;

(d) In a lake or a reservoir, unless assigned on or before December 8, 1999, an assigned mixing zone, from the point of discharge in any spatial direction, shall not exceed one-tenth (1/10) of the width of the lake, or reservoir at the discharge point;

(e) An assigned mixing zone shall be limited to an area or volume that shall not adversely affect the designated uses of the receiving water and shall not be so large as to adversely affect an established community of aquatic organisms;

(f) The location of a mixing zone shall not:

1. Interfere with fish spawning or nursery areas, fish migration routes, public water supply intakes, or bathing areas;

2. Preclude the free passage of fish or other aquatic life; or

3. Jeopardize the continued existence of endangered or threatened aquatic species listed under Section 4 of the Endangered Species Act, 16 U.S.C. 1531 through 1544, or result in the destruction or adverse modification of their critical habitat;

(g) For thermal discharges, a successful demonstration conducted under Section 316(a) of the Clean Water Act, 33 U.S.C. Section 1326(a), shall constitute compliance with this section; and

(h) **Unless assigned by the cabinet on or before September 8, 2004,**~~[Unless assigned by the cabinet on or before September 8, 2004,~~ there shall not be mixing zones~~for other dilution provisions assigned]~~ for bioaccumulative chemicals of concern.

~~1. [A mixing zone that was assigned by the cabinet for a bioaccumulative chemical of concern shall not expire later than September 8, 2014.~~

2.a.] A bioaccumulative chemical of concern is one that

accumulates in one (1) or more aquatic organisms by a human health bioaccumulation factor of greater than 1,000.

2.[b.] For the purposes of this administrative regulation, bioaccumulative chemicals of concern shall consist of the following:

- (i) alpha-Hexachlorocyclohexane;
- (ii) beta-Hexachlorocyclohexane;
- (iii) Chlordane;
- (iv) DDD;
- (v) DDE;
- (vi) DDT;
- (vii) delta-Hexachlorocyclohexane;
- (viii) Dieldrin;
- (ix) Hexachlorobenzene;
- (x) Hexachlorobutadiene;
- (xi) Hexachlorocyclohexane;
- (xii) Lindane;
- (xiii) Mercury;
- (xiv) Mirex;
- (xv) Octachlorostyrene;
- (xvi) PCBs;
- (xvii) Pentachlorobenzene;
- (xviii) Photomirex;
- (xix) Toxaphene;
- (xx) 1,2,3,4-Tetrachlorobenzene;
- (xxi) 1,2,4,5-Tetrachlorobenzene; and
- (xxii) 2,3,7,8-TCDD (Dioxin).

(2) Concentrations of toxic substances that exceed the acute criteria for protection of aquatic life in 401 KAR 10:031 shall not exist within an assigned mixing zone or in the discharge itself unless a zone of initial dilution is assigned.

(a) A zone of initial dilution shall be assigned pursuant to subsection (3) of this section.

(b) Chronic criteria for the protection of aquatic life and criteria for the protection of human health regarding the consumption of fish tissue shall be met at the edge of the assigned mixing zone.

(3) The following requirements shall apply to a zone of initial dilution:

(a) The cabinet shall require an applicant to provide a technical evaluation for a zone of initial dilution;

(b) Concentrations of toxic substances shall not exceed the acute criteria for the protection of aquatic life at the edge of the assigned zone of initial dilution, except, numeric acute criteria may be exceeded within the zone if the frequency and duration of exposure of aquatic organisms are not sufficient to cause acute toxicity; and

(c) Unless assigned on or before December 8, 1999, a zone of initial dilution for a pollutant shall not be allowed in an exceptional water.

(4) Unless assigned on or before July 6, 2009, a zone of initial dilution for a pollutant shall be available only to a submerged high-rate multipoint outfall structure and shall be limited in size to the most restrictive of the acute criteria which shall be met:

(a) Within ten (10) percent of the distance from the edge of the outfall structure to the edge of the regulatory mixing zone in a spatial direction;

(b) Within a distance of fifty (50) times the square root of the cross-sectional area of a discharge port, in a spatial direction; or

(c) In a horizontal direction within a distance of five (5) times the natural water depth that prevails under mixing zone design conditions, and exists before the installation of a discharge outlet.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: September 13, 2019

FILED WITH LRC: September 13, 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 general operating provisions for water quality regulations that protect the surface waters of the Commonwealth. This administrative regulation provides for withdrawal of contaminated water, sample collection and methodology, and mixing zones. This administrative regulation is also used in conjunction with 401 KAR 10:030 to implement antidegradation requirements. The purpose of this administrative regulation is to address water quality protection issues not covered in 10:026, 10:030, or 10:031 to form a complete protection program.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish requirements for the protection of the surface waters of the Commonwealth.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100 requires the cabinet to develop and conduct a comprehensive program for the management of water resources and to provide for the prevention, abatement, and control of water pollution. This administrative regulation and 401 KAR 10:001, 10:026, 10:030, and 10:031 establish procedures to protect the surface waters of the commonwealth, and thus protect water resources. This administrative regulation establishes the commonwealth's surface water antidegradation policy, provides for withdrawals of waters not meeting water quality standards, and addresses sample collection and analytical methodology and mixing zones.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the administration of the statutes by providing specific requirements for the protection of surface waters of the Commonwealth as required by the authorizing statutes.

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

(a) How the amendment will change this existing administrative regulation: The amendment reinserts the date on which mixing zones for bioaccumulative chemicals of concern were removed (September 8, 2004), deletes proposed language regarding dilution provisions for clarity.

(b) The necessity of the amendment to this administrative regulation: The amendment reinserts the date on which mixing zones for bioaccumulative chemicals of concern were removed (September 8, 2004), and deletes proposed language regarding dilution provisions for clarity.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100 requires the cabinet to develop and conduct a comprehensive program for the management of water resources and to provide for the prevention, abatement, and control of water pollution. This administrative regulation and 401 KAR 10:001, 10:026, 10:030, and 10:031 establish procedures to protect the surface waters of the commonwealth, and thus protect water resources. This administrative regulation establishes the commonwealth's surface water antidegradation policy, provides for withdrawals of waters not meeting water quality standards, and addresses sample collection and analytical methodology and mixing zones.

(d) How the amendment will assist in the effective administration of the statutes: The amendment reinserts the date on which mixing zones for bioaccumulative chemicals of concern were removed (September 8, 2004), and deletes proposed language regarding dilution provisions for clarity.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All individuals, businesses, organizations, and governments that use the Commonwealth's surface waters for residential, commercial, industrial, or recreational purposes could be impacted by this regulation.

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

(a) List the actions that each of the regulated entities identified

in question (3) will have to take to comply with this administrative regulation or amendment: The regulated entities will not need to take additional actions to comply with the amendment to this administrative regulation. The amendment reinserts the date on which mixing zones for bioaccumulative chemicals of concern were removed (September 8, 2004), and deletes proposed language regarding dilution provisions for clarity.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amendment to this administrative regulation will not result in additional costs. The amendment reinserts the date on which mixing zones for bioaccumulative chemicals of concern were removed (September 8, 2004), and deletes proposed language regarding dilution provisions for clarity.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Maintaining existing water quality may have a positive influence on revenues derived from water-based tourism and can lower the costs of treating drinking water.

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

(a) Initially: This administrative regulation will not result in additional costs.

(b) On a continuing basis: This administrative regulation will not result in additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding is a combination of general funds appropriated by the Kentucky General Assembly and federal funds from the U.S. Environmental Protection Agency.

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

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

(9) TIERING: Is tiering applied? Yes, tiering is applied in this administrative regulation. Dischargers must meet certain criteria depending on the nature of the discharge established in 401 KAR 10:029, Section 4.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation may affect the wastewater treatment operations of local government if they have new or expanded discharges into surface waters of the Commonwealth.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation relates to local government wastewater treatment service. KRS 224.10-100, 224.70-100, and 224.70-110 mandate action taken by this administrative regulation.

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

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

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

(c) How much will it cost to administer this program for the first year? This administrative regulation will not result in additional costs.

(d) How much will it cost to administer this program for

subsequent years? This administrative regulation will not result in additional costs.

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

Revenues (+/-): NA

Expenditures (+/-): NA

Other Explanation: The amendment will not generate revenue or result in additional costs. The amendment reinserts the date on which mixing zones for bioaccumulative chemicals of concern were removed (September 8, 2004), and deletes proposed language regarding dilution provisions for clarity.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal mandate to implement a water pollution control program. For Kentucky to maintain its delegation authority of the NPDES permit program, the Clean Water Act requires that Kentucky review its water quality standards every three years (known as the "Triennial Review") and comply with the programmatic requirements of 40 C.F.R. Part 131, including implementing the antidegradation policy.

2. State compliance standards. KRS 146.220, 146.241, 146.270, 146.410, 146.450, 146.460, 146.465, 224.10-100, 224.16-050, 224.16-060, 224.70-100, and 224.70-110

3. Minimum or uniform standards contained in the federal mandate. 40 C.F.R. Part 131, 16 U.S.C. 1531-1544, 33 U.S.C. 1311, 1312, 1313, 1314, 1316, and 1341. The Clean Water Act requires designated uses, criteria, standards, and antidegradation policies in water quality standards.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate? No, this administrative regulation does not impose stricter, additional, or different responsibilities or requirements than the federal standard.

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

ENERGY AND ENVIRONMENT CABINET Department for Environmental Protection Division of Water (Amended After Comments)

401 KAR 10:030. Antidegradation policy implementation methodology.

RELATES TO: KRS 146.200 through 146.360[146.200-146.360], 146.410 through 146.535[146.410-146.535], 146.550 through 146.570[146.550-146.570], 146.600 through 146.619[146.600-146.619], 146.990, 176.430, 224.1-010, 224.1-400, 224.16-050, 224.16-070, 224.70-100 through 224.70-140[224.70-100-224.70-140], 224.71-100 through 224.71-145[224.71-100-224.71-145], 224.73-100 through 224.73-120[224.73-100-224.73-120], 30 U.S.C. 1201 -1328

STATUTORY AUTHORITY: KRS 146.220, 146.241, 146.270, 146.410, 146.450, 146.460, 146.465, 224.10-100, 224.16-050, 224.16-060, 224.70-100, 224.70-110, 40 C.F.R. 130, 131, 16 U.S.C. 1271 through 1287[1271-1287], 1531 through 1544[1531-1544], 33 U.S.C. 1311, 1313, 1314, 1315, 1316, 1341, 1342, 1344

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the cabinet to develop and conduct a comprehensive program for the management of water resources and to provide for the prevention, abatement, and control of all water pollution. KRS 224.70-100 authorizes the policy of the commonwealth to conserve its waters for legitimate uses, safeguard from pollution the uncontaminated waters of the commonwealth, prevent the creation of any new pollution in the waters of the commonwealth, and abate any existing pollution. This administrative regulation and 401 KAR 10:001, 10:026, 10:029, and 10:031 establish procedures to

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protect the surface waters of the Commonwealth, and thus protect water resources. This administrative regulation establishes a methodology to implement the antidegradation policy contained in 401 KAR 10:029 by establishing procedures to control water pollution in waters affected by that policy.

Section 1. Categorization and Implementation. The antidegradation procedures established in this administrative regulation shall not preempt the power or authority of a local government to provide by ordinance for a higher level of protection through antidegradation implementation for a discharger located

within that local government's jurisdiction to a surface water of the commonwealth. The procedures established in this section shall govern implementation of the antidegradation policy of 401 KAR 10:029, Section 1, for a point source discharge. Surface waters shall be placed into one (1) of four (4) categories listed in this section and each category shall have a corresponding implementation procedure. (1) Outstanding national resource water. Surface waters of the commonwealth categorized as outstanding national resource waters are listed in Table 1 of this subsection.

Table 1 SURFACE WATERS CATEGORIZED AS OUTSTANDING NATIONAL RESOURCE WATER (ONRW)			
Waterbody and Receiving Water	Boundary Description	Latitude, Longitude (Downstream/Upstream; Decimal Degrees)	County
Big South Fork Cumberland River of Lake Cumberland (Cumberland River)	Wild River Boundary at Blue Heron to Tennessee State Line	36.66769, -84.54570/ 36.59880, -84.60518	McCreary
Marsh Creek of Cumberland River	Mouth to Laurel Creek	36.77776, -84.34903/ 36.73182, -84.37118	McCreary
Marsh Creek of Cumberland River*	Laurel Creek to Ford Crossing at CR-1060 East Kidd School Road and CR-1110 Kidd School Road	36.73182, -84.37118/ 36.69964, -84.34471	McCreary
Red River of Kentucky River	School House Branch to KY-746	37.84422, -83.67583/ 37.79871, -83.48947	Menifee, Powell, Wolfe
Reelfoot Lake	Surface Waters Within the National Wildlife Refuge Proclamation Boundary in Kentucky	Not Applicable	Fulton
Rock Creek of Big South Fork Cumberland River*	CR-1236 Rock Creek Road to Tennessee State Line	36.70306, -84.59619/ 36.60241, -84.73999	McCreary
Rockcastle River of Lake Cumberland	Lower End of The Narrows (0.25 River Miles Upstream of Cane Creek) to KY-1956 Billows Road	37.03017, -84.30832/ 37.17136, -84.29679	Laurel, Pulaski, Rockcastle
Underground River System	Within Mammoth Cave National Park	Not Applicable	Edmonson, Hart, Barren
War Fork of Station Camp Creek	Basin Including all Tributaries from Mouth to to Steer Fork	37.53264, -83.90929/ 37.45467, -83.92699	Jackson
*Waterbodies in the cabinet's reference reach network.			

Table 4 SURFACE WATERS CATEGORIZED AS OUTSTANDING NATIONAL RESOURCE WATER			
Stream	Segment	River Miles	County
Red River	Upstream to Island off SR 1067 to Downstream Wild River Boundary at SR 746	49.2 to 68.6	Menifee/Wolfe
Underground River System	Within Mammoth Cave National Park Boundary		Edmonson/Hart/Barren
Big South Fork Cumberland River	Downstream Wild River Boundary to Tennessee State line	44.3 to 54.8	McCreary
Surface Waters within Reelfoot Lake National Wildlife Refuge	Reelfoot Lake National Wildlife Refuge Proclamation Boundary in Kentucky	2040 Acres	Fulton
War Fork Station Camp Creek	Basin above South Fork of Station Camp Creek to Steer Fork	0.0 to 13.8	Jackson
Marsh Creek	Mouth to 1.9 miles upstream of Kentucky 478	0.0 to 15.0	McCreary
Rock Creek	State border to White Oak Creek	4.1 to 21.9	McCreary
Rockcastle River	Lower end of Narrows to 0.2 miles downstream of Kentucky 80 bridge	8.95 to 22.4	Laurel/Pulaski

(a) Categorization criteria. A surface water shall be categorized as an outstanding national resource water if:

1. The surface water meets, at a minimum, the requirements for an outstanding state resource water as provided in 401 KAR 10:031, Section 8; and
2. The surface water demonstrates national ecological or recreational significance.

(b) Implementation procedure.

1. Water quality shall be maintained and protected in an outstanding national resource water.
2. A new discharger or expanded discharge that may result in

permanent or long-term changes in water quality shall be prohibited.

3. The cabinet may approve temporary or short-term changes in water quality if the changes to the outstanding national resource water do not have a demonstrable impact on the ability of the water to support the designated uses.

(2) Exceptional water. Surface waters of the commonwealth categorized as an exceptional water are listed in Table 2 of this subsection.

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Table 2 SURFACE WATERS CATEGORIZED AS EXCEPTIONAL WATER			
Waterbody and Receiving Water	Boundary Description	Latitude, Longitude (Downstream/ Upstream; Decimal Degrees)	County
BIG SANDY RIVER BASIN			
Hobbs Fork of Pigeonroost Fork*	Mouth to Headwaters	37.70738, -82.43272/ Headwaters	Martin
Lower Pigeon Branch of Elkhorn Creek*	Left Fork Lower Pigeon Branch to Headwaters	37.24194, -82.48681/ Headwaters	Pike
Russell Fork of Levisa Fork*	Upstream End of Clinchfield Railroad Yard (0.6 RM Upstream of Big Island Branch) to Virginia State Line	37.29283, -82.32741/ 37.29579, -82.31462	Pike
Thompson Fork of Souders Branch*	Mouth to Headwaters	37.68474, -82.66775/ Headwaters	Floyd
Toms Branch of Elkhorn Creek*	Mouth to Headwaters	37.26119, -82.45249/ Headwaters	Pike
Unnamed Tributary of Hobbs Fork of Pigeonroost Fork*	Mouth to Headwaters	37.68319, -82.40511/ Headwaters	Martin
Unnamed Tributary of Open Fork Paint Creek of Paintsville Lake (Paint Creek)	Mouth to Headwaters	37.97373, -83.05614/ Headwaters	Morgan
GREEN RIVER BASIN			
Beaverdam Creek of Green River*	Mouth to Headwaters	37.19637, -86.27598/ Headwaters	Edmonson
Big Brush Creek of Green River	Brush Creek to Poplar Grove Branch	37.38472, -85.59302/ 37.42787, -85.57944	Green
Brushy Pond Creek of Caney Creek	Above Pond to Headwaters	37.40290, -86.59473/ Headwaters	Butler, Grayson
Cane Run of Nolin River Lake (Nolin River)*	Nolin River Lake Backwaters to Headwaters	37.33240, -86.07132/ Headwaters	Hart
Caney Fork of Peter Creek*	Mouth to Headwaters	36.84608, -85.97090/ Headwaters	Barren
Clifty Creek of Rough River*	Barton Run to Western Kentucky Parkway	37.54800, -86.23505/ 37.51366, -86.15115	Grayson
Clifty Creek of Wolf Lick Creek*	Little Clifty Creek to Sulphur Lick	36.99759, -87.05518/ 36.98189, -87.12934	Todd
Dismal Creek of Nolin River	Mouth to Headwaters	37.27478, -86.24986/ Headwaters	Edmonson
East Fork Little Barren River of Little Barren River*	Leatherwood Creek to Flat Rock Creek	37.00149, -85.52277/ 36.98390, -85.52892	Metcalfe
Elk Lick Creek of Wolf Lick Creek*	Duck Lick Creek to Barren Fork and Edger Creek	36.96003, -86.98838/ 36.91651, -86.97280	Logan
Ellis Fork of Damron Creek*	Mouth to Headwaters	37.15744, -85.06621/ Headwaters	Adair, Russell
Falling Timber Creek of Skaggs Creek*	Land Use Change (0.1 River Miles Upstream of Taylor Branch) to Headwaters	36.93680, -85.74424/ Headwaters	Metcalfe
Fiddlers Creek of North Fork Rough River*	Mouth to Headwaters	37.70782, -86.34660/ Headwaters	Breckinridge
Forbes Creek of Buck Creek*	Mouth to Unnamed Tributary (0.3 River Miles Downstream of CR-1021 Owen West Road)	36.98832, -87.32847/ 36.95495, -87.34872	Christian
Gaspar River of Barren River*	Clear Fork Creek to Wiggington Creek	36.98618, -86.63216/ 36.91698, -86.74175	Logan, Warren
Goose Creek of Green River*	Mouth to Little Goose Creek	37.20311, -85.01074/ 37.11575, -84.99617	Casey, Russell
Green River of Ohio River	Western Mammoth Cave National Park Boundary to to Lynn Camp Creek	37.21698, -86.26334/ 37.31974, -85.71529	Edmonson, Hart
Halls Creek of Rough River*	Unnamed Tributary (0.2 River Miles Upstream of CR-1131 Halls Creek Road) to Headwaters	37.49338, -86.76189/ Headwaters	Ohio
Lick Creek of West Fork Drakes Creek*	Mouth to Headwaters	36.80165, -86.49463/ Headwaters	Simpson
Linders Creek of Rough River*	Mouth to Sutzer Creek	37.63677, -86.20180/ 37.63368, -86.14513	Hardin
Little Beaverdam Creek of Green River*	Mouth to KY-743 Boiling Springs Road	37.17474, -86.34748/ 37.09866, -86.31160	Edmonson, Warren
Little Meeting Creek of Meeting Creek	Mouth to Loss of Riparian Buffer (near Unnamed Tributary)	37.58031, -86.22664/ 37.59732, -86.21150	Hardin
Little Short Creek of Rough River*	Mouth to Headwaters	37.55200, -86.57632/ Headwaters	Grayson

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<u>Lynn Camp Creek of Green River*</u>	<u>Mouth to Lindy Creek</u>	<u>37.31994, -85.71503/ 37.39027, -85.70372</u>	<u>Hart</u>
<u>McFarland Creek of West Fork Pond River*</u>	<u>Grays Branch to Unnamed Tributary</u>	<u>37.13299, -87.38653/ 37.11248, -87.40630</u>	<u>Christian</u>
<u>Meeting Creek of Rough River*</u>	<u>Little Meeting Creek to Petty Branch</u>	<u>37.58021, -86.22663/ 37.56328, -86.15925</u>	<u>Grayson, Hardin</u>
<u>Muddy Creek of Rough River*</u>	<u>Land Use Change (1.2 River Miles Upstream of CR-1125 Mt Pleasant Road) to Headwaters</u>	<u>37.42276, -86.73440/ Headwaters</u>	<u>Ohio</u>
<u>North Fork Rough River of Rough River Lake*</u>	<u>Buffalo Creek to Reservoir Dam</u>	<u>37.70023, -86.38206/ 37.71212, -86.32604</u>	<u>Breckinridge</u>
<u>Nosey Creek of Nolin River</u>	<u>Mouth to Dry Run</u>	<u>37.45730, -86.06752/ 37.46694, -86.08128</u>	<u>Grayson</u>
<u>Peter Creek of Barren River*</u>	<u>Caney Fork to Dry Fork</u>	<u>36.84608, -85.97090/ 36.80042, -85.90772</u>	<u>Barren</u>
<u>Pond Run of Rough River*</u>	<u>Land Use Change (0.2 River Miles Downstream of CR-1503 White Road) to Headwaters</u>	<u>37.57381, -86.60506/ Headwaters</u>	<u>Breckinridge, Ohio</u>
<u>Puncheon Creek of Figure Eight Branch</u>	<u>Mouth to Tennessee State Line</u>	<u>36.67503, -85.99483/ 36.62953, -86.00534</u>	<u>Allen</u>
<u>Rough River of Green River*</u>	<u>Linders Creek to Vertrees Creek</u>	<u>37.63677, -86.20180/ 37.69001, -86.13664</u>	<u>Hardin</u>
<u>Russell Creek of Green River*</u>	<u>Mouth to Columbia Waste Water Treatment Plant</u>	<u>37.22938, -85.51040/ 37.10942, -85.30532</u>	<u>Adair, Green</u>
<u>Russell Creek of Green River*</u>	<u>Reynolds Creek to Hudson Creek and Mount Olive Creek</u>	<u>37.04137, -85.18825/ 37.09160, -85.10334</u>	<u>Adair, Russell</u>
<u>Sixes Creek of Wild Branch*</u>	<u>Mouth to Headwaters</u>	<u>37.34154, -86.69993/ Headwaters</u>	<u>Ohio</u>
<u>Sulphur Branch of Alexander Creek*</u>	<u>Mouth to Headwaters</u>	<u>37.12892, -86.26930/ Headwaters</u>	<u>Edmonson</u>
<u>Thompson Branch of West Fork Drakes Creek*</u>	<u>Webb Branch to Tennessee State Line</u>	<u>36.65809, -86.49862/ 36.65202, -86.47973</u>	<u>Simpson</u>
<u>Trammel Creek of Drakes Creek*</u>	<u>Mouth to Tennessee State Line</u>	<u>36.87579, -86.37443/ 36.63973, -86.19775</u>	<u>Allen, Warren</u>
<u>Unnamed Tributary of Big Run Branch of Big Run Branch</u>	<u>Mouth to Loss of Riparian Buffer and Unnamed Tributary from the South West</u>	<u>37.50894, -86.33964/ 37.48244, -86.32314</u>	<u>Grayson</u>
<u>Unnamed Tributary of Green River of Ohio River*</u>	<u>Mouth to Headwaters.</u>	<u>37.19160, -85.12732/ Headwaters</u>	<u>Adair</u>
<u>Unnamed Tributary of White Oak Creek of Green River Lake*</u>	<u>CR-1073 Hovious Ridge Road to KY-76 Elkhorn Road</u>	<u>37.23736, -85.22392/ 37.26178, -85.19616</u>	<u>Adair</u>
<u>West Fork Pond River of Pond River*</u>	<u>Unnamed Tributary (0.8 River Miles Downstream of CR-1078 J P Grace Road) to East Branch Pond River</u>	<u>37.09098, -87.36698/ 37.03070, -87.40602</u>	<u>Christian</u>
KENTUCKY RIVER BASIN			
<u>Backbone Creek of Sixmile Creek*</u>	<u>Mouth to Scrabble Creek</u>	<u>38.33978, -84.99690/ 38.32025, -84.99355</u>	<u>Franklin, Henry, Shelby</u>
<u>Bear Branch of North Fork Kentucky River</u>	<u>Upstream of Sediment Pond to Headwaters</u>	<u>37.13248, -83.10152/ Headwaters</u>	<u>Perry</u>
<u>Big Double Creek of Red Bird River*</u>	<u>Mouth to Left and Right Fork Big Double Creek</u>	<u>37.14045, -83.58768/ 37.09053, -83.60245</u>	<u>Clay</u>
<u>Bill Branch of Laurel Fork*</u>	<u>Mouth to Right and Left Fork Bill Branch</u>	<u>36.93025, -83.30921/ 36.93249, -83.30578</u>	<u>Harlan</u>
<u>Bill Oak Branch of Laurel Fork</u>	<u>Mouth to Headwaters</u>	<u>37.33478, -83.56541/ Headwaters</u>	<u>Owsley</u>
<u>Billey Fork of Millers Creek</u>	<u>Land Use Change (1.0 River Mile Upstream of Wodward Creek) to Headwaters</u>	<u>37.67957, -83.79653/ Headwaters</u>	<u>Estill, Lee</u>
<u>Boyd Run of North Elkhorn Creek</u>	<u>Mouth to Cherry Run</u>	<u>38.21316, -84.48529/ 38.21731, -84.47430</u>	<u>Scott</u>
<u>Buffalo Creek of South Fork Kentucky River*</u>	<u>Mouth to Right Fork and Left Fork Buffalo Creek</u>	<u>37.35051, -83.65233/ 37.35163, -83.63576</u>	<u>Owsley</u>
<u>Bullskin Creek of South Fork Kentucky River</u>	<u>Mouth to Headwaters</u>	<u>37.27322, -83.64441/ Headwaters</u>	<u>Clay, Leslie</u>
<u>Camp Branch of Spass Creek</u>	<u>Mouth to Headwaters</u>	<u>37.88067, -83.70589/ Headwaters</u>	<u>Menifee</u>
<u>Cavanaugh Creek of South Fork Station Camp Creek*</u>	<u>Mouth to Headwaters</u>	<u>37.55370, -83.94222/ Headwaters</u>	<u>Jackson</u>
<u>Chester Creek of Middle Fork Red River*</u>	<u>Mouth to Headwaters</u>	<u>37.72746, -83.65906/ Headwaters</u>	<u>Wolfe</u>
<u>Clear Creek of Kentucky River*</u>	<u>Mouth to East Fork Clear Creek</u>	<u>37.93654, -84.79613/ 37.92667, -84.72576</u>	<u>Woodford</u>

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<u>Clemons Fork of Buckhorn Creek*</u>	<u>Mouth to Headwaters</u>	<u>37.45511, -83.16582/ Headwaters</u>	<u>Breathitt</u>
<u>Coles Fork of Buckhorn Creek *</u>	<u>Mouth to Headwaters</u>	<u>37.45720, -83.13468/ Headwaters</u>	<u>Breathitt, Knott</u>
<u>Craig Creek of Kentucky River*</u>	<u>Mouth to Unnamed Tributary</u>	<u>37.97902, -84.82058/ 37.98133, -84.78474</u>	<u>Woodford</u>
<u>Deep Ford Branch of Cutshin Creek</u>	<u>Upstream of Pond to Headwaters</u>	<u>37.19085, -83.34793/ Headwaters</u>	<u>Leslie</u>
<u>Drennon Creek of Kentucky River*</u>	<u>Fivemile Creek to Town Creek</u>	<u>38.46577, -85.09825/ 38.43094, -85.11912</u>	<u>Henry</u>
<u>East Fork Indian Creek of Indian Creek*</u>	<u>Mouth to Headwaters</u>	<u>37.86030, -83.67480/ Headwaters</u>	<u>Menifee</u>
<u>Elisha Creek of Red Bird River*</u>	<u>Land Use Change (0.4 River Miles Downstream of Left Fork Elisha Creek) to Right and Big Middle Fork Elisha Creek</u>	<u>37.08454, -83.53407/ 37.08165, -83.51802</u>	<u>Leslie</u>
<u>Emily Run of Drennon Creek</u>	<u>Mouth to Unnamed Tributary (0.5 River Miles Downstream of CR-1010 New Cut Road)</u>	<u>38.50114, -85.07706/ 38.51135, -85.12727</u>	<u>Henry</u>
<u>Evans Fork of Billy Fork*</u>	<u>Mouth to Headwaters</u>	<u>37.69659, -83.77567/ Headwaters</u>	<u>Estill</u>
<u>Falling Rock Branch of Clemons Fork*</u>	<u>Mouth to Headwaters</u>	<u>37.47650, -83.14005/ Headwaters</u>	<u>Breathitt</u>
<u>Gilbert Creek of Kentucky River</u>	<u>Mouth to Unnamed Tributary (at Milepost 7.06 KY-513 Gilberts Creek Road)</u>	<u>37.97571, -84.85305/ 37.97570, -84.85305</u>	<u>Anderson</u>
<u>Gladie Creek of Red River*</u>	<u>Land Use Change (Downstream of Sargent Branch) to Long Branch</u>	<u>37.83977, -83.60773/ 37.86994, -83.53192</u>	<u>Menifee</u>
<u>Goose Creek of Red Bird River</u>	<u>Mouth to Laurel Creek</u>	<u>37.26982, -83.64347/ 37.21607, -83.71750</u>	<u>Clay</u>
<u>Grier Creek of Kentucky River*</u>	<u>Kentucky River Backwaters to Unnamed Tributary</u>	<u>38.02224, -84.82900/ 38.01901, -84.78975</u>	<u>Woodford</u>
<u>Grindstone Creek of Kentucky River*</u>	<u>Kentucky River Backwaters to Pond</u>	<u>38.27095, -84.87841/ 38.25169, -84.86151</u>	<u>Franklin</u>
<u>Hardwick Creek of Red River</u>	<u>Mouth to Little Hardwick Creek</u>	<u>37.83287, -83.92629/ 37.80637, -83.91057</u>	<u>Powell</u>
<u>Hell for Certain Creek of Middle Fork Kentucky River</u>	<u>Mouth to Cucumber Branch</u>	<u>37.25900, -83.38193/ 37.21916, -83.44410</u>	<u>Leslie</u>
<u>Hines Creek of Kentucky River*</u>	<u>Kentucky River Backwaters to Unnamed Tributary</u>	<u>37.87669, -84.37216/ 37.87346, -84.35034</u>	<u>Madison</u>
<u>Honey Branch of Greasy Creek</u>	<u>Mouth to Headwaters</u>	<u>37.01785, -83.35630/ Headwaters</u>	<u>Leslie</u>
<u>Hopper Cave Branch of Cavanaugh Creek*</u>	<u>Mouth to Headwaters</u>	<u>37.54046, -83.96364/ Headwaters</u>	<u>Jackson</u>
<u>Indian Creek of Eagle Creek*</u>	<u>Mouth to Headwaters</u>	<u>38.64460, -84.97133/ Headwaters</u>	<u>Carroll</u>
<u>Indian Fork of Sixmile Creek*</u>	<u>Mouth to Headwaters</u>	<u>38.30060, -85.04584/ Headwaters</u>	<u>Shelby</u>
<u>John Carpenter Fork of Clemons Fork*</u>	<u>Mouth to Headwaters</u>	<u>37.48191, -83.13306/ Headwaters</u>	<u>Breathitt</u>
<u>John Littles Branch of North Fork Kentucky River</u>	<u>Mouth to Headwaters</u>	<u>37.44138, -83.36137/ Headwaters</u>	<u>Breathitt</u>
<u>Joyce Fork of Cortland Fork*</u>	<u>Mouth to Headwaters</u>	<u>37.35043, -83.55770/ Headwaters</u>	<u>Owsley</u>
<u>Katies Creek of Red Bird River</u>	<u>Mouth to Headwaters</u>	<u>37.03516, -83.54001/ Headwaters</u>	<u>Clay</u>
<u>Laurel Fork of Left Fork Buffalo Creek*</u>	<u>Cortland Fork to Big Branch</u>	<u>37.34758, -83.56464/ 37.32795, -83.56754</u>	<u>Owsley</u>
<u>Left Fork Big Double Creek of Big Double Creek*</u>	<u>Mouth to Headwaters</u>	<u>37.09053, -83.60245/ Headwaters</u>	<u>Clay</u>
<u>Line Fork of North Fork Kentucky River*</u>	<u>Defeated Creek to Headwaters</u>	<u>37.05325, -82.98858/ Headwaters</u>	<u>Letcher</u>
<u>Little Middle Fork Elisha Creek of Big Middle Fork Elisha Creek*</u>	<u>Mouth to Headwaters</u>	<u>37.08174, -83.51566/ Headwaters</u>	<u>Leslie</u>
<u>Little Millseat Branch of Clemons Fork*</u>	<u>Mouth to Headwaters</u>	<u>37.47206, -83.14624/ Headwaters</u>	<u>Breathitt</u>
<u>Little Negro Creek of Negro Creek</u>	<u>Mouth to Unnamed Tributary</u>	<u>37.39375, -84.41432/ 37.36326, -84.42477</u>	<u>Rockcastle</u>
<u>Little Sixmile Creek of Sixmile Creek*</u>	<u>Mouth to Headwaters</u>	<u>38.38438, -85.00254/ Headwaters</u>	<u>Henry</u>
<u>Little Sturgeon Creek of Sturgeon Creek</u>	<u>Mouth to Headwaters</u>	<u>37.47837, -83.81345/ Headwaters</u>	<u>Owsley</u>

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<u>Low Gap Branch of Elk Creek*</u>	<u>Mouth to Headwaters</u>	<u>37.15340, -82.98357/ Headwaters</u>	<u>Letcher</u>
<u>Lower Devil Creek of North Fork Kentucky River</u>	<u>Mouth to Middle Fork Lower Devil Creek</u>	<u>37.64419, -83.60972/ 37.68891, -83.60403</u>	<u>Lee, Wolfe</u>
<u>Lower Howard Creek of Kentucky River</u>	<u>Mouth to West Fork Lower Howard Creek</u>	<u>37.91807, -84.27256/ 37.93369, -84.26952</u>	<u>Clark</u>
<u>Lulbegrud Creek of Red River</u>	<u>Mouth to Falls Branch</u>	<u>37.83781, -84.00193/ 37.88288, -83.99603</u>	<u>Clark, Powell</u>
<u>Middle Fork Kentucky River of North Fork Kentucky River</u>	<u>Mouth to Upper Twin Creek</u>	<u>37.58669, -83.67003/ 37.54597, -83.56307</u>	<u>Lee, Breathitt</u>
<u>Middle Fork Kentucky River of North Fork Kentucky River*</u>	<u>Hurts Creek to Greasy Creek</u>	<u>37.15444, -83.37052/ 37.07658, -83.39234</u>	<u>Leslie</u>
<u>Middle Fork Red River of Red River</u>	<u>South Fork Red River to Natural Bridge State Park Lake</u>	<u>37.82360, -83.75245/ 37.77769, -83.67745</u>	<u>Powell</u>
<u>Mike Branch of Laurel Fork</u>	<u>Mouth to Headwaters</u>	<u>37.33908, -83.56338/ Headwaters</u>	<u>Owsley</u>
<u>Mill Creek of Kentucky River*</u>	<u>0.05 River Miles Upstream of PS-1306 Perry Park Road to Headwaters</u>	<u>38.54565, -84.99933/ Headwaters</u>	<u>Owen</u>
<u>Millseat Branch of Clemons Fork*</u>	<u>Mouth to Headwaters</u>	<u>37.47440, -83.14367/ Headwaters</u>	<u>Breathitt</u>
<u>Muddy Creek of Kentucky River*</u>	<u>0.1 River Mile Upstream of KY-52 Irvine Road to Viny Fork</u>	<u>37.74039, -84.15691/ 37.70998, -84.18205</u>	<u>Madison</u>
<u>Musselman Creek of Eagle Creek*</u>	<u>Mouth to Headwaters</u>	<u>38.56845, -84.67732/ Headwaters</u>	<u>Grant</u>
<u>Red Bird River of South Fork Kentucky River</u>	<u>Mouth to Big Creek</u>	<u>37.26973, -83.64341/ 37.16648, -83.58233</u>	<u>Clay</u>
<u>Right Fork Beehive Branch of Beehive Branch</u>	<u>Residential Area to Headwaters</u>	<u>37.06172, -83.10148/ Headwaters</u>	<u>Perry</u>
<u>Right Fork Buffalo Creek of Buffalo Creek*</u>	<u>Mouth to Headwaters</u>	<u>37.35163, -83.63575/ Headwaters</u>	<u>Owsley</u>
<u>Right Fork Elisha Creek of Elisha Creek</u>	<u>Mouth to Headwaters</u>	<u>37.08165, -83.51802/ Headwaters</u>	<u>Leslie</u>
<u>Roaring Fork of Lewis Fork*</u>	<u>Mouth to Headwaters</u>	<u>37.46327, -83.17081/ Headwaters</u>	<u>Breathitt</u>
<u>Rock Lick Creek of South Fork Station Camp Creek*</u>	<u>Mouth to Headwaters</u>	<u>37.539508, -84.010769/ Headwaters</u>	<u>Jackson</u>
<u>Sand Ripple Creek of Kentucky River*</u>	<u>Kentucky River Backwaters to Headwaters</u>	<u>38.37772, -84.89991/ Headwaters</u>	<u>Franklin, Henry</u>
<u>Seyvern Creek of Kentucky River*</u>	<u>Kentucky River Backwaters to North Fork Seyvern Creek</u>	<u>38.46397, -84.91060/ 38.46646, -84.89242</u>	<u>Owen</u>
<u>Shaker Creek of Kentucky River</u>	<u>Kentucky River Backwaters to Shawnee Run</u>	<u>37.84717, -84.76738/ 37.84378, -84.76810</u>	<u>Mercer</u>
<u>Shelly Rock Fork of Millseat Branch*</u>	<u>Mouth to Headwaters</u>	<u>37.48162, -83.15038/ Headwaters</u>	<u>Breathitt</u>
<u>Sixmile Creek of Kentucky River*</u>	<u>Little Sixmile Creek to Cedarmore Lake Dam</u>	<u>38.38448, -85.00261/ 38.32816, -85.01600</u>	<u>Henry, Shelby</u>
<u>South Fork Kentucky River of Kentucky River</u>	<u>Mouth to Sexton Creek</u>	<u>37.56996, -83.71085/ 37.35900, -83.68198</u>	<u>Lee, Owsley</u>
<u>South Fork Red River of Middle Fork Kentucky River</u>	<u>Mouth to Sand Lick Fork</u>	<u>37.82360, -83.75245/ 37.78067, -83.73355</u>	<u>Powell</u>
<u>South Fork Station Camp Creek of Station Camp Creek*</u>	<u>Mouth to Rock Lick Creek</u>	<u>37.53286, -83.90931/ 37.55370, -83.94222</u>	<u>Jackson</u>
<u>Spring Creek of Red Bird River</u>	<u>Mouth to Little Spring Creek</u>	<u>37.06192, -83.54144/ 37.05562, -83.56302</u>	<u>Clay</u>
<u>Spruce Branch of Red Bird Creek*</u>	<u>Mouth to Headwaters</u>	<u>36.95696, -83.53108/ Headwaters</u>	<u>Clay</u>
<u>Station Camp Creek of Kentucky River*</u>	<u>Land Use Change (1.25 River Miles Upstream of Sparks Branch) to South Fork Station Camp Creek</u>	<u>37.58261, -83.92802/ 37.53287, -83.90929</u>	<u>Estill</u>
<u>Steeles Run of South Elkhorn Creek</u>	<u>Mouth to Unnamed Tributary (0.1 River Miles Upstream of PV-3002 Miss Alleged Drive)</u>	<u>38.11099, -84.62871/ 38.06735, -84.59554</u>	<u>Fayette, Woodford</u>
<u>Steer Fork of War Fork*</u>	<u>Mouth to Headwaters</u>	<u>37.45466, -83.92700/ Headwaters</u>	<u>Jackson</u>
<u>Sturgeon Creek of Kentucky River*</u>	<u>Duck Fork to Little Sturgeon Creek</u>	<u>37.53576, -83.78177/ 37.47850, -83.81356</u>	<u>Lee, Owsley</u>
<u>Sugar Creek of Red Bird River*</u>	<u>Land Use Change (at End of CR-1119 Sugar Creek Road) to Headwaters</u>	<u>37.11885, -83.55208/ Headwaters</u>	<u>Clay, Leslie</u>
<u>Sulphur Lick Creek of Elkhorn Creek*</u>	<u>Mouth to Headwaters</u>	<u>38.28765, -84.80211/ Headwaters</u>	<u>Franklin</u>

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<u>Unnamed Tributary of Cawood Branch of Beech Fork*</u>	<u>Mouth to Headwaters</u>	<u>36.93676, -83.37278/ Headwaters</u>	<u>Leslie</u>
<u>Unnamed Tributary of Cedar Creek of Kentucky River*</u>	<u>Mouth to Headwaters</u>	<u>38.37196, -84.79664/ Headwaters</u>	<u>Owen</u>
<u>Unnamed Tributary of Glenss Creek of Kentucky River*</u>	<u>Mouth to Headwaters</u>	<u>38.14826, -84.83651/ Headwaters</u>	<u>Woodford</u>
<u>Unnamed Tributary of Jacks Creek of Kentucky River*</u>	<u>Mouth to Headwaters</u>	<u>37.85200, -84.36529/ Headwaters</u>	<u>Madison</u>
<u>Unnamed Tributary of Kentucky River of Ohio River*</u>	<u>Mouth to Land Use Change</u>	<u>38.21913, -84.87712/ 38.23174, -84.86242</u>	<u>Franklin</u>
<u>Unnamed Tributary of Line Fork of North Fork Kentucky River*</u>	<u>Mouth to Headwaters</u>	<u>37.07769, -82.99241/ Headwaters</u>	<u>Letcher</u>
<u>War Fork of Station Camp Creek*</u>	<u>Steer Fork to Headwaters</u>	<u>37.45467, -83.92699/ Headwaters</u>	<u>Jackson</u>
<u>Watches Fork of Laurel Fork</u>	<u>Mouth to Headwaters</u>	<u>37.34456, -83.56203/ Headwaters</u>	<u>Owsley</u>
<u>Wild Dog Creek of Sturgeon Creek</u>	<u>Mouth to Dry Fork</u>	<u>37.48729, -83.82329/ 37.48235, -83.82972</u>	<u>Owsley</u>
<u>Wolfpen Creek of Red River*</u>	<u>Mouth to Headwaters</u>	<u>37.82549, -83.63094/ Headwaters</u>	<u>Menifee</u>
LICKING RIVER BASIN			
<u>Blackwater Creek of Licking River*</u>	<u>Eaton Creek to Greasy Fork</u>	<u>37.94073, -83.41328/ 37.87922, -83.43981</u>	<u>Morgan</u>
<u>Blanket Creek of Licking River</u>	<u>Mouth to Unnamed Tributary</u>	<u>38.65560, -84.28532/ 38.64266, -84.29929</u>	<u>Pendleton</u>
<u>Botts Fork of Brushy Fork*</u>	<u>Mouth to Land Use Change</u>	<u>37.94933, -83.50601/ 37.93022, -83.53288</u>	<u>Menifee</u>
<u>Bowman Creek of Licking River</u>	<u>Mouth to Unnamed Tributary at CR-1135 Martin Road</u>	<u>38.89246, -84.44237/ 38.89404, -84.50217</u>	<u>Kenton</u>
<u>Brushy Fork of Beaver Creek*</u>	<u>Cave Run Lake Backwaters to Headwaters</u>	<u>37.98439, -83.50523/ Headwaters</u>	<u>Menifee</u>
<u>Brushy Fork of Middle Fork Grassy Creek*</u>	<u>Mouth to Headwaters</u>	<u>38.70106, -84.44697/ Headwaters</u>	<u>Pendleton</u>
<u>Bucket Branch of North Fork Licking River*</u>	<u>Mouth to Headwaters</u>	<u>38.05169, -83.31594/ Headwaters</u>	<u>Morgan</u>
<u>Cedar Creek of Licking River</u>	<u>Mouth to North Branch Cedar Creek</u>	<u>38.47637, -84.12301/ 38.49051, -84.10732</u>	<u>Robertson</u>
<u>Craney Creek of North Fork Licking River</u>	<u>Mouth to Headwaters</u>	<u>38.06493, -83.35154/ Headwaters</u>	<u>Morgan, Rowan</u>
<u>Devils Fork of North Fork Licking River*</u>	<u>Mouth to Headwaters</u>	<u>38.04413, -83.30378/ Headwaters</u>	<u>Elliott, Morgan</u>
<u>Flour Creek of Licking River</u>	<u>Mouth to Unnamed Tributary (0.05 River Miles Upstream of CR-1021 Vater Road)</u>	<u>38.78982, -84.34388/ 38.80192, -84.32458</u>	<u>Pendleton</u>
<u>Grovers Creek of Kincaid Lake*</u>	<u>Kincaid Lake Backwaters to Unnamed Tributary</u>	<u>38.70547, -84.25273/ 38.70795, -84.21217</u>	<u>Bracken, Pendleton</u>
<u>Licking River of Ohio River</u>	<u>End of KY-211 Auora Road to 0.6 River Miles Downstream of Salt Lick Creek</u>	<u>38.17659, -83.61805/ 38.13064, -83.60581</u>	<u>Bath, Rowan</u>
<u>North Fork Licking River of Cave Run Lake*</u>	<u>Cave Run Lake Backwaters (0.25 River Miles Downstream of Lick Branch) to Devils Fork</u>	<u>38.06587, -83.36149/ 38.04413, -83.30378</u>	<u>Morgan, Rowan</u>
<u>Sawyers Fork of Cruises Creek</u>	<u>Mouth to Headwaters</u>	<u>38.84833, -84.54035/ Headwaters</u>	<u>Kenton</u>
<u>Slabcamp Creek of Craney Creek</u>	<u>Mouth to Headwaters</u>	<u>38.09987, -83.32893/ Headwaters</u>	<u>Rowan</u>
<u>Slate Creek of Licking River</u>	<u>Mouth to Mill Creek</u>	<u>38.21841, -83.69863/ 38.11220, -83.74665</u>	<u>Bath</u>
<u>South Fork Grassy Creek of Grassy Creek*</u>	<u>Mouth to Greasy Creek</u>	<u>38.79193, -84.42895/ 38.68302, -84.48375</u>	<u>Pendleton</u>
<u>Unnamed Tributary of Shannon Creek of North Fork Licking River</u>	<u>Mouth to Headwaters</u>	<u>38.55443, -83.93335/ Headwaters</u>	<u>Mason</u>
<u>Welch Fork of Brushy Fork*</u>	<u>Mouth to Unnamed Tributary (Downstream of CR-1160 Fox Chase Road)</u>	<u>37.94405, -83.50360/ 37.93209, -83.51361</u>	<u>Menifee</u>
<u>West Creek of Licking River*</u>	<u>Mouth to Headwaters</u>	<u>38.53643, -84.20046/ Headwaters</u>	<u>Harrison, Robertson</u>
<u>Willow Creek of North Fork Licking River</u>	<u>Mouth to Logans Branch</u>	<u>38.58589, -84.17627/ 38.63013, -84.16426</u>	<u>Bracken</u>
LITTLE SANDY RIVER BASIN			
<u>Arabs Fork of Big Sinking Creek*</u>	<u>Mouth to Headwaters</u>	<u>38.22358, -83.15918/ Headwaters</u>	<u>Elliott</u>

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<u>Big Caney Creek of Grayson Lake (Little Sandy River)*</u>	<u>Grayson Lake Backwaters to Headwaters</u>	<u>38.15880, -83.09431/ Headwaters</u>	<u>Elliott, Rowan</u>
<u>Big Sinking Creek of Little Sandy River*</u>	<u>KY-986 to Arabs Fork</u>	<u>38.24972, -83.11729/ 38.22360, -83.15915</u>	<u>Carter, Elliott</u>
<u>Laurel Creek of Little Sandy River*</u>	<u>CR-1352 Stegall Cold Spring Road to Headwaters</u>	<u>38.12912, -83.18963/ Headwaters</u>	<u>Elliott, Rowan</u>
<u>Meadow Branch of Little Fork Little Sandy River*</u>	<u>Mouth to Headwaters</u>	<u>38.07711, -82.99544/ Headwaters</u>	<u>Elliott</u>
<u>Middle Fork Little Sandy River of Little Sandy River*</u>	<u>Mouth to Sheepskin Branch</u>	<u>38.12135, -83.09262/ 38.09139, -83.09075</u>	<u>Elliott</u>
<u>Nichols Fork of Little Fork Little Sandy River*</u>	<u>Green Branch to Headwaters</u>	<u>38.08073, -83.00200/ Headwaters</u>	<u>Elliott</u>
LOWER CUMBERLAND RIVER BASIN			
<u>Crooked Creek of Energy Lake*</u>	<u>Energy Lake Backwaters to Headwaters</u>	<u>36.85193, -88.03311/ Headwaters</u>	<u>Trigg</u>
<u>Donaldson Creek of Lake Barkley*</u>	<u>Lake Barkley Backwaters to Unnamed Tributary</u>	<u>36.74924, -87.91006/ 36.74970, -87.86754</u>	<u>Trigg</u>
<u>Elk Fork of Red River*</u>	<u>Tennessee State Line to Dry Branch</u>	<u>36.64264, -87.08560/ 36.74638, -87.13221</u>	<u>Todd</u>
<u>Sugar Creek of Cumberland River*</u>	<u>Lick Creek to Left Descending Unnamed Tributary (Upstream of KY-2232 Sugar Creek Road)</u>	<u>37.17547, -88.26578/ 37.13054, -88.28340</u>	<u>Livingston</u>
<u>West Fork Red River of Red River*</u>	<u>Tennessee State Line to Montgomery Creek</u>	<u>36.64154, -87.35589/ 36.70964, -87.32988</u>	<u>Christian</u>
<u>Whippoorwill Creek of Red River*</u>	<u>Mouth to Vicks Branch</u>	<u>36.66568, -86.96368/ 36.75027, -86.99652</u>	<u>Logan</u>
MISSISSIPPI RIVER BASIN			
<u>Jackson Creek of Bayou de Chien*</u>	<u>Mouth to Headwaters</u>	<u>36.58204, -88.80298/ Headwaters</u>	<u>Graves</u>
<u>Murphy Pond</u>	<u>Entire Pond and Preserve Area</u>	<u>Not Applicable</u>	<u>Hickman</u>
<u>Obion Creek of Mississippi River*</u>	<u>Hurricane Creek to Little Creek</u>	<u>36.75483, -89.01154/ 36.76673, -88.91258</u>	<u>Carlisle, Hickman</u>
<u>Swan Pond</u>	<u>Entire Lake</u>	<u>Not Applicable</u>	<u>Ballard</u>
<u>Terrapin Creek of North Fork Obion River*</u>	<u>Tennessee State Line to East and West Forks Terrapin Creek</u>	<u>36.50113, -88.49244/ 36.55040, -88.52493</u>	<u>Graves</u>
OHIO RIVER BASIN			
<u>Ashbys Fork of Woolper Creek</u>	<u>Mouth to KY-20 Petersburg Road</u>	<u>39.03846, -84.81574/ 39.07729, -84.79534</u>	<u>Boone</u>
<u>Blackford Creek of Ohio River</u>	<u>Little Yellow Creek to Butchers Branch</u>	<u>37.90127, -86.91300/ 37.88324, -86.89596</u>	<u>Daviess, Hancock</u>
<u>Crooked Creek of Ohio River*</u>	<u>Rush Creek to Marion City Lake Dam</u>	<u>37.35915, -88.06775/ 37.31055, -88.09185</u>	<u>Crittenden</u>
<u>Double Lick Creek of Woolper Creek*</u>	<u>Mouth to Headwaters</u>	<u>39.03416, -84.78650/ Headwaters</u>	<u>Boone</u>
<u>Garrison Creek of Ohio River*</u>	<u>Mouth to Headwaters</u>	<u>39.10565, -84.80643/ Headwaters</u>	<u>Boone</u>
<u>Harrods Creek of Ohio River</u>	<u>Wolfpen Branch to Brush Creek</u>	<u>38.33388, -85.60350/ 38.44058, -85.42898</u>	<u>Henry, Jefferson, Oldham</u>
<u>Kinniconick Creek of Ohio River*</u>	<u>McDowell Creek to Headwaters</u>	<u>38.57479, -83.18862/ Headwaters</u>	<u>Lewis</u>
<u>Little South Fork of Big South Fork</u>	<u>Land Use Change to Headwaters</u>	<u>38.82216, -84.74115/ Headwaters</u>	<u>Boone</u>
<u>Metropolis Lake of Ohio River</u>	<u>Entire Lake</u>	<u>37.15096, -88.77076/ 37.14475, -88.76100</u>	<u>McCracken</u>
<u>Middle Fork Massac Creek of Massac Creek*</u>	<u>CR-1207 Hines Road to Pond</u>	<u>37.01626, -88.74480/ 36.97538, -88.72982</u>	<u>McCracken</u>
<u>Pryors Fork of Corn Creek</u>	<u>Mouth to Land Use Change</u>	<u>38.63666, -85.40210/ 38.64269, -85.33447</u>	<u>Trimble</u>
<u>Second Creek of Ohio River*</u>	<u>Ohio River Backwaters to Headwaters</u>	<u>39.08518, -84.84280/ Headwaters</u>	<u>Boone</u>
<u>Unnamed Tributary of Big Sugar Creek of Ohio River*</u>	<u>I-71 to Headwaters</u>	<u>38.74961, -84.81112/ Headwaters</u>	<u>Gallatin</u>
<u>Unnamed Tributary of Corn Creek of Ohio River*</u>	<u>Mouth to Headwaters</u>	<u>38.60284, -85.42320/ Headwaters</u>	<u>Trimble</u>

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<u>Unnamed Tributary of Massac Creek of Ohio River*</u>	<u>Mouth to Headwaters</u>	<u>36.99350, -88.69103/ Headwaters</u>	<u>McCracken</u>
<u>West Fork Massac Creek of Massac Creek*</u>	<u>KY-724 Woodville Road to Little Massac Creek</u>	<u>37.08238, -88.77790/ 37.06021, -88.79830</u>	<u>McCracken</u>
<u>Yellowbank Creek of Ohio River*</u>	<u>KY-259 to Headwaters</u>	<u>37.98102, -86.50810/ Headwaters</u>	<u>Breckinridge</u>
SALT RIVER BASIN			
<u>Beech Fork of Rolling Fork</u>	<u>Hot Water Creek to Headwaters</u>	<u>37.59785, -85.04111/ Headwaters</u>	<u>Boyle, Marion</u>
<u>Brashears Creek of Salt River</u>	<u>Guist Creek to Bullsken and Clear Creeks</u>	<u>38.09923, -85.28643/ 38.16191, -85.28012</u>	<u>Shelby, Spencer</u>
<u>Cedar Creek of Salt River*</u>	<u>Mouth to Greens Branch</u>	<u>38.00214, -85.66327/ 37.98224, -85.60071</u>	<u>Bullitt</u>
<u>Chaplin River of Beech Fork*</u>	<u>Thompson Creek to Cornishville, KY</u>	<u>37.85567, -85.03830/ 37.80423, -84.98705</u>	<u>Mercer, Washington</u>
<u>Doctors Fork of Chaplin River</u>	<u>Mouth to Begley Branch</u>	<u>37.67567, -84.96085/ 37.64612, -84.99949</u>	<u>Boyle</u>
<u>Guist Creek of Brashears Creek</u>	<u>Mouth to Jephtha Creek</u>	<u>38.09920, -85.28615/ 38.13244, -85.19651</u>	<u>Spencer</u>
<u>Harts Run of Wilson Creek*</u>	<u>Mouth to Headwaters</u>	<u>37.86326, -85.61160/ Headwaters</u>	<u>Bullitt</u>
<u>Indian Creek of Thompson Creek</u>	<u>Mouth to Unnamed Tributary</u>	<u>37.85118, -84.97889/ 37.87350, -84.94786</u>	<u>Mercer</u>
<u>Lick Creek of Long Lick Creek</u>	<u>Mouth to 0.1 River Miles Downstream of Dam</u>	<u>37.81851, -85.21553/ 37.82616, -85.16402</u>	<u>Washington</u>
<u>Otter Creek of Rolling Fork*</u>	<u>Land Use Change (0.04 River Miles Downstream of West Fork Otter Creek) to East and Middle Fork Otter Creek</u>	<u>37.50830, -85.58171/ 37.49520, -85.57644</u>	<u>Larue</u>
<u>Overalls Creek of Wilson Creek*</u>	<u>Mouth to West Fork Overalls Creek</u>	<u>37.87053, -85.60352/ 37.88749, -85.60604</u>	<u>Bullitt</u>
<u>Plum Run of Glens Creek</u>	<u>Mouth to Headwaters</u>	<u>37.85773, -85.12186/ Headwaters</u>	<u>Washington</u>
<u>Salt Lick Creek of Rolling Fork*</u>	<u>Mouth to Headwaters</u>	<u>37.55415, -85.52125/ Headwaters</u>	<u>Larue, Marion</u>
<u>Sulphur Creek of Chaplin River*</u>	<u>Mouth to Cheese Lick and Brush Creek</u>	<u>37.88144, -85.09987/ 37.88844, -85.02061</u>	<u>Anderson, Mercer, Washington</u>
<u>Unnamed Tributary of Unnamed Tributary of Sulphur Creek of Sulphur Creek</u>	<u>Mouth to End of Forested Reach</u>	<u>37.88903, -85.09514/ 37.89877, -85.09422</u>	<u>Anderson</u>
<u>West Fork Otter Creek of Otter Creek*</u>	<u>Mouth to Headwaters</u>	<u>37.50770, -85.58158/ Headwaters</u>	<u>Larue</u>
<u>Wilson Creek of Rolling Fork*</u>	<u>Mouth to Headwaters</u>	<u>37.81170, -85.73756/ Headwaters</u>	<u>Bullitt, Nelson</u>
TENNESSEE RIVER BASIN			
<u>Blood River of Kentucky Lake*</u>	<u>McCullough Fork to Tennessee State Line</u>	<u>36.52538, -88.17089/ 36.49911, -88.17594</u>	<u>Calloway</u>
<u>Clarks River of Tennessee River</u>	<u>Persimmon Slough Creek to Middle Fork Creek</u>	<u>36.91438, -88.42009/ 36.90303, -88.40517</u>	<u>Marshall</u>
<u>Grindstone Creek of Kentucky Lake*</u>	<u>Kentucky Lake Backwaters to Headwaters</u>	<u>36.58230, -88.11886/ Headwaters</u>	<u>Calloway</u>
<u>Panther Creek of Kentucky Lake (Blood River)*</u>	<u>Kentucky Lake Backwaters (0.05 River Miles Downstream From End of CR-1137 Deerberry Lane) to Headwaters</u>	<u>36.56275, -88.15697/ Headwaters</u>	<u>Calloway</u>
<u>Panther Creek of West Fork Clarks River*</u>	<u>Upstream of Channelization (at CR-1088 McKendree Church Road) to Impoundment</u>	<u>36.80551, -88.52235/ 36.74409, -88.51418</u>	<u>Graves</u>
<u>Rockhouse Creek of Clarks River</u>	<u>Mouth to East and West Fork Rockhouse Creek</u>	<u>36.74871, -88.27661/ 36.70430, -88.31580</u>	<u>Calloway</u>
<u>Soldier Creek of West Fork Clarks River*</u>	<u>Mouth to North Fork and South Fork Soldier Creek</u>	<u>36.79642, -88.47535/ 36.78881, -88.39095</u>	<u>Marshall</u>
<u>Sugar Creek of Kentucky Lake (Blood River)</u>	<u>Kentucky Lake Backwaters (0.05 River Miles Upstream of KY-732 Irvine Cobb Road) to CR-1014 Old Newburg Road</u>	<u>36.65222, -88.15062/ 36.65780, -88.15776</u>	<u>Calloway</u>
<u>Sugar Creek of West Fork Clarks River</u>	<u>Mouth to Unnamed Reservoir</u>	<u>36.90001, -88.54781/ 36.87609, -88.49180</u>	<u>Graves</u>
<u>Trace Creek of West Fork of Clarks River*</u>	<u>Mouth to Neely Branch</u>	<u>36.84213, -88.53168/ 36.80975, -88.56009</u>	<u>Graves</u>
<u>Unnamed Tributary of Unnamed Tributary of Panther Creek of West Fork Clarks River*</u>	<u>Mouth to Headwaters</u>	<u>36.79894, -88.53176/ Headwaters</u>	<u>Graves</u>

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<u>West Fork Clarks River of Clarks River</u>	<u>Panther Creek to Soldier Creek</u>	<u>36.82217, -88.51448/ 36.79648, -88.47555</u>	<u>Graves</u>
<u>West Fork Clarks River of Clarks River*</u>	<u>Soldier Creek to Duncan Creek</u>	<u>36.79646, -88.47554/ 36.76359, -88.45642</u>	<u>Marshall</u>
<u>Wildcat Creek of Blood River*</u>	<u>CR-1131 Wright Road to Headwaters</u>	<u>36.61320, -88.18308/ Headwaters</u>	<u>Calloway</u>
TRADEWATER RIVER BASIN			
<u>East Fork Flynn Fork of Flynn Fork*</u>	<u>US-62 Dawson Road to Headwaters</u>	<u>37.14805, -87.76320/ Headwaters</u>	<u>Caldwell</u>
<u>Piney Creek of Lake Beshear*</u>	<u>Lake Beshear Backwaters to Headwaters</u>	<u>37.10253, -87.70751/ Headwaters</u>	<u>Caldwell, Christian</u>
<u>Sandlick Creek of Tradewater River*</u>	<u>Camp Creek to Headwaters</u>	<u>37.02761, -87.59583/ Headwaters</u>	<u>Christian</u>
<u>Tradewater River of Ohio River</u>	<u>Caney Creek to Buffalo Creek</u>	<u>37.16249, -87.66399/ 37.15384, -87.64868</u>	<u>Hopkins</u>
<u>Tradewater River of Ohio River*</u>	<u>Drippings Spring Branch to Buntin Lake Dam</u>	<u>37.03680, -87.52727/ 36.95621, -87.48714</u>	<u>Christian</u>
<u>Unnamed Tributary of Piney Creek of Lake Beshear*</u>	<u>Mouth to Headwaters</u>	<u>37.08000, -87.71066/ Headwaters</u>	<u>Caldwell</u>
<u>Unnamed Tributary of Sandlick Creek of Tradewater River*</u>	<u>Mouth to Headwaters</u>	<u>37.00769, -87.59282/ Headwaters</u>	<u>Christian</u>
TYGARTS CREEK BASIN			
<u>Tygarts Creek of Ohio River</u>	<u>Lost Creek to Leatherwood Branch</u>	<u>38.51484, -82.97672/ 38.48574, -83.02801</u>	<u>Greenup</u>
UPPER CUMBERLAND RIVER BASIN			
<u>Bad Branch of Poor Fork Cumberland River*</u>	<u>Mouth to Headwaters</u>	<u>37.06615, -82.77128/ Headwaters</u>	<u>Letcher</u>
<u>Bark Camp Creek of Cumberland River*</u>	<u>Upstream of Cumberland River Backwaters to Martins Fork</u>	<u>36.90856, -84.30678/ 36.89760, -84.26548</u>	<u>Whitley</u>
<u>Bear Creek of Big South Fork Cumberland River</u>	<u>Mouth to Tennessee State Line</u>	<u>36.62673, -84.53343/ 36.59643, -84.52092</u>	<u>McCreary</u>
<u>Beaver Creek of Cumberland River*</u>	<u>Mouth to Freeman Fork and Middle Fork</u>	<u>36.94623, -84.41643/ 36.89501, -84.44078</u>	<u>McCreary</u>
<u>Bee Lick Creek of Brushy Creek</u>	<u>Mouth to Warren Branch</u>	<u>37.26772, -84.43760/ 37.30223, -84.49337</u>	<u>Pulaski</u>
<u>Brownies Creek of Cumberland River*</u>	<u>Blacksnake Branch to Headwaters</u>	<u>36.70309, -83.51605/ Headwaters</u>	<u>Bell, Harlan</u>
<u>Brush Creek of Roundstone Creek</u>	<u>Wolf Creek to Reemergence of Sinking Creek</u>	<u>37.38934, -84.26451/ 37.46557, -84.22675</u>	<u>Rockcastle</u>
<u>Brushy Creek of Buck Creek*</u>	<u>Mouth to Headwaters</u>	<u>37.21223, -84.46737/ Headwaters</u>	<u>Pulaski, Rockcastle</u>
<u>Buck Creek of Lake Cumberland (Cumberland River)*</u>	<u>Backwaters of Lake Cumberland to 0.8 River Miles Upstream of Hurricane Creek</u>	<u>37.04922, -84.42953/ 37.35997, -84.59522</u>	<u>Lincoln, Pulaski</u>
<u>Bunches Creek of Cumberland River*</u>	<u>Mouth to Amos Falls Branch and Seminary Branch</u>	<u>36.83271, -84.31786/ 36.82749, -84.26979</u>	<u>Whitley</u>
<u>Cane Creek of Rockcastle River*</u>	<u>Mouth to Dam/Pond in Headwaters</u>	<u>37.02646, -84.30837/ 37.05336, -84.17792</u>	<u>Laurel</u>
<u>Clear Creek of Roundstone Creek</u>	<u>Scaffold Cane Branch to Davis Branch</u>	<u>37.44240, -84.27859/ 37.48595, -84.25532</u>	<u>Rockcastle</u>
<u>Clifty Creek of Brushy Creek</u>	<u>Mouth to Rocky Branch</u>	<u>37.21642, -84.46933/ 37.24147, -84.48323</u>	<u>Pulaski</u>
<u>Coqur Fork of Indian Creek*</u>	<u>Mouth to Headwaters</u>	<u>36.79972, -84.39768/ Headwaters</u>	<u>McCreary</u>
<u>Cumberland River of Lake Cumberland</u>	<u>Kentucky Wild River Boundaries</u>	<u>36.87220, -84.32413/ 36.75173, -84.28413</u>	<u>McCreary, Whitley</u>
<u>Dog Slaughter Creek of Cumberland River*</u>	<u>Mouth to North and South Fork Dog Slaughter Creek</u>	<u>36.85996, -84.31441/ 36.85930, -84.30072</u>	<u>Whitley</u>
<u>Eagle Creek of Cumberland River*</u>	<u>Mouth to Headwaters</u>	<u>36.84359, -84.34359/ Headwaters</u>	<u>McCreary</u>
<u>Fishing Creek of Lake Cumberland (Cumberland River)</u>	<u>Lake Cumberland Backwaters to Puncheon Creek</u>	<u>37.12475, -84.71187/ 37.22878, -84.71567</u>	<u>Casey, Lincoln, Pulaski</u>
<u>Fugitt Creek of Clover Fork Cumberland River*</u>	<u>Land Use Change to Headwaters</u>	<u>36.91670, -83.08021/ Headwaters</u>	<u>Harlan</u>
<u>Horse Lick Creek of Rockcastle River*</u>	<u>Mouth to Clover Bottom Creek</u>	<u>37.31994, -84.13808/ 37.40908, -84.12219</u>	<u>Jackson, Rockcastle</u>

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<u>Howards Creek of Dale Hollow Lake*</u>	<u>Dale Hollow Lake Backwaters to Headwaters</u>	<u>36.69404, -85.22579/ Headwaters</u>	<u>Clinton</u>
<u>Indian Creek of Cumberland River*</u>	<u>Kilburn Fork to Barren Fork</u>	<u>36.80492, -84.37957/ 36.78654, -84.41624</u>	<u>McCreary</u>
<u>Jackie Branch of Bark Camp Creek*</u>	<u>Mouth to Headwaters</u>	<u>36.90449, -84.27945/ Headwaters</u>	<u>Whitley</u>
<u>Jellico Creek of Cumberland River</u>	<u>Mouth to Jacks Creek</u>	<u>36.75172, -84.27458/ 36.72276, -84.27523</u>	<u>McCreary, Whitley</u>
<u>Kettle Creek of Cumberland River</u>	<u>Tennessee State Line to Wells Creek</u>	<u>36.61526, -85.49117/ 36.65104, -85.44504</u>	<u>Monroe</u>
<u>Kilburn Fork of Indian Creek</u>	<u>Mouth to Headwaters</u>	<u>36.80503, -84.37958/ Headwaters</u>	<u>McCreary</u>
<u>Laurel Creek of Marsh Creek</u>	<u>Mouth to Laurel Creek Lake Dam</u>	<u>36.73182, -84.37118/ 36.69308, -84.44385</u>	<u>McCreary</u>
<u>Laurel Fork of Clear Fork*</u>	<u>Tennessee State Line to Tiny Branch</u>	<u>36.58947, -83.98760/ 36.63172, -83.95268</u>	<u>Whitley</u>
<u>Laurel Fork of Middle Fork Rockcastle River*</u>	<u>Mouth to Headwaters</u>	<u>37.36733, -84.04829/ Headwaters</u>	<u>Jackson</u>
<u>Leatherwood Creek of Marrowbone Creek</u>	<u>Mouth to Headwaters</u>	<u>36.83564, -85.56409/ Headwaters</u>	<u>Cumberland, Metcalfe, Monroe</u>
<u>Left Fork Fugitt Creek of Fugitt Creek</u>	<u>Mouth to Headwaters</u>	<u>36.92528, -83.04509/ Headwaters</u>	<u>Harlan</u>
<u>Little South Fork of Cumberland River*</u>	<u>Backwaters of Lake Cumberland to Langham Branch</u>	<u>36.80583, -84.59556/ 36.64854, -84.78912</u>	<u>McCreary, Wayne</u>
<u>Little White Oak Creek of White Oak Creek</u>	<u>Mouth to Headwaters</u>	<u>37.10204, -84.19978/ Headwaters</u>	<u>Laurel</u>
<u>Marsh Creek of Cumberland River*</u>	<u>Ford Crossing at CR-1060 East Kidd School Road and CR-1110 Kidd School Road to Tennessee State Line</u>	<u>36.69964, -84.34471/ 36.59540, -84.40845</u>	<u>McCreary</u>
<u>Martins Fork of Cumberland River</u>	<u>Rough Branch to Headwaters</u>	<u>36.69766, -83.39220/ Headwaters</u>	<u>Bell, Harlan</u>
<u>McFarland Creek of Cumberland River</u>	<u>Poore Branch to Tennessee State Line</u>	<u>36.63276, -85.50960/ 36.61585, -85.55184</u>	<u>Monroe</u>
<u>McFarland Creek of Cumberland River</u>	<u>Tennessee State Line to Tennessee State Line</u>	<u>36.61628, -85.57728/ 36.61646, -85.58620</u>	<u>Monroe</u>
<u>Meshack Creek of Cumberland River</u>	<u>Mouth to Pitcock Branch</u>	<u>36.70211, -85.53507/ 36.73160, -85.54153</u>	<u>Monroe</u>
<u>Middle Fork Rockcastle River of Rockcastle River*</u>	<u>Mouth to Indian Creek and Laurel Fork</u>	<u>37.33585, -84.11898/ 37.36739, -84.04838</u>	<u>Jackson</u>
<u>Mud Camp Creek of Cumberland River*</u>	<u>Mouth to Collins Branch</u>	<u>36.76461, -85.51225/ 36.77858, -85.51607</u>	<u>Cumberland</u>
<u>Mud Camp Creek of Cumberland River*</u>	<u>Unnamed Tributary (at Milepost 0.25 of CR-1335 Sawmill Hollow Road) to Headwaters</u>	<u>36.78298, -85.55654/ Headwaters</u>	<u>Cumberland, Monroe</u>
<u>Otter Creek of Lake Cumberland</u>	<u>0.75 River Miles Upstream of Gap Creek to Carpenter Fork</u>	<u>36.76911, -84.96678/ 36.70801, -84.95672</u>	<u>Wayne</u>
<u>Poor Fork Cumberland River of Cumberland River*</u>	<u>Franks Creek to Headwaters</u>	<u>37.05547, -82.80558/ Headwaters</u>	<u>Letcher</u>
<u>Presley House Branch of Poor Fork Cumberland River*</u>	<u>Mouth to Headwaters</u>	<u>37.06433, -82.79065/ Headwaters</u>	<u>Letcher</u>
<u>Puncheoncamp Branch of Rock Creek*</u>	<u>Mouth to Headwaters</u>	<u>36.65874, -84.64042/ Headwaters</u>	<u>McCreary</u>
<u>Sand Lick Creek of Crocus Creek</u>	<u>Mouth to Unnamed Tributary</u>	<u>36.92458, -85.27126/ 36.92129, -85.24942</u>	<u>Adair, Cumberland, Russell</u>
<u>Shilalah Creek of Clear Fork*</u>	<u>Mouth to to Headwaters</u>	<u>36.66632, -83.59259/ Headwaters</u>	<u>Bell</u>
<u>Sinking Creek of Rockcastle River*</u>	<u>Mouth to White Oak Creek</u>	<u>37.10193, -84.27981/ 37.09095, -84.20416</u>	<u>Laurel</u>
<u>South Fork Dog Slaughter Creek of Dog Slaughter Creek*</u>	<u>Mouth to Headwaters</u>	<u>36.85930, -84.30072/ Headwaters</u>	<u>Whitley</u>
<u>South Fork Rockcastle River of Rockcastle River</u>	<u>Mouth to to White Oak Creek</u>	<u>37.33576, -84.11903/ 337.29097, -84.08801</u>	<u>Jackson, Laurel</u>
<u>Sulphur Creek of Cumberland River</u>	<u>Little Sulphur Creek to Baxter Branch</u>	<u>36.68446, -85.57250/ 36.68327, -85.60582</u>	<u>Monroe</u>
<u>Sulphur Creek of Dale Hollow Lake (Wolf River)*</u>	<u>Dale Hollow Reservoir Backwaters to Headwaters</u>	<u>36.64784, -85.20342/ Headwaters</u>	<u>Clinton</u>
<u>Unnamed Tributary of Cane Creek of Rockcastle River</u>	<u>Mouth to Headwaters</u>	<u>37.05162, -84.19761/ Headwaters</u>	<u>Laurel</u>

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Unnamed Tributary of Rock Creek of Big South Fork Cumberland River*	Mouth to Headwaters	36.66420, -84.62917/ Headwaters	McCreary
Unnamed Tributary of Rock Creek of Big South Fork Cumberland River*	Mouth to Headwaters	36.64450, -84.71115/ Headwaters	McCreary
Watts Branch of Rock Creek*	Mouth to Headwaters	36.65759, -84.65619/ Headwaters	McCreary
Watts Creek of Cumberland River*	Camp Blanton Lake to Headwaters	36.86035, -83.37971/ Headwaters	Harlan
White Oak Creek of Sinking Creek	Little White Oak Creek to Headwaters	37.10204, -84.19978/ Headwaters	Laurel

[Table 2 SURFACE WATERS CATEGORIZED AS EXCEPTIONAL WATER

Stream	Segment	River Miles	County
BIG SANDY RIVER BASIN			
Hobbs Fork of Pigeonroost Fork of Wolf Creek ²	Mouth to Headwaters	0.0-3.9	Martin
Lower Pigeon Branch of Elkhorn Creek ²	Left Fork to Headwaters	0.6-1.9	Pike
Russell Fork of Levisa Fork of Big Sandy River ²	Clinch Field RR Yard off HWY 80 to Virginia State Line	15.0-16.5	Pike
Thompson Fork of Souders Branch	Mouth to Headwaters	0.0-1.0	Floyd
Toms Branch of Elkhorn Creek ²	Mouth to Headwaters	0.0-1.6	Pike
Unidentified Tributary of Hobbs Fork ²	Hobbs Fork of Pigeonroost Fork to Headwaters	0.0-0.6	Martin
Unidentified Tributary of Open Fork Paint Creek	Mouth to Headwaters	0.0-0.8	Morgan
LITTLE SANDY RIVER BASIN			
Arabs Fork of Big Sinking Creek ²	Clay Fork to Headwaters	0.0-5.1	Elliott
Big Caney Creek ²	Grayson Lake to Headwaters	1.8-15.3	Elliott, Rowan
Big Sinking Creek of Little Sandy River ²	SR 986 to Clay Fork and Arab Fork	6.1-15.8	Carter, Elliott
Meadow Branch of Little Sandy River ²	Mouth to Headwaters	0.0-1.4	Elliott
Middle Fork Little Sandy River ²	Mouth to Sheepskin Branch	0.0-3.4	Elliott
Nichols Fork of Little Sandy River ²	Green Branch to Headwaters	0.0-2.0	Elliott
Laurel Creek of Little Sandy River ²	Carter School Rd Bridge to Headwaters	7.6-14.7	Elliott, Rowan
LICKING RIVER BASIN			
Blackwater Creek of Licking River ²	Eaton Creek to Greasy Fork	3.8-11.7	Morgan
Blanket Creek of Licking River	Mouth to Unidentified Tributary	0.0-1.9	Pendleton
Botts Fork of Brushy Fork of Licking River ²	Mouth to Landuse Change	0.0-2.1	Menifee
Bowman Creek of Licking River	Mouth to Unidentified Tributary	0.0-6.0	Kenton
Brushy Fork of Meyers Creek ²	Cave Run Lake Backwaters to Headwaters	0.7-5.6	Menifee
Brushy Fork of South Fork of Grassy Creek ²	Mouth to Headwaters	0.0-5.8	Pendleton
Bucket Branch of North Fork Licking River ²	Mouth to Headwaters	0.0-1.9	Morgan
Cedar Creek of Licking River	Mouth to North Branch of Cedar Creek	0.0-1.7	Robertson
Craney Creek of Licking River	Mouth to Headwaters	0.0-11.2	Morgan, Rowan
Devils Fork of North Fork Licking River ²	Mouth to Headwaters	0.0-8.5	Elliott, Morgan
Flour Creek of Licking River	Mouth to Unidentified Tributary	0.0-2.2	Pendleton
Grovers Creek of Kincaid Creek ²	Kincaid Lake Backwaters to Unidentified Tributary	0.5-3.4	Bracken, Pendleton
Licking River	SR 211 to unnamed Rd off Slatey Point Rd	159.5-170.6	Bath, Rowan
North Fork Licking River ²	Cave Run Lake Backwaters to Devils Fork	8.4-13.4	Morgan
Sawyers Fork of Cruises Creek	Mouth to Headwaters	0.0-3.3	Kenton
Slabcamp Creek of Craney Creek of Licking River	Mouth to Headwaters	0.0-3.7	Rowan
Slate Creek of Licking River	Mouth to Mill Creek	0.0-13.6	Bath
South Fork Grassy Creek of Grassy Creek of Licking River ²	Mouth to Greasy Creek	0.0-19.8	Kenton, Pendleton
Unidentified Tributary of Shannon Creek of North Fork Licking River	Mouth to Headwaters	0.0-2.2	Mason
Welch Fork of Brushy Fork Licking River ²	Mouth to First Road Crossing	0.0-1.0	Menifee

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West Creek of Licking River ²	Mouth to Headwaters	0.0-9.8	Harrison, Robertson
KENTUCKY RIVER BASIN			
Backbone Creek of Sixmile Creek of Kentucky River*	Mouth to Scrabble Creek	0.0-1.65	Franklin, Henry, Shelby
Bear Branch of North Fork Kentucky River	Above Sediment Pond to Headwaters	0.3-1.2	Perry
Big Double Creek of Red Bird River ²	Mouth to confluence of Left and Right Forks of Big Double Creek	0.0-4.4	Clay
Bill Branch of Laurel Fork Greasy Creek ²	Mouth to Right Fork and Left Fork Creek	0.0-0.3	Leslie
Billey Fork of Millers Creek	Land Use Change to Headwaters	2.6-8.8	Lee, Elliott
Boyd Run of North Elkhorn Creek	Mouth to Cherry Run	0.0-0.9	Scott
Bill Oak Branch of Left Fork Buffalo Creek	Mouth to Headwaters	0.0-0.6	Owsley
Buffalo Creek of South Fork Kentucky River ²	Mouth to Right Fork and Left Fork	0.0-1.6	Owsley
Bullskin Creek of Redbird River	Mouth to Headwaters	0.0-14.6	Clay
Cavanaugh Creek ²	South Fork Station Camp Creek to Foftown Rd	0.0-8.3	Jackson
Chester Creek of Middle Fork Red River ²	Mouth to Headwaters	0.0-2.8	Wolfe
Clear Creek of Kentucky River ²	Mouth to East Fork Clear Creek	0.0-9.0	Woodford
Clemons Fork of Buckhorn Creek ²	Mouth to Headwaters	0.0-4.8	Breathitt
Coles Fork of Buckhorn Creek ²	Mouth to Headwaters	0.0-6.2	Breathitt
Craig Creek of Kentucky River ²	Mouth to Unidentified Tributary	0.5-2.7	Woodford
Deep Ford Branch of Cutshin Creek	Above Pond to Headwaters	0.3-1.3	Leslie
Drennon Creek of Kentucky River ²	Fivemile Creek to Town Branch	8.7-12.2	Henry
East Fork Indian Creek of Indian Creek of Red River ²	West Fork Indian Creek to Headwaters	0.0-9.0	Menifee
Elisha Creek of Red Bird River ²	Land Use Change (Residential) to the confluence of Right Fork and Middle Fork Elisha Creek	0.8-1.8	Leslie
Emily Run of Drennon Creek	Mouth to Unidentified Tributary	0.0-4.0	Henry
Evans Fork of Billey Fork of Millers Creek ²	Mouth to Headwaters	0.0-3.0	Estill
Falling Rock Branch of Clemons Fork of Buckhorn Creek ²	Mouth to Headwaters	0.0-0.7	Breathitt
Gilberts Creek of Kentucky River	Mouth to Unidentified Tributary	0.0 to 2.6	Anderson
Gladie Creek of Red River ²	Land Use Change to Long Branch	0.35 to 7.3	Menifee
Goose Creek of South Fork Kentucky River	Mouth to Laurel Creek	0.0-9.1	Clay, Leslie
Griers Creek of Kentucky River ²	Kentucky River Backwaters to Unidentified Tributary	0.1 to 3.5	Woodford
Grindstone Creek of Kentucky River ²	Kentucky River Backwaters to Headwaters	0.1 to 1.9	Franklin
Hardwick Creek of Red River	Mouth to Little Hardwick Creek	0.0-3.25	Powell
Hell For Certain of Middle Fork Red River	Mouth to Big Fork	0.0-2.1	Leslie
Hines Creek of Kentucky River ²	Kentucky River Backwaters to confluence with Unidentified Tributary	0.1 to 1.9	Madison
Honey Branch of Greasy Creek of Middle Fork Kentucky River ²	Mouth to Headwaters	0.0-1.35	Leslie
Hopper Cave Branch of Cavanaugh Creek ²	Mouth to Headwaters	0.0-1.8	Jackson
Indian Creek of Eagle Creek ²	Mouth to Headwaters	0.0 to 5.4	Carroll
Indian Fork of Sixmile Creek of Kentucky River ²	Mouth to Headwaters	0.0-3.3	Shelby
John Carpenter Fork of Clemons Fork of Buckhorn Creek ²	Mouth to Headwaters	0.0-1.2	Breathitt
Joyce Fork of Cortland Fork	Mouth to Headwaters	0.0-1.2	Owsley
Katies Creek of Red Bird River	Mouth to Headwaters	0.0-4.0	Clay
Laurel Fork of Left Fork Buffalo Creek of Buffalo Creek*	Cortland Fork to Big Branch	0.0-3.75	Owsley
Left Fork Big Double Creek of Kentucky River ²	Mouth to Headwaters	0.0-1.5	Clay
Line Fork of North Fork of Kentucky River ²	Defeated Creek to Headwaters	12.2-28.6	Letcher
Little Middle Fork of Elisha Creek of Red Bird River*	Mouth to Headwaters	0.0-0.75	Clay
Little Millseat Branch of Clemons Fork of Buckhorn Creek ²	Mouth to Headwaters	0.0-1.2	Breathitt
Little Sixmile Creek of Sixmile Creek of Kentucky River ²	Mouth to Headwaters	0.0-5.3	Henry
Little Sturgeon Creek of Sturgeon Creek	Mouth to Headwaters	0.0-3.0	Owsley
Low Gap Branch of Elk Creek	Mouth to Headwaters	0.0-0.8	Letcher
Lower Devil Creek of North Fork Kentucky River	Mouth to Headwaters	0.0-4.65	Lee
Lower Howard Creek of Kentucky River	Mouth to West Fork	0.0-2.7	Clark

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Lulbegrud Creek of Red River	Mouth to Falls Branch	0.0-7.3	Clark, Powell
Middle Fork Kentucky River	Mouth to Upper Twin Creek	0.0-12.7	Lee, Owsley
Middle Fork Kentucky River ²	Hurts Creek to Greasy Creek	75.6-85.8	Leslie
Middle Fork Red River	South Fork of Red River to Natural Bridge State Park Lake	1.8-8.5	Powell
Mikes Branch of Laurel Fork of Left Fork Buffalo Creek	Mouth to Headwaters	0.0-0.7	Owsley
Mill Creek of Kentucky River ²	Upstream of Mouth to Headwaters	0.5-8.3	Owen
Millseat Branch of Clemons Fork of Buckhorn Creek ²	Mouth to Headwaters	0.0-1.85	Breathitt
Muddy Creek of Kentucky River ²	Elliston, Kentucky to Viney Creek	13.8-20.65	Madison
Musselman Creek of Eagle Creek ²	Mouth to Headwaters	0.0-9.0	Grant
Red Bird River of South Fork Kentucky River	Mouth to Big Creek	0.0-15.3	Clay
Right Fork Buffalo Creek of Kentucky River ²	Mouth to Headwaters	0.0-11.75	Owsley
Right Fork Elisha Creek of Redbird River	Mouth to Headwaters	0.0-3.3	Leslie
Roaring Fork of Lewis Fork of Buckhorn Creek ²	Mouth to Headwaters	0.0-0.9	Breathitt
Rock Lick Creek of South Fork of Station Camp Creek ²	Mouth to Headwaters	0.0-9.6	Jackson
Sand Ripple Creek of Kentucky River ²	Kentucky River Backwaters to Headwaters	0.1-3.9	Henry
Severn Creek of Kentucky River ²	Kentucky River Backwaters to North Fork Severn Creek	1.35-3.0	Owen
Shaker Creek of Kentucky River	Near Mouth to Shawnee Run	0.1-1.4	Mercer
Shelly Rock Fork of Millseat Branch of Clemons Fork ²	Mouth to Headwaters	0.0-0.6	Breathitt
Sixmile Creek of Kentucky River ²	Little Sixmile Creek to Dam	7.1-15.3	Henry
South Fork Kentucky River	Mouth to Sexton Creek	0.0-27.8	Owsley
South Fork Red River	Mouth to Sandlick Fork	0.0-4.2	Powell
South Fork Station Camp Creek of Kentucky River ²	Mouth to Rock Lick Creek	0.0-9.7	Jackson
Spruce Branch of Redbird River ²	Mouth to Headwaters	0.0-1.0	Clay
Station Camp Creek of Kentucky River ²	Landuse Change to South Fork Station Camp Creek	18.0-22.8	Estill
Steeles Run of Elkhorn Creek	Mouth to Unidentified Tributary	0.0-4.2	Fayette
Steer Fork of War Fork of Station Camp Creek ²	Mouth to Headwaters	0.0-2.7	Jackson
Sturgeon Creek of Kentucky River ²	Duck Fork to Little Sturgeon Creek	1.3-13.7	Lee, Owsley
Sugar Creek of Redbird River ²	Landuse Change to Headwaters	0.6-5.4	Leslie
Sulphur Lick Creek of Elkhorn Creek	Mouth to Headwaters	0.0-5.2	Franklin
Unidentified Tributary of Cawood Branch of Beech Fork ²	Mouth to Headwaters	0.0-2.1	Leslie
Unidentified Tributary of Cedar Creek of Kentucky River ²	Mouth to Headwaters	0.0-1.4	Owen
Unidentified Tributary of Glenss Creek of Kentucky River ²	Mouth to Headwaters	0.0 to 1.9	Woodford
Unidentified Tributary of Jacks Creek of Kentucky River ²	Mouth to Headwaters	0.0-1.15	Madison
Unidentified Tributary of Kentucky River ²	Land Use Change to Headwaters	0.1-1.4	Franklin
Unidentified Tributary of Line Fork of North Fork Kentucky River ² (LCW)	Mouth to Headwaters	0.0-0.6	Letcher
War Fork of Station Camp Creek ²	Mouth to Headwaters	0.0-13.8	Jackson
Watches Fork of Laurel Fork of Left Fork Buffalo Creek	Mouth to Headwaters	0.0-1.0	Owsley
Wolfpen Creek of Red River ²	Mouth to Headwaters	0.0-3.6	Menifee
SALT RIVER BASIN			
Brashears Creek of Salt River	Guist Creek to Bullsken and Clear Creek	13.0-25.9	Shelby, Spencer
Cedar Creek of Salt River ²	Mouth to Greens Branch	0.0-5.2	Bullitt
Chaplin River of Salt River ²	Thompson Creek to Cornishville, KY	40.9-54.2	Washington
Doctors Fork of Chaplin River	Mouth to Begley Branch	0.0-3.8	Boyle
Guist Creek of Brashears Creek	Mouth to Jephtha Creek	0.0-15.7	Spencer
Harts Run of Wilson Creek of Rolling Fork Salt River ²	Mouth to Headwaters	0.0-1.8	Bullitt
Indian Creek of Thompson Creek of Chaplin River of Salt River	Mouth to Unidentified Tributary	0.0-0.9	Mercer
Lick Creek of Long Lick Creek of Beech Fork of Salt River ²	Mouth to 0.1 miles below Dam	0.0-4.0	Washington
Otter Creek of Rolling Fork of Salt River ²	Landuse Change to confluence of East Fork and Middle Fork Otter Creek	1.7-2.9	Larue
Overalls Creek of Wilson Creek of Rolling Fork of Salt River ²	Mouth to Headwaters of Middle Fork Overalls Creek	0.0-3.2	Bullitt

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Salt Lick Creek of Rolling Fork of Salt River ²	Mouth to Headwaters	0.0-8.6	Larue, Marion
Sulphur Creek of Chaplin River ²	Mouth to confluence of Cheese Lick and Brush Creek	0.0-10.0	Anderson, Mercer, Washington
Unidentified Tributary of Glens Creek of Chaplin River	Mouth to Headwaters	0.0-2.3	Washington
West Fork Otter Creek of Rolling Fork of Salt River ²	Mouth to Headwaters	0.0-5.1	Larue
Wilson Creek of Rolling Fork of Salt River ²	Mouth to Headwaters	0.0-18.4	Bullitt, Nelson
GREEN RIVER BASIN			
Beaverdam Creek of Green River ²	Mouth to Headwaters	0.0-14.5	Edmonson
Big Brush Creek of Green River	Brush Creek to Poplar Grove Branch	13.0-17.3	Green
Cane Run of Nolin River ²	Nolin River Lake Backwaters to Headwaters	0.8-6.5	Hart
Caney Fork of Peter Creek ²	Mouth to Headwaters	0.0-6.7	Barren
Clifty Creek of Rough River ²	Barton Run to Western Kentucky Parkway	7.3-17.2	Grayson
Clifty Creek of Wolf Lick Creek ²	Little Clifty Creek to Sulphur Lick	7.6-13.4	Todd
East Fork Little Barren River ²	Red Lick Creek to Flat Creek	18.9-20.7	Metcalfe
Elk Lick Creek	Duck Lick Creek to Barren Fork Creek and Edger Creek	3.6 to 11.8	Allen
Ellis Fork of Damron Creek ²	Mouth to Headwaters	0.0-3.2	Adair, Russell
Falling Timber Creek of Skaggs Creek ²	Landuse Change to Headwaters	10.8-15.2	Barren, Metcalfe
Fiddlers Creek of North Fork Rough River ²	Mouth to Headwaters	0.0-5.9	Breckinridge
Forbes Creek of Buck Creek of East Fork Pond River ²	Mouth to Unidentified Tributary	0.0-4.1	Christian
Gasper River of Barren River ²	Clear Fork to Wiggington Creek	17.2-35.6	Logan, Warren
Goose Creek of Green River ²	Mouth to Little Goose Creek	0.0-8.5	Casey, Russell
Green River	Downstream Mammoth Cave National Park Boundary to Lynn Camp Creek	185.0-250.3	Edmonson, Hart
Halls Creek of Rough River ²	Unidentified Tributary to Headwaters	7.15-9.6	Ohio
Lick Creek of West Fork Drakes Creek ²	Mouth to Headwaters	0.0-10.2	Simpson
Linders Creek of Rough River ²	Mouth to Sutzer Creek	0.0-7.9	Hardin
Little Beaverdam Creek of Green River ²	Mouth to SR 743	0.0-11.65	Edmonson, Warren
Little Short Creek of Rough River ²	Mouth to Headwaters	0.0-3.1	Grayson
Lynn Camp Creek of Green River ²	Mouth to Lindy Creek	0.0-8.5	Hart
McFarland Creek of West Fork Pond River ²	Grays Branch to Unidentified Tributary	1.5-5.0	Christian
Meeting Creek of Rough River ²	Little Meeting Creek to Petty Branch	5.2-14.0	Grayson, Hardin
Muddy Creek of Caney Creek of Rough River ²	Landuse Change to Headwaters	13.0-15.5	Ohio
North Fork Rough River ²	Buffalo Creek to Reservoir Dam	22.1-26.9	Breckinridge
Peter Creek of Barren River ²	Caney Fork to Dry Fork	11.6-18.5	Barren
Pond Run of Rough River ²	Landuse Change to Headwaters	1.4-6.8	Breckinridge, Ohio
Puncheon Creek	Mouth to Tennessee State Line	0.0-3.8	Logan
Rough River ²	Linders Creek to Vertrees Creek	138.0-149.4	Hardin
Russell Creek of Green River ²	Mouth to Columbia WWTP	0.0-40.0	Green, Adair
Russell Creek of Green River ²	Reynolds Creek to confluence with Hudson Creek and Mount Olive Creek	56.9-66.3	Adair, Russell
Sixes Creek of Indian Camp Creek ²	Wild Branch to Headwaters	2.0-7.5	Ohio
Sulphur Branch of Alexander Creek ²	Mouth to Headwaters	0.0-3.0	Edmonson
Thompson Branch of West Fork Drakes Creek	Webb Branch to Tennessee State Line	0.3-1.5	Simpson
Trammel Creek of Drakes Creek ²	Mouth to Tennessee State Line	0.0-30.6	Allen, Warren
Unidentified Tributary of Green River ²	Landuse Change to Headwaters	1.7-3.2	Adair
Unidentified Tributary of White Oak Creek ²	Hovious Rd Crossing to SR 76	0.4-2.9	Adair
West Fork Pond River ²	Unidentified Tributary to East Branch Pond River	12.45-22.5	Christian
LOWER CUMBERLAND RIVER BASIN			
Crooked Creek of Cumberland River ²	Energy Lake Backwaters to Headwaters	3.0-9.4	Trigg
Donaldson Creek of Cumberland River ²	Craig Branch to Unidentified Tributary	3.2-7.2	Trigg
Elk Fork Red River of Cumberland River ²	Tennessee State Line to Dry Branch	7.5-23.1	Todd

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Sugar Creek of Cumberland River ²	Lick Creek to Unidentified Tributary	2.2-6.9	Livingston
West Fork Red River of Cumberland River ²	Tennessee State Line to Montgomery Creek	16.1-26.5	Christian
West Fork Red River	Tennessee State Line to Montgomery Creek	14.75-26.85	Christian
Whippoorwill Creek of Red River of Cumberland River ²	Mouth to Vicks Branch	0.0-13.2	Logan
TENNESSEE RIVER BASIN			
Blood River of Kentucky Lake (Tennessee River) ²	McCullough Fork to Tennessee State Line	15.15-18.7	Calloway
Clarks River of Tennessee River	Persimmon Slough to Middle Fork Creek	28.7-30.7	Marshall
Grindstone Creek of Kentucky Lake (Blood River of Tennessee River) ²	Kentucky Lake Backwaters to Headwaters	0.7-2.9	Calloway
Panther Creek of Kentucky Lake (Blood River of Tennessee River) ²	Kentucky Lake Backwaters to Headwaters	0.5-5.7	Calloway
Soldier Creek of West Fork Clarks River ²	Mouth to South Fork of Soldier Creek	0.0-5.7	Marshall
Sugar Creek of Kentucky Lake (Tennessee River) ²	Kentucky Lake Backwaters to Buzzard Roost Road	2.5-3.2	Calloway
Sugar Creek of West Fork Clarks River ²	Mouth to Unnamed Reservoir	0.0-3.9	Graves
Trace Creek of West Fork Clarks River ²	Mouth to Neeley Branch	0.0-3.35	Graves
Unidentified Tributary of Unidentified Tributary of Panther Creek of West Fork Clarks River ²	Mouth to Headwaters	0.0-1.7	Graves
West Fork Clarks River ²	Soldier Creek to Duncan Creek	20.1-23.5	Graves
Wildcat Creek of Kentucky Lake (Blood River of Tennessee River) ²	Ralph Wright Road Crossing to Headwaters	2.8-6.8	Calloway
TRADEWATER RIVER BASIN			
East Fork of Flynn Fork of Tradewater River ²	Landuse Change to Headwaters	2.15-4.6	Caldwell
Piney Creek of Tradewater River ²	Lake Beshear Backwaters to Headwaters	4.5-10.2	Caldwell, Christian
Sandlick Creek of Tradewater River ²	Camp Creek to Headwaters	4.5-8.6	Christian
Tradewater River ²	Dripping Springs Branch to Buntin Lake Dam	126.2-133.9	Christian
Unidentified Tributary of Piney Creek of Tradewater River ²	Mouth to Headwaters	0.0-2.9	Caldwell
Unidentified Tributary of Sandlick Creek of Tradewater River ²	Mouth to Headwaters	0.0-1.4	Christian
OHIO RIVER BASIN (Minor Tributaries)			
Ashbys Fork of Woolper Creek	Mouth to SR 20	0.0-3.7	Boone
Crooked Creek*	Rush Creek to City Lake Dam	18.1-26.4	Crittenden
Double Lick Creek of Woolper Creek ²	Mouth to Headwaters	0.0-3.5	Boone
Garrison Creek ²	Mouth to Headwaters	0.0-4.85	Boone
Kinniconick Creek ²	McDowell Creek to Headwaters	5.2-50.9	Lewis
Little South Fork of Big South Fork	Land Use Change to Headwaters	1.2-5.8	Boone
Middle Fork of Massac Creek ²	Hines Road to Headwaters (Pond)	3.1-6.4	McCracken
Second Creek ²	Ohio River Backwaters to Headwaters	0.4-2.9	Boone
Unidentified Tributary of Big Sugar Creek ²	I-71 to Headwaters	1.0-1.8	Gallatin
Unidentified Tributary of Corn Creek ²	Mouth to Headwaters	0.0-2.3	Trimble
Unidentified Tributary of Massac Creek ²	Mouth to Headwaters	0.0-1.7	McCracken
West Fork Massac Creek ²	SR 724 to Little Massac Creek	3.6-6.2	McCracken
Yellowbank Creek ²	Ohio River Backwaters to Headwaters	2.0-12.0	Breckinridge
LAKE			
Metropolis	Entire Lake		McCracken
MISSISSIPPI RIVER BASIN (Main Stem and Minor Tributaries)			
Jackson Creek ²	Mouth to Headwaters	0.0-3.0	Graves
Obion Creek ²	Hurricane Creek to Little Creek	26.7-37.1	Hickman
Terrapin Creek ²	Tennessee State Line to Confluence of East and West Forks	2.7-6.0	Graves
LAKES			
Murphy's Pond	Entire Pond and Preserve Area		Hickman
Swan	Entire Lake		Ballard
UPPER CUMBERLAND RIVER BASIN			

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Bad Branch of Poor Fork Cumberland River ²	Mouth to Headwaters	0.0-3.0	Letcher
Bark Camp Creek of Cumberland River ²	Mouth to Martins Fork	0.0-4.0	Whitley
Beaver Creek of Cumberland River ²	Lake Cumberland Backwaters to confluence of Freeman Fork and Middle Fork	2.4-7.1	McCreary
Bee Lick Creek of Brushy Creek of Buck Creek	Mouth to Warren Branch	0.0-5.7	Pulaski
Brownies Creek of Cumberland River ²	Blacksnake Branch to Headwaters	9.3-16.75	Bell, Harlan
Brush Creek of Roundstone Creek ²	Wolf Creek to Reemergence of Sinking Creek	1.1-7.6	Rockcastle
Brushy Creek of Buck Creek ²	Mouth to Headwaters	0.0-16.5	Pulaski
Buck Creek of Cumberland River ²	0.8 river mile upstream of confluence of Hurricane Creek to Lake Cumberland Backwaters	11.7-55.0	Lincoln, Pulaski
Bunches Creek of Cumberland River ²	Mouth to confluence of Amos Falls Branch and Seminary Branch	0.0-3.3	Whitley
Cane Creek of Rockcastle River ²	Mouth to Headwaters	0.0-11.85	Laurel
Clear Creek of Roundstone Creek	Scaffold Cane Branch to Davis Branch	3.45-7.8	Rockcastle
Clifty Creek of Brushy Creek of Buck Creek	Mouth to Rocky Branch	0.0-2.7	Pulaski
Cogur Fork of Indian Creek ²	Mouth to Headwaters	0.0-7.95	McCreary
Cumberland River	Wild River Boundaries	549.65-566.1	McCreary, Whitley
Dog Slaughter Creek of Cumberland River ²	Mouth to confluence of North Fork and South Fork Dog Slaughter Creek	0.05-1.15	Whitley
Eagle Creek of Cumberland River ²	Mouth to Headwaters	0.05-6.75	McCreary
Fugitt Creek of Clover Fork Cumberland River ²	Landuse Change to Headwaters	0.5-4.6	Harlan
Horse Lick Creek of Rockcastle River ²	Mouth to Clover Bottom	0.0-12.3	Jackson, Rockcastle
Howards Creek of Illwill Creek of Wolf River ²	Dale Hollow Reservoir Backwaters to Headwaters	0.6-4.6	Clinton
Indian Creek of Cumberland River ²	Laurel Fork to Barren Fork	2.4-6.8	McCreary
Jackie Branch of Bark Camp Creek ²	Mouth to Headwaters	0.0-1.65	Whitley
Kettle Creek of Cumberland River	State line to Wells Creek	1.75-6.1	Monroe
Kilburn Fork of Indian Creek	Mouth to Headwaters	0.0-7.2	McCreary
Laurel Creek of Marsh Creek	Mouth to Laurel Creek Dam	0.0-9.0	McCreary
Laurel Fork of Clear Fork of Cumberland River ²	Tennessee State Line to Tiny Branch	4.3-13.1	Whitley
Laurel Fork of Middle Fork of Rockcastle River ²	Mouth to Headwaters	0.0-12.3	Jackson
Left Fork of Fugitt Creek of Clover Fork Cumberland River	Mouth to Headwaters	0.0-1.5	Harlan
Little South Fork Cumberland River ²	Lake Cumberland Backwaters to Langham Branch	4.4-35.5	McCreary, Wayne
Little White Oak Creek of White Oak Creek	Mouth to Headwaters	0.0-2.6	Laurel
Marsh Creek of Cumberland River ²	Laurel Creek to Kentucky/Tennessee State Line	8.8-26.5	McCreary
Martins Fork Cumberland River	Rough Branch to Headwaters	27.2-32.7	Harlan
McFarland Creek of Cumberland River	Little McFarland Creek to Spring Branch	0.8-6.2	Monroe
Meshack Creek of Cumberland River	Mouth to Pitcock Branch	0.0-2.8	Monroe
Middle Fork Rockcastle River ²	Mouth to confluence of Indian Creek and Laurel Fork	0.0-7.9	Jackson
Mud Camp Creek of Cumberland River ²	Mouth to Collins Branch	0.0-1.2	Cumberland
Mud Camp Creek of Cumberland River ²	Unidentified Tributary to Headwaters	3.8-8.8	Cumberland, Monroe
Otter Creek of Cumberland River	Lake Cumberland Backwaters to Carpenter Fork	14.0-22.1	Wayne
Poor Fork Cumberland River ²	Franks Creek to Headwaters	42.1-52.4	Letcher
Presley House Branch of Poor Fork Cumberland River ²	Mouth to Headwaters	0.0-1.5	Letcher
Puncheoncamp Branch of Rock Creek of Big South Fork Cumberland River ²	Mouth to Headwaters	0.0-1.85	McCreary
Rock Creek of Big South Fork Cumberland River ²	White Oak Creek to Tennessee State Line	4.0-21.5	McCreary
Rockcastle River	Wild River Boundaries	8.95-54.7	Laurel, Pulaski
Shillalah Creek of Clear Fork of Yellow Creek ²	Mouth to Headwaters	0.0-5.5	Bell
Sinking Creek of Rockcastle River ²	Mouth to White Oak Creek	0.0-9.9	Laurel
Sulphur Creek of Wolf River of Obey River ²	Dale Hollow Reservoir Backwaters to Headwaters	1.7-5.1	Clinton
South Fork of Dog Slaughter Creek of Cumberland River ²	Mouth to Headwaters	0.0-4.6	Whitley

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South Fork Rockcastle River	Mouth to White Oak Creek	0.0-5.8	Laurel
Unidentified Tributary of Cane Creek of Rockcastle River	Mouth to Headwaters	0.0-1.2	Laurel
Unidentified Tributary (across from Hemlock Grove) of Rock Creek of Big South Fork Cumberland River ²	Mouth to Headwaters	0.0-1.3	McCreary
Unidentified Tributary (RMI 17.0 of Rock Creek) of Rock Creek of Big South Fork Cumberland River ²	Mouth to Headwaters	0.0-1.2	McCreary
Watts Branch of Rock Creek of South Fork Cumberland River ²	Mouth to Headwaters	0.0-2.6	McCreary
Watts Creek of Cumberland River ²	Camp Blanton Reservoir to Headwaters	2.4-4.4	Harlan]

*Waterbodies in the cabinet's reference reach network

(a) Categorization criteria. A surface water shall be categorized as an exceptional water if the surface water:

1. Is designated as a Kentucky Wild River and is not categorized as an outstanding national resource water;

2. Is designated as an outstanding state resource water as established in 401 KAR 10:031, Section 8(1)(a)1. and 2. and Section 8(1)(b);

3. Contains a:

a. Fish community that is rated "excellent" by the use of the Index of Biotic Integrity included in Development and Application of the Kentucky Index of Biotic Integrity (KIBI), 2003; or

b. Macroinvertebrate community that is rated "excellent" by the Macroinvertebrate Bioassessment Index included in "The Kentucky Macroinvertebrate Bioassessment Index," 2003; or

4. Is in the cabinet's reference reach network.

(b) Implementation procedure. The implementation procedure for exceptional water shall be as established in subsection (3)(b) of this section.

(3) High quality water.

(a) Categorization criteria.

1. A surface water shall be categorized as high quality water if the surface water is not listed as an outstanding national resource water or an exceptional water in Table 1 or 2 of this section and if the surface water does not meet the criteria for impaired water as established in subsection (4)(a) of this section.

2. A surface water shall be categorized as a high quality water if the surface water is listed as an outstanding state resource water in 401 KAR 10:026 and is not listed as an outstanding national resource water in Table 1 or an exceptional water in Table 2 of this section.

(b) Implementation procedure. Existing instream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected. A KPDES permit application for a new or expanded discharge into a high quality or exceptional water shall be subject to the provisions of this paragraph, except:

1.a. The renewal of a KPDES permit that does not authorize pollutant loading to the receiving stream in excess of that previously authorized;

b. An increase in pollutant loading within the limits previously approved by the KPDES permit; or

c. A new or expanded discharge that the applicant demonstrates:

(i) Shall not consume more than ten (10) percent of the available assimilative capacity of the receiving stream outside of a designated mixing zone or zone of initial dilution for each new or increased pollutant in the discharge; and

(ii) The cumulative impact of this category of discharges shall not consume more than ten (10) percent of the available assimilative capacity of the receiving stream outside of a designated mixing zone or zone of initial dilution.

2. The activities identified in clauses a. through d. of this subparagraph shall constitute compliance with the alternatives and socioeconomic analysis requirements if addressed in the manner established in this subparagraph rather than as established in subparagraph 1.c. of this paragraph, unless the permittee chooses to satisfy applicable antidegradation requirements pursuant to subparagraph 3. of this paragraph.

a. The cabinet may, upon receipt of a notice of intent to be covered under a general permit, require additional analyses or other information if necessary to comply with antidegradation requirements. A general permit issued pursuant to 401 KAR 5:050

through 5:080 shall be compliant with the alternatives and socioeconomic analysis requirements if:

(i) The activity permitted by the general permit may result in a lowering of water quality, the cabinet shall describe in the Fact

Sheet how the general permit complies with the alternatives analysis, and socioeconomic demonstration requirements of subparagraph 1.c. of this paragraph upon each general permit issuance;

(ii) The requirements and conditions in a general permit will prevent a lowering of water quality, the cabinet shall describe in the Fact Sheet how the general permit complies with the antidegradation policy established in 401 KAR 10:029, Section 1; and

(iii) The cabinet notifies the public of an activity granted coverage under a general permit on the cabinet's Web page, which shall include the facility name, location, and receiving water.

b. The approval of a POTW's regional facility plan pursuant to 401 KAR 5:006 shall constitute compliance with the alternatives analysis and socioeconomic demonstration for a regional facility.

c. An antidegradation review shall not be required for maintenance of an existing highway facility. A new or expanded discharge associated with a project identified in the Kentucky Transportation Cabinet's six (6) year road plan; as established in KRS 176.430 shall satisfy the:

(i) Alternatives analysis for lowering water quality requirement if an alternatives analysis for the project has been submitted; and

(ii) Socioeconomic demonstration requirement if the project has been approved by the General Assembly and included in the Kentucky Transportation Cabinet's six (6) year road plan and evaluated pursuant to the provisions of KRS 176.430(4)(i).

d. An individual MS4 permit issued pursuant to 401 KAR 5:050 through 5:080 shall be compliant with the alternatives and socioeconomic analysis requirements if the:

(i) Activity permitted by the MS4 permit may result in a lowering of water quality, the cabinet shall describe in the Fact Sheet how the MS4 permit complies with the alternatives analysis and socioeconomic demonstration requirements of subparagraph 3.a. and b. of this paragraph; and

(ii) Requirements and conditions in the MS4 permit will prevent a lowering of water quality, the cabinet shall describe in the Fact Sheet how the MS4 permit complies with the antidegradation policy established in 401 KAR 10:029, Section 1.

3. An application for a KPDES permit subject to this paragraph shall contain information demonstrating that the lowering of water quality is necessary to accommodate important economic or social development in the area in which the water is located.

a. The socioeconomic demonstration shall consider:

(i) The boundaries of the affected community;

(ii) The potential effect on employment, including a comparison of local unemployment rates and state and national unemployment rates;

(iii) The potential effect on median household income levels, including a comparison of the present median household income level, projected median household income level, and number of households affected in the defined community;

(iv) The potential effect on tax revenues, including current tax revenues in the affected community compared to projected increase in tax revenues generated by the permitted project;

(v) The potential effect of the facility on the environment and public health; and

(vi) Other potential economic or social effect to the community that the applicant includes in the application.

b. The alternatives analysis shall consider:

- (i) Pollution prevention measures, such as changes in plant processes, source reductions, or substitution with less toxic substances;
- (ii) The use of best management practices to minimize impacts;
- (iii) Recycle or reuse of wastewater, waste by-products, or production materials and fluids;
- (iv) Application of water conservation methods;
- (v) Alternative or enhanced treatment technology;
- (vi) Improved operation and maintenance of existing treatment systems;
- (vii) Seasonal or controlled discharge options;
- (viii) Land application or infiltration to capture pollutants and reduce surface runoff, on-site treatment, or alternative discharge locations; and
- (ix) Discharge to other treatment facilities.

c. Information required pursuant to this subparagraph shall be submitted on the Socioeconomic Demonstration and Alternatives Analysis form.

4. A permit applicant who has failed to demonstrate the necessity and social or economic development importance for lowering water quality shall not receive a permit unless:

a. The applicant demonstrates, through a revised submission, the necessity for lowering revised water quality in accordance with subparagraph 3. of this paragraph; or

b. The applicant demonstrates that the discharge can meet the requirements established in subparagraph 1.c. of this paragraph.

5. A permit applicant who demonstrates the necessity and social or economic development importance for lowering water quality shall meet the requirements of the KPDES program, 401 KAR 5:050 through 5:080.

6. The cabinet's determination shall be documented in the permit Fact Sheet and included in the administrative record for the permit or action.

(4) Impaired water.

(a) Categorization criteria. A surface water categorized as impaired for applicable designated uses shall be a water identified pursuant to 33 U.S.C. 1315(b).

1. ~~A surface water categorized as impaired shall be~~ assessed by the cabinet as not fully supporting ~~an[any]~~ applicable designated ~~use[uses]~~ shall be categorized as impaired for the purposes of this administrative regulation, except as established in paragraph (a)2. of this subsection.

2. A surface water shall not be categorized as impaired water for the purposes of this administrative regulation if the surface water is listed:

a. As an outstanding state resource water in 401 KAR 10:026;[.]

b. As an exceptional water in 401 KAR 10:030; or

c. Only as mercury or methylmercury impaired for fish consumption.[3. A surface water shall not be categorized as impaired for the purposes of this administrative regulation if the surface water is listed only as mercury impaired for fish consumption.]

(b) Implementation procedure.

1. All existing uses shall be protected and the level of water quality necessary to protect those existing uses shall be assured in impaired water.

2. The process to allow a discharge into an impaired water and to assure protection of the water shall be regulated by the requirements in the Kentucky Pollution Discharge Elimination System Program, 401 KAR 5:050 through 5:080[5:050-5:080].

Section 2. Procedure for Recategorizing Water. This section shall apply to the recategorization of surface water to outstanding national resource water and exceptional water. The redesignation of water to outstanding state resource water shall be governed by the procedures in 401 KAR 10:026. (1) The cabinet may propose to recategorize certain water to outstanding national resource water and exceptional water if the water meets the criteria set forth in Section 1(1)(a) or (2)(a) of this administrative regulation.

(a) If the cabinet proposes to recategorize these waters, it shall

provide notice and an opportunity for public hearing.

(b) The cabinet shall provide the documentation requirements of this section for those surface waters it proposes to recategorize.

(2) A person may request recategorization of a surface water to an outstanding national resource water or exceptional water by filing a petition with the cabinet.

(a) The petition shall include the name and address of the petitioner and the information and documentation necessary to recategorize the particular water as required by subsection (4) of this section.

(b) The petitioner shall have the burden of proof that the recategorization is appropriate.

(c) The cabinet shall provide notice of the petition and an opportunity for a public hearing.

(d) The cabinet shall review the petition, supporting documentation, and any comments received from the public to determine if the proposed water qualifies for recategorization.

(e) The cabinet shall document the determination to grant or deny recategorization as a result of a petition, and shall provide a copy of the decision to the petitioner and other interested parties.

(3) If a water is to be recategorized, the cabinet shall publish notice of the recategorization.

(a) A permit issued after the date of publication shall be issued with limitations based on the new category.

(b) When the cabinet reviews its water quality standards pursuant to the provisions of Section 303 of the Clean Water Act, 33 U.S.C. 1313, the cabinet shall propose to have all recategorized water promulgated as an amendment to this administrative regulation.

(4) The following information, documentation, and data shall support a petition for recategorization:

(a) A petition for outstanding national resource water shall include:

1. A USGS 7.5 minute topographic map or its equivalent showing those surface waters to be recategorized including a description consisting of a river mile index with any existing and proposed discharge points;

2. Existing uses and water quality data for the surface water for which the recategorization is proposed. If adequate data are unavailable, additional studies shall be required by the cabinet;

3. Descriptions of general land uses and specific land uses adjacent to the surface water for which the recategorization is proposed;

4. The existing and designated uses of the water upstream and downstream of the proposed recategorized water;

5. General physical characteristics of the surface water including width, depth, bottom composition, and slope;

6. The frequency of occasions when there is no natural flow in the surface water and the 7Q₁₀ and harmonic mean flow values for the surface water and adjacent surface waters;

7. An assessment of the existing and potential aquatic life habitat in the surface water under consideration and the adjacent upstream surface waters. The existing aquatic life shall be documented including the occurrence of individuals or populations, indices of diversity and well-being, and abundance of species of any unique native biota;

8. A documented rationale as to why the water qualify for the recategorization; and

9. The rationale used to support the national significance of the water.

(b) A petition for exceptional water shall include:

1. A United States Geological Survey 7.5 minute topographic map or its equivalent showing the surface water to be recategorized including a description consisting of a river mile index with existing and proposed discharge points;

2. Descriptions of general land uses, including:

a. Mining;

b. Agriculture;

c. Recreation;

d. Low, medium, and high density residential, commercial, or industrial uses; and

e. Specific land uses adjacent to the surface water for which the recategorization is proposed;

3. The frequency of occasions when there is no natural flow in the surface water and the 7Q₁₀ and annual mean flow values for the surface water; and

4. Fish or benthic macroinvertebrate collection data and an Index of Biotic Integrity or Macroinvertebrate Bioassessment Index calculation from a waterbody if criteria specified in Section 1(2)(a)3 of this administrative regulation are utilized.

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

(a) "Development and Application of the Kentucky Index of Biotic Integrity (KIBI)", 2003, Kentucky Division of Water, Environmental and Public Protection Cabinet;

(b) "The Kentucky Macroinvertebrate Bioassessment Index", 2003, Kentucky Division of Water, Environmental and Public Protection Cabinet; and

(c) "Socioeconomic Demonstration and Alternative Analysis", KPDES Form SDAA, DEP Form 7032, May 2019[April 2009].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Water, 300 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(a) The Socioeconomic Demonstration and Alternative Analysis, KPDES Form SDAA, DEP Form 7032, May 2019, is also available on the division's Web site at <https://eec.ky.gov/Environmental-Protection/Water/PermitCert/KPDES/Pages/default.aspx>.

(b) "Development and Application of the Kentucky Index of Biotic Integrity" and "Kentucky Macroinvertebrate Bioassessment Index" is also available on the division's Web site at <https://eec.ky.gov/Environmental-Protection/Water/QA/Pages/default.aspx>.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: September 13, 2019

FILED WITH LRC: September 13, 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 implements the antidegradation policy of 401 KAR 10:029 by establishing procedures to control water pollution in waters affected by that policy. This administrative regulation provides categorization criteria, lists many surface waters assigned to specific categories, and provides for recategorization of water.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to manage water resources and to provide for the prevention, abatement, and control of water pollution.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100 requires the cabinet to develop and conduct a comprehensive program for the management of water resources and to provide for the prevention, abatement, and control of all water pollution. KRS 224.70-100 authorizes the policy of the commonwealth to conserve its waters for legitimate uses, safeguard from pollution the uncontaminated waters of the commonwealth, prevent the creation of any new pollution in the waters of the commonwealth, and abate any existing pollution. This administrative regulation and 401 KAR 10:001, 10:026, 10:029, and 10:031 establish procedures to protect the surface waters of the Commonwealth, and thus protect water resources. This administrative regulation establishes a methodology to implement the antidegradation policy contained in 401 KAR 10:029 by establishing procedures to control water pollution in waters affected by that policy.

(d) How this administrative regulation currently assists or will

assist in the effective administration of the statutes: This administrative regulation implements the antidegradation policy to protect surface waters of the Commonwealth required by the authorizing statutes.

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

(a) How the amendment will change this existing administrative regulation: This amendment clarifies that if a water is not supporting even one designated use, the water is impaired for the purposes of antidegradation consideration.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to clarify that if a water is not supporting even one designated use, the water is impaired for the purposes of antidegradation consideration.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100 requires the cabinet to develop and conduct a comprehensive program for the management of water resources and to provide for the prevention, abatement, and control of all water pollution. KRS 224.70-100 authorizes the policy of the commonwealth to conserve its waters for legitimate uses, safeguard from pollution the uncontaminated waters of the commonwealth, prevent the creation of any new pollution in the waters of the commonwealth, and abate any existing pollution. This administrative regulation and 401 KAR 10:001, 10:026, 10:029, and 10:031 establish procedures to protect the surface waters of the Commonwealth, and thus protect water resources. This administrative regulation establishes a methodology to implement the antidegradation policy contained in 401 KAR 10:029 by establishing procedures to control water pollution in waters affected by that policy.

(d) How the amendment will assist in the effective administration of the statutes: The amendments will assist in the administration of the statutes by clarifying that if a water is not supporting even one designated use, the water is impaired for the purposes of antidegradation consideration.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Individuals, businesses, organizations, and state and local governments that will have new or expanded wastewater discharges into streams could be affected by either stricter discharge limits or the requirement to perform an alternatives analysis and socioeconomic demonstration.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Potential permit limits imposed on new or expanded point source discharges could result in additional treatment outlays, training costs, or operational changes. New or expanded point source dischargers covered under the KPDES permitting system may incur costs of alternatives, pollution prevention, and socioeconomic analyses. These requirements already exist in state and federal law.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The costs to comply with this administrative regulation will vary considerably depending on the location, type of activity, and other factors. Costs cannot be determined until an applicant applies for a KPDES permit for a new or expanded discharge which is regulated under 401 KAR Chapter 5.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Direct and indirect savings will be realized through reduced drinking water treatment costs, maintenance of good agricultural water and fisheries, and healthy recreational waters.

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

(a) Initially: The amendment to this administrative regulation will not result in additional costs.

(b) On a continuing basis: The amendment to this administrative regulation will not result in additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funding sources are a combination of general funds appropriated by the Kentucky General Assembly and federal funds from the U.S. Environmental Protection Agency.

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

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

(9) TIERING: Is tiering applied? Yes, tiering is applied, however, the amendments do not change how the regulation is tiered. This regulation tiers the requirements of the antidegradation policy based on the water quality where the applicant proposed to discharge. The tiers are based on whether the receiving waters are categorized as Exceptional Waters, Outstanding National Resource Waters, High Quality Waters, or Impaired Waters.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The amendments may affect the wastewater treatment divisions of local government if they have new or expanded discharges into Exceptional Waters.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 146.220, 146.241, 146.270, 146.410, 146.450, 146.460, 146.465, 224.10-100, 224.16-050, 224.16-060, 224.70-100, 224.70-110, 40 C.F.R. 130, 131, 16 U.S.C. 1271-1287, 1531-1544, 33 U.S.C. 1311, 1313, 1314, 1315, 1316, 1341, 1342, 1344

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

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

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

(c) How much will it cost to administer this program for the first year? This administrative regulation will not result in additional costs.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation will not result in additional costs.

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

Revenues (+/-): NA

Expenditures (+/-): NA

Other Explanation: Wastewater treatment costs may increase for those local governments requesting new or expanded discharges into Exceptional Waters. Local governments withdrawing drinking water from these waters may have lower treatment costs because the waters should have lower pollutant loads.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal mandate to implement a water pollution control program. For Kentucky to maintain its delegation authority over the National Pollution Discharge Elimination System permit program, the Clean Water Act requires that Kentucky review

its water quality standards every three years (known as the "Triennial Review") and comply with the programmatic requirements of 40 C.F.R. Part 131, including implementing the antidegradation policy. The U.S. Environmental Protection Agency provides guidance to the states, but individual decisions regarding water quality programs are left to the states.

2. State compliance standards. KRS 146.220, 146.241, 146.270, 146.410, 146.450, 146.460, 146.465, 224.10-100, 224.16-050, 224.16-060, 224.70-100, and 224.70-110

3. Minimum or uniform standards contained in the federal mandate. 40 C.F.R. 130, 131, 16 U.S.C. 1271-1287, 1531-1544, 33 U.S.C. 1311, 1313, 1314, 1315, 1316, 1341, 1342, 1344

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate? No.

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

ENERGY AND ENVIRONMENT CABINET Department for Environmental Protection Division of Water (Amended After Comments)

401 KAR 10:031. Surface water standards.

RELATES TO: KRS 146.200 through 146.360[~~146.200-146.360~~], 146.410 through 146.535[~~146.410-146.535~~], 146.550 through 146.570[~~146.550-146.570~~], 146.600 through 146.619[~~146.600-146.619~~], 146.990, 224.1-010, 224.1-400, 224.16-050, 224.16-070, 224.70-100 through 224.70-140[~~224.70-100-224.70-140~~], 224.71-100 through 224.71-145[~~224.71-100-224.71-145~~], 224.73-100 through 224.73-120[~~224.73-100-224.73-120~~];

STATUTORY AUTHORITY: KRS 146.220, 146.241, 146.270, 146.410, 146.450, 146.460, 146.465, 224.10-100, 224.16-050, 224.16-060, 224.70-100, 224.70-110, 40 C.F.R. Part 131, 16 U.S.C. 1271 through 1287[~~1271-1287~~], 1531 through 1544[~~1531-1544~~], 33 U.S.C. 1311, 1313, 1314, 1341

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the cabinet to develop and conduct a comprehensive program for the management of water resources and to provide for the prevention, abatement, and control of water pollution. This administrative regulation and 401 KAR 10:001, 10:026, 10:029, and 10:030 establish procedures to protect the surface waters of the Commonwealth, and thus protect water resources. This administrative regulation establishes water quality standards that consist of designated legitimate uses of the surface waters of the Commonwealth and the associated water quality criteria necessary to protect those uses. These water quality criteria[standards] are minimum requirements that apply to all surface waters in the Commonwealth of Kentucky in order to maintain and protect them for designated uses. These water quality standards are subject to periodic review and revision in accordance with the Clean Water Act, 33 U.S.C. 1251-1387, 40 C.F.R. 131, and KRS Chapter 224.

Section 1. Nutrients Criterion. Nutrients shall not be elevated in a surface water to a level that results in a eutrophication problem.

Section 2. Minimum Criteria Applicable to All Surface Waters.

(1) The minimum water quality criteria established in this administrative regulation shall be applicable to all surface waters including mixing zones, with the exception that toxicity to aquatic life in mixing zones shall be subject to the provisions of 401 KAR 10:029, Section 4. Surface waters shall not be aesthetically or otherwise degraded by substances that:

- (a) Settle to form objectionable deposits;
- (b) Float as debris, scum, oil, or other matter to form a nuisance;
- (c) Produce objectionable color, odor, taste, or turbidity;
- (d) Injure or are chronically or acutely toxic to or produce

adverse physiological or behavioral responses in humans, animals, fish, and other aquatic life;

(e) Produce undesirable aquatic life or result in the dominance of nuisance species; or

(f) Cause fish flesh tainting.

(2) The concentration of phenol shall not exceed 300 µg/L as an instream value.

(3) The water quality criteria for the protection of human health related to fish consumption in Table 1 of Section 6 of this administrative regulation shall apply to all surface water at the edge of the assigned mixing zones except for those points where water is withdrawn for domestic water supply use.

(a) The criteria are established to protect human health regarding the consumption of fish tissue and shall not be exceeded.

(b) For those substances associated with a cancer risk, an acceptable risk level of not more than one (1) additional cancer case in a population of 1,000,000 people, or 1×10^{-6} shall be utilized to establish the allowable concentration.

Section 3. Use Designations and Associated Criteria. (1) Surface waters may be designated as having one (1) or more legitimate uses established in 401 KAR 10:026 and associated criteria protective of those uses. Nothing in this administrative regulation shall be construed to prohibit or impair the legitimate beneficial uses of these waters. The criteria in Sections 2, 4, 6, and 7 of this administrative regulation represent minimum conditions necessary to:

(a) Protect surface waters for the indicated designated use; and

(b) Protect human health regarding fish consumption.

(2) On occasion, surface water quality may be outside of the limits established to protect designated uses because of natural conditions. If this occurs during periods when stream flows are below the flow that is used by the cabinet to establish effluent limitations for wastewater treatment facilities, a discharger shall not be considered a contributor to instream violations of water quality standards, if treatment results in compliance with permit requirements.

(3) Stream flows for water quality-based permits. The following stream flows shall be utilized if deriving KPDES permit limitations to protect surface waters for the listed uses and purposes:

(a) Aquatic life protection shall be $7Q_{10}$;

(b) Water-based recreation protection shall be $7Q_{10}$;

(c) Domestic water supply protection shall be determined at points of withdrawal as:

1. The harmonic mean for cancer-linked substances; and

2. $7Q_{10}$ for noncancer-linked substances;

(d) Human health protection regarding fish consumption and for changes in radionuclides shall be the harmonic mean; and

(e) Protection of aesthetics shall be $7Q_{10}$.

Section 4. Aquatic Life. (1) Warm water aquatic habitat. The following parameters and associated criteria shall apply for the protection of productive warm water aquatic communities, fowl, animal wildlife, arboreal growth, agricultural, and industrial uses:

(a) Natural alkalinity as CaCO_3 shall not be reduced by more than twenty-five (25) percent.

1. If natural alkalinity is below twenty (20) mg/L CaCO_3 , there shall not be a reduction below the natural level.

2. Alkalinity shall not be reduced or increased to a degree that may adversely affect the aquatic community;

(b) pH shall not be less than six and zero-tenths (6.0) nor more than nine and zero-tenths (9.0) and shall not fluctuate more than one and zero-tenths (1.0) pH unit over a period of twenty-four (24) hours;

(c) Flow shall not be altered to a degree that will adversely affect the aquatic community;

(d) Temperature shall not exceed thirty-one and seven-tenths (31.7) degrees Celsius (eighty-nine (89) degrees Fahrenheit).

1. The normal daily and seasonal temperature fluctuations that existed before the addition of heat due to other than natural causes shall be maintained.

2. The cabinet may determine allowable surface water temperatures on a site-specific basis utilizing available data that shall be based on the effects of temperature on the aquatic biota that utilize specific surface waters of the commonwealth and that may be affected by person-induced temperature changes.

3.[a.] Effects on downstream uses shall also be considered in determining site-specific temperatures.

[b. Values in the following table are guidelines for surface water temperature.]

Month/Date	Period Average		Instantaneous Maximum	
	(°F)	(°C)	(°F)	(°C)
January 1-31	45	7	50	10
February 1-29	45	7	50	10
March 1-15	51	11	56	13
March 16-31	54	12	59	15
April 1-15	58	14	64	18
April 16-30	64	18	69	21
May 1-15	68	20	73	23
May 16-31	75	24	80	27
June 1-15	80	27	85	29
June 16-30	83	28	87	31
July 1-31	84	29	89	32
August 1-31	84	29	89	32
September 1-15	84	29	87	31
September 16-30	82	28	86	30
October 1-15	77	25	82	28
October 16-31	72	22	77	25
November 1-30	67	19	72	22
December 1-31	52	11	57	14

4.[3.] A successful demonstration concerning thermal discharge limits carried out pursuant to Section 316(a) of the Clean Water Act, 33 U.S.C. 1326, shall constitute compliance with the temperature requirements of this subsection. A successful demonstration assures the protection and propagation of a balanced indigenous population of shellfish, fish, and wildlife in or on the water into which the discharge is made;

(e) Dissolved oxygen.

1.a. Dissolved oxygen shall be maintained at a minimum concentration of five and zero-tenths (5.0) mg/L as a twenty-four (24) hour average in water with WAH use.;

b. The instantaneous minimum shall not be less than four and zero-tenths (4.0) mg/L in water with WAH use.

2. The dissolved oxygen concentration shall be measured at mid-depth in waters having a total depth of ten (10) feet or less and at representative depths in other waters;

(f) Total dissolved solids or specific conductance. Total dissolved solids or specific conductance shall not be changed to the extent that the indigenous aquatic community is adversely affected;

(g) Total suspended solids. Total suspended solids shall not be changed to the extent that the indigenous aquatic community is adversely affected;

(h) Settleable solids. The addition of settleable solids that may alter the stream bottom so as to adversely affect productive aquatic communities shall be prohibited;

(i) Ammonia. The concentration of the un-ionized form shall not be greater than 0.05 mg/L at any time instream after mixing. Un-ionized ammonia shall be determined from values for total ammonia-N, in mg/L, pH and temperature, by means of the following equation:

$$Y = 1.2 (\text{Total ammonia-N}) / (1 + 10^{\text{pKa-pH}})$$

$$\text{pKa} = 0.0902 + (2730 / (273.2 + T_c))$$

Where:

T_c = temperature, degrees Celsius.

Y = un-ionized ammonia (mg/L);

(j) Toxics.

1. The allowable instream concentration of toxic substances, or whole effluents containing toxic substances, which are noncumulative or non-persistent[nonpersistent] with a half-life of less than ninety-six (96) hours, shall not exceed:

a. One-tenth (0.1) of the ninety-six (96) hour median lethal

concentration (LC₅₀) of representative indigenous or indicator aquatic organisms; or

b. A chronic toxicity unit of 1.00 utilizing the twenty-five (25) percent inhibition concentration, or $\frac{1}{25}[LC_{25}]$.

2. The allowable instream concentration of toxic substances, or whole effluents containing toxic substances, which are bioaccumulative or persistent, including pesticides, if not specified elsewhere in this section, shall not exceed:

a. 0.01 of the ninety-six (96) hour median lethal concentration (LC₅₀) of representative indigenous or indicator aquatic organisms; or

b. A chronic toxicity unit of 1.00 utilizing the IC₂₅.

3. In the absence of acute criteria for pollutants listed in Table 1 of Section 6 of this administrative regulation, for other substances known to be toxic but not listed in this administrative regulation, or for whole effluents that are acutely toxic, the allowable instream concentration shall not exceed the LC₁ or one-third (1/3) LC₅₀ concentration derived from toxicity tests on representative indigenous or indicator aquatic organisms or exceed three-tenths (0.3) acute toxicity units.

4. If specific application factors have been determined for a toxic substance or whole effluent such as an acute to chronic ratio or water effect ratio, the specific application factors may be used instead of the one-tenth (0.1) and 0.01 factors listed in this subsection upon demonstration by the applicant that the application factors are scientifically defensible.

5. Allowable instream concentrations for specific pollutants for the protection of warm water aquatic habitat are listed in Table 1 of Section 6 of this administrative regulation. These concentrations are based on protecting aquatic life from acute and chronic toxicity and shall not be exceeded; and

(k) Total residual chlorine. Instream concentrations for total residual chlorine shall not exceed an acute criteria value of nineteen (19) µg/L or a chronic criteria value of eleven (11) µg/L.

(2) Cold water aquatic habitat. The following parameters and criteria are for the protection of productive cold water aquatic communities and streams that support trout populations, whether self-sustaining or reproducing, on a year-round basis. The criteria adopted for the protection of warm water aquatic life also apply to the protection of cold water habitats with the following additions:

(a) Dissolved oxygen.

1. A minimum concentration of six and zero-tenths (6.0) mg/L as a twenty-four (24) hour average and five and zero-tenths (5.0) mg/L as an instantaneous minimum shall be maintained.

2. In lakes and reservoirs that support trout, the concentration of dissolved oxygen in waters below the epilimnion shall be kept consistent with natural water quality; and

(b) Temperature. Water temperature shall not be increased through human activities above the natural seasonal temperatures.

Section 5. Domestic Water Supply Use. Maximum allowable instream concentrations for specific substances, to be applicable at the point of withdrawal, as established in 401 KAR 10:026, Section 5(2)(b), Table B, for use for domestic water supply from surface water sources are specified in Table 1 of Section 6 of this administrative regulation and shall not be exceeded.

Section 6. Pollutants. (1) Allowable instream concentrations of pollutants are listed as water column values in Table 1 of this section unless otherwise indicated.

Table 1

Pollutant	CAS ¹ Number	Water Quality Criteria µg/L ² (mg/L ²)			
		Human Health:		Warm Water Aquatic Habitat ³ :	
		DWS ⁴	Fish ⁵	Acute ⁶	Chronic ⁷
Acenaphthene	83-32-9[83329]	670	990	-	-
Acrolein	107-02-8[107028]	190	6	3	3
Acrylonitrile	107-13-1[107131]	0.051	0.25	-	-
Aldrin	309-00-2[309002]	0.000049	0.000050	3.0	-
alpha-BHC	319-84-6[319846]	0.0026	0.0049	-	-
alpha-Endosulfan	959-98-8[959988]	62	89	0.22	0.056
Anthracene	120-12-7[120127]	8,300	40,000	-	-
Antimony	744-03-60[7440360]	5.6	640	-	-
Arsenic	7440-38-2[7440382]	10.0	-	340	150
Asbestos	1332-21-4[1332214]	7 million fibers/L	-	-	-
Barium	7440-39-3[7440393]	1,000	-	-	-
Benzene	71-43-2[71432]	2.2	51	-	-
Benzidine	92-87-5[92875]	0.000086	0.00020	-	-
Benzo(a)anthracene	56-55-3[56553]	0.0038	0.018	-	-
Benzo(a)pyrene	50-32-8[50328]	0.0038	0.018	-	-
Benzo(b)fluoranthene	205-99-2[205992]	0.0038	0.018	-	-
Benzo(k)fluoranthene	207-08-9[207089]	0.0038	0.018	-	-
Beryllium	7440-41-7[7440417]	4	-	-	-
Beta-BHC	319-85-7[319857]	0.0091	0.017	-	-
Beta-Endosulfan	33213-65-9[33213659]	62	89	0.22	0.056
bis(chloromethyl)ether	542-88-1[542881]	0.00010	0.00029	-	-
bis(2-chloroethyl)ether	111-44-4[111444]	0.030	0.53	-	-
bis(2-chloroisopropyl)ether	108-60-1[108601]	1,400	65,000	-	-
bis(2-ethylhexyl)phthalate	117-81-7[117817]	1.2	2.2	-	-
Bromoform	75-25-2[75252]	4.3	140	-	-
Butylbenzyl phthalate	85-68-7[85687]	1,500	1,900	-	-
Cadmium	7440-43-9[7440439]	5	-	$\frac{e(0.9789(\ln \text{Hard}^*) - 3.866)}{e(1.0166(\ln \text{Hard}^*) - 3.924))}$	$\frac{e(0.7977(\ln \text{Hard}^*) - 3.909)}{e(0.7409(\ln \text{Hard}^*) - 4.719))}$
Carbaryl	63-25-2			2.1	2.1
Carbon tetrachloride	56-23-5[56235]	0.23	1.6	-	-
Chlordane	57-74-9[57749]	0.00080	0.00081	2.4	0.0043
Chloride	16887-00-6[16887006]	250,000	-	1,200,000	600,000
Chlorobenzene	108-90-7[108907]	130	1600	-	-
Chlorodibromomethane	124-48-1[124481]	0.40	13	-	-

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Chloroform	67-66-3[67663]	5.7	470	-	-
Chloropyrifos	2921-88-2[2921882]	-	-	0.083	0.041
Chromium (total)	N/A	100	-	-	-
Chromium (III)	16065-83-1[16065831]	-	-	$e^{(0.8190(\ln \text{Hard}^*)+3.7256)}$ [e(0.8190 (ln Hard*)+3.7256)]	$e^{(0.8190(\ln \text{Hard}^*)+0.6848)}$ [e(0.8190 (ln Hard*)+0.6848)]
Chromium (VI)	18540-29-0[18540299]	-	-	16	11
Chrysene	218-01-9[218019]	0.0038	0.018	-	-
Color	N/A	75 Platinum Cobalt Units	-	-	-
Copper	7440-50-8[7440508]	1,300	-	$e^{(0.9422(\ln \text{Hard}^*)-1.700)}$ [e(0.9422 (ln Hard*)-1.700)]	$e^{(0.8545(\ln \text{Hard}^*)-1.702)}$ [e(0.8545 (ln Hard*)-1.702)]
Cyanide, Free	57-12-5[57125]	140	140	22	5.2
Demeton	8065-48-3[8065483]	-	-	-	0.1
Diazinon	333-41-5[333415]	-	-	0.17	0.17
Dibenzo(a,h)anthracene	53-70-3[53703]	0.0038	0.018	-	-
Dichlorobromomethane	75-27-4[75274]	0.55	17	-	-
Dieldrin	60-57-1[60571]	0.000052	0.000054	0.24	0.056
Diethyl phthalate	84-66-2[84662]	17,000	44,000	-	-
Dimethyl phthalate	131-11-3[131113]	270,000	1,100,000	-	-
Di-n-butyl phthalate	84-74-2[84742]	2,000	4,500	-	-
Dinitrophenols	25550-58-7[25550587]	69	5300	-	-
Endosulfan sulfate	1031-07-8[1031078]	62	89	-	-
Endrin	72-20-8[72208]	0.059	0.060	0.086	0.036
Endrin aldehyde	7421-93-4[7421934]	0.29	0.30	-	-
Ethylbenzene	100-41-4[100414]	530	2100	-	-
Fluoranthene	206-44-0[206440]	130	140	-	-
Fluorene	86-73-7[86737]	1,100	5,300	-	-
Fluoride	16984-48-8[N/A]	4,000	-	-	-
Guthion	86-50-0[86500]	-	-	-	0.01
Heptachlor	76-44-8[76448]	0.000079	0.000079	0.52	0.0038
Heptachlor epoxide	1024-57-3[1024573]	0.000039	0.000039	0.52	0.0038
Hexachlorobenzene	118-74-1[118741]	0.00028	0.00029	-	-
Hexachlorobutadiene	87-68-3[87683]	0.44	18	-	-
Hexachlorocyclo-hexane- Technical	608-73-1[319868]	0.0123	0.0414	-	-
Hexachlorocyclopentadiene	77-47-4[77474]	40	1100	-	-
Hexachloroethane	67-72-1[67721]	1.4	3.3	-	-
Ideno(1,2,3-cd)pyrene	193-39-5[193395]	0.0038	0.018	-	-
Iron ⁸	7439-89-6[7439896]	300	-	4,000	1,000
Isophorone	78-59-1[78591]	35.0	960	-	-
Lead	7439-92-1[7439921]	15	-	$e^{(1.273(\ln \text{Hard}^*)-1.460)}$ [e(1.273 (ln Hard*)-1.460)]	$e^{(1.273(\ln \text{Hard}^*)-4.705)}$ [e(1.273 (ln Hard*)-4.705)]
Lindane (gamma-BHC)	58-89-9[58899]	0.98	1.8	0.95	-
Malathion	121-75-5[121755]	-	-	-	0.1
Mercury	7439-97-6[7439976]	2.0	0.051	1.4	0.77
Methylmercury	22967-92-6[22967926]	-	0.3 mg/Kg ⁹ [mg/Kg]	-	-
Methoxychlor	74-43-5[72435]	100	-	-	0.03
Methyl Bromide[Methylbromide]	74-83-9[74839]	47	1,500	-	-
Methylene Chloride	75-09-2[75092]	4.6	590	-	-
Mirex	2385-85-5[2385855]	-	-	-	0.001
Nickel	7440-02-0[7440020]	610	4,600	$e^{(0.8460(\ln \text{Hard}^*)+2.255)}$ [e(0.8460 (ln Hard*)+2.255)]	$e^{(0.8460(\ln \text{Hard}^*)+0.0584)}$ [e(0.8460 (ln Hard*)+0.0584)]
Nitrate (as N)	14797-55-8[14797558]	10,000	-	-	-
Nitrobenzene	98-95-3[98953]	17	690	-	-
Nitrosamines, Other	N/A	0.0008	1.24	-	-
N-Nitrosodibutylamine	924-16-3[924163]	0.0063	0.22	-	-
N-Nitrosodiethylamine	55-18-5[55185]	0.0008	1.24	-	-
N-Nitrosodimethylamine	62-75-9[62759]	0.00069	3.0	-	-
N-Nitrosodi-n-Propylamine	621-64-7[621647]	0.0050	0.51	-	-
N-Nitrosodiphenylamine	86-30-6[86306]	3.3	6.0	-	-
N-Nitrosopyrrolidine	930-55-2[930552]	0.016	34	-	-
Nonylphenol	1044-05-1[1044051]	-	-	28	6.6
Parathion	56-38-2[56382]	-	-	0.065	0.013
Pentachlorobenzene	608-93-5[608935]	1.4	1.5	-	-

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Pentachlorophenol	87-65-5[87865]	0.27	3.0	$e^{(1.005(\text{pH})-4.869)}$ [e(1.005(pH)-4.869)]	$e^{(1.005(\text{pH})-5.134)}$ [e(1.005(pH)-5.134)]
Phenol ¹⁰	108-95-2[108952]	21,000	860,000	-	-
Polychlorinated Biphenyls (PCBs)	N/A	0.000064	0.000064	-	0.014
Pyrene	129-00-0[129000]	830	4,000	-	-
Selenium	7782-49-2[7782492]	170	4,200	-	5.0 ¹¹ [5.0 ⁹] 8.6 ^{12,13} [8.6 ^{10,44}] 11.3 ^{13,14} [19.3 ^{44,42}]
Silver	7440-22-4[7440224]	-	-	$e^{(1.72(\ln \text{Hard}^*)-6.59)}$ [e(1.72 (ln Hard*)-6.59)]	-
Sulfate	14808-79-8 [N/A]	250,000	-	-	-
Hydrogen Sulfide, Undissociated	7783-06-4[7783064]	-	-	-	2.0
Tetrachloroethylene	127-18-4[127184]	0.69	3.3	-	-
Thallium	7440-28-0[7440280]	0.24	0.47	-	-
Toluene	108-88-3[108883]	1300	15,000	-	-
Total Dissolved Solids	N/A	250,000	-	-	-
Toxaphene	8001-35-2[8001352]	0.00028	0.00028	0.73	0.0002
Tributyltin (TBT)	688-73-3	-	-	0.46	0.072
Trichloroethylene	79-01-6[79016]	2.5	30	-	-
Vinyl Chloride	75-01-4[75014]	0.025	2.4	-	-
Zinc	7440-66-6[7440666]	7,400	26,000	$e^{(0.8473(\ln \text{Hard}^*)+0.884)}$ [e(0.8473 (ln Hard*)+0.884)]	$e^{(0.8473(\ln \text{Hard}^*)+0.884)}$ [e(0.8473 (ln Hard*)+0.884)]
1,1-dichloroethylene	75-35-4[75354]	330	7100	-	-
1,1,1-trichloroethane	71-55-6[71556]	200	-	-	-
1,1,2-trichloroethane	79-00-5[79005]	0.59	16	-	-
1,1,2,2-tetrachloroethane	79-34-5[79345]	0.17	4.0	-	-
1,2-dichlorobenzene	95-50-1[95501]	420	1300	-	-
1,2-dichloroethane	107-06-2[107062]	0.38	37	-	-
1,2-dichloropropane	78-87-5[78875]	0.50	15	-	-
1,2-diphenylhydrazine	122-66-7[122667]	0.036	0.20	-	-
1,2-trans-dichloroethylene	156-60-5[156605]	140	10,000	-	-
1,2,4-trichlorobenzene	120-82-1[120821]	35	70	-	-
1,2,4,5-tetrachlorobenzene	95-94-3[95943]	0.97	1.1	-	-
1,3-dichlorobenzene	541-73-1[541731]	320	960	-	-
1,3-dichloropropene	542-75-6[542756]	0.34	21	-	-
1,4-dichlorobenzene	106-46-7[106467]	63	190	-	-
2-chloronaphthalene	91-58-7[91587]	1,000	1,600	-	-
2-chlorophenol	95-57-8[95578]	81	150	-	-
2-methyl-4,6-dinitrophenol	534-52-1[534521]	13	280	-	-
2,3,7,8-TCDD (Dioxin)	1746-01-6[1746016]	5.0 E - 9	5.1 E - 9	-	-
2,4-D	94-75-7[94757]	100	-	-	-
2,4-dichlorophenol	120-83-2[120832]	77	290	-	-
2,4-dimethylphenol	105-67-9[105679]	380	850	-	-
2,4-dinitrophenol	51-28-5[51285]	69	5,300	-	-
2,4-dinitrotoluene	121-14-2[121142]	0.11	3.4	-	-
2,4,5-TP (Silvex)	93-72-1[93721]	10	-	-	-
2,4,5-trichlorophenol	95-95-4[95954]	1,800	3,600	-	-
2,4,6-trichlorophenol	88-06-2[88062]	1.4	2.4	-	-
3,3'-dichlorobenzidine	91-94-1[91941]	0.021	0.028	-	-
4,4'-DDD	72-54-8[72548]	0.00031	0.00031	-	-
4,4'-DDE	72-55-9[72559]	0.00022	0.00022	-	-
4,4'-DDT	50-29-3[50293]	0.00022	0.00022	1.1	0.001

¹CAS = Chemical Abstracts Service.

²Water quality criteria in µg/L unless reported in different units.

³Metal concentrations shall be total recoverable metals to be measured in an unfiltered sample, unless it can be demonstrated that a more appropriate analytical technique is available that provides a measurement of that portion of the metal present which causes toxicity to aquatic life. An applicant for a Clean Water Act Section 402 permit may request site-specific copper aquatic life criteria using the Copper Biotic Ligand Model established in Aquatic Life Ambient Freshwater Quality Criteria-Copper, EPA, February 2007.

⁴DWS = Domestic Water Supply Source.

⁵Fish = protecting human health regarding fish consumption.

⁶Acute criteria = protective of aquatic life based on one (1) hour exposure that does not exceed the criterion for a given pollutant.

⁷Chronic = protective of aquatic life based on ninety-six (96) hour exposure that does not exceed the criterion of a given pollutant more than once every three (3) years on the average.

⁸The chronic criterion for iron shall not exceed three and five tenths (3.5) mg/L (thirty-five hundred µg/L) if aquatic life has not been shown to be adversely affected.

⁹This value is the concentration in fish or shellfish tissue (wet weight).

¹⁰Section 2 of this administrative regulation also contains a criterion for phenol.

¹¹If fish tissue data are available, fish tissue data shall take precedence over water column data.

¹²⁽⁴⁰⁾This value is the concentration in micrograms/g (dry weight) of whole fish tissue.

¹³⁽⁴⁴⁾A concentration of five and zero tenths (5.0) µg/L or greater selenium in the water column shall trigger further sampling and analysis of whole-body fish tissue or alternately of fish fillet~~(egg/ovary tissue)~~.

¹⁴This value is the concentration in mg/g (dry weight) of fish egg/ovary tissue.

¹⁴This value is the concentration in µg/g (dry weight) of skinless, boneless fish fillet, which may be analyzed instead of whole body tissue if~~when~~ predator or bottom-feeding fish exceed twelve (12) inches in length.

*Hard = Hardness as mg/L CaCO₃.

(2) The following additional criteria for radionuclides shall apply for Domestic Water Supply use:

(a) The gross total alpha particle activity, including radium-226 but excluding radon and uranium, shall not exceed fifteen (15) pCi/L;

(b) Combined radium-226 and radium-228 shall not exceed five (5) pCi/L. Specific determinations of radium-226 and radium-228 are not necessary if dissolved gross alpha particle activity does not exceed five (5) pCi/L;

(c) The concentration of total gross beta particle activity shall not exceed fifty (50) pCi/L;

(d) The concentration of tritium shall not exceed 20,000 pCi/L;

(e) The concentration of total Strontium-90 shall not exceed eight (8) pCi/L; and

(f) The concentration of uranium shall not exceed thirty (30) mg/l.

Section 7. Recreational Waters. (1) Primary contact recreation water. The following criteria shall apply to waters designated as primary contact recreation use during the primary contact recreation season of May 1 through October 31:

(a)~~[Fecal coliform content or]~~ Escherichia coli content shall not exceed~~[200 colonies per 100 ml or]~~ 130 colonies per 100 ml~~[respectively]~~ as a geometric mean based on not less than five (5) samples taken during a thirty (30) day period. Content also shall not exceed ~~240~~~~[400]~~ colonies per 100 ml in twenty (20) percent or more of all samples taken during a thirty (30) day period for~~[fecal coliform or 240 colonies per 100 ml]~~ for Escherichia coli. Fecal coliform criteria listed in subsection (2)(a) of this section shall apply during the remainder of the year;

(b) pH shall be between six and zero-tenths (6.0) to nine and zero-tenths (9.0) and shall not change more than one and zero-tenths (1.0) pH unit within this range over a period of twenty-four (24) hours; and

(c)1. PCR criteria may be suspended in CSO receiving waters during CSO events for a duration determined by the cabinet-approved Long-Term Control Plan as established in 401 KAR 5:005 and the facility KPDES permit; if:

a. An exception to criteria is approved~~[A variance is approved]~~;

(i) In accordance with Section 10 or~~[Section 10 or Section]~~ 11 of this administrative regulation; and

(ii) Consistent with 40 C.F.R. 131.14; or

b. A redesignation pursuant to a use attainability analysis has been approved;

(i) In accordance with 401 KAR 10:026, Sections 2 through 4; and

(ii) Consistent with 40 C.F.R. 131.10(g).~~[(c) pH shall be between six and zero-tenths (6.0) to nine and zero-tenths (9.0) and~~

~~shall not change more than one and zero-tenths (1.0) pH unit within this range over a period of twenty-four (24) hours; and]~~

2. A table of CSO-impacted waters for which a suspension of the Primary Contact Recreation has been approved shall be located in 401 KAR 10:026.~~[(c) Fecal coliform content criteria listed in paragraph (a) of this subsection shall no longer apply beginning November 1, 2019.]~~

(2) Secondary contact recreation water. The following criteria shall apply to waters designated for secondary contact recreation use during the entire year:

(a) Fecal coliform content shall not exceed 1,000 colonies per 100 ml as a thirty (30) day geometric mean based on not less than five (5) samples; nor exceed 2,000 colonies per 100 ml in twenty (20) percent or more of all samples taken during a thirty (30) day period;~~[and]~~

(b) pH shall be between six and zero-tenths (6.0) to nine and zero-tenths (9.0) and shall not change more than one and zero-tenths (1.0) pH unit within this range over a period of twenty-four (24) hours;~~[-]~~

~~(c)1. SCR criteria may be suspended in CSO receiving waters during CSO events for a duration determined by the cabinet-approved Long-Term Control Plan as established in 401 KAR 5:005 and the facility KPDES permit; if:~~

a. An exception to criteria is approved~~[A variance is approved]~~;

(i) In accordance with Section 10 or~~[Section 10 or Section]~~ 11 of this administrative regulation; and

(ii) Consistent with 40 C.F.R. 131.14; or

b. A redesignation pursuant to a use attainability analysis has been approved;

(i) In accordance with 401 KAR 10:026, Sections 2 through 4; and

(ii) Consistent with 40 C.F.R. 131.10(g).

2. A table of CSO-impacted waters for which a suspension of the Secondary Contact Recreation criteria has been approved shall be located in 401 KAR 10:026.

Section 8. Outstanding State Resource Waters. This designation category includes certain unique waters of the commonwealth. (1) Water for inclusion.

(a) Automatic inclusion. The following surface waters shall automatically be included in this category:

1. Waters designated pursuant to the Kentucky Wild Rivers Act, KRS 146.200 through 146.360~~[146.200-146.360]~~;

2. Waters designated pursuant to the Federal Wild and Scenic Rivers Act, 16 U.S.C. 1271-1287; and

3. Waters that support federally recognized endangered or threatened species pursuant to the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531-1544.

(b) Permissible consideration. Other surface waters shall be considered for inclusion in this category if:

1. The surface waters flow through or are bounded by state or federal forest land, or are of exceptional aesthetic or ecological value or are within the boundaries of national, state, or local government parks, or are a part of a unique geological, natural, or historical area recognized by state or federal designation; or

2. The surface water is a component part of an undisturbed or relatively undisturbed watershed that can provide basic scientific data and possess outstanding water quality characteristics, or fulfill two (2) of the following ~~conditions~~criteria:

a. Support a diverse or unique native aquatic flora or fauna;
b. Possess physical or chemical characteristics that provide an unusual and uncommon aquatic habitat; or
c. Provide a unique aquatic environment within a physiographic region.

(2) Outstanding state resource waters protection.~~[The designation of certain waters as outstanding state resource waters shall fairly and fully reflect those aspects of the waters for which the designation is proposed.] The~~cabinet shall determine water quality criteria for protection of an OSRW shall be~~[these waters]~~ as established in paragraphs (a) through (d) of this section.

(a) At a minimum, the criteria of Section 2 and Table 1 of Section 6 of this administrative regulation and the appropriate criteria associated with the stream use designation assignments in 401 KAR 10:026, shall be applicable to these waters.

(b) Outstanding state resource waters that are listed as Exceptional Waters in 401 KAR 10:030, Section 1(2) shall have dissolved oxygen maintained at a minimum concentration of six and zero-tenths (6.0) mg/L as a twenty-four (24) hour average and an instantaneous minimum concentration of not less than five and zero-tenths (5.0) mg/L.

~~(c) 1.] If the values identified for an outstanding state resource water are dependent upon or related to instream water quality, the cabinet shall review existing water quality criteria and determine if additional criteria or more stringent criteria are necessary for protection, and evaluate the need for the development of additional data upon which to base the determination.~~

2.] Existing water quality and habitat shall be maintained and protected in those waters designated as outstanding state resource waters that support federally threatened and endangered species of aquatic organisms, unless the cabinet determines~~[it can be demonstrated]~~ that lowering~~[of]~~ water quality or a habitat modification will not have an adverse~~[a harmful]~~ effect on the threatened or endangered species that the water supports.

2. If the basis of the Outstanding State Resource Water designation depends on or relates to instream water quality, the cabinet shall:

a. Review existing water quality criteria to determine if additional criteria or more stringent criteria are necessary to protect the water; and

b. Evaluate the need to develop additional data upon which to base the determination.

3. If the cabinet determines that more stringent instream water quality criteria are necessary to protect the basis of the Outstanding State Resource Water designation as established in paragraph 2 of this subsection, those additional protective criteria shall not be effective until the cabinet lists those criteria with the respective waterbody in 401 KAR 10:026. (d) 1. The cabinet shall evaluate the need for and shall establish more stringent instream water quality criteria if necessary to protect the basis for the Outstanding State Resource Water designation.

2. Adoption of additional protective criteria as established in subsection (2)(d) shall be listed with the respective stream segment in 401 KAR 10:026]~~[Adoption of more protective criteria in accordance with this section shall be listed with the respective stream segment in 401 KAR 10:026].~~

(3) Determination of designation.

(a) A person may present a proposal to designate certain waters pursuant to this section. Documentation requirements in support of an outstanding state resource water proposal shall

contain those elements outlined in 401 KAR 10:026, Section 3(3)(a) through (h).

(b)1. The cabinet shall review the proposal and supporting documentation to determine if the proposed waters qualify as outstanding state resource waters within the conditions~~[criteria]~~ established by this administrative regulation.

2. The cabinet shall document the determination to deny or to propose redesignation, and a copy of the decision shall be served upon the petitioner and other interested parties.

(c) After considering all of the pertinent data, a redesignation, if appropriate, shall be made pursuant to 401 KAR 10:026.

Section 9. Water Quality Criteria for the Main Stem of the Ohio River. (1) The water quality standards established in this Chapter provide for the protection of the designated uses of the Ohio River with consideration of the uses and water quality criteria established in the Pollution Control Standards and the achievement of the goals of the Ohio River Valley Water Sanitation Compact. ~~The~~[following] criteria established in this Section shall apply to the main stem of the Ohio River from its juncture with the Big Sandy River at River Mile 317.1 to its confluence with the Mississippi River, and shall not be exceeded.

(2) These waters shall be subject to all applicable provisions of 401 KAR 10:001, 10:026, 10:029, 10:030, and this administrative regulation, except in-stream~~[for those criteria in paragraphs (a) and (b) of this subsection.~~

~~(a) Dissolved oxygen. Instream~~ concentrations of dissolved oxygen shall:

(a) Average at least five and zero-tenths (5.0) mg/L per calendar day; and

(b) Shall not be less than four and zero-tenths (4.0) mg/L except during the April 15 - June 15 spawning season when a minimum of five and one-tenth (5.1) mg/L shall be maintained.

~~[(b) Maximum allowable instream concentrations for nitrite-nitrogen for the protection of human health shall be one and zero-tenths (1.0) mg/L and shall be met at the edge of the assigned mixing zone.]~~

Section 10. Exceptions to Criteria for Specific Surface Waters.

(1) The cabinet may grant exceptions to the criteria contained in Sections 2, 4, 6, 7, 8, and 9 of this administrative regulation for specific surface water upon demonstration by an applicant that maintenance of applicable water quality criteria is not attainable or scientifically valid but the use designation is still appropriate.

(2) The analysis shall show that the water quality criteria cannot be reasonably achieved, either on a seasonal or year-round basis due to natural conditions or site-specific factors differing from the conditions used to derive criteria in Sections 2, 4, 6, 7, 8, and 9 of this administrative regulation.

(a) Site-specific criteria shall be developed by the applicant utilizing toxicity tests, indicator organisms, and application factors that shall be consistent with those outlined in Chapter 3 of Water Quality Standards Handbook, EPA, 2017~~[4994]~~.

(b) In addition, an applicant shall supply the documentation established~~[listed]~~ in 401 KAR 10:026, Section 3 and 40 C.F.R. 131.14(b).

(c) The documentation required by subparagraph (b) shall be subject to the public notice and comment requirements established in 40 C.F.R. 130.20(b) and 131.14.

(3) An exception to criteria listed in Table 1 of Section 6 of this administrative regulation for the protection of human health from the consumption of fish tissue may be granted if it is demonstrated that natural, ephemeral, intermittent, or low flow conditions or water levels preclude the year-round support of a fishery, unless these conditions may be compensated for by the discharge of sufficient volume of effluent discharges.

(4) Before granting an exception to water quality criteria, the cabinet shall ensure the maintenance of downstream water quality and that the variance shall~~[does]~~ not preclude the attainment of designated uses~~[that the water quality standards]~~ of downstream surface waters~~[shall be attained and maintained]~~.

(5)(a) All exceptions to water quality criteria shall be subject to reevaluation~~[review]~~ at least every five (5)~~[three (3)]~~ years.

(b) If reevaluation results are not submitted, the exception to criteria shall no longer be the applicable water quality standard for the purposes of this administrative regulation and the federal Clean Water Act.

(6) Exceptions to water quality criteria shall be adopted as an administrative regulation by listing them with the respective surface water in 401 KAR 10:026.

Section 11. Exceptions to Criteria for Individual Dischargers.

(1) An exception to criteria may be granted to an individual discharger based on a demonstration by the discharger, that KPDES permit compliance with existing instream criteria cannot be attained because of factors specified in 401 KAR 10:026, Section 2(4)(a) through (f) and 40 C.F.R. 131.14(b)(1)(A)(1) through (3).

(2) The demonstration shall include:

(a) An assessment of alternative pollution control strategies and biological assessments that indicated designated uses are being met; and

(b) The documentation established in 40 C.F.R. 131.14(b).

(3) Before granting an exception to water quality criteria, the cabinet shall ensure the maintenance of downstream water quality and that the variance ~~shall~~**does** not preclude the attainment of designated uses~~[water quality standards]~~ of downstream surface waters~~[shall be attained and maintained]~~.

(4)(a) All exceptions shall be submitted to the cabinet for ~~reevaluation~~**review** at least every ~~five (5)~~**three (3)** years.

(b) Upon review, the discharger shall demonstrate to the cabinet the effort the discharger made to reduce the pollutants in the discharge to levels that would achieve existing applicable water quality criteria.

(c) If reevaluation results are not submitted, the exception to criteria shall no longer be the applicable water quality standard for the purposes of this administrative regulation and the federal Clean Water Act.

(5) The highest level of effluent quality that can be economically and technologically achieved shall be ensured while the exception is in effect.

(6) ~~Exceptions to criteria for individual discharges shall be subject to the public participation requirements as established in 40 C.F.R. 131.20(b)[The Kentucky Pollution Discharge Elimination System permitting program shall be the mechanism for the review and public notification of intentions to grant exceptions to criteria].~~

Section 12. Compliance Schedules. (1) The cabinet may allow a compliance schedule to give a permittee time to comply with water quality based effluent limitations that derive from and comply with water quality standards.

(2) Compliance schedules shall be as established in 40 C.F.R. 122.47.

Section 13. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Water Quality Standards Handbook-Chapter 3", EPA 2017, Publication No. EPA-823-B-17-001~~[August 1994, Publication EPA-823-B-94-005a]~~, U.S. Environmental Protection Agency, Office of Water, Washington, D.C.;~~and~~

(b) "Interim Economic Guidance for Water Quality Standards Workbook", [EPA]March 1995, Publication EPA-823-B-95-002, U.S. Environmental Protection Agency, Office of Water, Washington, D.C.;~~and~~

(c) "Aquatic Life Ambient Freshwater Quality Criteria-Copper", EPA, February 2007, Publication No. EPA 822-R-07-001, U.S. Environmental Protection Agency, Office of Water, Washington D.C.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Water, 300 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(3)(a) "Water Quality Standards Handbook-Chapter 3", EPA 2017, Publication EPA-823-B-17-001, U.S. Environmental Protection Agency, Office of Water can also be found at <https://www.epa.gov/sites/production/files/2014-10/documents/handbook-chapter3.pdf>.

(b) "Interim Economic Guidance for Water Quality Standards Workbook", March 1995, Publication EPA-823-B-95-002, U.S. Environmental Protection Agency, Office of Water can also be found at <https://www.epa.gov/sites/production/files/2016-03/documents/econworkbook-complete.pdf>.

(c) "Aquatic Life Ambient Freshwater Quality Criteria-Copper", February 2007, Publication No. EPA-822-R-07-001, U.S. Environmental Protection Agency, Office of Water can also be found at <https://www.epa.gov/sites/production/files/2019-02/documents/al-freshwater-copper-2007-revision.pdf>.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: September 13, 2019

FILED WITH LRC: September 13, 2019 at 10 a.m.

CONTACT PERSON: Carole J. Catafo, Internal Policy Analyst, RPPS, Division of Water, 3rd Floor, 300 Sower Boulevard, Frankfort, Kentucky 40601, phone (502) 564-3410, fax (502) 564-9003, email water@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Carole J. Catafo

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes water quality standards for surface waters of the Commonwealth and the associated water quality criteria necessary to protect designated uses.

(b) The necessity of this administrative regulation: This administrative regulation is necessary for the protection of public health, aquatic habitat, and designated uses of the surface waters of the Commonwealth.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100 requires the cabinet to develop and conduct a comprehensive program for the management of water resources and to provide for the prevention, abatement, and control of water pollution. This administrative regulation and 401 KAR 10:001, 10:026, 10:029, and 10:030 establish procedures to protect the surface waters of the Commonwealth, and thus protect water resources. This administrative regulation establishes water quality standards that consist of designated legitimate uses of the surface waters of the Commonwealth and the associated water quality criteria necessary to protect those uses. These water quality standards are minimum requirements that apply to all surface waters in the Commonwealth of Kentucky in order to maintain and protect them for designated uses. These water quality standards are subject to periodic review and revision in accordance with the Clean Water Act, 33 U.S.C. 1251-1387, 40 C.F.R. 131, and KRS Chapter 224.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the administration of the statutes by providing specific criteria and water quality standards for the protection of surface waters of the Commonwealth as required by the authorizing statutes.

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

(a) How the amendment will change this existing administrative regulation: The amendment corrects references from milligrams per liter, corrects Chemical Abstracts Service numbers for fluoride, sulfate, and tributyltin, replaces "variance" with "exception to criteria" for consistency throughout 401 KAR Chapter 10, clarifies the process for establishing more stringent instream water quality criteria for Outstanding State Resource Water designations, corrects the use of the Ohio River Valley Water Sanitation Compact Pollution Control Standards for water quality criteria for the main stem of the Ohio River, and makes technical corrections to comply with KRS Chapter 13A drafting rules.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to clarify and update water quality standards, which are minimum requirements that apply to all surface waters in the Commonwealth of Kentucky, in order to maintain and protect them for designated uses.

(c) How this administrative regulation conforms to the content

of the authorizing statutes: KRS 224.10-100 requires the cabinet to develop and conduct a comprehensive program for the management of water resources and to provide for the prevention, abatement, and control of water pollution. This administrative regulation and 401 KAR 10:001, 10:026, 10:029, and 10:030 establish procedures to protect the surface waters of the Commonwealth, and thus protect water resources. This administrative regulation establishes water quality standards that consist of designated legitimate uses of the surface waters of the Commonwealth and the associated water quality criteria necessary to protect those uses. These water quality standards are minimum requirements that apply to all surface waters in the Commonwealth of Kentucky in order to maintain and protect them for designated uses. These water quality standards are subject to periodic review and revision in accordance with the Clean Water Act, 33 U.S.C. 1251-1387, 40 C.F.R. 131, and KRS Chapter 224.

(d) How the amendment will assist in the effective administration of the statutes: The amendment The amendment corrects references from milligrams to micrograms per liter, corrects Chemical Abstracts Service numbers for fluoride, sulfate, and tributyltin, replaces "variance" with "exception to criteria" for consistency throughout 401 KAR Chapter 10, clarifies the process for establishing more stringent instream water quality criteria for Outstanding State Resource Water designations, corrects the use of the Ohio River Valley Water Sanitation Compact Pollution Control Standards for water quality criteria for the main stem of the Ohio River, and makes technical corrections to comply with KRS Chapter 13A drafting rules..

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation applies to the surface waters of the Commonwealth. All individuals, businesses, organizations, and governments that use the Commonwealth's surface waters for residential, commercial, industrial, or recreational purposes could be impacted by this regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: If an entity applies for a KPDES permit for a new or expanded discharge into a Surface Water of the Commonwealth, or submits application for the renewal of an existing permit for a discharge to a Surface Water of the Commonwealth, the permit conditions may result in additional treatment outlays, training costs, or operational changes. The permit conditions will depend on the nature of the discharge.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The costs to comply with this administrative regulation vary considerably depending on the site location, type of activity, and other factors. Therefore, it is not possible to quantify costs to implement this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Fewer costs may be incurred when criteria are less stringent. Direct and indirect savings will be realized through reduced drinking water treatment costs, maintenance of good agricultural water and fisheries, and healthy recreational waters.

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

(a) Initially: The amendments to this administrative regulation will not result in additional costs.

(b) On a continuing basis: The amendments to this administrative regulation will not result in additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of funding are a combination of general funds appropriated by the Kentucky General Assembly and federal funds from the U.S. Environmental Protection Agency.

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

funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The amendments to this administrative regulation will not require an increase in fees or funding.

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

(9) TIERING: Is tiering applied? Yes, tiering is applied in this administrative regulation. Water quality standards and associated criteria vary based on the designated use of the surface water.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will affect the wastewater treatment operations of local government if it applies for a KPDES permit for a new or expanded discharge into a Surface Water of the Commonwealth, or submits an application for the renewal of an existing permit for a discharge to a Surface Water of the Commonwealth.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 146.220, 146.241, 146.270, 146.410, 146.450, 146.460, 146.465, 224.10-100, 224.16-050, 224.16-060, 224.70-100, 224.70-110, 40 C.F.R. Part 131, 16 U.S.C. 1271-1287, 1531-1544, 33 U.S.C. 1311, 1313, 1314, 1341

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

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

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

(c) How much will it cost to administer this program for the first year? This administrative regulation will not result in additional costs.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation will not result in additional costs.

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

Revenues (+/-): NA

Expenditures (+/-): NA

Other Explanation: Wastewater treatment costs may increase for those local governments that have discharges into surface waters of the Commonwealth. Local governments withdrawing drinking water from these waters may have lower treatment costs because these waters should have lower pollutant loads.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal mandate to implement a water pollution control program. For Kentucky to maintain its delegation authority over the National Pollution Discharge Elimination System permit program, the Clean Water Act requires that Kentucky review its water quality standards every three years (known as the "Triennial Review") and comply with the programmatic requirements of 40 C.F.R. Part 131, including the requirement for reviewing water quality criteria for appropriate revisions.

2. State compliance standards. KRS 146.220, 146.241, 146.270, 146.410, 146.450, 146.460, 146.465, 224.10-100, 224.16-050, 224.16-060, 224.70-100, and 224.70-110

3. Minimum or uniform standards contained in the federal

mandate. 40 C.F.R. Part 131, 16 U.S.C. 1271-1287, 1531-1544, 33 U.S.C. 1311, 1313, 1314, 1341

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate? No.

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

**TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Driver Licensing
(Amended After Comment)**

601 KAR 13:090. Medical Review Board; basis for examination, evaluation, tests.

RELATES TO: KRS 186.411, 186.444, 186.570

STATUTORY AUTHORITY: KRS 186.400, 186.411, 186.444, 186.570

NECESSITY, FUNCTION, AND CONFORMITY: KRS 186.444 and 186.570 require the Transportation Cabinet to promulgate administrative regulations establishing the Medical Review Board. This administrative regulation establishes the board, the procedures used by the board and the Department in a medical review case, the process for informal hearings and appeals to formal administrative hearings, and the forms adopted by the Department [and clarifies differences between the statutes].

Section 1. Medical Review Board Generally. (1) The Medical Review Board shall be chaired by the Commissioner of the Department of Vehicle Regulation of the Transportation Cabinet or the commissioner's [his] representative.

(2) The Medical Review Board shall be comprised of any number of physicians licensed to practice medicine in the Commonwealth of Kentucky, as established in KRS 186.444(2), and any number of licensed medical specialists and rehabilitation specialists, as established in KRS 186.570(1)(c) and 601 KAR 13:100.

(3) [(2)] A quorum of the Medical Review Board shall be at least three (3) physicians licensed to practice medicine in the Commonwealth of Kentucky.

(4) [(3)] Appointees to the Medical Review Board who are not physicians licensed pursuant to KRS Chapter 311 shall not count towards the quorum and may have their appointment restricted based on their [to a] specified area of expertise.

(5) [(4)] The Commissioner of the Department of Vehicle Regulation or the commissioner's [his] representative shall prescribe the time and place for the board to meet.

(6) [(5)] The ~~non-state [nonstate]~~ government members of the board who participate in a meeting shall be paid \$200 each day or part of a day and reimbursed for necessary expenses incurred in attending the meeting.

Section 2. Initiation of a Medical Review Board Case and Agency Actions in Response to Medical Conditions. (1) (a) A Medical Review Board case that requires investigation into a person's medical condition before the commissioner takes licensing action shall be initiated when the commissioner receives notice that one (1) or more of the following conditions exists in a person and the commissioner or the commissioner's representative determines that the person's physical or mental condition could render it unsafe for the person to operate a motor vehicle upon the public highways: [(1) If the Commissioner of the Department of Vehicle Regulation or his representative receives notice that one (1) or more of the conditions listed in Section 4 of this administrative regulation exists in a person and that the person's physical or mental condition may render it unsafe for him to operate a motor vehicle upon the public highways, the commissioner shall refuse to issue an operator's license to the person or he shall suspend the existing driving privilege of the

person unless the person submits to an examination by a qualified physician within forty-five (45) days of notification of the commissioner's intentions.]

1. Driver has been named in a Medical Review Affidavit Form TC 94-182 [94-64] by at least two (2) citizens as being incapable of properly operating a motor vehicle due to physical or mental condition;

2. Driver has been reported by a physician, licensed medical specialist as defined in 601 KAR 13:100, or rehabilitation specialist as being incapable of driving safely due to physical or mental condition or due to medication prescribed for an extended time;

3. Driver has been reported by a law enforcement officer or a Kentucky State Police license examiner who has reason to believe or who has observed an individual driving or behaving in an erratic or dangerous manner that indicates a possibility of a physical or mental condition that could impair driving ability;

4. Applicant for a motor vehicle operator's license or for license renewal indicates on the application form that the applicant has a physical or mental condition that could impair driving ability;

5. Driver's official record kept by the Department of Vehicle Regulation indicates a possibility of physical or mental condition that could impair driving ability;

6. Driver has been reported by a commonwealth attorney, county attorney, county clerk, circuit clerk, sheriff, or judge as being incapable of driving due to a physical or mental condition;

7. Driver has reported to the Transportation Cabinet or Medical Review Board that he or she has a mental or physical condition that could impair driving ability; or

8. Driver has been reported by a government agency as being incapable of driving safely due to a physical or mental condition.

(b) A Medical Review Board case that requires investigation into a person's medical condition and shall result in the automatic suspension of a person's driving privileges shall be initiated when the commissioner receives notice that one (1) or more of the following conditions exists in a person:

1. Driver has indicated that he or she "blacked out," lost consciousness, or suffered a seizure prior to a reportable motor vehicle accident as established in KRS 186.411; or

2. Driver has, by judicial decree, been adjudged incompetent as established in KRS 186.440(6).

(2) (a) If the commissioner or the commissioner's representative decides pursuant to this administrative regulation and 601 KAR 13:100 to take action regarding a person's driver license, the commissioner shall provide written notice to the person of the decision to take licensing action.

(b) Notice to the person of the commissioner's decision to take licensing action shall also inform the person that the licensing action shall take place unless the person submits to and completes an examination in satisfaction of the medical standards established in 601 KAR 13:100, Sections 4-11, by a physician licensed to practice medicine pursuant to KRS Chapter 311 or, if a vision examination is requested, a vision specialist as defined in 601 KAR 13:100 [a satisfactory examination by a qualified physician] within thirty (30) days of the date of the notice. The required medical examinations and diagnostic testing shall be conducted at the person's own expense by a physician licensed to practice medicine pursuant to KRS Chapter 311 or, if a vision examination is requested, a vision specialist as defined in 601 KAR 13:100 [licensed physician] of the person's choice.

(c) If the commissioner needs more information regarding a person's medical condition before making a decision about licensing actions, the commissioner shall require that a person submit to and complete one (1) or more additional examinations by a qualified physician. The required medical examinations shall be conducted at the person's own expense by a licensed physician of the person's choice. [(2) If the department deems that an examination by a qualified physician is necessary, the required medical examination shall be conducted at the person's own expense by a licensed physician of his choice.]

(3) (a) Within thirty (30) days of the date that the commissioner provided written notice to the person pursuant to subsection (2) (b) of this section, the examining physician shall report and

~~submit within forty-five (45) days~~ the results of ~~the person's~~^[his] required medical examination directly to the Division of Driver Licensing on a form ~~provided~~^[furnished] by the Department of Vehicle Regulation. The ~~form~~^[Medical Review Board Form TC 94-86, revised in November 1995;] is incorporated by reference in ~~subsection (c) of this section~~^[Section 5 of this administrative regulation].

~~(b) The commissioner may, pursuant to this administrative regulation, authorize the suspension of the person's driving privilege if the examining physician fails to submit the completed results of the required medical examination on the required form to the Medical Review Office within thirty (30) days of the date of the commissioner's notice.~~

~~(c) The Medical Review Affidavit Form TC 94-182~~^[94-61], the Medical Review Examination Form TC ~~94-183~~^[94-86], the Medical Review Vision Examination Form TC ~~94-185~~^[94-174], and the Medical Review Psychiatric Examination Form TC ~~94-184~~^[94-171] shall be used by examining physicians to submit the results of the required medical examination(s).

~~(4)(a) As soon as practicable~~ ^[possible] after receipt of the completed form, the Department of Vehicle Regulation ~~with the advice and instruction of the Medical Review Board~~ shall evaluate ~~the completed form~~^[it] according to the medical standards ~~established~~^[set forth] in 601 KAR 13:100.

~~(b) The Department of Vehicle Regulation shall submit a case in which medical or rehabilitation expertise is needed to evaluate the driving ability of a person to the Medical Review Board.~~

~~(c) The Medical Review Board may make recommendations to the Department of Vehicle Regulation for further medical examination, testing, or restriction of the person's driving privilege, or denial of driving privilege.~~

~~(d) Based on this administrative regulation and 601 KAR 13:100, if the Medical Review Board recommends further examination or investigative testing or if the Department of Vehicle Regulation determines it to be necessary, the Commissioner of the Department of Vehicle Regulation or the commissioner's~~^[his] representative shall notify the person of the date by which the ~~person~~^[he] shall comply ~~[in order to retain or obtain his driving privilege]~~.

Section 3. Notice and Hearing. (1) If the Medical Review Board or Department of Vehicle Regulation, pursuant to~~the evaluation in Section 2(3) of~~ this administrative regulation and 601 KAR 13:100, recommends total suspension of a person's driving privilege or any limitations thereon, the Commissioner of the Department of Vehicle Regulation ~~or the commissioner's~~^[his] representative shall notify the ~~petitioner~~^[person] at the last known address of the ~~petitioner~~^[person] that this action ~~shall~~^[will] be taken unless a written request for an informal hearing before the board is received ~~from the petitioner~~ within twenty (20) days following the first class mailing of the notice. The ~~petitioner~~^[person] shall also be informed of his or her right to:

(a) An informal hearing before the board; and

(b) If necessary, an appeal to the board for a formal administrative hearing pursuant to KRS Chapter 13B.

(2) ~~An~~^[The] informal hearing shall be scheduled as early as practicable at a time and place designated by the commissioner or his representative. Notice ~~of the time and place of the in- formal hearing~~ shall be mailed to the ~~petitioner~~^[person involved] no later than ten (10) days prior to the hearing date.

~~(3)(a) If the petitioner fails to appear at the informal hearing, the driving privilege of that petitioner shall be automatically suspended.~~

~~(b) The petitioner may request one (1) rescheduling of the informal hearing and the request shall be submitted to the Medical Review Office in writing no later than five (5) days prior to the hearing date.~~

1. The commissioner, following the recommendation of the Medical Review Office, shall grant or deny the request to reschedule or suspend the driving privilege of the petitioner.

2. The Medical Review Office shall notify the petitioner of the decision.

~~(4)~~^[(3)] The commissioner or ~~the commissioner's~~^[his]

representative shall preside at the hearing before the Medical Review Board, and at least three (3) physician members shall be present.

~~(5)~~^[(4)] The presiding officer ~~shall be appointed by the commissioner and may administer oaths and may issue subpoenas for the attendance of witnesses and the production of relevant records~~^[books and papers].

~~(6)~~^[(5)] The scope of the hearing shall be limited to the presentation of the evidence upon which the Medical Review Board ~~shall make~~^[made] a~~their~~ recommendation ~~to the commissioner and any medical evidence the petitioner wishes to present in explanation~~ ^[or refutation] of this evidence.

~~(7)~~^[(6)] Evidence may be presented at the hearing in the form of depositions.

~~(8)~~^[(7)] All testimony at the hearing shall be recorded, and~~together with any depositions or exhibits introduced at the hearing shall form the complete record~~ the complete record shall ~~be comprised of any exhibits introduced at the informal hearing, any depositions, and other documents placed in the petitioner's medical review chart by the Medical Review Office.~~

~~(9)~~^[(8)] Within ten (10) working days after the hearing, the commissioner shall issue a decision ~~that~~^[which] shall be~~promptly~~ forwarded to the petitioner along with the notice required pursuant to subsection ~~(10)~~^[(9)] of this section.

~~(10)~~^[(9)] The petitioner shall be informed of his ~~or her~~ right to a~~an~~ formal administrative hearing pursuant to the provisions of KRS Chapter 13B.

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

(a) "Medical Review Affidavit Form TC 94-182," revised March 2019;

(b) "Medical Review Examination Form TC 94-183," revised March 2019;

(c) "Medical Review Psychiatric Examination Form TC 94-184," revised March 2019; and

(d) "Medical Review Vision Examination Form TC 94-185," revised March 2019.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Vehicle Regulation, Medical Review Office, 200 Mero Street, Second Floor, Frankfort, Kentucky 40622 between 8:00 a.m. and 4:30 p.m. Monday through Friday. ~~The Commissioner of the Department of Vehicle Regulation or his representative shall promptly notify the person involved to submit to the physical examination set out in Section 2 of this administrative regulation when one (1) or more of the following conditions exists:~~

~~(1) Driver has indicated that he "blacked out", lost consciousness or suffered a seizure prior to a reportable motor vehicle accident;~~

~~(2) Driver has been named in an affidavit by at least two (2) citizens as being incapable of properly operating a motor vehicle due to physical or mental infirmities;~~

~~(3) Driver has been reported by a physician as being incapable of driving safely due to physical or mental condition or due to medication prescribed for an extended time;~~

~~(4) Driver has been reported by a law enforcement officer or a Kentucky State Police license examiner who has reason to believe or who has observed an individual driving or behaving in an erratic or dangerous manner which indicates a possibility of a physical or mental disability which may impair his driving ability;~~

~~(5) Applicant for a motor vehicle operator's license or for its renewal indicates on the application form that he has a physical or mental disability which may impair his driving ability;~~

~~(6) Driver's official record kept by the Department of Vehicle Regulation indicates a possibility of physical or mental impairment;~~

~~(7) Driver has been reported by a commonwealth attorney, county attorney, county clerk, circuit clerk, sheriff, or judge as being incapable of driving due to a physical or mental impairment; or~~

~~(8) Driver has reported to the Transportation Cabinet or Medical Review Board that he has a mental or physical impairment.~~

Section 5. (1) Medical Review Board Form TC 94-86, revised November 1995, is incorporated by reference as a part of this administrative regulation.

(2) ~~The material incorporated by reference in this administrative regulation can be viewed, copied, or obtained from the Division of Driver Licensing. The address is 501 High Street, Second Floor, Frankfort, Kentucky 40601. The telephone number is (502) 564-5384. The business hours are 8 a.m. to 4:30 p.m. on weekdays.]~~

GREG THOMAS, Secretary
MATTHEW D. HENDERSON, Commissioner
P. KEVIN MOORE, Executive Director & General Counsel, Office of Legal Services

APPROVED BY AGENCY: September 11, 2019

FILED WITH LRC: September 12, 2019 at 1 p.m.

CONTACT PERSON: P. Kevin Moore, Executive Director & General Counsel, Transportation Cabinet, Office of Legal Services, 200 Mero Street, Frankfort, Kentucky 40622, phone (502) 564-7650, fax (502) 564-5238, email Kevin.Moore@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: P. Kevin Moore

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the Medical Review Board and provides information regarding how the board exists and functions. This administrative regulation details what happens when an individual is referred to the Medical Review Board, including how an individual is referred to the Medical Review Board, what actions the agency may take, and the nature of the informal hearings.

(b) The necessity of this administrative regulation: The cabinet is authorized to promulgate regulations to establish a Medical Review Board and to promote public safety by enforcing standards relative to the issuance of driver's licenses. The purpose of the Medical Review Board is to receive, review, and make recommendations to the commissioner of the Department of Vehicle Regulations regarding cases that concern the ability of a person seeking or holding a driver's license to safely operate a motor vehicle. This administrative regulation outlines the structure of the Medical Review Board and how that structure relates to the licensing actions that the department may take.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 186.444 and KRS 186.570(1)(c) authorize the cabinet to promulgate administrative regulations to establish a Medical Review Board with the purpose of receiving, reviewing, and making recommendations on cases relating to the ability of an individual seeking to hold a driver's license. This regulation establishes the Medical Review Board and details how the Medical Review Board works in conjunction with the Department of Vehicle Regulation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This amended administrative regulation updates the processes of the Medical Review Board as it relates to the intake of cases, administration of hearings, and relationship to the agency actions available to the commissioner. This administrative regulation has not been amended since 1996.

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

(a) How the amendment will change this existing administrative regulation: This amendment will update the organization of the Medical Review Board generally; the initiation and course of a Medical Review Board case; the notice, hearing, and right to appeal requirements; and forms incorporated by reference.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation is necessary to inform the public of the most current requirements of the Medical Review Board.

(c) How the amendment conforms to the content of the authorizing statutes: The administrative regulation is authorized by KRS 186.444 and KRS 186.570(1)(c), which allow the cabinet to create a Medical Review Board that receives, reviews, and makes recommendations concerning cases of drivers who may be unsafe to operate a motor vehicle as a result of a medical condition.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will update the administrative regulation and inform the public about the most current requirements as it concerns cases referred to the Medical Review Board.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects individuals who may have a medical condition, either mental or physical. This administrative regulation affects individuals in the medical field and persons working in rehabilitation services. This administrative regulation impacts county clerks, police agencies, and the Transportation Cabinet's Division of Driver Licensing.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Each of the aforementioned entities will now have new forms to utilize should they opt to report a medical condition that may be impacting a driver. Physicians asked to complete forms regarding a patient with a medical condition that possibly impedes that patient's ability to safely operate a motor vehicle will have guidelines regarding the completion and timeliness of forms.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no costs or fees as a result of this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment will improve the safety of the traveling public and inform the public about the procedures involved in a Medical Review Board case.

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

(a) Initially: There are no costs associated with this amendment.

(b) On a continuing basis: There are no continuing costs associated with these amendments.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is necessary.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: Fees are not established by this administrative regulation.

(9) TIERING: Is tiering applied? Tiering is not applied. All individuals seeking to obtain and maintain a driver license are subject to the same scrutiny and regulations.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Division of Driver Licensing in the Kentucky Transportation Cabinet; the Cabinet for Health and Family Services; police agencies; county clerks.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 186.411, KRS 186.440, KRS 186.444, KRS 186.570.

(3) Estimate the effect of this administrative regulation on the

expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This amendment will not affect expenditures or revenues.

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

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

(c) How much will it cost to administer this program for the first year? There will not be any costs.

(d) How much will it cost to administer this program for subsequent years? There will not be any costs.

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

Revenues (+/-):

Expenditure (+/-):

Other Explanation:

**TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Driver Licensing
(Amended After Comment)**

601 KAR 13:100. Medical standards for operators of motor vehicles.

RELATES TO: KRS 186.411, 186.440, 186.444, 186.570

STATUTORY AUTHORITY: KRS 186.444, 186.570

NECESSITY, FUNCTION, AND CONFORMITY: KRS 186.570 requires the Transportation Cabinet to withhold driving privileges from an individual who has a mental or physical condition[disability] that makes it unsafe[for him] to drive upon the highways. KRS 186.411 requires that a person with a seizure condition be seizure-free for ninety (90) days prior to licensing. This administrative regulation establishes the standards to be used by the Transportation Cabinet and Medical Review Board in determining who is unsafe to operate a motor vehicle because of a mental or physical condition[disability].

Section 1. Definitions. (1) "Altered consciousness" means a state of awareness characterized by loss or distortion of the impressions made by the senses or the inability to respond to the impressions made by the senses.

(2) "Assessment" means an evaluation of a person's substance abuse performed by a certified chemical dependency counselor, a certified driving under the influence (DUI) assessor, or other mental health professional in a licensed treatment facility.

(3) "Best corrected" means the corrected distance visual acuity of an individual through the use of traditional prescription lenses or contacts.

(4) "Chemical" means alcohol,[a] drug, or[a] controlled substance as defined by[in] KRS Chapter 218A.

(5)[(4)] "Cognition" means the ability to think, perceive, and remember.

(6)[(5)] "Comorbid" means that more than one (1) condition is present at the same time.

(7)[(6)] "Corrective lens" means an ophthalmic lens, whether an eyeglass, contact lens, or single lens system, that corrects the refraction error or other optically correctable deficiency of the eye.

(8)[(7)] "Driving evaluation" means a test conducted to determine if a person adequately compensates for [his] medical, mental, or physical condition or functional impairment.

(9)[(8)] "Episode" means any incident or segment of time involving "altered consciousness" or "loss of bodily control."

(10)[(9)] "Field of vision" means the entire horizontal and

vertical planes a person has for each eye without shifting the gaze.

(11)[(40)] "Functional ability" means the degree of cognitive, mental or emotional, sensorimotor, and sensory capability in performing activities of daily living, including safely per forming the tasks of driving.

(12) "Licensed medical specialist" means anyone who is licensed in the Commonwealth of Kentucky to make a medical report, make medical recommendations, or identify risk factors or other conditions within the specialist's scope of medical practice regarding[impacting] an individual's physical or mental condition.

(13)[(44)] "Licensing action" means any action by the Transportation Cabinet involving the denial, cancellation, restriction, or issuance of a motor vehicle operator's license under KRS Chapter 186.

(14)[(42)] "Loss of bodily control" means involuntary movements of the body characterized by muscle spasms or muscle rigidity, or loss of muscle tone or muscle movement.

(15) "Loss of muscle tone" means the loss of nerve impulses in muscle as distinguished from poor conditioning.

(16)[(43)] "Medical condition" means any physical, mental, or emotional condition that[which] affects a person's health for which a person is receiving medical or substance abuse treatment, or for which medical or substance abuse treatment is usually prescribed.

(17)[(44)] "Mental or emotional function" means interaction and communication skills, adaptive behavior or coping capacity, and orientation.

(18) "Overall condition" means the presence or absence of comorbid conditions or disorders affecting a person's health and information considered by the Medical Review Board or department pursuant to Section 3 of this administrative regulation.

(19)[(45)] "Review board" means the Medical Review Board established pursuant to[under] KRS 186.444 and 186.570(1)(c).

(20)[(46)] "Sensory function" means vision, hearing, touch, smell, or vibration sense.

(21)[(47)] "Vision specialist" means a person licensed to practice optometry as defined by KRS Chapter 320, or a physician licensed pursuant to KRS Chapter 311.

Section 2. General Requirements. (1) If the Department of Vehicle Regulation learns that a person applying for, renewing, or holding a motor vehicle operator's license could[may] have a medical condition that might[which may] affect safe driving, the department may, pursuant to 601 KAR 13:090 and this administrative regulation, require the person to provide the department with medical information about the person's medical condition. The department shall review the medical information as established[using the standards specified] in this administrative regulation.

(2) A person holding a Kentucky operator's license or instruction permit shall report to the department medical conditions that adversely affect his or her driving skills.

Section 3. Information to be Considered in Licensing Actions. Pursuant to 601 KAR 13:090, the Medical Review Board, if making recommendations, and the department, if taking licensing action, may consider[the following information]:

(1) Any medical condition affecting the person, including:

(a) History of illness;

(b) Severity of symptoms and prognosis;

(c) Complications or comorbid conditions, or both;

(d) Treatment and medications, including effects and side effects, and the person's knowledge and use of medications;

(e) Results of medical tests and reports of laboratory findings;

(f) Medical reports of licensed physicians and licensed medical specialists and rehabilitation specialists[Physician's medical report];

(g) Recommendations of licensed physicians and licensed medical specialists and rehabilitation specialists[Physician's Recommendations] with regard to functional impairment;[and]

(h) Identification[Physicians' identification] of risk factors as identified by licensed physicians and licensed medical specialists and rehabilitation specialists;[-] and

(i) Overall condition as defined in Section 1.

- (2) Reports of driver condition or behavior;
- (3) The results of any driving evaluation of the person;
- (4) Substance abuse assessment reports from a licensed treatment facility, certified chemical dependency counselor, or certified driving under the influence (DUI) assessor;
- (5) Traffic accidents with a police report or citation that could[~~may~~] have been caused in whole or in part by a medical condition; ~~[(6) Vision specialist's report;]~~
- ~~(6)[(7)]~~ A person's failure to provide requested information to the department; or
- ~~(7)[(8)]~~ A report from a licensed physician, including vision specialists, or other licensed medical specialists and rehabilitation specialists, including rehabilitation specialists, advanced practice registered nurses, physician assistants, psychologists, physical therapists, occupational therapists, chiropractors, or social workers[rehabilitation specialist].

(8) A person shall be ineligible to apply for, renew, or hold a motor vehicle operator's license if that person does not satisfy any of the standards named in Sections 4-11.

Section 4. Conditions Affecting Cardiovascular Function. (1) With respect to conditions affecting cardiovascular function, the Medical Review Board, if making recommendations, and the department, if taking licensing action, may consider disorders, including~~[the following]~~:

- (a) Cardiac dysfunction;
- (b) Arrhythmias; and
- (c) Other cardiac or circulatory disorder or dysfunction.

(2) The department or the Medical Review Board may require a person to provide information on the person's cardiovascular functional abilities and disorders.

(3) A motor vehicle operator's license shall not be issued to, renewed by, or held by a person who does not meet the applicable medical review standards for conditions affecting cardiovascular function of this subsection, and a person who applies for, renews, or holds a motor vehicle operator's license shall meet all of the ~~[following]~~ cardiovascular function criteria:

- (a) There shall not be current symptoms of coronary artery disease, such as unstable angina, dyspnea, or pain at rest, which interfere with safe driving;
- (b) There shall not be a cause of cardiac syncope present, including ventricular tachycardia or fibrillation, which is not successfully controlled;
- (c) There shall not be congestive heart failure that limits functional ability;
- (d) There shall not be cardiac rhythm disturbances ~~if[which are]~~ not successfully controlled;
- (e) There shall not be an automatic implantable cardioverter defibrillator, unless the device is assessed by an electrophysiologist as not interfering with safe driving;
- (f) There shall not be medications interfering with safe driving; and
- (g) There shall not be valvular heart disease or malfunction of prosthetic valves that interferes with safe driving.

Section 5. Conditions Affecting Cerebrovascular Function. (1) With respect to conditions affecting cerebrovascular function, the Medical Review Board, if making recommendations, and the department, if taking licensing action, may consider disorders, including~~[the following]~~:

- (a) Cerebrovascular accident; and
- (b) Other cerebrovascular disorder or dysfunction.

(2) The department or Medical Review Board may require information on a person's central nervous system functional abilities and disorders.

(3) A motor vehicle operator's license shall not be issued to, renewed by, or held by a person who does not meet the applicable medical review standards for conditions affecting cerebrovascular functions of this subsection, and a person who applies for, renews, or holds a motor vehicle operator's license shall meet all of the ~~[following]~~ cerebrovascular function criteria:

- (a) There shall not be a sensori-motor deficit preventing safe

driving;

- (b) There shall not be impairment of reasoning or judgement preventing safe operation of a vehicle; and
- (c) There shall not be medications interfering with the person's ability to operate a motor vehicle safely.

Section 6. Conditions Affecting Endocrine Function. (1) With respect to conditions affecting endocrine function, the Medical Review Board, if making recommendations, and the department, if taking licensing action, may consider disorders, including~~[the following]~~:

- (a) Diabetes mellitus; and
- (b) Other endocrine disorder or dysfunction.

(2) The department or Medical Review Board may require information on a person's endocrine functional abilities and disorders.

(3) A motor vehicle operator's license shall not be issued to, renewed by, or held by a person who does not meet the applicable medical review standards for conditions affecting endocrine functions of this subsection, and a person who applies for, renews, or holds a motor vehicle operator's license shall meet all of the~~[following]~~ endocrine function criteria:

- (a) There shall not be diabetic neuropathy, retinopathy, or other complication ~~that[which]~~ interferes with safe driving;
- (b) There shall not be frequent and functionally impaired hypoglycemic reactions; and
- (c) There shall not be evidence of use of alcohol or other drugs to an extent that interfere with the person's prescribed treatment program for the condition.

Section 7. Conditions Affecting Musculoskeletal Function. (1) With respect to conditions affecting musculoskeletal function, the Medical Review Board, if making recommendations, and the department, if taking licensing action, may consider disorders, including~~[the following]~~:

- (a) Rheumatoid arthritis;
- (b) Paralysis; and
- (c) Other musculoskeletal disorder or dysfunction.

(2) The department or Medical Review Board may require information on a person's musculoskeletal functional abilities and disorders.

(3) A motor vehicle operator's license shall not be issued to, renewed by, or held by a person who does not meet the applicable medical review standards for conditions affecting musculoskeletal function of this subsection, and a person who applies for, renews, or holds a motor vehicle operator's license shall meet of the ~~[following]~~ musculoskeletal function criteria:

- (a) Pain shall not interfere with the person's ability to safely operate a motor vehicle;
- (b) The person's operation of a vehicle in a driving evaluation demonstrates adequate compensation for any weakness or limitations in range of motion or mobility; and
- (c) There shall not be effects or side effects of medication interfering with safe driving.

Section 8. Conditions Affecting Neurological or Neuromuscular Function. (1) With respect to conditions affecting neurological or neuromuscular function, the Medical Review Board,~~[review board]~~ if making recommendations, and the department, if taking licensing action, may consider disorders, including~~[the following]~~:

- (a) Central nervous system diseases or disorders;
- (b) Demyelinating diseases;
- (c) Muscular diseases or disorders; and
- (d) Seizure disorders.

(2) The department or Medical Review Board may require information on neurological or neuromuscular functional abilities, instances of altered consciousness or loss of bodily control, or disorders.

(3) A motor vehicle operator's license shall not be issued to, renewed by, or held by a person who does not meet the medical review standards for conditions affecting neurological or neuromuscular function of this subsection, and a person who applies for, renews, or holds for motor vehicle operator's license

shall meet all of the neurological and~~[following]~~ neuromuscular function criteria:

(a) There shall not have been a seizure episode as set forth in KRS 186.411;

(b) The person adequately compensates for any paralysis or sensory deficit when operating a vehicle;

(c) Fatigue, weakness, muscle spasm or tremor at rest does not impair safe driving;

(d) There shall not be effects of or side effects of medication that interferes with safe driving;~~[and]~~

(e) There shall not be a decline in cognition to an extent that interferes with safe driving;~~[-] and~~

(f) The person shall satisfy the vision and sensory function standards established in Section 11 of this administrative regulation.

Section 9. Conditions Affecting Psychosocial, Mental, or Emotional Function. (1) With respect to conditions affecting psychosocial, mental, or emotional function, the Medical Review Board, [review board] if making recommendations, and the department, if taking licensing action, may consider disorders, including~~[the following]~~:

(a) Substance and alcohol abuse; and
Other mental or emotional disorder or dysfunction.

(2) The department or Medical Review Board may require information on mental or emotional functional abilities and disorders.

(3) A motor vehicle operator's license shall not be issued to, renewed by, or held by a person who does not meet the medical review standards for conditions affecting mental and emotional function of this subsection, and a person who applies for, renews, or holds any classification of operator's license shall meet all of the psychosocial, [following] mental, and emotional function criteria:

(a) There shall not be dementia that is unresponsive to treatment or that interferes with safe driving;

(b) There shall not be a behavior disorder with threatening or assaultive behavior that interferes with safe driving~~[at the time of application]~~;

(c) There shall not be a delusional system that~~[which]~~ interferes with safe driving;

(d) There shall not be a suicidal tendency;

(e) There shall not be an impairment of judgment~~[judgement]~~ that interferes with safe driving;

(f) There shall not be an active psychosis that interferes with safe driving; and

(g) There shall not be effects or side effects of medication that interferes with safe driving.

Section 10. Conditions Affecting Respiratory Function. (1) With respect to conditions affecting respiratory function, the Medical Review Board, [review board] if making recommendations, and the department, if taking licensing action, may consider disorders, including~~[the following]~~:

(a) Chronic obstructive pulmonary diseases; and

(b) Any other respiratory disorder or dysfunction.

(2) The department or Medical Review Board may require information on respiratory functional abilities and disorders.

(3) A motor vehicle operator's license shall not be issued to, renewed by, or held by a person who does not meet the medical review standards for conditions affecting respiratory function of the subsection, and a person who applied for, renews, or holds a motor vehicle operator's license shall meet all of the~~[following]~~ respiratory function criteria:

(a) The person does not require medication that interferes with safe driving; and

(b) There shall not be dyspnea that interferes with safe driving.

Section 11. Conditions Affecting Vision and Sensory Function. (1) With respect to conditions affecting vision and sensory function, the Medical Review Board, [review board] if making recommendations, and the department, if taking licensing action, may consider conditions, including~~[the following]~~:

(a) Vision loss; and

(b) Any other ocular or sensory disorder or dysfunction.

(2) The department or Medical Review Board may, pursuant to this administrative regulation and 601 KAR 13:090, require information on ocular and sensory functional abilities and disorders.

(3) A motor vehicle operator's license shall not be issued to, renewed by, or held by a person who does not meet the medical review standards for conditions affecting vision and sensory functions of this subsection, and a person who applies for, renews, or holds any classification of operator's license shall meet all of the~~[following]~~ criteria established in paragraphs (a) and (b) of this subsection for visual acuity and visual fields. [-]

(a) Visual Acuity. Persons with visual acuity of 20/60, best corrected, or better and visual fields in satisfaction of subparagraph (b) of this subsection shall be eligible for an operator's license.

1. Persons with visual acuity 20/40 or better without corrective lenses shall not have a restriction mandating the use of corrective lenses added to that person's driving privilege.

2. Persons with visual acuity of 20/40 or better with corrective lenses shall have a restriction mandating the use of corrective lenses added to that person's driving privilege.

3. Persons with visual acuity of 20/41, best corrected, in at least one (1) eye with a single lens system, but no worse than 20/60, best corrected, in at least one (1) eye with a single lens system, shall have a restriction pursuant to Section 12 of this administrative regulation added to that person's driving privilege.

4. Persons with visual acuity of 20/61, best corrected, in at least one (1) eye with a single lens system shall not be eligible to test for an operator's license pursuant to KRS 186.577 and a motor vehicle operator's license shall not be issued to, renewed by, or held by a person with visual acuity of 20/61, best corrected. [Visual acuity of at least 20/60 or better in at least one (1) eye with single lens system; and]

(b) Visual Fields. Persons with a horizontal [Binocular horizontal] field of vision in the person's better eye of at least thirty-five (35) degrees to the left and right side of fixation and a [binocular] vertical field of vision in the person's better eye of at least twenty-five (25) degrees above and below fixation shall be eligible for an operator's license.

1. Visual fields tests required by the department shall be administered by way of a 120-point screening test on an automatic visual fields device.

2. Visual fields test results with over one-third of false positive, false negative, or fixation losses shall be considered unreliable and non-responsive to the department's visual fields test requirement.

(4) A person who does not meet both the visual acuity and the visual fields requirements shall not be eligible for a motor vehicle operator's license. [A motor vehicle operator's license shall not be issued to, renewed by, or held by a person that has a documented hemianopia.]

Section 12. License Restrictions. (1) The department may restrict a person's operating privilege based on~~[any of the following]~~:

(a) A recommendation of a licensed physician or vision specialist;

(b) The results of a driving examination or evaluation performed by the Kentucky State Police or a rehabilitation specialist or facility; or

(c) Recommendation of the Medical Review Board.

(2) License restrictions may require a person to:

(a) Wear corrective lenses;

(b) Use special equipment or specially equipped vehicles;

(c) Operate only during daylight hours;

(d) Not operate a vehicle in inclement weather causing decreased visibility;

(e) [(d)] Restrict the driving area; [or]

(f) [(e)] Restrict the maximum speed limit; or

(g) Restrict the motor vehicle operating privilege in any other manner which the department deems necessary for safety purposes.

GREG THOMAS, Secretary

MATTHEW D. HENDERSON, Commissioner
P. KEVIN MOORE, Executive Director & General Counsel
Office of Legal Services

APPROVED BY AGENCY: September 11, 2019

FILED WITH LRC: September 12, 2019 at 1 p.m.

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REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: P. Kevin Moore

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the medical standards that must be achieved and maintained by individuals seeking to hold a driver's license.

(b) The necessity of this administrative regulation: This administrative regulation provides the medical standards that the cabinet and the medical review board will utilize in making the decision to withhold driving privileges from an individual on the basis of a medical or physical condition.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 186.570 requires the cabinet to withhold driving privileges from an individual with a mental or physical condition that would make it unsafe for that individual to operate a motor vehicle. KRS 186.411 and KRS 186.440 both require that the cabinet not provide a driver license to an individual who has not been free of seizures for ninety (90) days. This administrative regulation provides the medical standards that the cabinet and the medical review board will utilize in making the decision to withhold driving privileges from an individual on the basis of a medical or physical condition.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This amended administrative regulation updates the medical standards used by the medical review board in making recommendations to the commissioner about an individual's ability to operate a motor vehicle. This administrative regulation has not been updated since 1996.

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

(a) How the amendment will change this existing administrative regulation: This amendment updates information to be considered in licensing actions, provides more specific visual acuity and visual fields standards, and enumerates additional available restrictions.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation is necessary to inform the public of the most current medical standards utilized by the medical review board and the Department of Vehicle Regulation when reviewing cases before the medical review board.

(c) How the amendment conforms to the content of the authorizing statutes: The establishment and implementation of the medical review board is required by KRS 186.411, 186.440, 186.444, and 186.570 in order to review cases referred to the department for license suspension as a result of a mental or physical disability. This amended administrative regulation informs the public about the updated medical standards that are used by the medical review board and the department.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will update the administrative regulation and inform individuals of the most current medical standards considered by the medical review board.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects individuals who may have a medical condition, either mental or physical. This administrative regulation affects licensed physicians, individuals in the medical field, and persons working in rehabilitation services. This administrative regulation affects businesses doing evaluations of individuals with medical conditions that might impact driving and medical practices with patients who

may have difficulty operating a vehicle. This administrative regulation impacts county clerks, police agencies, the Cabinet for Health and Family Services, and the Transportation Cabinet's Division of Driver Licensing.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Individuals who have a medical condition that could impact their driving ability can consult this administrative regulation for information about the required medical standards in order to obtain a driver license. Physicians, licensed medical specialists, rehabilitation specialists, businesses doing evaluations of individuals with medical conditions, county clerks, police agencies, the Cabinet for Health and Family Services, and the Transportation Cabinet Division of Driver Licenses will now be able to refer to the updated medical standards established in this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no costs or fees as a result of this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment will improve the safety of the traveling public and inform the public about medical standards.

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

(a) Initially: There are no costs associated with this amendment.

(b) On a continuing basis: There are no continuing costs associated with these amendments.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is necessary.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: Fees are not established by this administrative regulation.

(9) TIERING: Is tiering applied? Tiering is not applied. All individuals seeking to obtain and maintain a driver license are subject to the same scrutiny and regulations.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Division of Driver Licensing in the Kentucky Transportation Cabinet; the Cabinet for Health and Family Services; police agencies; county clerks.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 186.411, KRS 186.440, KRS 186.444, KRS 186.570.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This amendment will not affect expenditures or revenues.

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

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation is not expected to generate

revenue.

(c) How much will it cost to administer this program for the first year? There will not be any costs.

(d) How much will it cost to administer this program for subsequent years? There will not be any costs.

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

Revenues (+/-):

Expenditure (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Medicaid Services

Division of Policy and Operations

(Amended After Comments)

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

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

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

NECESSITY, FUNCTION, AND CONFORMITY: In accordance with KRS 194A.030(2), the Cabinet for Health and Family Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. KRS 205.559 establishes the requirements regarding Medicaid reimbursement of telehealth providers and KRS 205.559(2) and (7) require the cabinet to promulgate an administrative regulation relating to telehealth services[consultations] and reimbursement. This administrative regulation establishes the Department for Medicaid Services' coverage and reimbursement policies relating to telehealth services[consultations] in accordance with KRS 205.559.

Section 1. Definitions. (1) **"Asynchronous telehealth" means a store and forward telehealth service that is electronically mediated.**

(2) ["Advanced practice registered nurse" or "APRN"] is defined by KRS 314.011(7).

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

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

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

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

(3) [(2)] [(6) "Diabetes self-management training consultation"] means the ongoing process of facilitating the knowledge, skill, and ability necessary for diabetes self-care.

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

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

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

(a) In person; and

(b) Not via telehealth.

(4) [(3)] [(10)] "Federal financial participation" is defined by [in] 42 C.F.R. 400.203.

(5) [(4)] [(11) "GT modifier"] means a modifier that identifies a telehealth consultation which is approved by the healthcare common procedure coding system (HCPCS).

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

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

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

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

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

(b) That is considered the place of service.

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

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

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

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

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

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

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

(7) "Synchronous telehealth" means a telehealth service that simulates a face-to-face encounter via real-time interactive audio and video technology between a telehealth care provider and a Medicaid recipient.

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

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

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

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

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

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

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

(a) Event;

(b) Encounter;

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

(d) Visit;

(e) Store and forward transfer, as limited by Section 4 of this administrative regulation[for radiology services only];

(f) Remote patient monitoring, as limited by Section 4 of this administrative regulation;

(g) Referral; or

(h) Treatment. [(20) "National Provider Identifier" or "NPI" means a standard unique health identifier for health care providers which:

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Authorized to perform a telehealth consultation in

accordance with this administrative regulation;

- (b) Employed by or is an agent of a telehealth provider; and
- (c) Not the individual or entity who:

- 1. Bills the department for a telehealth consultation; or
- 2. Is reimbursed by the department for a telehealth consultation.

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

- (a) Performs a telehealth consultation at a hub site; or
- (b) Is the employer of or entity that contracts with a telehealth practitioner who performs a telehealth consultation:

- 1. At a hub site; and
- 2. That is billed under the telehealth provider's national provider identifier.

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

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

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

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

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

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

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

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

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

(a) It is not medically necessary;

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

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

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

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

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

3. Not in good standing with the Medicaid program;

4. Currently listed on the Kentucky DMS Provider Terminated and Excluded Provider List[of Excluded Providers], which is available at <https://chfs.ky.gov/agencies/dms/dpi/pe/Pages/terminated.aspx>[<http://chfs.ky.gov/dms/provEnf>]; or

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

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

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

- 1. Be an approved member of the Kentucky Telehealth

Network; and

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

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

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

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

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

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

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

- 1. Medical necessity;
- 2. Compliance with this administrative regulation; and
- 3. Compliance with applicable state and federal law.

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

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

2. Compliant with this administrative regulation;

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

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

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

1. Medically necessary[; was not]

2. Compliant with this administrative regulation;

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

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

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

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

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

(b) A referral by a health care provider; and

(c) A referral by a recipient's lock-in provider if the recipient is locked in pursuant to:

1. 42 C.F.R. 431.54; and

2. 907 KAR 1:677.]

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

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

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

(2) A provider shall appropriately denote telehealth services by place of service[, modifiers,] or other means as designated by the department or as required in a managed care organization's contract with the provider or member.[Consultation Coverage in a Setting That is Not a Community Mental Health Center. (1) The

policies in this section shall apply to a telehealth consultation provided in a setting that is not a community mental health center.

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

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

1. A physician including a physician:

a. With an individual physician practice;

b. Who belongs to a group physician practice; or

c. Who is employed by a federally-qualified health center, federally-qualified health center look-alike, rural health clinic, or primary care center;

2. An advanced practice registered nurse including an advanced practice registered nurse:

a. With an individual advanced practice registered nurse practice;

b. Who belongs to a group advanced practice registered nurse practice; or

c. Who is employed by a physician, federally-qualified health center, federally-qualified health center look-alike, rural health clinic, or primary care center;

3. An optometrist; or

4. A chiropractor;

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

1. A psychiatrist;

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

3. An APRN in accordance with the limit established in 907 KAR 1:102;

4. A psychologist:

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

b. With a doctorate degree in psychology;

c. Who is directly employed by a psychiatrist; and

d. If:

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

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

5. A licensed professional clinical counselor:

a. Who is directly employed by a psychiatrist; and

b. If:

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

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

6. A licensed clinical social worker:

a. Who is directly employed by a psychiatrist; and

b. If:

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

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

7. A licensed marriage and family therapist:

a. Who is directly employed by a psychiatrist; and

b. If:

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

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

(c) Individual or group psychotherapy provided by:

1. A psychiatrist;

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

3. An APRN in accordance with the limit established in 907 KAR 1:102;

4. A psychologist:

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

b. With a doctorate degree in psychology;

c. Who is directly employed by a psychiatrist; and

d. If:

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

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

5. A licensed professional clinical counselor:

a. Who is directly employed by a psychiatrist; and

b. If:

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

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

6. A licensed clinical social worker:

a. Who is directly employed by a psychiatrist; and

b. If:

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

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

7. A licensed marriage and family therapist:

a. Who is directly employed by a psychiatrist; and

b. If:

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

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

(d) Pharmacologic management provided by:

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

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

3. A psychiatrist;

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

1. A psychiatrist;

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

3. An APRN in accordance with the limit established in 907 KAR 1:102;

4. A psychologist:

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

b. With a doctorate degree in psychology;

c. Who is directly employed by a psychiatrist; and

d. If:

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

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

5. A licensed professional clinical counselor:

a. Who is directly employed by a psychiatrist; and

b. If:

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

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

6. A licensed clinical social worker:

a. Who is directly employed by a psychiatrist; and

b. If:

(i) The psychiatrist by whom the licensed clinical social worker

is directly employed also interacts with the recipient during the encounter; and

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

7. A licensed marriage and family therapist:

a. Who is directly employed by a psychiatrist; and

b. If:

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

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

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

1. Licensed dietitian:

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

b. If the telehealth consultation is billed under the:

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

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

2. Certified nutritionist:

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

b. If the telehealth consultation is billed under the:

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

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

(g) Individual diabetes self-management training consultation

if:

1. Ordered by a:

a. Physician;

b. APRN directly employed by a physician; or

c. Physician assistant directly employed by a physician;

2. Provided by a:

a. Physician;

b. APRN directly employed by a physician;

c. Physician assistant directly employed by a physician;

d. Registered nurse directly employed by a physician; or

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

3. The telehealth consultation is billed under the:

a. NPI of the physician, federally qualified health care center, rural health clinic, hospital's outpatient department, or primary care center by whom the provider is directly employed; or

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

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

1. If direct physician contact occurs during the evaluation;

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

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

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

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

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

(j) An occupational therapy evaluation or treatment provided by

an occupational therapist who is directly employed by or is an agent of a home health agency:

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

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

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

1. If direct physician contact occurs during the evaluation;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(s) A neurobehavioral status examination provided by:

1. A psychiatrist;

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

3. A psychologist:

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

b. With a doctorate degree in psychology; and

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

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

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

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

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

1. A physician directly employed by a hospital's outpatient

department if the telehealth consultation is billed under the hospital's outpatient department's NPI; or

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

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

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

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

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

1. Telehealth; and

2. A community mental health center.

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

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

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

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

2. An agent of the community mental health center.

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

(a) A psychiatric diagnostic interview examination provided:

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

2. By:

a. A psychiatrist; or

b. An APRN who:

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

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

(b) A psychological diagnostic interview examination provided:

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

2. By:

a. A psychiatrist; or

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

(c) Pharmacologic management provided:

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

2. By:

a. A physician;

b. A psychiatrist; or

c. An APRN who:

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

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

(d) Group psychotherapy provided:

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

2. By:

a. A psychiatrist;

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

c. A licensed professional clinical counselor;

d. A licensed marriage and family therapist;

e. A licensed clinical social worker;

f. A psychiatric registered nurse; or

g. An APRN who:

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

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

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

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

2. By:

a. A psychiatrist;

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

c. A licensed professional clinical counselor;

d. A licensed marriage and family therapist;

e. A licensed clinical social worker;

f. A psychiatric medical resident;

g. A psychiatric registered nurse; or

h. An APRN who:

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

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

(f) A mental health assessment provided:

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

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

(g) Individual psychotherapy provided:

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

2. By:

a. A psychiatrist;

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

c. A licensed professional clinical counselor;

d. A licensed marriage and family therapist;

e. A licensed clinical social worker;

f. A psychiatric registered nurse; or

g. An APRN who:

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

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

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

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

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

a. By a physician; and

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

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

a. By an advanced practice registered nurse; and

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

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

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

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

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

(b)1. Reimbursement for a telehealth consultation provided by a practitioner who is employed by a provider or is an agent of a provider shall be a matter between the provider and the practitioner.

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

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

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

(3) The department shall not require the presence of a health

care provider requesting a telehealth consultation at the time of the telehealth consultation unless it is requested by a telehealth provider or telehealth practitioner at the hub site.

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

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

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

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

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

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

(c) Preventing unauthorized access to a telehealth transmission.

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

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

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

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

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

(d) The dissemination, storage, or retention of an identifiable recipient image or other information from the telehealth consultation shall comply with 42 U.S.C. 1301 et seq., 45 C.F.R. Parts 160, 162, 164, KRS 205.566, 246.2927, and any other federal law or regulation or state law establishing individual health care data confidentiality policies;

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

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

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

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

Section 4. Asynchronous Telehealth. (1) An asynchronous telehealth service or store and forward transfer shall be limited to those telehealth services that have an evidence base establishing the service's safety and efficacy.

(2) A store and forward service shall be permissible if the primary purpose of the asynchronous interaction involves high quality digital data transfer, such as digital image transfers. An asynchronous telehealth service within the following specialties or instances of care that meets the criteria established in this section shall be reimbursable as a store and forward telehealth service:

(a) Radiology;

(b) Cardiology;

(c) Oncology;

(d) Obstetrics and gynecology;

(e) Ophthalmology, including a retinal exam;

(f) Dentistry;

(g) Nephrology;

(h) Infectious disease;

(i) Dermatology;

(j) Orthopedics;

(k) Wound care consultation;

(l) A store and forward telehealth service in which a clear digital image is integral and necessary to make a diagnosis or continue a course of treatment;

(m) A speech language pathology service that involves the analysis of a digital image, video, or sound file, such as for a speech language pathology diagnosis or consultation; or

(n) Any code or group of services included as an allowed asynchronous telehealth service pursuant to subsection (4) of this section.

(3) Unless otherwise prohibited by this section, an asynchronous telehealth service shall be reimbursable if that service supports an upcoming synchronous telehealth or face-to-face visit to a provider that is providing one (1) of the specialties or instances of care listed in subsection (2) of this section.

(4)(a) The department shall evaluate available asynchronous telehealth services quarterly, and may expand, as appropriate and as funds are available, asynchronous telehealth services that have an evidence base establishing the service's:

1. Safety; and

2. Efficacy.

(b) Any asynchronous service expansion pursuant to this subsection shall be available on the department's Web site.

(5) Except as allowed pursuant to subsection (4) of this section or otherwise within the Medicaid program, a provider shall not receive additional reimbursement for an asynchronous telehealth service if the service is an included or integral part of the billed office visit code or service code.

(6)(a) Remote patient monitoring shall not be an eligible telehealth service within the fee-for-service Medicaid program unless that service is:

1. Expanded pursuant to subsection (4) of this section;

2. Otherwise included as a part of a department approved value based payment arrangement; or

3. Otherwise included as a value added service or payment arrangement.

(b) A managed care organization may reimburse for remote patient monitoring as a telehealth service if expanded pursuant to subsection (4) of this section or provided as a:

1. Value based payment arrangement; or

2. Value added service or payment arrangement.

Section 5.[8.] Medical Records. (1) [A request for a telehealth consultation from a health care provider and the medical necessity for the telehealth consultation shall be documented in the recipient's medical record.

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

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

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

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

consultation;

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

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

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

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

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

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

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

Section ~~6[5]~~[9]. Federal Financial Participation. A policy established in this administrative regulation shall be null and void if the Centers for Medicare and Medicaid Services:

- (1) Denies federal financial participation for the policy; or
- (2) Disapproves the policy.

Section ~~7[6]~~[40]. Appeal Rights. (1) An appeal of a department determination regarding a Medicaid beneficiary shall be in accordance with 907 KAR 1:563.

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

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

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

ADAM M. MEIER, Secretary

APPROVED BY AGENCY: September 12, 2019

FILED WITH LRC: September 13, 2019 at 10 a.m.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Jonathan Scott, (502) 564-4321, ext. 2015, jonathant.scott@ky.gov; Donna Little, (502) 564-6746, CHFSRegs@ky.gov.

(1) Provide a brief summary of:

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

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish DMS policies relating to telehealth in accordance with KRS 194A.125 and KRS 205.559. DMS is required to establish telehealth policies and guidelines pursuant to 2018 SB 112.

(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 implementing KRS 205.559 and 205.5591 and establishing DMS telehealth policies.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: DMS is required to establish telehealth policies by KRS 205.559 and 205.5591, this administrative regulation will establish coverage, reimbursement, and specific telehealth policies for telehealth to qualify for Medicaid reimbursement.

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

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

The Amended After Comments version of this administrative regulation includes new definitions for "asynchronous telehealth" and "synchronous telehealth". In addition, a new Section 4, titled "Asynchronous telehealth" expands store and forward telehealth services by clarifying and establishing criteria for specific types of care. The new section requires that store and forward services be limited to those services that have an evidence base establishing safety and efficacy, establishes a list of specialties for which asynchronous telehealth is available, establishes a process by which the department will expand available asynchronous telehealth services, and allows for expansion of remote patient monitoring by managed care organizations or as a part of a department approved value based or value added payment arrangement.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to ensure that policies stated in the administrative regulation are consistent with policies approved by CMS for federal funding. In addition, these amendments incorporate changes made by 2018's SB 112. SB 112 required that sweeping updates to telehealth policies be filed by July 1, 2019.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by complying with KRS 205.559 and conforming the administrative regulation's policies to those approved by CMS, ensuring federal funding for the policies. In addition, these amendments incorporate changes made by 2018's SB 112. SB 112 required that sweeping updates to telehealth policies be filed by July 1, 2019.

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

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

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

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

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). No cost is imposed on the entities regulated by the administrative regulation as participation is optional.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Those who opt to perform telehealth services in compliance with this administrative regulation will be reimbursed for services rendered.

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

(a) Initially: The department anticipates that it will incur no additional expenses in the implementation of this program in the first year of operation.

(b) On a continuing basis: The department anticipates that it will incur no additional expenses in implementing this program on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under the Social Security Act, Title XIX and matching funds of general fund appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Neither an increase in fees nor funding will be necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes nor increases any fees.

(9) Tiering: Is tiering applied? Tiering was not applied as telehealth service standards are applied equally to all affected individuals.

regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 C.F.R. 431.300-431.307, 440.50.

2. State compliance standards. KRS 205.559, 205.5591, and 205.560 require DMS to expand telehealth services and policies to ensure proper use and security and promote access to health care.

3. Minimum or uniform standards contained in the federal mandate. The federal requirements in 42 C.F.R. 431.300-431.307 establish requirements relating to the safeguarding of electronic health information. 42 C.F.R. 440.50 allow for the provision of telehealth by providers within the Medicaid program.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The administrative regulation does not impose stricter than federal requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This amendment is authorized by KRS 194A.010, 194A.030(2), 194A.125, 205.520(3), and 205.559.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amendment and program is not expected to generate revenue for state or local government.

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

(c) How much will it cost to administer this program for the first year? The department anticipates no additional costs in administering this program in the first year.

(d) How much will it cost to administer this program for subsequent years? The department anticipates no additional costs in administering this program in subsequent years.

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

PROPOSED AMENDMENTS

PERSONNEL CABINET
Office of the Secretary
(Amendment)

101 KAR 2:210. 2020[2019] Plan Year Handbook for the Public Employee Health Insurance Program.

RELATES TO: KRS 18A.030, 18A.225, 18A.2254

STATUTORY AUTHORITY: KRS 18A.030(2)(b), 18A.2254(1)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.2254(1)(a)1 requires the secretary of the Personnel Cabinet to promulgate an administrative regulation to incorporate by reference the plan year handbook distributed by the Department of Employee Insurance to public employees covered under the self-insured plan and establishes the minimum requirements for the information included in the handbook. This administrative regulation incorporates by reference the plan year Benefits Selection Guide, which is the handbook distributed by the department to public employees for the 2020[2019] Plan Year as required by KRS 18A.2254(1)(a)1.

Section 1. The Department of Employee Insurance shall distribute or make available to the public employees covered under the self-insured plan the 2020[2019] Plan Year Kentucky Employees' Health Plan Benefits Selection Guide, which shall include the premiums, employee contributions, employer contributions, and a summary of benefits, copays, coinsurance, and deductibles for each plan provided to the public employees covered under the self-insured plan.

Section 2. Incorporation by Reference. (1) "2020[2019] Plan Year Kentucky Employees' Health Plan Benefits Selection Guide", 2020[2019] edition, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Personnel Cabinet, 501 High Street, 3rd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m.

THOMAS B. STEPHENS, Secretary

APPROVED BY AGENCY: August 27, 2019

FILED WITH LRC: September 13, 2019 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 26, 2019 at 10:00 a.m. at 501 High Street, 3rd Floor, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until 11:59 p.m. on November 30, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Sharron Burton

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation incorporates by reference the 2020 plan year handbook containing information about the self-insured health

insurance plans offered through the Public Employee Health Insurance Program. The handbook, commonly referred to as the Benefits Selection Guide, is distributed to all plan holders participating in the self-insured program. The Benefits Selection Guide contains the premiums, employee contributions, employer contributions, and a summary of benefits, co-pays, coinsurance, and deductibles for each plan available to public employees through the self-insured program in 2020.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with the statutory mandate of KRS 18A.2254. More specifically, KRS 18A.2254(1)(a) requires the Personnel Cabinet to promulgate an administrative regulation that incorporates by reference the 2020 plan year handbook that will be distributed to the public employees covered by the Public Employee Health Insurance Program. The handbook must be filed with the Legislative Research Commission on or before September 15 each year.

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

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation aids in the effectuation of the statute, KRS 18A.2254, by incorporating by reference the 2020 plan year handbook for the Public Employee Health Insurance Program in an administrative regulation. Further, this administrative regulation is the method by which the Personnel Cabinet will comply with KRS 18A.2254.

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

(a) How the amendment will change this existing administrative regulation: This is an amendment. The existing administrative regulation incorporates by reference the 2019 plan year handbook which constitutes a compilation of the premium rates and contributions, benefit options, eligibility rules, and enrollment information for participants of the Public Employee Health Insurance Program for plan year 2019. The amendment replaces the 2019 plan year handbook with the 2020 plan year handbook. The amendment also incorporates by reference the 2020 plan year handbook which contains the premiums, employee contributions, employer contributions, and a summary of benefits, co-pays, coinsurance, and deductibles for each plan available to public employees for plan year 2020.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to give notice regarding the premiums, employee contributions, employer contributions, benefits, co-pays, coinsurance, and deductibles for each plan available to public employees under the Public Employee Health Insurance Program for plan year 2020. This amendment is also necessary to comply with the statutory mandate in KRS 18A.2254 to annually update the regulation incorporating the plan year handbook.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of KRS 18A.2254, the statute authorizing the self-insured plan under the Public Employee Health Insurance Program. KRS 18A.2254 mandates that the plan year handbook be incorporated by reference in an administrative regulation on or before September 15 each year. This amendment incorporates the 2020 plan year handbook by reference in accordance with KRS 18A.2254.

(d) How the amendment will assist in the effective administration of the statutes: This amendment conforms to the requirements of KRS 18A.2254, the statute authorizing the self-insured plan under the Public Employee Health Insurance Program. KRS 18A.2254 mandates that the plan year handbook be incorporated by reference in an administrative regulation on or before September 15 each year. This amendment incorporates the 2020 plan year handbook by reference in accordance with KRS 18A.2254.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects employees of state and select county and local government entities, including employees of the local school boards and districts. This administrative regulation also affects certain retirees as specified by KRS 18A.225. More specifically, and as defined by KRS 18A.225(1)(a), this administrative regulation affects approximately 174,177 employees and retirees eligible to participate in the Public Employee Health Insurance Program. In total, this administrative regulation affects 294,424 members in the self-insured plan including employees and retirees, qualifying beneficiaries, and dependents.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Affected entities will not be required to take any additional action to comply with this administrative regulation that incorporates the 2020 plan year handbook. The 2020 Benefits Selection Guide will provide information to the public employees covered under the Public Employee Health Insurance Program about the premiums, employee contributions, employer contributions, and a summary of benefits, co-pays, coinsurance, and deductibles for the 2020 plan year.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This administrative regulation provides employer and employee premium contribution information for health plans available under the Public Employee Health Insurance Program for plan year 2020. There is no direct cost impact to employers participating in the Public Employee Health Insurance Program as a result of incorporating the 2020 plan year handbook into the administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): For plan year 2020, participating employers (entities) and participating employees and retirees and their beneficiaries and dependents covered under the Public Employee Health Insurance Program will have access to comprehensive health insurance benefits under all plans offered through the self-insured program. For plan year 2020, employee contributions to health coverage premiums increased 3% across all plans as compared to 2019 premiums. The employee contribution increase resulted in an average increase to family plans in the amount of \$12.10/month and an average increase to single plans in the amount of \$1.40/month. The largest increase was \$19.90/month for the LivingWell PPO Family Plan. Employer premium contribution amounts did not increase for any plan. In addition to the employee contribution increase, all plan deductibles and out-of-pocket maximums increased \$250.

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

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

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

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

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

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will affect all employees of state and select county and local government entities, including employees of the local school boards and districts that participate in the Public Employee Health Insurance Program. As employers, this administrative regulation will affect state and select county and local government entities as well as local school boards and districts. This administrative regulation also affects retirees under the age of 65 who are eligible to participate in the Program by virtue of their participation in one of the state-administered retirement systems.

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

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

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

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

(c) How much will it cost to administer this program for the first year? Costs of implementing this program are believed to be similar to previous plan years. However, the 2020 plan year handbook will be online and distributed electronically rather than in printed hard copy. This method of distribution is expected to be a savings for the Public Employee Health Insurance Program during the 2019 open enrollment season and throughout the 2020 plan year.

(d) How much will it cost to administer this program for subsequent years? The 2020 plan year handbook will be online and distributed electronically rather than in printed hard copy. This method of distribution is expected to be a savings for the Public Employee Health Insurance Program during the 2019 open enrollment season and throughout the 2020 plan year. Should the distribution of the plan year handbook continue to be made available online and distributed only by electronic means in the future, the Public Employee Health Insurance Program could recognize cost savings in subsequent years.

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

Revenues (+/-):

Expenditures (+/-)

Other Explanation:

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
(Amendment)

103 KAR 25:050. Factors and agents.

RELATES TO: KRS 139.010, 139.200, 139.340

STATUTORY AUTHORITY: KRS 131.130(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations for the administration and enforcement of Kentucky tax laws. This administrative regulation interprets the sales and use tax law as it applies to transactions involving factors and agents.

Section 1. Definitions. (1) "Factors" and "agents" means persons, excluding marketplace providers, to whom products are consigned, entrusted, or delivered by a principal owner for the purpose of selling.

(2) "Marketplace providers" is defined by KRS 139.010.

(3) "Principal owner" means a person who has the primary and ultimate ownership of the products for sale.

(4) "Products" means tangible personal property, digital property, and services subject to sales tax according to the provisions of KRS 139.200.

Section 2. Factors and Agents are Retailers. (1) Factors and agents shall be considered the retailers of products sold and shall include the retail-selling price of the products in their gross receipts and shall be liable for the sales and use tax thereon unless the principal owner:

(a) Holds a retail permit under KRS Chapter 139;

(b) Reports the retail-selling price of the products in its gross receipts; and

(c) Remits the sales and use tax thereon.

(2) The delivery in this state of products by a factor or agent of a principal owner that is a retailer not doing business in this state as provided in KRS 139.340 shall be considered a retail sale by the factor or agent. The factor or agent shall include the retail-selling price of the products in their gross receipts and shall be liable for the sales and use tax thereon except under the principal owner stipulations provided in subsection (1) of this section. [Section 1. A factor, or agent of an owner, or former owner or factor, to whom property is consigned, entrusted, or otherwise delivered for the purpose of selling shall be considered the retailer of such property when sold. Said factor, or agent, shall include the retail selling price of said property in his gross receipts and be liable for the sales tax thereon; provided, however, that said factor or agent need not include the retail selling price of the subject property in his gross receipts in those instances where the principal involved is a retail permit holder under the Kentucky Sales and Use Tax Act, and said principal includes the retail selling price of the subject property in his gross receipts.]

Section 2. The delivery in this state by a factor, or agent of an owner, or former owner or factor, to a consumer or person for redelivery to a consumer pursuant to a retail sale made by a retailer not engaged in business in this state shall be considered a retail sale. Said factor, or agent, shall include the retail selling price of said property in his gross receipts and be liable for the sales tax thereon; provided, however, that said factor or agent need not include the retail selling price of the subject property in his gross receipts in those instances where the principal involved is a retail permit holder under the Kentucky Sales and Use Tax Act, and said principal includes the retail selling price of the subject property in his gross receipts.]

DANIEL P. BORK, Commissioner

APPROVED BY AGENCY: September 12, 2019

FILED WITH LRC: September 13, 2019 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 21, 2019, at 10:00 a.m. in Room 9B, State Office

Building, 501 High Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through November 30, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Lisa Swiger, Tax Policy Research Consultant II, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky 40601, phone (502) 564-9526, fax (502) 564-3875, email Lisa.Swiger@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lisa Swiger

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation amends 103 KAR 25:050 to add definitions for "factors," "agents," and "products" by moving them into Section 1 to comply with regulatory requirements; adding definitions for "principal owner" and "marketplace provider;" updating the regulation regarding digital property and taxable services, and updating general statutory language as it applies to transactions regarding factors and agents.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to providing up to date guidance on the tax treatment of transactions made by factors and agents.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The proposed updates amend regulatory language to conform with KRS 131.130 and 131.131.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The changes made in this administrative regulation will provide the most current and up to date guidance to taxpayers impacted by the provisions of this regulation.

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

(a) How the amendment will change this existing administrative regulation: See (1)(a).

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All individuals, businesses, or organizations operating as retailers, specifically the defined factors and agents.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No specific impact to those entities detailed in Question 3 are noted based upon the amendments made. Additional guidance is being provided to those entities detailed in Question 3 regarding the topics already included in the said regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no additional cost to comply with the administrative regulation by the entities detailed in Question 3

based upon the amendments made.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities detailed in Question 3 will be knowledgeable as to who is required to collect the sales tax in transactions involving factors and agents and as such remain in good standing with the Department of Revenue

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

(a) Initially: There is no expected cost to implement the proposed amendment. Current staff and budgeted funding will absorb the implementation of this administrative regulation.

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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current departmental staff and funding will be used to implement and enforce this proposed amendment.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are directly or indirectly established or increased by the proposed amendment.

(9) TIERING: Is tiering applied? Tiering is not applicable as the proposed amended regulation will be applied equally to all entities impacted by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Finance and Administration Cabinet, Department of Revenue.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 131.130 and KRS 131.131.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? There is no estimated impact on expenditures and revenues for state and local governments.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? There is no estimated impact on expenditures and revenues for state and local governments.

(c) How much will it cost to administer this program for the first year? No additional costs will be incurred in the first year of this regulation being in effect. Any costs associated with this new requirement should be absorbed into the current department maintenance contracts and operating budget.

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

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

Revenues (+/-): No impact.

Expenditures (+/-): No impact.

Other Explanation:

FINANCE AND ADMINISTRATION CABINET Department of Revenue (Amendment)

103 KAR 25:060. Temporary vendors and transient[vendors] merchants.

RELATES TO: KRS 139.010, 139.200, 139.550, 139.660, 365.650, 365.665, 365.680

STATUTORY AUTHORITY: KRS 131.130[~~(4)~~], 139.550
NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations for the administration and enforcement of Kentucky tax laws. This administrative regulation interprets[~~To interpret~~] the sales and use tax law as it applies to temporary vendors and transient [vendors]merchants.

Section 1. Definitions. (1) "Temporary vendor" means a person engaged in selling as described in KRS 139.550.

(2) "Transient merchant" is defined by KRS 365.650.

Section 2. Temporary vendors and transient merchants who are not registered with an active Sales and Use Tax Account shall report and remit the sales and use tax on a nonpermit basis on the Temporary Vendor Sales and Use Tax Return (Form 30A006) prescribed by the department[~~Persons not regularly engaged in selling at retail and not having a permanent place of business, but who are temporarily engaged in selling from trucks, portable roadside stands, concessionaires at fairs, circuses, carnivals, and the like, shall report and remit the tax on a nonpermit basis, and shall obtain a retail sales tax registration from the Department of Revenue~~].

Section 3[2]. Transient merchants having no fixed place of business and not selling from a vehicle shall register for, and procure, a permit in the county in which they make sales of tangible personal property by completing the Application for Transient Merchant Permit (Form 51A250). The application shall be submitted to the county clerk or other applicable local representative as required by KRS 365.665[~~Persons having no fixed place of business and not selling from a vehicle shall procure a registration in the county in which they make sales of tangible personal property. The application for such registration shall set forth an established residence or permanent mailing address to which all communications from the department shall be addressed~~].

Section 4[3]. Transient merchants having no fixed place of business and selling from vehicles shall submit an Application for Transient Merchant Permit (Form 51A250) for each vehicle. The application for registration shall be submitted to the county clerk or other applicable local representative as required by KRS 365.665[~~Persons with no fixed place of business and selling from vehicles shall procure a registration for each vehicle.~~] The[~~Such~~] registration shall cover all sales made from the vehicle in any county in the state. [~~The application for such registration shall set forth a residence or permanent mailing address in this state to which all communications from the department may be sent.~~]

Section 5[4]. Bonding Requirements. (1)[~~Persons coming within the provisions of this administrative regulation~~] Temporary vendors may be required to post a bond pursuant to the provisions of KRS 139.660[~~if, in the judgment of the department, it is deemed necessary or advisable to secure the collection of the tax. A cash bond or a surety bond is acceptable~~]. The amount and type of the bond shall be determined by the department. The tax may be prepaid in lieu of filing said bond. The bond shall be filed with the department prior to the issuance of the registration and engaging in business within this state.

(2) Transient merchants may be required to post a bond with the Office of the Attorney General pursuant to the provisions of KRS 365.680.

Section 6[5]. ~~[The sales tax return shall be filed and the tax due shall be paid to either a Department of Revenue field office or representative.]The due date for[the] filing[of] the sales tax return and remitting payment required by this regulation is the [expiration]due date shown on [the taxpayer's retail sales tax registration]Form 30A006 as prescribed by the department, or the date when selling at the designated location is completed[, whichever is the earlier. In those cases where the sales of tangible personal property are of more than one (1) month's duration, the tax shall be reported and remitted to the department at the end of each month].~~

Section 7. (1) Form 30A006 may be obtained or inspected from 8:00 a.m. until 4:30 p.m.:

(a) At the Kentucky Department of Revenue, 501 High Street, Frankfort, Kentucky 40601.

(b) On the department Web site at <http://revenue.ky.gov>; or

(c) At a Kentucky Department of Revenue Taxpayer Service Center during their hours of operation.

(2) Form 51A250 may be obtained from the county clerk or other applicable local representative.

DANIEL P. BORK, Commissioner

APPROVED BY AGENCY: September 12, 2019

FILED WITH LRC: September 13, 2019 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 21, 2019, at 10:00 a.m. in Room 9B, State Office Building, 501 High Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through November 30, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Lisa Swiger, Tax Policy Research Consultant II, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky 40601, phone (502) 564-9526, fax (502) 564-3875, email Lisa.Swiger@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lisa Swiger

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative interprets the sales and use tax law as it applies to transactions regarding temporary and transient vendors.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to providing up to date guidance on the tax treatment of transactions made by temporary and transient vendors.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The proposed updates amend regulatory language to conform with KRS 131.130 and 131.131.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The changes made in this amendment will provide the most current and up to date guidance to taxpayers impacted by the provisions of this regulation.

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

(a) How the amendment will change this existing administrative regulation: The proposed amendment will change the existing administrative regulation by updating the authorization statement in the "NECESSITY, FUNCTION, and CONFORMITY" section, adding the form information related to form 30A006, and

standardizing language within the administrative regulation.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to providing up to date guidance on the tax treatment of transactions made by temporary and transient vendors.

(c) How the amendment conforms to the content of the authorizing statutes: The proposed updates amend regulatory language to conform with KRS 131.130 and 131.131.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of related statutes by providing the most current and up to date guidance to taxpayers impacted by the provisions of this regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Temporary and transient vendors.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No specific impact to those entities detailed in Question 3 are noted based upon the amendments made. Additional guidance is being provided to those entities detailed in Question 3 regarding the topics already included in said regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no additional cost to comply with the administrative regulation by the entities detailed in Question 3 based upon the amendments made.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities detailed in Question 3 will be knowledgeable as to sales tax filings made by temporary and transient vendors and as such remain in good standing with the Department of Revenue

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

(a) Initially: There is no expected cost to implement the proposed amendment. Current staff and budgeted funding will absorb the implementation of this administrative regulation.

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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current departmental staff and funding will be used to implement and enforce this proposed amendment.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are directly or indirectly established or increased by the proposed amendment.

(9) TIERING: Is tiering applied? Tiering is not applicable as the proposed amended regulation will be applied equally to all entities impacted by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Finance and Administration Cabinet, Department of Revenue.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 131.130 and KRS 131.131.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? There is no estimated impact on expenditures and revenues for state and local governments.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? There is no estimated impact on expenditures and revenues for state and local governments.

(c) How much will it cost to administer this program for the first year? No additional costs will be incurred in the first year of this regulation being in effect. Any costs associated with this new requirement should be absorbed into the current department maintenance contracts and operating budget.

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

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

Revenues (+/-): No impact.

Expenditures (+/-): No impact.

Other Explanation:

**FINANCE AND ADMINISTRATION CABINET
Department of Revenue
(Amendment)**

103 KAR 26:030. Optometrists, oculists and opticians.

RELATES TO: KRS 139.010

STATUTORY AUTHORITY: KRS 131.130(1)[Chapter 13A]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations for the administration and enforcement of Kentucky tax laws. This administrative regulation interprets [defines and clarifies] the sales and use tax law as it applies to transactions involving optometrists, oculists, and opticians.

Section 1. Oculists and optometrists shall be [are] the consumers of the ophthalmic materials including eyeglasses, frames, and lenses [lens] used or furnished to their patients in the performance of their professional services. The tax accordingly shall apply [applies] to the sale of the tangible personal property to them.

Section 2. Where optometrists fill prescriptions written by others, the optometrist is the retailer and the tax shall apply [applies] to the entire charge made for the glasses furnished in filling the prescription.

Section 3. Opticians are engaged in the business of selling tangible personal property and the tax shall apply [applies] to the entire charge made by a dispensing optician for glasses and kindred products furnished in filling a prescription of an oculist, optometrist, or ophthalmologist.

Section 4. Repairers of eyeglass frames shall be the consumers of the parts and materials used in his or her repair. Repairers of eyeglass frames shall pay sales and use tax on the purchase of all parts and materials used in his or her repair. Sales and use tax shall not be due on the charge by the repairer to their customer for the eyeglass frame repair.

DANIEL P. BORK, Commissioner

APPROVED BY AGENCY: September 12, 2019

FILED WITH LRC: September 13, 2019 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 21, 2019 at 10:00 a.m. in Room 9B, State Office Building, 501 High Street, Frankfort, Kentucky 40601. Individuals

interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through November 30, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Lisa Swiger, Tax Policy Research Consultant II, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky 40601, phone (502) 564-9526, fax (502) 564-3875, email Lisa.Swiger@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lisa Swiger

(1) Provide a brief summary of:

(a) What this administrative regulation does: The proposed amendment will change the existing administrative regulation by updating the NECESSITY, FUNCTION, AND CONFORMITY section to include KRS 131.130(1) authorization language and adds Section 4 to include guidance regarding repairs of eyeglass frames.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide up to date guidance on the tax treatment of transactions made by and involving optometrists, oculists and opticians.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The proposed updates amend regulatory language to conform with KRS 131.130 and 131.131.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The changes made in this amendment will provide the most current and up to date guidance to taxpayers impacted by the provisions of this regulation.

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

(a) How the amendment will change this existing administrative regulation: See (1)(a).

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Optometrists, oculists and opticians and their customers 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: No specific impact to those entities detailed in Question 3 are noted based upon the amendments made. Additional guidance is being provided to those entities detailed in Question 3 regarding the topics already included in the administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no additional cost to comply with the administrative regulation by the entities detailed in Question 3 based upon the amendments made.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities detailed in Question 3 will be knowledgeable as to the detailed sales tax transaction listed

and as such remain in good standing with the Department of Revenue.

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

(a) Initially: There is no expected cost to implement the proposed amendment. Current staff and budgeted funding will absorb the implementation of this administrative regulation.

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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current departmental staff and funding will be used to implement and enforce this proposed amendment.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are directly or indirectly established or increased by the proposed amendment.

(9) TIERING: Is tiering applied? Tiering is not applicable as the proposed amended regulation will be applied equally to all entities impacted by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Finance and Administration Cabinet, Department of Revenue.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 131.130 and KRS 131.131.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? There is no estimated impact on expenditures and revenues for state and local governments.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? There is no estimated impact on expenditures and revenues for state and local governments.

(c) How much will it cost to administer this program for the first year? No additional costs will be incurred in the first year of this regulation being in effect. Any costs associated with this new requirement should be absorbed into the current department maintenance contracts and operating budget.

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

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

Revenues (+/-): No impact.

Expenditures (+/-): No impact.

Other Explanation:

FINANCE AND ADMINISTRATION CABINET Department of Revenue (Amendment)

103 KAR 26:050. Common carriers.

RELATES TO: KRS 139.470, 139.480

STATUTORY AUTHORITY: KRS 131.130(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS

131.130(1) authorizes the Department of Revenue to promulgate administrative regulations for the administration and enforcement of Kentucky tax laws. This administrative regulation interprets [To interpret] the sales and use tax law as it applies to transactions involving common carriers.

Section 1. Definition. "Rolling stock" means only that equipment designed to move on rails and used for the transportation of goods or passengers for hire.

Section 2. All tangible personal property, digital property, admissions, accommodations, and taxable services sold to or used by common carriers in this state shall be subject to application of the sales or use tax with the exceptions noted in Section 3[2] of this administrative regulation. Tax shall[will] be applicable to leasing arrangements, or use pursuant to leasing arrangements, whereby items of equipment (including things such as[, for example, but not limited to, such things] as tires or batteries) are acquired by common carriers for utilization over extended periods of time in connection with operations. The[Such] purchases, uses, leases, and uses pursuant to leases shall be[are] subject to the exceptions and qualifications in Section 3 of this administrative regulation[hereinafter noted].

Section 3.[2.] The following shall be excepted from application of the sales or use tax[are the following]:

(1) Over the road equipment [or floating equipment] which enters this state in actual use in interstate commerce at the time of entering, and is used exclusively in interstate commerce thereafter. This exception shall not be void due to nominal use in intrastate commerce[nominal use in intrastate commerce will not affect this exception from application of tax].

(2) Ships, vessels, and related equipment which enters this state in actual use in interstate commerce at the time of entering and are used exclusively in interstate commerce thereafter. This exception shall not be void due to nominal use in intrastate commerce.

(3) Locomotives or rolling stock, including materials for the construction, repair, or modification thereof, or fuel or supplies for the direct operation of locomotives or trains, used or to be used in interstate commerce. The term "supplies" does not include items used for construction, maintenance, or support of the railway system[The term "rolling stock" shall mean only that equipment designed to move on rails and used for the transportation of goods or passengers for hire].

(4)[(3)] Aircraft, repair and replacement parts therefor, and supplies, except fuel, for the direct operation of aircraft in interstate commerce and used exclusively for the conveyance of property or passengers for hire. This exception shall not be void due to nominal use in intrastate commerce[nominal use in intrastate commerce will not affect this exception from application of tax].

DANIEL P. BORK, Commissioner

APPROVED BY AGENCY: September 12, 2019

FILED WITH LRC: September 13, 2019 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 21, 2019 at 10:00 a.m. in Room 9B, State Office Building, 501 High Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through November 30, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Lisa Swiger, Tax Policy Research

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Consultant II, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky 40601, phone (502) 564-9526, fax (502) 564-3875, email Lisa.Swiger@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lisa Swiger

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation updates the NECESSITY, FUNCTION, AND CONFORMITY section to include KRS 131.130(1) authorization language, creates a "Definition" section and moves the definition of "rolling stock" into this section per KRS 13A, adds "digital property, admissions, accommodations, and taxable services" to Section 2, removes the term "floating equipment" and replaces it with the more specific sales and use tax law guidance related to ships, vessels and related equipment.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide up to date guidance on the tax treatment of transactions made by and to common carriers.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The proposed amendment updates regulatory language to conform with KRS 131.130 and 131.131.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The changes made in this amendment will provide the most current and up to date guidance to taxpayers impacted by the provisions of this regulation.

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

(a) How the amendment will change this existing administrative regulation: See (1)(a).

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Common carriers including providers of over the road vehicles, ships, vessels, locomotives, aircraft, and their vendors.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities detailed in Question 3 will have to ensure they are correctly paying or accruing sales and use tax on previously unlisted digital property, admissions, accommodations and taxable services.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no additional cost to comply with the administrative regulation by the entities detailed in Question 3 based upon the amendments made.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities detailed in Question 3 will be knowledgeable as to the detailed sales tax transactions listed, and as a result, may remain in good standing with the Department of Revenue.

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

(a) Initially: There is no expected cost to implement the proposed amendment. Current staff and budgeted funding will absorb the implementation of this administrative regulation.

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

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

Current departmental staff and funding will be used to implement and enforce this proposed amendment.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are directly or indirectly established or increased by the proposed amendment.

(9) TIERING: Is tiering applied? Tiering is not applicable as the proposed amended regulation will be applied equally to all entities impacted by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Finance and Administration Cabinet, Department of Revenue.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 131.130 and KRS 131.131.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Undetermined. Any increase in revenue to the state would be attributable to the statutory changes in KRS 139.200 and the addition of these additional taxable items.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? See 3(a) above.

(c) How much will it cost to administer this program for the first year? No additional costs will be incurred in the first year of this regulation being in effect. Any costs associated with this new requirement should be absorbed into the current department maintenance contracts and operating budget.

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

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

Revenues (+/-): Undetermined.

Expenditures (+/-): No impact.

Other Explanation:

FINANCE AND ADMINISTRATION CABINET Department of Revenue (Amendment)

103 KAR 26:110. Motor carrier repair and replacement parts.

RELATES TO: KRS 131.110, 139.010, 139.200, 139.260, 139.270, 139.310, 139.330, 139.480, 139.540, 139.550, 139.590, 139.720

STATUTORY AUTHORITY: KRS 131.130, 139.710

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130 and 139.710 authorize the Department of Revenue to promulgate administrative regulations for the assessment, collection, refunding, administration, and enforcement of the Kentucky tax laws. This administrative regulation establishes requirements and guidelines for the application of the sales and use tax exemption for repair and replacement parts for the direct operation or maintenance of a motor vehicle, including any towed unit, used exclusively in interstate commerce for the conveyance of property

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or passengers for hire as provided in KRS 139.480(31)[(32)].

Section 1. Definitions. (1) "Exclusively in interstate commerce" means the conveyance of property or passengers by a motor vehicle in more than one (1) state. A motor vehicle used in the conveyance of property or passengers only within the borders of this state is not used in interstate commerce.

(2) "For hire" means a motor carrier receiving compensation for transportation of property owned by others or passengers under the requirements of the Federal Motor Carrier Safety Administration (FMCSA) 49 C.F.R. 325 to 399.

(3) "Truck Part Direct Pay Authorization" or "TP 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 on applicable repair, replacement parts, and labor or services rendered in installing or applying applicable repair and replacement parts[and replacement parts].

Section 2. Application Process. (1) The applicant shall complete the Application for Truck Part Direct Pay Authorization, Revenue Form 51A160.

(2) To qualify for the TP DPA, the applicant shall be:

(a) Designated as an interstate motor carrier with the Federal Motor Carrier Safety Administration and the Kentucky Transportation Cabinet;

(b) Registered with a Kentucky sales and use tax account number or a Kentucky consumer use tax account number; and

(c) Operating one (1) or more motor vehicles exclusively in interstate commerce.

(3) The department shall issue qualifying applicants a TP DPA (Revenue Form 51A161).

Section 3. Exemption Procedures. The TP DPA holder shall:

(1) Issue a copy of the authorization to all its truck part vendors;

(2) Report and remit the sales or use tax to the Department of Revenue on purchases of repair, replacement parts, and labor or services rendered in installing or applying applicable repair and replacement parts used on nonqualifying motor vehicles that the purchaser's vendor would have remitted if the authorization had not been issued;

(3) Report and pay all taxable purchases in accordance with KRS 139.540, 139.550, and 139.590;

(4) Maintain records pursuant to KRS 139.720(2); and

(5) File by February 15 of each year the "Truck Part Direct Pay Authorization Purchase Report," Revenue Form 51A162, to report the total tax savings from purchases of repair, replacement parts, and labor or services rendered in installing or applying applicable repair and replacement parts that are exempt from sales and use tax pursuant to KRS 139.480(31)[(32)].

Section 4. Vendor Requirements. (1) Vendors shall be relieved of the duty to collect and pay the sales or use tax on sales of repair, replacement parts, and labor or services rendered in installing or applying applicable repair and replacement parts if they:

(a) Accept a copy of the purchaser's TP DPA pursuant to KRS 139.270; and

(b) Retain the copy in the company records pursuant to KRS 139.720(2).

(2) Vendors shall:

(a) Report sales to a TP DPA holder on Line 1, Gross Receipts, of Revenue Form 51A102, "Sales and Use Tax Return"; and

(b) Take a corresponding deduction Code 190 on the return and identify the deduction as "TP DPA Sales".

Section 5. Transfer of Authorization. (1) A TP DPA shall not be transferable upon the sale, lease, or other transfer of the business.

(2) A TP 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 6. Termination. (1) The department shall terminate a TP DPA if the holder:

(a) Fails or ceases to be an eligible taxpayer;

(b) Fails to timely file its sales and use tax returns and timely pay any tax due; or

(c) Fails to comply with any of the provisions of this administrative regulation.

(2) The department shall notify a TP DPA holder of the termination by certified mail at the last known business address.

(3) Upon receipt of the notification of termination, a TP DPA holder shall notify all truck repair and replacement part vendors within thirty (30) days of the date of termination.

(4) The effective date of the termination shall be the date of the mailing of the termination notice.

~~Section 7. [Protests. The denial or termination of a TP DPA may be protested pursuant to KRS 131.110.~~

~~Section 8.] 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 40620;

(2) A Kentucky Taxpayer Service Center, Monday through Friday, 8 a.m. to 4:30 p.m.; or

(3) The department Web site at <http://revenue.ky.gov>.

DANIEL P. BORK, Commissioner

APPROVED BY AGENCY: September 12, 2019

FILED WITH LRC: September 13, 2019 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 21, 2019 at 10:00 a.m. in Room 9B, State Office Building, 501 High Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through November 30, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Lisa Swiger, Tax Policy Research Consultant II, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky 40601, phone (502) 564-9526, fax (502) 564-3875, email Lisa.Swiger@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lisa Swiger

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements and guidelines for the application of sales and use tax exemption for repair and replacement parts for the direct operation or maintenance of a motor vehicle, including any towed unit, used exclusively in interstate commerce for the conveyance of property or passengers for hire.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to providing up to date guidance on the tax treatment of transactions made by and with motor carriers.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The proposed updates amend regulatory language to conform with KRS 131.130, 131.131, and 139.010.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The changes made in this amendment will provide the most current and up to

date guidance to taxpayers impacted by the provisions of this regulation.

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

(a) How the amendment will change this existing administrative regulation: The proposed amendment will change the existing administrative regulation by updating statutory references, updating taxable labor provisions, and deleting protest language related to the Direct Pay Authorization that is obsolete.

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

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

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of related statutes by providing the most current and up to date guidance to taxpayers impacted by the provisions of this regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Motor carriers and their vendors.

(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: Motor carriers who hold TP DPA's will now need to report and remit sales tax on their purchase of service and installation labor on repair and replacement parts (in addition to the parts themselves) used on non-qualifying motor vehicles pursuant to KRS 139.010(15).

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): While there is no additional specific cost to comply with the amended regulation, service and installation labor on repair and replacement parts (in addition to the parts themselves) used on non-qualifying motor vehicles is now subject to sales tax pursuant to KRS 139.010(15).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities detailed in Question 3 will be knowledgeable as to what transactions are subject to sales tax involving motor carriers, and as such, remain in good standing with the Department of Revenue

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

(a) Initially: There is no expected cost to implement the proposed amendment. Current staff and budgeted funding will absorb the implementation of this administrative regulation.

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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current departmental staff and funding will be used to implement and enforce this proposed amendment.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are directly or indirectly established or increased by the proposed amendment.

(9) TIERING: Is tiering applied? Tiering is not applicable as the proposed amended regulation will be applied equally to all entities impacted by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Finance and Administration Cabinet, Department of Revenue.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 131.130 and KRS 131.131.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? There is no estimated impact on expenditures and revenues for state and local governments.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? There is no estimated impact on expenditures and revenues for state and local governments.

(c) How much will it cost to administer this program for the first year? No additional costs will be incurred in the first year of this regulation being in effect. Any costs associated with this new requirement should be absorbed into the current department maintenance contracts and operating budget.

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

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

Revenues (+/-): No impact.

Expenditures (+/-): No impact.

Other Explanation:

FINANCE AND ADMINISTRATION CABINET

Department of Revenue

(Amendment)

103 KAR 27:080. Meals served by railroads, airlines, and other transportation companies[etc.]

RELATES TO: KRS 139.010, 139.200

STATUTORY AUTHORITY: KRS 131.130[(+)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations for the assessment, collection, refunding, administration, and enforcement of Kentucky tax laws. This administrative regulation interprets the sales and use tax law as it applies to meals, prepared food, candy, soft drinks, and alcoholic beverages[To interpret the sales and use tax law as it applies to meals]served by railroads, airlines or other transportation companies[facilities].

Section 1. Gross receipts or sales price[~~as the case may be,~~] includes sales of meals, prepared food, candy, soft drinks, and alcoholic beverages by railroads, pullman car, airlines or other transportation companies, while within the state.

Section 2. In cases where meals, prepared food, candy, soft drinks, and alcoholic beverages are served without a separately stated charge to the passengers of the foregoing companies, the company will be considered the consumer of the meals, prepared food, candy, soft drinks, and alcoholic beverages and the tax applies at the time of the[their] sale to the company.

DANIEL P. BORK, Commissioner

APPROVED BY AGENCY: September 12, 2019

FILED WITH LRC: September 13, 2019 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 21, 2019, at 10:00 a.m. in Room 9B, State Office Building, 501 High Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to

attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through November 30, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Lisa Swiger, Tax Policy Research Consultant II, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky 40601, phone (502) 564-9526, fax (502) 564-3875, email Lisa.Swiger@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lisa Swiger

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation clarifies the sales and use tax treatment on sales of meals, prepared food, candy, soft drinks, and alcoholic beverages to railroads, airlines and other transportation companies.

(b) The necessity of this administrative regulation: The amendment is necessary to update outdated regulatory language, to clarify the previous guidance contained and to specify the types of property sold.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The proposed updates amend regulatory language to conform with KRS 131.130 and KRS 131.131.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The changes made in this amendment will provide the most current and up to date guidance to taxpayers impacted by the provisions of this regulation.

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

(a) How the amendment will change this existing administrative regulation: The amendment will update this existing administrative regulation by clarifying the existing tax treatment of specific property types sold to railroads, airlines and other transportation companies.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to remove outdated regulatory language and to supplement the listing of property sold to transportation providers that are covered by this treatment.

(c) How the amendment conforms to the content of the authorizing statutes: The proposed amendment updates regulatory language to conform with KRS 131.130 and KRS 131.131.

(d) How the amendment will assist in the effective administration of the statutes: The proposed amendment updates regulatory language to clarify information currently contained in the regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All railroads, airlines, other transportation companies and their vendors that access the amended regulation..

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No actions are necessary to comply with the amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost to comply with the amended regulation.

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

entities identified in question (3): Anyone who accesses the amended regulation will benefit from the updated information contained therein.

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

(a) Initially: There is no expected cost to implement the proposed amendment. Current staff and budgeted funding will absorb the implementation of this administrative regulation.

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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current departmental staff and funding will be used to implement and enforce this proposed amendment.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are directly or indirectly established or increased by the proposed amendment.

(9) TIERING: Is tiering applied? Tiering is not applicable as the proposed amended regulation will be applied equally to all entities impacted by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Finance and Administration Cabinet, Department of Revenue.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 131.130 and KRS 131.131.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenues are expected to be generated by updating this administrative regulation.

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FINANCE AND ADMINISTRATION CABINET Department of Revenue (Amendment)

103 KAR 27:100. Motor vehicles, manufactured homes, mobile homes, and trailers.

RELATES TO: KRS 138.450, 138.460, 139.010, 139.200, 139.470, 189.010, 227.550

STATUTORY AUTHORITY: KRS 131.130

NECESSITY, FUNCTION, AND CONFORMITY: KRS

131.130(1) authorizes the Department of Revenue to promulgate administrative regulations for the administration and enforcement of Kentucky tax laws. This administrative regulation interprets [To interpret] the sales and use tax law as it applies to sales of motor vehicles, manufactured homes, mobile homes, and trailers.

Section 1. Definitions. (1) "All-terrain vehicle" is defined by KRS 189.010(24).

(2) "Electric low-speed scooter" is defined by KRS 189.010.

(3) "Manufactured home" is defined by KRS 227.550(6).

(4) "Mobile home" is defined by KRS 227.550(9).

(5) "Moped" is defined by KRS 138.450(6).

(6) "Motor vehicle" is defined by KRS 138.450(5).

(7) "Semitrailer" is defined by KRS 189.010(12).

(8) "Trailer" is defined by KRS 189.010(17) [As used in this administrative regulation, "motor vehicle" includes trailers and semitrailers as defined in KRS 189.010(12) and (017)].

Section 2. Gross receipts from sales of motor vehicles, including motorcycles, which are registered for use on the public highways and upon which any applicable motor vehicle usage tax levied by KRS 138.460(1) has been paid, shall not be [are not] subject to sales or use tax. [Motor vehicle means any vehicle that is propelled by other than muscular power and that is used for transportation of persons or property over the public highways of the state, except road rollers, vehicles that travel exclusively on rails, and vehicles propelled by electric power obtained from overhead wires.]

Section 3. Manufactured homes, mobile [Mobile] homes, camper trailers, [and] boat trailers, utility trailers, and other trailers not defined by KRS 189.010 are not motor vehicles and gross receipts from their sale shall be [are] subject to the sales or use tax.

Section 4. Gross receipts from sales of vehicles such as all-terrain vehicles, mopeds, and electric low-speed scooters shall be subject to the sales or use tax.

Section 5. Trailers and semitrailers shall not be [as defined in KRS 189.010(11) and (16) are motor vehicles and are not] subject to sales or use tax pursuant to KRS 139.470(20).

DANIEL P. BORK, Commissioner

APPROVED BY AGENCY: September 12, 2019

FILED WITH LRC: September 13, 2019 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 21, 2019, at 10:00 a.m. in Room 9B, State Office Building, 501 High Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through November 30, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Lisa Swiger, Tax Policy Research Consultant II, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky 40601, phone (502) 564-9526, fax (502) 564-3875, email Lisa.Swiger@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lisa Swiger

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation clarifies the sales and use tax treatment

on sales of motor vehicles, manufactured homes, mobile homes, and trailers.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide up to date guidance on the tax treatment on sales of motor vehicles, manufactured homes, mobile homes, and trailers.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The proposed amendment updates regulatory language to conform with KRS 131.130 and KRS 131.131.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The changes made in this amendment will provide the most current and up to date guidance to taxpayers impacted by the provisions of this regulation.

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

(a) How the amendment will change this existing administrative regulation: The amendment will update this existing administrative regulation by updating the NECESSITY, FUNCTION, AND CONFORMITY section to include KRS 131.130(1) authorization language, creates a definitions section which supplements the listing of property types sold that are covered by this treatment, and by updating and clarifying the existing regulation language.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to remove outdated regulatory language to clarify the previous guidance contained and to specify the types of property sold.

(c) How the amendment conforms to the content of the authorizing statutes: The proposed amendment updates regulatory language to conform with KRS 131.130 and KRS 131.131.

(d) How the amendment will assist in the effective administration of the statutes: The changes made in this amendment will provide the most current and up to date guidance to taxpayers impacted by the provisions of this regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All individuals, businesses, organizations, that access the amended regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No actions are necessary to comply with the amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost to comply with the amended regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Anyone who accesses the amended regulation will benefit from the updated information contained therein.

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

(a) Initially: There is no expected cost to implement the proposed amendment. Current staff and budgeted funding will absorb the implementation of this administrative regulation.

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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current departmental staff and funding will be used to implement and enforce this proposed amendment.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are directly or indirectly established or increased by the

proposed amendment.

(9) TIERING: Is tiering applied? Tiering is not applicable as the proposed amended regulation will be applied equally to all entities impacted by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Finance and Administration Cabinet, Department of Revenue.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 131.130 and KRS 131.131.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenues are expected to be generated by updating this administrative regulation.

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FINANCE AND ADMINISTRATION CABINET Department of Revenue (Amendment)

103 KAR 27:220. Restaurant~~[Miscellaneous—restaurant]~~ transactions.

RELATES TO: KRS 91A.400, 139.010, [91A.400,]139.200, 139.210, 139.260, 139.270, 139.290, 139.310, 139.330, 139.480, 139.485

STATUTORY AUTHORITY: KRS 131.130~~[(4)]~~, 139.710

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations necessary for the assessment, collection, refunding, administration, and enforcement of [all tax laws in] Kentucky tax laws. This administrative regulation establishes the sales and use tax requirements for miscellaneous transactions relating to restaurants.

Section 1. Definitions. (1) "Food and food ingredients" is defined by [in]KRS 139.485(2).

(2) "Mandatory gratuity" means a gratuity or tip charged by a restaurant. An example of a mandatory gratuity is a gratuity charge made by a restaurant for serving a large number of customers in a single group.

(3) "Prepared food" is defined by [in]KRS 139.485(3)(g).

(4) "Voluntary gratuity" means a gratuity or tip not required by a restaurant but willfully added by a customer.

Section 2. (1) Tax shall apply to any charge added to the price of prepared food by a restaurant, including a mandatory gratuity, service charge, surcharge, or fee itemized on the invoice or ticket

to the customer by the restaurant. These charges shall be considered part of the selling price of prepared food.

(2) A voluntary gratuity left by the customer shall not be subject to tax.~~[A gratuity not required by the restaurant but willfully added by the customer shall be considered voluntary.]~~

Section 3. A restaurant employee shall pay tax on the sales price of any prepared food or other taxable item purchased from the employer.

Section 4. (1) Taxable tangible personal property shall be subject to sales and use tax based upon the restaurant's purchase price if the property was:

(a) Purchased exempt from tax under a Resale Certificate (Form 51A105) or a Streamlined Sales and Use Tax Agreement - Certificate of Exemption (Form 51A260)~~[-, both incorporated by reference in 403-KAR-3:020]; and~~

(b) Provided free of charge to employees or customers, or otherwise used or consumed by the restaurant.

(2) Food and food ingredients and prepared food donated by a restaurant to charity shall not be subject to the tax.

Section 5. The tax imposed by a city on a restaurant pursuant to KRS 91A.400 shall be classified as a license tax that when passed on to customers shall constitute gross receipts subject to sales tax according to the provisions of KRS 139.010.

Section 6. (1) This administrative regulation shall replace Revenue Circular 51C001-S2 and Revenue Policy 51P345.

(2) Revenue Circular 51C001-S2 and Revenue Policy 51P345 are hereby rescinded and shall be null, void, and unenforceable.

Section 7. Forms. The forms listed herein may be inspected, copied, or obtained, applicable copyright law, at:

(1) The Kentucky Department of Revenue, 501 High Street, Frankfort, Kentucky 40601;

(2) A Kentucky Taxpayer Service Center, Monday through Friday, 8:00 a.m. to 4:30 p.m.; or

(3) The department Web site at <http://revenue.ky.gov>.

DANIEL P. BORK, Commissioner

APPROVED BY AGENCY: September 12, 2019

FILED WITH LRC: September 13, 2019 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 21, 2019, at 10:00 a.m. in Room 9B, State Office Building, 501 High Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through November 30, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Lisa Swiger, Tax Policy Research Consultant II, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky 40601, phone (502) 564-9526, fax (502) 564-3875, email Lisa.Swiger@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lisa Swiger

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation interprets the sales and use tax law as it applies to miscellaneous restaurant transactions.

(b) The necessity of this administrative regulation: This

administrative regulation is necessary to provide up to date guidance on the tax treatment of miscellaneous restaurant transactions.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The proposed amendment updates regulatory language to conform with KRS 131.130 and KRS 131.131.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The proposed amendment updates regulatory language to clarify information currently contained in the regulation.

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

(a) How the amendment will change this existing administrative regulation: The amendment will change this existing administrative regulation by distinguishing between the sales and use tax treatment of a mandatory gratuity and a voluntary gratuity, updating regulatory language to clarify previous guidance, and to provide guidance on the sourcing of forms.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to remove outdated regulatory language to clarify the previous guidance contained and to specify the types of property sold.

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

(d) How the amendment will assist in the effective administration of the statutes: The proposed amendment updates regulatory language to clarify information currently contained in the regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All restaurants, their customers, their employees, and their vendors that access the amended regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No actions are necessary to comply with the amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost to comply with the amended regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Anyone who accesses the amended regulation will benefit from the updated information contained therein.

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

(a) Initially: There is no expected cost to implement the proposed amendment. Current staff and budgeted funding will absorb the implementation of this administrative regulation.

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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current departmental staff and funding will be used to implement and enforce this proposed amendment.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are directly or indirectly established or increased by the proposed amendment.

(9) TIERING: Is tiering applied? Tiering is not applicable as the proposed amended regulation will be applied equally to all entities impacted by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Finance and Administration Cabinet, Department of Revenue.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 131.130 and KRS 131.131.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenues are expected to be generated by updating this administrative regulation.

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FINANCE AND ADMINISTRATION CABINET Department of Revenue (Amendment)

103 KAR 28:090. Tangible personal property; security instrument enforcement.

RELATES TO: KRS 139.010

STATUTORY AUTHORITY: KRS 131.130[(4)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations for the administration and enforcement of Kentucky tax laws. This administrative regulation interprets [To interpret] the sales and use tax law as it applies to sales of tangible personal property enforcing the provisions of a security instrument.

Section 1. The sales or use tax ~~shall~~ [does] not apply to sales of tangible personal property at public auction enforcing the provisions of a security instrument if the sale is made pursuant to a court decree by a court appointed official and if the property is bid in by the secured party.

Section 2. The sales or use tax ~~shall apply~~ [applies] to other sales of tangible personal property enforcing the provisions of a security instrument and to subsequent sales of tangible personal property by the secured party who bids in the property at public auction to the same extent as other sales.

DANIEL P. BORK, Commissioner

APPROVED BY AGENCY: September 12, 2019

FILED WITH LRC: September 13, 2019 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 21, 2019, at 10:00 a.m. in Room 9B, State Office Building, 501 High Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to

attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through November 30, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Lisa Swiger, Tax Policy Research Consultant II, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky 40601, phone (502) 564-9526, fax (502) 564-3875, email Lisa.Swiger@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lisa Swiger

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation interprets the sales and use tax law as it applies to sales of tangible personal property enforcing the provisions of a security instrument.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide up to date guidance on the tax treatment of tangible personal property sales as part of enforcement of a security instrument.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The proposed amendment updates regulatory language to conform with KRS 131.130 and KRS 131.131.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The changes made in this amendment will provide the most current and up to date guidance to taxpayers impacted by the provisions of this regulation.

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

(a) How the amendment will change this existing administrative regulation: The amendment will change this existing administrative regulation by updating the NECESSITY, FUNCTION, AND CONFORMITY section to include KRS 131.130(1) authorization language and clarifying other regulatory language currently contained in the guidance.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to remove outdated regulatory language to clarify the previous guidance contained.

(c) How the amendment conforms to the content of the authorizing statutes: The proposed amendment updates regulatory language to conform with KRS 131.130, KRS 131.131 and KRS 139.010.

(d) How the amendment will assist in the effective administration of the statutes: The proposed amendment updates regulatory language and clarifies information currently contained in the regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All individuals, businesses, organizations, that access the amended regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No actions are necessary to comply with the amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost to comply with the amended regulation.

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

entities identified in question (3): Anyone who accesses the amended regulation will benefit from the updated information contained therein.

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

(a) Initially: There is no expected cost to implement the proposed amendment. Current staff and budgeted funding will absorb the implementation of this administrative regulation.

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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current departmental staff and funding will be used to implement and enforce this proposed amendment.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are directly or indirectly established or increased by the proposed amendment.

(9) TIERING: Is tiering applied? Tiering is not applicable as the proposed amended regulation will be applied equally to all entities impacted by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Finance and Administration Cabinet, Department of Revenue.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 131.130 and KRS 131.131.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenues are expected to be generated by updating this administrative regulation.

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FINANCE AND ADMINISTRATION CABINET Department of Revenue (Amendment)

103 KAR 30:270. Oil and gas extraction machinery.

RELATES TO: KRS 139.010, 139.200, 139.260, 139.270, 139.280, 139.290, 139.310, 139.330, 139.470, 139.480

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 ~~tax laws~~. This administrative regulation establishes the sales and use tax requirements for transactions relating to the oil and gas extraction industry.

Section 1. ~~(1) Definitions~~[Definition]. "Contract driller" means a person performing a drilling service for the owner or operator of an oil or gas well under a contractual relationship for consideration.

~~(2) "Repair, replacement, or spare parts" is defined in KRS 139.010(34).~~

Section 2. Eligible Property for Exemption. The storage, use, or other consumption of tangible personal property for use in the extraction or production process for oil or natural gas which will be for sale shall be exempt from the sales and use tax according to the provisions of KRS 139.010, ~~139.470(9)~~[139.470(40)], and 103 KAR 30:120. (1) The extraction or production process for oil shall be considered as beginning with the erection of the drilling rig at the drilling location and shall be considered as terminating at the settling tank immediately prior to transportation. Oil tanks used for storage alone shall be subject to tax.

(2) The extraction or production process for natural gas shall be considered as beginning with the erection of the drilling rig at the location of the well and shall be considered as continuing until the gas leaves the outlet on the discharge side of the final gathering compressor station. The pipeline from the outlet to the transmission line shall be subject to tax.

(3) The list in this subsection shall serve as examples of machinery used in the extraction or production process:

- (a) Drilling rigs;
- (b) Casings;
- (c) Tubing;
- (d) Well head equipment;
- (e) Pumps;
- (f) Compressors;
- (g) Production and gathering pipe;
- (h) Cleaning equipment; and
- (i) Oil settling tanks.

(4) The list in this subsection shall serve as examples of other tangible personal property used in the extraction or production process:

- (a) Drilling bits;
- (b) Explosives;
- (c) Drilling muds;~~and~~
- (d) Chemicals;~~and~~
- ~~(e) Fracking fluids, including water and sand.~~

(5) Tangible personal property shall not be exempt from sales and use tax if it is used as "repair, replacement, or spare parts"[as defined in KRS 139.010(26)].

Section 3. ~~The~~ extraction or production process shall include the following operations:

(1) Drilling and equipping wells, to include:

(a) Drilling of the hole by the drilling rig to the producing formation;

- (b) Installing casing and tubing in the hole;
- (c) Stimulating production by explosives or other means;~~and~~
- ~~(d) Hydraulic fracturing or fracking; and~~
- ~~(e) Completion of the well by the installation of machinery and equipment; and~~

(2) Pumping, gathering, and cleaning.

(a) Pumping shall include the use of separate pumps on individual wells, group well pumps, and auxiliary pumps at other points on the gathering system. The machinery and appurtenant equipment used in secondary methods of recovery including gas repressuring or waterflooding shall be considered part of the extraction or production process.

(b) The gathering system shall consist of a series of pipelines connecting several different wells with settling tanks grouped together for production purposes. Compressors used to stimulate production and to continue in effect the processing production

operation shall be considered part of the gathering system.

(c) Cleaning operations shall occur in the final settling tank where impurities are removed from oil by chemical heating and settling processes. If a well produces both oil and gas, separator equipment shall be necessary at appropriate points in the gathering lines to separate the oil and gas. In addition, various types of machinery may be used at different points in the gathering system to clean oil or gas.

Section 4. Nonproduction Process. Preliminary work, transportation, and marketing shall not be considered part of the oil or gas extraction or production process.

(1) Preliminary work shall include:

- (a) Geological and geophysical work;
- (b) Leasing or purchasing operations;
- (c) Determination of drilling sites; and
- (d) Surface work preparatory to drilling.

(2) The transportation of oil shall be considered as commencing when the oil is pumped from the settling tank into transportation facilities, which may be truck, rail, or pipeline, or a combination thereof.

(3) The transportation of natural gas shall be considered as commencing at the point where the production or gathering system ceases, and it is delivered into pipelines for transportation to the retail distribution system.

(4) The marketing of natural gas shall be considered as commencing when the pressure in the transportation line is reduced and the gas is delivered into a low-pressure system for distribution to the ultimate retail consumer.

Section 5. Contract Drillers. (1) The exemptions provided in KRS ~~139.470(9)~~[139.470(40)] and 139.480(10) shall not apply to purchases made by a contract driller ~~since~~[as] a contract driller is providing a service and is the consumer of the machinery and materials used to provide the service.

~~(2) A contract driller may jointly execute a "Certificate of Exemption Machinery for New and Expanded Industry," Form 51A111, with an oil or gas well owner or operator to purchase machinery used to provide drilling services to the oil or gas well owner or operator only if the oil or gas well owner or operator is the actual title owner of the machinery used to provide the drilling services after the contract between the contract driller and the oil or gas well owner or operator has been completed.~~[A contractor may execute a "Certificate of Exemption Machinery for New and Expanded Industry," Form 51A111, which is incorporated by reference in 103 KAR 3:020, jointly with an oil or gas well owner or operator to purchase machinery only if the real or ultimate ownership of the machinery lies with the owner or operator].

Section 6. (1) This administrative regulation shall replace Revenue Circular 51C013.

(2) Revenue Circular 51C013 is hereby rescinded and shall be null, void and unenforceable.

Section 7. Forms. The form listed herein may be inspected, copied, or obtained, applicable to copyright law, at:

(1) The Kentucky Department of Revenue, 501 High Street, Frankfort, Kentucky 40601;

(2) A Kentucky Taxpayer Service Center, Monday through Friday, 8:00 a.m. to 4:30 p.m.; or

(3) The department Web site at <http://revenue.ky.gov>.

DANIEL P. BORK, Commissioner

APPROVED BY AGENCY: September 12, 2019

FILED WITH LRC: September 13, 2019 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 21, 2019, at 10:00 a.m. in Room 9B, State Office Building, 501 High Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to

the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written November 30, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Lisa Swiger, Tax Policy Research Consultant II, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky 40601, phone (502) 564-9526, fax (502) 564-3875, email Lisa.Swiger@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lisa Swiger

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the sales and use tax requirements for transactions relating to the oil and gas extraction industry.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide up to date guidance on the tax treatment of transactions made by and involving members of the oil and gas extraction industry.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The proposed amendment updates regulatory language to conform with KRS 131.130 and KRS 131.131.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The changes made in this amendment will provide the most current and up to date guidance to taxpayers impacted by the provisions of this administrative regulation.

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

(a) How the amendment will change this existing administrative regulation: The amendment will change this existing administrative regulation by adding a definitions section, adding tax treatment for property sold to aid in newer types of oil and gas extraction methods, adding a reference to the statutory definition of "repair, replacement, or spare parts" found in KRS 139.010(34), and updating statutory references.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to provide up to date guidance on the tax treatment of transactions made by and involving members of the oil and gas extraction industry.

(c) How the amendment conforms to the content of the authorizing statutes: The proposed amendment updates regulatory language to conform with KRS 131.130 and KRS 131.131.

(d) How the amendment will assist in the effective administration of the statutes: The changes made in this amendment will provide the most current and up to date guidance to taxpayers impacted by the provisions of this regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All individuals, businesses, and organizations involved in the oil and gas extraction industry as well as their vendors that access the amended regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No actions are necessary to comply with the amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost to comply with the amended regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Anyone who accesses the

amended regulation will benefit from the updated information contained therein.

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

(a) Initially: There is no expected cost to implement the proposed amendment. Current staff and budgeted funding will absorb the implementation of this administrative regulation.

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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current departmental staff and funding will be used to implement and enforce this proposed amendment.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are directly or indirectly established or increased by the proposed amendment.

(9) TIERING: Is tiering applied? Tiering is not applicable as the proposed amended regulation will be applied equally to all entities impacted by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Finance and Administration Cabinet, Department of Revenue.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 131.130 and KRS 131.131.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenues are expected to be generated by updating this administrative regulation.

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

KENTUCKY COMMUNITY AND TECHNICAL COLLEGE SYSTEM

Kentucky Board of Emergency Medical Services (Amendment)

202 KAR 7:020. Board organization.

RELATES TO: KRS Chapter 13A, 311A.015, 311A.020, 311A.145

STATUTORY AUTHORITY: KRS 311A.020, 311A.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311A.020 requires the board to establish procedures and

processes for committees and subcommittees. This administrative regulation establishes the organization and committee structure of the board.

Section 1. Appointment of Committee Members and Committee Chairpersons. (1) The chairpersons and members of a standing committee of the board, subcommittee of the board, and any task force shall be appointed by the board chairperson.

(2) A standing committee shall be comprised of seven (7) members excluding the EMS-C Advisory Committee which shall be established consistent with federal EMS-C guidelines.

(3)~~[(2)]~~ The executive director shall serve as an ex officio member to each standing committee. The chairperson may also appoint other KBEMS office staff members to serve as ex officio members to a standing committee.

(4)~~[(3)]~~ Standing committee members shall have a term that expires November 30~~[September 30]~~ of each calendar year. Reappointments for subsequent terms may be made by the chairperson of the board any time after November~~[September]~~ 1 and before November~~[September]~~ 30. All appointments shall be made by November~~[September]~~ 30.

(5)~~[(4)]~~ Only a standing committee or task force chairperson or vice-chairperson in the absence of the chairperson may bring reports or recommendations before the board for action. All reports to the board shall be submitted in written format.

(a) The Chairperson or vice-chairperson shall disclose to the board through written report any committee, subcommittee, or task force member who has resigned their position by virtue of missing three (3) or more meetings consistent with Section 2(10) of this administrative regulation.

(6)~~[(5)]~~ A task force shall be comprised of no more than five (5) members, excluding the chairperson.

(7)~~[(6)]~~ A task force may be created:

(a) At the request of the chairperson of a standing committee;

(b) At the request of the executive director; or

(c) At the discretion of the board chairperson.

(8)~~[(7)]~~ A task force shall cease to exist at the close of its work.

A member of a task force shall not serve for a period of more than one (1) year without reappointment. A task force shall serve at the pleasure of the board. The board chairperson may dissolve a task force at any time including prior to the completion of an assigned task, subject to a majority vote of board members.

(9)~~[(8)]~~ When a task force is created, the board chairperson shall give a specific written charge to the task force with guidelines, as appropriate. The board chairperson may establish a reporting deadline for the completion of the specific written charge.~~[(9) Only a task force chairperson, or vice-chairperson, in the absence of the chairperson, may bring reports or recommendations before the full board for official action.]~~

(10) Task Force members shall serve without compensation.

Section 2. Standing Committees of the Board. (1) Executive committee. The executive committee shall address legislative issues and proposals and review administrative regulations for submission to the board including:

(a) Recommending to the board promulgation of administrative regulations, amendment of administrative regulations, or repeal of administrative regulations relating to:

1. All levels of personnel licensed or certified by the board and ambulance services licensed or certified by the board;

2. Rules and operating procedures for the board and each of its standing committees, subcommittees, and task forces;

3. EMS Grant Program; and

4. EMS for Children Program;

(b) Serving as a resource for board staff:

1. In reviewing applications regarding requests for funding under programs administered by or overseen by the board;

2. With the development of funding programs or applications, including state and federal grants pertaining to EMS and monitoring and reviewing the grants once received by the board;

3. With creating and recommending to the board a biennial budget for the board prior to submission to appropriate state agencies;

4. With identifying, developing and recommending to the board sources of funding for its programs; and

5. In developing reimbursement programs and providing consult for emergency medical service providers.

(c) Making recommendations to the board regarding fees to be charged by the board.

(2) A majority of Executive Committee appointees shall be members of the board.

(3) The Vice-Chairperson of the board shall be the Ex-Officio Chairperson of the Executive Committee with full voting rights.

(4)~~[(2)]~~ Medical oversight committee. The medical oversight committee shall address issues pertaining to quality assurance, medical control, scope of practice, medical standards of curricula or other related issues as may be assigned by the board.

(5)~~[(3)]~~ EMS for children committee. The EMS for children committee shall assist the coordinator and executive director of the board in achieving the mission of the program.

(6) Data Management Committee. The data management committee shall be responsible for the following:

(a) The development of a statewide plan for data collection and compliance;

(b) Identification of information initiatives for EMS in Kentucky;

(c) Identification and research of funding sources tied to EMS data collection;

(d) Assistance to licensed services with questions or other needs associated with this administrative regulation, KRS Chapter 311A, and other issues associated with the board's statutory authority to require data collection and submission; and

(e) Matters identified by board members, the chairperson, or the executive director that involve data collection, data submission, or information use.

(7) Education Committee. The purpose and charge of the Education Committee shall be to:

(a) Assist the board in developing a strategic plan for EMS education in the Commonwealth of Kentucky;

(b) Act as a resource for EMS educators and EMS-TEIs in the Commonwealth; and

(c) Assume the lead role in formulating, drafting, and sending to the board for approval and subsequent promulgation of all administrative regulations that set the standards and requirements for EMS education in Kentucky.

(8) The membership of each standing committee shall include one (1) member of the board or more except as specifically notated in Section 1(2) of this administrative regulation.

(9) Standing Committees shall schedule on an annual basis at least six (6) regular meetings.

(10) Members of a standing committee, subcommittee, or task force who are absent for three (3) regular meetings in a term of one (1) year shall be deemed to have resigned from their appointed position and his or her position shall be deemed vacant.

Section 3. Agendas. (1) A person desiring a matter to be placed on the agenda for a regular board meeting shall, not less than twenty (20) working days prior to the board meeting, submit a written request to the executive director.

(2) The request shall contain the following information:

(a) The matter requested to be placed before the board;

(b) The action desired on the matter;

(c) Documentation in support of the request;

(d) The name, address, telephone number, and other contact methods as may be necessary to contact the person or organization submitting the request; and

(e) The name, address, telephone number, and other contact methods as may be necessary to contact each person requesting to speak on behalf of the request at the board meeting.

(3) Not less than seven (7)~~[fourteen (14)]~~ working days prior to the board meeting, the chairperson of the board shall set the agenda and cause its publication on the KBEMS website and in writing. ~~[Written copies of the agenda may be obtained from the executive director after it is public. The board may charge a reasonable fee for the provision of an agenda by mail, fax, or in hard copy. Following publication, the agenda shall be available for inspection at the office of the board.]~~

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(4) The submission of a request for a matter to be placed on the agenda at a regular board meeting shall not guarantee that the matter will be placed on the agenda, or the sequential order of a matter approved for the agenda on the agenda.

(5) The board shall adhere to the published agenda at a regular board meeting, unless the board takes action to amend the agenda.

(6) Every agenda for a regular or special meeting shall include an item to allow public comments. The chairperson may limit the time each person comments.

(7) Nothing in the section shall prohibit or constrain any board member from requesting that an item be added to the agenda of a regular meeting. Such a request may be made from the floor of the meeting. This provision shall not apply to special or emergency meetings.

Section 4. Quorum. (1) A simple majority [Ten (10) members] of sitting [the] board members shall constitute a quorum.

(2) A vacant position on the board shall not be counted toward the number of sitting members of the board.

(3) [(2)] A quorum shall be present in order for the board to take action, other than adjourn, or adjourn to a time certain.

(4) [(3)] The board shall transact business so long as it has convened with a quorum present. A quorum shall be presumed present until a question of "no quorum" is raised or the absence of a quorum is disclosed by vote of the members present.

(5) [(4)] A simple majority of appointed members shall constitute a quorum for standing committee, subcommittee, and task force [committee] meetings.

Section 5. Voting. (1) Voting shall be accomplished by one (1) of the following methods:

- (a) Voice vote;
- (b) A show of hands; or
- (c) A roll call vote.

(2) A roll call vote shall be conducted at the call of any member of the board [by motion, second and a simple majority vote of the members present].

(3) In order for the board to take action on the following matters, [a routine matter, other than those set forth in subsection (4) of this section, of this administrative regulation] a majority of board members present shall have agreed to the action:

- (a) Promulgate, amend, or repeal an administrative regulation;
- (b) Appoint, directly, or by personal service contract, the executive director, general counsel, or medical advisor;
- (c) Initiate a legal action on behalf of the board;
- (d) Adopt a budget or proposed budget for the board;
- (e) Authorize the expenditure of more than \$7,500, unless the amount is a routine budgeted expenditure;

(f) Take action on an item added to the agenda of the board at the same meeting at which the item is added to the agenda of the board; or

(g) Take an action at an emergency meeting of the board.

(4) In order for the board to take action on the following matters, two-thirds (2/3) of the [ten (10)] members of the board that are present shall have agreed to the action:

- (a) [Promulgate, amend, or repeal an administrative regulation;
- (b) Appoint, directly, or by personal service contract, the executive director, general counsel, or medical advisor;]
- (c) Discipline or negative action regarding statutory employees; or [(d) Initiate a legal action on behalf of the board;]
- (b) [(e)] Hire outside legal counsel to defend the board in a legal action against the board, a member of the board, or an employee of the board, or for other specified purpose. [(f) Adopt a budget or proposed budget for the board;

(g) Authorize the expenditure of more than \$5,000, unless the amount is a routine budgeted expenditure;

(h) Take action on an item added to the agenda of the board at the same meeting at which the item is added to the agenda of the board; or

(i) Take an action at an emergency meeting of the board.]

Section 6. Attendance of Board Staff and Employees at a

Board Meeting. (1) The following staff of the board shall attend each board meeting, unless excused in writing by the chairperson of the board or excused from the meeting by action of the board:

- (a) Executive director;
- (b) Deputy executive director;
- (c) General counsel; and
- (d) State medical advisor.

(2) An employee of the board, other than one (1) specified in subsection (1) of this section, shall attend a meeting of the board if requested to do so by a member [the chairperson] of the board or the executive director. Board member requests for an employee to attend shall be communicated through the executive director or the deputy executive director.

(3) An employee of the board, other than one specified in subsection (1) of this section, may attend a meeting of the board as part of their state duty time with the permission of the chairperson of the board or the executive director or deputy executive director.

Section 7. A person aggrieved by an action of a standing committee or task force may appeal to the board by serving written notice to the board within ten (10) working days prior to a regularly scheduled board meeting.

PHILIP DIETZ, Chairman

APPROVED BY AGENCY: September 6, 2019

FILED WITH LRC: September 9, 2019 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 26, at 1:00 p.m. Eastern Standard Time at the Kentucky Board of Emergency Medical Services, 118 James Court, Lexington, Kentucky 40505. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through November 30, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jeffrey S. Walther, Legal Counsel, Kentucky Board of Emergency Medical Services, Walther, Gay & Mack, PLC; 163 East Main Street, Suite 200, Lexington, Kentucky 40588, phone (859) 225-4714, fax (859) 225-1493, email administrativeregulations@wgmfirm.com.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jeffrey S. Walther

(1) Provide a brief summary of:

(a) What this administrative regulation does: 202 KAR 7:020 establishes the organization and committee structure of the Kentucky Board of Emergency Medical Services.

(b) The necessity of this administrative regulation: KRS 311A.020 requires the board to establish procedures and processes for committees and subcommittees. This administrative regulation establishes the organization and committee structure of the board.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 311A.020 by establishing procedures and processes for committees and subcommittees and establishing the organization and committee structure of the board.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 311A.020 requires the board to establish procedures and processes for committees and subcommittees. This administrative regulation will establish the organization and committee structure of the board.

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

(a) How the amendment will change this existing administrative regulation: This amendment enables the board to establish a quorum irrespective of the number of members. This amendment updates the committee structure and processes regarding voting and agendas to better serve the needs of the board and its ability efficiently and effectively fulfill its duties.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to enable the board to establish a quorum irrespective of the number of members. This amendment is necessary to update the committee structure and processes regarding voting and agendas to better serve the needs of the board and its ability to efficiently and effectively fulfill its duties.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of KRS 311A.020 by establishing procedures and processes for committees and subcommittees and establishing the organization and committee structure of the board.

(d) How the amendment will assist in the effective administration of the statutes: KRS 311A.020 requires the board to establish procedures and processes for committees and subcommittees. This administrative regulation will establish the organization and committee structure of the board.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky Board of Emergency Medical Services, its members, and staff will be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The Kentucky Board of Emergency Medical Services, its members, and staff shall organize and execute their duties consistent with this amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no cost to any entity identified in question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): All entities will benefit from the board's ability to establish a quorum irrespective of the number of members. All entities will benefit from updates to the committee structure and processes regarding voting and agendas, which will better serve the needs of the board and its ability efficiently and effectively fulfill its duties.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: There will be no cost to the administrative body to implement this administrative regulation.

(a) Initially: There will be no cost to the administrative body to implement this administrative regulation.

(b) On a continuing basis: There will be no cost to the administrative body to implement this administrative regulation.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: No funding source is necessary to implement and enforce this administrative regulation.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This regulation did not establish any fees.

(9) TIERING: Is tiering applied? Tiering is not applied to this administrative regulation because this amendment applies to the board's organization as a whole.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The administrative regulation will impact the organization and committee structure of the Kentucky Board of Emergency Medical Services.

(2) Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 311A.020 requires the board to establish procedures and processes for committees and subcommittees. This administrative regulation will establish the organization and committee structure of the board.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will generate no revenue for the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will generate no revenue for subsequent years.

(c) How much will it cost to administer this program for the first year? This administrative regulation will not impose any costs on state or local government.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation will not impose any costs on state or local government.

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

Revenues (+/-): This administrative regulation will not generate revenue.

Expenditures (+/-): This administrative regulation will not impose any costs.

Other Explanation:

**TOURISM, ARTS AND HERITAGE CABINET
Department of Travel Development
(Amendment)**

300 KAR 1:010. Procedure for Tourism[Regional] Marketing Incentive[and Matching Funds] Program.

RELATES TO: KRS 91A.350, 142.406, 148.522, 148.525, 273.161-273.405

STATUTORY AUTHORITY: KRS 148.525(2), (3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 148.525(2) provides that the Division of Tourism Services shall be responsible for the Tourism Marketing Incentive[state matching fund-tourism advertising] Program. KRS 148.525(3) authorizes the Commissioner of the Department of Tourism to promulgate administrative regulations to promote, develop, and support the tourism industry in Kentucky. This administrative regulation establishes uniform and consistent administration of the application, participation, and reimbursement requirements of the Tourism[Regional] Marketing Incentive[and Matching Funds] Program.

Section 1. Subject to the availability of~~Definitions. (1) "Familiarization trip" means a trip or tour given by a tourism professional to visit a site or location to inform a person about attractions, amenities, entertainment, natural areas, or other tourist destinations in an effort to educate the person who may then market the site or location through the person's own venues.~~

~~(2) "Local promotional project" means a promotional project that:~~

(a) Is not affiliated with a:

1. State agency;
2. Federal agency;

3. Nonprofit organization that receives funds from the Tourism Marketing Incentive Program shall provide financial and marketing assistance for projects which are in direct support of the promotion and marketing efforts of a tourism Department of Tourism or the Office of the Sports Authority for the purpose of sponsorship or advertising; or

4. Statewide project;

(b) Promotes to markets outside of the local area:

1. A specific local tourism event;
2. An attraction, event, or;
3. A geographic area.

Section 2. Definitions. (1) "County Assessment" means an assessment fee each county is assessed and is paid to the region in order to participate in the regional marketing efforts.

(a) County assessments are (2) Funding shall be distributed based on an average percentage derived from county population and tourism expenditures or factors determined by Regional Committee.

(b) Regional committees are required to match a percentage of funding through the program, and assessments are used for the match.

(c) A county's funding remains in the Tourism, Meeting and Convention Marketing Fund account when the county pays the assessment and does not request funding through the program.

(2) "Designated Marketing Organization" means the organization designated by a county's fiscal court such as Chamber of Commerce or Fiscal Court to receive Tourism Marketing Incentive funds when no Convention & Visitors Bureau or Tourism Commission exists in the county.

(3) "Number of rooms" means total number of rooms within a county or city that transient room tax is collected from an overnight stay at the property.

(4) "Program Year" means the Tourism Marketing Incentive;

(c) Shall be completed and documented in a matching funds program cycle; and

(d) Meets the eligibility requirements in this administrative regulation.

(3) "Matching funds program cycle" means the Regional Markets and Matching Funds Program Year[cycle] that:

- (a) Runs for a fiscal[calendar] year; and
- (b) Has one (1) application deadline of June[May] 1; and
- (c) Has two (2) final reimbursement deadlines:

1. February 1 for projects completed July through December;

and

2. August 1 for projects completed January through June.

(5)[(4)] "Regional promotional project"[] means a project that:

(a) Promotes tourism opportunities throughout one (1) of the nine (9) tourism regions designated by the Department of Tourism as a tourism region.[Section 2. Regional Marketing and Matching Funds Program Reimbursement Distribution. (1) The regional Marketing and Matching Funds Program shall provide financial and marketing assistance to promotional projects completed by tourism regions and local nonprofit organizations.]

Section 3. Tourism Region Committees. (1) To qualify for Tourism Marketing Incentive funds, a tourism region shall establish a tourism region committee.

(a) Each tourist and convention commission established pursuant to KRS 91A.350 in a tourism region shall appoint a person to serve on the tourism region committee.

(b) If a tourism and convention commission has not been established pursuant to KRS 91A.350 by the local governing bodies of a county, or cities within a county, in a tourism region, the county judge executive of each county shall appoint a person to serve on the tourism region committee.

(c) Counties with multiple tourism commissions are able to have a representative from each tourism commission on the committee.

(2) A member of the tourism region committee:

(a) Shall serve a two (2) year term; and

(b) May be reappointed for successive two (2) year terms.

(3) A tourism region committee shall be incorporated as a nonprofit, nonstock corporation, pursuant to KRS 273.161 through 273.405.

(4) A tourism region committee shall:

(a) Elect a chairperson, vice chairperson, secretary, and treasurer; and

(b) Establish bylaws that shall include:

1. Purpose, mission, and limitations of committee;

2. Composition and duties of the board of directors and officers;

3. Procedures for election, removal of directors and officers, and filling of vacancies;

4. When meetings shall be held;

5. Quorum and voting requirements;

6. Financial and contractual procedures;

7. Preparation of annual budget and financial report; and

8. Procedure for amendment of bylaws.[to calculate county allotments.

(3) Convention and visitors' bureaus, tourism commissions, and designated marketing organizations shall be eligible to receive up to seventy (70) percent of a county allotment.

(4) Applicants other than convention and visitor bureaus, tourism commissions, and designated marketing organizations shall be eligible to receive up to thirty (30) percent of a county allotment.

(5) Percentage of eligible costs reimbursement.

(a) 100 percent of the costs of an eligible promotional project shall be available to a tourism region;

(b) Eighty (80) percent of the costs of an eligible promotional project shall be available to a convention and visitors' bureau, a tourism commission, or a designated marketing organization; and

(c) Fifty (50) percent of the costs of an eligible promotional project shall be available to eligible applicants not specified in paragraph (a) and (b) of this subsection.]

Section 4.[3.] Tourism Regions. Nine (9) tourism regions, as specified on the Tourism Regions Map, are established, as follows:

(1) Tourism Region 1, Western Lakes and Rivers, shall consist of the following counties:

- (a) Ballard;
- (b) Caldwell;
- (c) Calloway;
- (d) Carlisle;
- (e) Christian;
- (f) Crittenden;
- (g) Fulton;
- (h) Graves;
- (i) Hickman;
- (j) Livingston;
- (k) Lyon;
- (l) Marshall;
- (m) McCracken;
- (n) Todd; and
- (o) Trigg.

(2) Tourism Region 2, Green River, shall consist of the following counties:

- (a) Daviess;
- (b) Hancock;
- (c) Henderson;
- (d) Hopkins;
- (e) McLean;
- (f) Muhlenberg;
- (g) Ohio;
- (h) Union; and
- (i) Webster.

(3) Tourism Region 3, Cave, shall consist of the following counties:

- (a) Allen;
- (b) Barren;
- (c) Butler;
- (d) Edmonson;

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- (e) Hart;
 - (f) Logan;
 - (g) Metcalfe;
 - (h) Monroe;
 - (i) Simpson; and
 - (j) Warren.
- (4) Tourism Region 4, Louisville-Lincoln, shall consist of the following counties:
- (a) Breckinridge;
 - (b) Bullitt;
 - (c) Grayson;
 - (d) Hardin;
 - (e) Henry;
 - (f) Jefferson;
 - (g) Larue;
 - (h) Marion;
 - (i) Meade;
 - (j) Nelson;
 - (k) Oldham;
 - (l) Shelby;
 - (m) Spencer;
 - (n) Trimble; and
 - (o) Washington.
- (5) Tourism Region 5, Southern Kentucky Lakes and Rivers, shall consist of the following counties:
- (a) Adair;
 - (b) Casey;
 - (c) Clinton;
 - (d) Cumberland;
 - (e) Green;
 - (f) McCreary;
 - (g) Pulaski;
 - (h) Russell;
 - (i) Taylor; and
 - (j) Wayne.
- (6) Tourism Region 6, Northern Kentucky, shall consist of the following counties:
- (a) Boone;
 - (b) Bracken;
 - (c) Campbell;
 - (d) Carroll;
 - (e) Fleming;
 - (f) Gallatin;
 - (g) Grant;
 - (h) Kenton;
 - (i) Lewis;
 - (j) Mason;
 - (k) Owen;
 - (l) Pendleton; and
 - (m) Robertson.
- (7) Tourism Region 7, Bluegrass, shall consist of the following counties:
- (a) Anderson;
 - (b) Bourbon;
 - (c) Boyle;
 - (d) Clark;
 - (e) Fayette;
 - (f) Franklin;
 - (g) Garrard;
 - (h) Harrison;
 - (i) Jessamine;
 - (j) Lincoln;
 - (k) Madison;
 - (l) Mercer;
 - (m) Nicholas;
 - (n) Scott; and
 - (o) Woodford.
- (8) Tourism Region 8, Eastern Highlands-North, shall consist of the following counties:
- (a) Bath;
 - (b) Boyd;
 - (c) Carter;
 - (d) Elliott;

- (e) Floyd;
 - (f) Greenup;
 - (g) Johnson;
 - (h) Lawrence;
 - (i) Magoffin;
 - (j) Martin;
 - (k) Menifee;
 - (l) Montgomery;
 - (m) Morgan;
 - (n) Pike; and
 - (o) Rowan.
- (9) Tourism Region 9, Eastern Highlands-South, shall consist of the following counties:
- (a) Bell;
 - (b) Breathitt;
 - (c) Clay;
 - (d) Estill;
 - (e) Harlan;
 - (f) Jackson;
 - (g) Knott;
 - (h) Knox;
 - (i) Laurel;
 - (j) Lee;
 - (k) Leslie;
 - (l) Letcher;
 - (m) Owsley;
 - (n) Perry;
 - (o) Powell;
 - (p) Rockcastle;
 - (q) Whitley; and
 - (r) Wolfe.

Section 5.[4.] Tourism Marketing Incentive Program Application and Applicants.

(1) An application may be submitted by an organization that is a tourism region, a convention and visitors' bureau, a tourism commission, or a designated marketing organization that is a nonprofit 501C(3) or 501C(6) tourism entity prior to June 1 for eligible:

(a) Projects that are listed and will be completed during the program year;

(b) Expenses totaling at least \$1,000 for a project, or several projects;

(c) Promotion projects in markets outside local area;

(d) Meet the eligibility requirements of this administrative regulation; and

(e) Complete and submit the Affidavit for Bidders, Offerors and Contractors.

(2) An applicant shall submit proof of nonprofit status with the application.

(3) A local tourism commission[Region Committees. (1) To qualify for state tourism matching funds, a tourism region shall establish a tourism region committee.

(2)(a) Each tourist and convention commission established pursuant to KRS 91A.350 in a tourism region] shall submit a copy of the ordinance establishing the commission; and one (1) of the following:

(a) Federal or State determination of tax exempt status; or

(b) A copy of the organization's W9; or

(c) A letter from fiscal court stating applying organization is part of city or county government and fiscal courts Federal ID number.

(3) New Tourist Commission established:

(a) Will not be eligible for funding for two (2) years;

(b) Must have at least a part time paid director;

(c) Must have a source of funding; and

(d) Must have established budget and marketing plan.

(4) Applicant shall not be affiliated with:

(a) A state agency;

(b) A state agency nonprofit affiliates;

(c) A federal agency;

(d) An organization that receives funds from other state agencies for the purpose of sponsorship or advertising;

(e) An organization that receives line item funding through the

Executive Budget:

- (f) A statewide organization; or
- (g) An organization that receives state or federal grants in order to match the Tourism Marketing Incentives funds.
- (5) Applicant must be a Kentucky based organization.

Section 6. Approval of Applications. (1) The state program manager shall review each application and determine the applicant's eligibility for reimbursement in accordance with applicable Kentucky Revised Statutes and this administrative regulation;

(2) The state program manager or assistant program manager shall hold allocation meetings in each of the nine (9) tourism regions with the tourism region committee for the region to:

- (a) Discuss the tourism marketing incentive program;
- (b) Review and establish priorities for the region;
- (c) Vote and approve the distribution of funds to organizations within the region; and
- (d) Review and discuss the tourism region application if submitted.
- (e) The state program manager shall base the allocation determination on:

- 1. A formula derived from county economic impact figures and number of rooms within the county; and
- 2. The availability of funds.

(f) The state program manager shall mail each applicant:

- 1. "Project Agreement" form stating the amount of the state funds allocation for the program year; or
- 2. Letter stating why an applicant's projects have been denied funding; and
- 3. Copy of the application submitted by each applicant, indicating approved and disapproved projects; and
- (g) An applicant shall sign and return the Project Agreement form to the state program manager by the dates mandated in Section 1 of this regulation.

Section 7. Reimbursement Percentages and Requirements. (1) Convention and visitor bureaus, tourism commissions, and designated marketing organizations shall be eligible to receive funding.

(2) Multiple tourism commissions within a county and distribution of funds:

(a) After the county allocation has been determined, a formula calculating the number of rooms located within their city will be used to determine individual tourist commission funding.

(b) If there is less than twenty-five (25) percent of rooms within a city the tourism commission will automatically be eligible for twenty-five (25) percent of the allotment.

(3) Reimbursement Percentage of eligible cost for Kentucky Department of Tourism cooperative opportunities:

(a) Up to ninety (90) percent of the costs of an eligible co-op project may be available;

(b) Up to seventy-five (75) percent of the cost with participation with selected vendor outside of co-ops.

(4) Reimbursement percentage of eligible cost for promotional projects other than cooperative opportunities:

(a) Up to eighty (80) percent costs for promotional projects may be available to a tourism region;

(b) Up to fifty (50) percent of the costs of an eligible promotional project may be available to all applicants not specified in paragraph (a) of this subsection.

(5) Convention sponsorship/bid fee that guarantees room nights within the state may be reimbursed up to eighty (80) percent of the cost.

(6) New event that has been brought to the state through a sponsorship/bid fee may be reimbursed up to seventy (70) percent of the cost. Reoccurring events may be reimbursed up to fifty (50) percent of the cost.

(7) Applicants shall be eligible for reimbursement for expenditures that do not exceed the amount allocated by the tourism marketing incentive program.

(8) Requests for reimbursement shall not be made until:

- (a) At least \$1,000 has been expended; or

1. Applicants original estimated expenses fall under the \$1,000 within a program year can be submitted to utilize an applicant's allotment; or

2. Applicant has submitted reimbursements through program year and remaining amount available was under \$1,000.

(b) Projects were included on the application or amendments had prior approval from program manager;

(c) Projects were compliant with the eligibility and reimbursement requirements; and

(d) Projects have been completed.

(9) A request for reimbursement shall be made on the Reimbursement Request form which shall:

(a) Be submitted to the state program manager by February 1 or August 1;

Applicants are able to submit multiple reimbursement requests for completed projects but must submit by the final reimbursement deadlines of February 1 or August 1;

(b) Be signed; and

(c) State the federal identification number of the organization.

(10) Checks submitted as documentation shall be issued by the organization that applied for tourism marketing incentive funds.

(11) The following information shall be attached to the Reimbursement Request form:

(a) A copy of each vendor's invoice;

(b) A copy of the front and back of each canceled check;

(c) Proof of payment of all expenditures;

(d) For tourism region projects:

1. Proof of payment of twenty (20) percent of expenditure;

2. Proof of payment of the remaining eighty (80) percent of expenditures shall be submitted after receipt of tourism marketing incentives funds; and

3. Completion of Regional Ad Sale form, if ads were sold in the region visitor's guide.

(e) Four (4) completed brochures;

(f) Four publications or videos, a copy of invoices, with a breakdown of layout and design costs, the number of copies printed, and other related expenses;

(g) If printing costs exceed \$1,000, a copy of three (3) written bids;

(h) One (1) duplicate of a completed video, CD, or DVD;

(i) One (1) original tear sheet of advertisements as they appeared in the print media including date of issue;

(j) One (1) typed transcript or a tape of a radio, television, or videotape, CD, or DVD travelogue advertisement;

(k) A copy of a press kit;

(l) Documentation of the distance of media from the event, attraction, or area promoted;

(m) One (1) photograph of a completed billboard and signage rentals;

(n) Documentation of the location and dates of service for billboard and signage rentals;

(o) Documentation of location, distribution routes, and dates for distribution services;

(p) Documentation of postage expenses, including postage invoices or paid receipts, list of names, addresses, and material mailed (for regional committees only);

(q) Verification of attendance at consumer travel shows or group tour marketplaces, including signed agreements or contracts; and

(r) Verification of regional travel show or group tour marketplace per diem, including a completed and signed Tourism Region Per Diem reimbursement form. [appoint a person to serve on the tourism region committee.

(b) If a tourism and convention commission has not been established pursuant to KRS 91A.350 by the local governing bodies of a county, or cities within a county, in a tourism region, the county judge executive of each county shall appoint a person to serve on the tourism region committee. (3) A member of the tourism region committee:

(a) Shall serve a two (2) year term; and

(b) May be reappointed for successive two (2) year terms.

(4) A tourism region committee shall be incorporated as a nonprofit, nonstock corporation, pursuant to KRS 273.161 through

273.405.

(5) A tourism region committee shall:

- (a) Elect a chairperson, vice chairperson, secretary, and treasurer; and
- (b) Establish bylaws that shall include:
 - 1. Purpose, mission, and limitations of committee;
 - 2. Composition and duties of the board of directors and officers;
 - 3. Procedures for election, removal of directors and officers, and filling of vacancies;
 - 4. When meetings shall be held;
 - 5. Quorum and voting requirements;
 - 6. Financial and contractual procedures;
 - 7. Preparation of annual budget and financial report; and
 - 8. Procedure for amendment of bylaws.]

Section 8.[5.] Types of Promotional Projects. (1) The types of [local or tourism region] promotional projects eligible for funding shall be:

- (a) Tourism publications, CDs, DVDs, and videos;
 - (b) Media advertisements and press kits;
 - (c) Billboards and signage;
 - (d) Brochure distribution services;
 - (e) Postage and freight expenses[;] (only available to regional committee);
 - (f) Meeting and convention advertising[(f) Consumer travel show] expenses;
 - (g) Group tour marketplace, meeting and conventions, and consumer travel show expenses;
 - (h) Sponsorship/Bid fee of tourism trade shows, conventions, sporting events and other events;
 - (i) Web site design; and
 - (j) Research studies and analysis.
- (2) Other projects not listed above may be considered on a case by case basis if they are consistent with the purpose of the Tourism Marketing Incentive Program. [expenses;
- (h) Meeting, convention, and sports marketing trade show and exposition expenses;
 - (i) Familiarize trips and site visits;
 - (j) Sponsorship of tourism trade show and events;
 - (k) Bid fees to assist in bringing events to Kentucky; and
 - (l) Internet hosting, design, and maintenance expenses.
- (2)(a) Promotional projects shall meet the requirements established in specified by Section 6 of this administrative regulation.

(b) Brochures, videos, CDs, DVDs, tourism region media, advertisements and press kits shall not be eligible for reimbursement unless they have been reviewed and approved by the state matching funds program manager prior to submission of a Reimbursement Request form for expenditures relating to these items.]

Section 9.[6.] Requirements for Tourism Publications, CDs, DVDs, Video[and Types of Promotional] Projects,[and] Allowable Costs and Bid Requirements. (1)[Tourism publications, videos, CDs, and DVDs and meeting, convention, and sports marketing tools:

(a) Types of travel related brochures, CDs, DVDs, and videos that highlight the attractions, facilities, meeting and convention, sports-marketing capabilities,[sporting venues,] and special events[of the tourism region or local area and] that encourage travelers to stop and visit, shall be eligible for reimbursement and include:

- (a)[1. Tourism region and local area] Visitor's guides;
- (b)[2.] General festival brochures;
- (c)[3.] Group tour publications;
- (d) Sports Publications;
- (e) Meeting/Convention publications; and
- (f)[4.] Brochures, videos, CDs, and DVDs promoting tourist attractions open to the public for regular hours.

(2)[(b)] Costs that exceed the advertising revenue shall be eligible for reimbursement if the expenditures were for brochures or other publications. [(c) A brochure that lists another state's

attraction, business, or facilities shall be eligible for forty (40) percent or twenty-five (25) percent depending on reimbursement of costs depending on the applicant's eligibility for a fifty (50) or eighty (80) percent reimbursement of costs as established in Section 2(5) of this administrative regulation.]

(3)[(d)] Brochures, other publications, and videos shall include: [the following information, as applicable:]

(a) Four (4) color cover; if applicable, and a distribution plan is required to receive reimbursement for print items. See Section 7 for distribution sources.[1. A description of points of interest, recreational opportunities, and listing of services, including food, lodging, and camping facilities;

2. Landmarks that relate to the history or tradition of the area, or of architectural interest, such as buildings listed on the state or national register;

3. Attractions open to the public, such as theaters and museums, including the:

- a. Date and time that they are open to the public;
- b. Admission fee, if applicable;
- c. Attraction location;
- d. Mailing address;
- e. Telephone number; and
- f. Web site address, if applicable;

4. Information relating to recreational activities and attractions, such as fishing, water sports, and hiking, and required fees;

5. A list of tourism region or tourism-related local area events;

6. The telephone number and Web site address of the state travel information office; and

7. Current maps of the tourism region, with major highways and access routes into the area clearly marked, and a chart listing mileage from major cities outside the immediate local area or tourism region.

(e) If possible, the title of a brochure shall be placed at the top of the publication for placement in a brochure rack.

(f) A brochure shall be professionally typeset.

(g) If feasible, to save costs, brochures shall:

- 1. Consist of the lightest possible paper weight and cover stock, and the least number of pages possible;
- 2. Be manufactured from recycled paper; and
- 3. Be designed as self-mailers.]

(b)[(h)] The front or back cover of a brochure shall include the Kentucky state official tourism brand, according to the Graphics Standards, which shall be obtained from the Kentucky Department of Tourism.[advertising theme, which shall be obtained from the state matching funds program manager.

(c)[(i)] A tag line stating: "Paid in Part by [Printed in cooperation with] the Kentucky Department of Tourism" shall be included in a brochure. [(j)] A tourism region brochure shall:

- 1. Include a four (4) color brochure cover;
- 2. The telephone number and or Web site address of the state tourism information office;
- 3. Include a map of the tourism region that shall be:
 - a. Prominently placed in the brochure;
 - b. Of at least eight (8) point font size, in order to be of sufficient size to be easily read;
 - c. Of sufficient detail to show major traffic arteries, primary cities and towns, lakes and other natural attractions, and shall be and keyed to the major attractions addressed in the brochure; and
 - 4. Emphasize the tourism region as a whole and shall not favor a particular area of the region.]

(d)[(k)] An advertisement may be sold to a business and included in a tourism region brochure to supplement the cost of a tourism region brochure if the:

1.] ratio of advertising to editorial space does not exceed 2:3;

(e) Printing or publications requires:[2. Advertiser provides a tourism-oriented service directly to travelers; or

3. Theme and content of advertisements promote tourism in the region.

(f) Distribution plan and services. A distribution plan for the distribution of brochures to potential tourists shall be developed with the following distribution sources:

- 1. Tourist commissions;
- 2. State and local welcome centers;

3. State Tourism Department;
4. Consumer travel shows; and
5. similar distribution sources.

(m) A distribution plan shall include a method for responding to inquiries resulting from state, tourism region and local area tourism advertising campaigns.

(n) 1. If the total printing cost of a publication, excluding layout and design expenses, exceeds \$1,000, three (3) written bids shall be obtained.

2. Bids shall not be required for reprints made with only minor changes.

3. (e) A publication, video, CD, or DVD shall be submitted to [the state matching funds] program manager for review and approval, prior to completion.

(f) (p) The Department of Tourism reserves the right to deny reimbursement for any brochure submitted that does not follow guidelines or questions regarding layout, design, or necessity will be reviewed by the Department of Tourism for final approval or denial.

(g) Only one (1) visitors guide per county is eligible unless there are multiple convention and visitors bureau offices within the county. If so, one (1) guide per office is eligible. If more than one (1) attraction/festival brochure is requested for reimbursement applicant shall give an explanation as to why individual brochures are needed.

Section 10. Distribution Plan and Services. (1) Funds available for brochure distribution expenses. A distribution plan shall be developed for the distribution of brochures to potential tourists with the following distribution sources:

- (a) Tourist Commissions;
- (b) State and local welcome centers;
- (c) State Travel Department;
- (d) Consumer travel shows;
- (e) Meeting planning expos;
- (f) Marketplaces; and
- (g) Brochure distribution rack services.

Section 11. [state matching funds program manager shall review submissions within five (5) business days after receipt.

(2) Media] Advertisements and [tourism region] Press Kits.

(1) A [(a) A media] tourism advertisement may be placed:

- (a) [1-] In a newspaper, magazine, or other periodical;
- (b) [2-] On the radio or television;
- (c) [3-] On video tape, CD, or DVD travelogue;
- (d) [or
- 4-] On electronic media such as the Internet;
- (e) Sports media; or
- (f) Meeting/convention media outlets.

(2) Tourism advertisement shall include the official state advertising brand according to the Graphic Standards, unless the advertisement is in conjunction with a Department of Tourism co-op. (b) A media tourism advertisement shall include:

1. An address, telephone number, or Web site address to be contacted for more information;
2. The official state advertising theme; and
3. General information about the tourism region in addition to specific information relating to an event, attraction, or geographic area promoted in the advertisement.

(c) Media costs.]

(3) [4-] Costs for tourism [media] advertisements, including media time, production costs, and [media] placement, shall be eligible for reimbursement.

(4) Major media markets and reimbursement percentages:

(a) Advertisement costs will qualify if they are [2- Except as provided by this subsection, advertising placed with media located within a fifty (50) mile radius shall not be eligible for reimbursement.

3. All media advertisement costs placed in a tourist-oriented publication shall be eligible for reimbursement.

4. Percentage of reimbursement for media costs shall be:

a. Forty (40) percent of media costs for advertising placed with media] located within a fifty (50) mile radius of a major media

market. The [shall be eligible for] reimbursement may be up to twenty-five (25) percent of media costs.

(b) Except as provided by this subsection, [to convention and visitors' bureaus, tourism com-missions, or designated marketing organizations; and

b. Twenty-five (25) percent of media costs for] advertising costs [placed] with media located within a fifty (50) mile radius shall not be eligible for reimbursement.

(c) [to organizations if the:

(i) Organization is located within a fifty (50) mile radius of a major media market listed in paragraph (d) of this subsection; and

(ii) Media cost is not a type listed as excluded in paragraph (e) of this subsection.

(d) Major media markets shall be:

1. Cincinnati, Ohio;
2. Evansville, Indiana;
3. Huntington, West Virginia;
4. Louisville, Kentucky;
5. Lexington, Kentucky;
6. Paducah, Kentucky; and
7. Bowling Green, Kentucky.

(d) [(e) Media] Advertisement costs shall not be eligible for reimbursement if they are incurred for advertisements that are:

1. Sponsored] sponsored or advertised by tourism organizations in tourism region brochures that have been allocated state Tourism Marketing Incentive Program [matching] funds[:] or [2-] funded through other cooperative advertising programs of the Kentucky Department of Tourism.

(e) [(f)] Costs associated with media press kits and media relations programs shall be reimbursable.

Section 12. Billboards and Signage. (1) [(3) Brochure distribution services. Rental of rack space for the distribution of eligible promotional materials shall be eligible for reimbursement.

(4) Postage and freight costs for bulk mail, United Parcel Service, mailing firm, and actual postage costs excluding stamps and postage meters shall be eligible for reimbursement if they are incurred in:

(a) Response to general tourist requests or media or group tour operator inquiries;

(b) Shipping tourism promotional literature and displays for use at consumer travel shows and group tour marketplaces; or

(c) Conventions, meetings, or sports marketing expenses.

(5) Rental of a billboard, tourist-oriented directional signage (TODS), fifth legends or attraction logos, including related artwork, design, and production costs shall be eligible for reimbursement if it:

(a) Promotes specific attractions, events, availability of food, lodging, camping or other services;

(b) Is placed on interstates or other major access highways outside a twenty (20) mile radius; [or] and

(c) Does not consist solely of language welcoming a visitor to a community or region.

(2) A photo of the billboard must be submitted with reimbursement request.

(3) The Department of Tourism brand must be included on billboards.

(4) Cost associated with construction of any permanent signage structure is not reimbursable.

(5) Only new signs shall be eligible for reimbursement; previously signs existing or maintenance of signs are not reimbursed.

Section 13. Postage and Freight. (1) Only region committees can be reimbursed for postage, freight, and mailing firm fees incurred in:

(a) Response to tourist requests, media or group tour operator inquiries; and

(b) Shipping tourism literature and displays for use at [(6) (a)] consumer travel shows, [show:] group tour marketplaces, or sports-marketing expenses.

Section 14. (1) Consumer travel show; group tour

marketplaces, meeting/convention trade show, sports marketing, or exposition expenses shall qualify that:

~~(a)[; meeting, convention, or sports-marketing trade show or exposition costs;:~~

~~4.-] Promote an attraction, event, or geographic area;~~

~~(b)[2.-] Are not a county fair or festival;~~

~~(c)[3.-] Are not expended for booth space costs at industrial solicitation events;~~

~~(d)[4.-] Are not registration expenses to attend a conference or meeting.~~

~~(e)[expended for consumer travel shows and group tour marketplaces located more than forty (40) miles from the event, attraction, or geographical area promoted;~~

~~5.-] Are expended for the purchase and maintenance of exhibits such as display assembly, artwork, transparencies, photographs, brochure racks, consumer travel show, or group tour marketplace booth space, or furniture rental; and~~

~~(f)[6.-] Are[registration fees to interview prospective tour operators;~~

~~7. Are for shipping costs of displays and promotional material; or~~

~~8. Are] rental fees for[audiovisual] equipment and material.~~

~~(2)[(b)] A tourism region [group] shall be eligible for reimbursement of membership dues for major tourism associations, if membership is required to participate in advertising or promotional ventures.~~

~~(3)[(c)1.-] A tourism region [group] shall be eligible for a seventy (70) dollar per diem, for a maximum of two (2) persons who serve as staff for tourism region travel booths at a consumer travel show or group tour marketplace if:~~

~~(a)[a.-] Booths are staffed continuously during event hours; and~~

~~(b)[b.-] The header, transparencies, photos, and regional[region] or local tourism brochures are representative of the tourism region or local areas within the tourism region.[2.- The per diem shall be paid to the tourism region committee.]~~

~~(c)[(e)] Transportation costs related to a tourism region's attendance at a consumer travel show or group tour marketplace shall not be eligible for reimbursement.~~

Section 15. Web site. (1) Region committees are eligible to claim design, hosting, and maintenance of a regional tourism website.

(2) Applicants are eligible to claim design of tourism related websites for reimbursement.

(3) Current state tourism branding with a link to the Department of Tourism Web site and regional website are required on applicants home page.

(4) A Web site that contains paid advertisements shall not[(7) Familiarize trips and site visits.

(a) Familiarization visits for planners and media staff shall be eligible for tourism matching funds if the efforts are based on future business to Kentucky.

(b) Event planners include the following:

1. Meeting planners;

2. Group travel planners;

3. Reunion planners;

4. Sports planners or rights holders; and

5. Media staff.

(c) Reimbursement shall be based on cash expenditures and not in-kind amenities.

(d) Airline fees and mileage costs up to \$300, based on the state's current vehicle mileage rate per person (excluding any additional guests), shall] be eligible for reimbursement with the exception of regional committees.

Section 16. Sponsorship/Bid Fees[(8) Sponsorship] of Tourism Trade Shows, Conventions, and Other[and] Events. (1)[(a)] Sponsorship of tourism trade shows, conferences, and events are eligible for reimbursement if:

(a) The sponsorship opportunity may create an economic impact for the state;[.]

(b) The sponsorship is for overall convention[opportunities include the following:

1. Meal functions;

2. Tangibles such as name badges, lanyards, and registration bags;

3. Education sessions and materials; and

4. Overall conference] partner or[sponsor of] a total event sponsor;

(c) The event is brought to the county/state by way of sponsorship/bid fee; or

(d) If the sponsorship is for a meal function or educational sessions at a trade show or convention.

(2)[(c) Reimbursement shall be for cash] Expenditures [and]not covered include:

(a) In-kind[In-kind] amenities;

(b)[(d)1.-] Expenses for hospitality events that include alcohol;

(c)[or a sponsorship package shall not be eligible for reimbursement.

2.] Gratuities, service charges, and tips;

(d) Tourism industry events such as:

1. Kentucky Tourism Council; and

2. Kentucky Association of Convention & Visitor Bureaus;

(e) In-state or local events and conferences;

(f) Kentucky Association meetings and conferences.

(3) Convention sponsorship/bid fee reimbursement percentages:

(a) A sponsorship/bid fee that guarantees room nights within[shall not be eligible for reimbursements.

(9) Bid fees to assist in bringing events to Kentucky.

(a) Fees involved in securing and attracting events in an effort to attract sports events or conventions and meetings to] the state may be reimbursed up to eighty (80) percent of costs.

(4) Event sponsorship/bid fee reimbursement percentages:

(a) New event or sporting event that is brought to the state through a sponsorship or bid fee may be reimbursed up to seventy (70) percent of the cost; and

(b) Reoccurring events brought to the state through a sponsorship or bid fee may be reimbursed up to fifty (50) percent of the cost.

Section 17. Research. (1) Tourism Marketing Incentive funds may be used for research and analysis. Any such use of funds for these purposes must have a clear relationship to planning and executing tourism marketing and promotion. Economic impact research and research related to future capital projects are not allowable. Research funded under the provision must be approved in advance and outside firms, organizations or individuals to be engaged in such activities must meet the following minimum criteria:

(a) In operation at least two (2) years, if a firm or organization; if an individual, at least five (5) years of relevant experience;

(b) At least three (3) references; and

(c) Demonstrate expertise in the type of services to be rendered.

Section 18. Ineligible Project and Expenses.[shall be eligible for reimbursement:

(b) To be eligible for reimbursement, the event shall have at least a five (5) year history in other locations. Events previously held in Kentucky are eligible if proof is provided that the event has been or will be secured through a competitive bid process.

(c) An applicant shall include a letter of award of event if submitting a Reimbursement Request when submitting reimbursement.

(10) Internet and Web site.

(a) Costs associated with the design, hosting, and maintenance of tourism related Web sites shall be are eligible for reimbursement if the current state tourism brand and logo with a link to the Department of Tourism's Web site and regional Web site are on the applicant's home page.

(b) A Web site that contains paid advertisements shall not be eligible for reimbursement.

(c) If applicable, a Web site shall include the following information:

1. A description of points of interest, recreational opportunities,

and services, including:

- a. Food;
- b. Lodging; and
- c. Camping facilities;
- 2. Landmark features related to the area's history or tradition or landmark features that are of architectural interest;
- 3. Attractions open to the public such as theaters and museums, including the:
 - a. Time and date the attraction is open to the public;
 - b. Admission fee;
 - c. Attraction's address, telephone number, and Web site address;
- 4. Recreational activities and applicable license information for attractions such as:
 - a. Fishing;
 - b. Water Sports;
 - c. Hiking; and
 - d. Golfing;
- 5. A Listing of area or regional tourism-related events; and
- 6. Current area maps with major highways and access routes into the area clearly marked as well as mileage from other cities.

(14)(1) The following items shall not be eligible for reimbursement:

- (a) Industrial incentive brochures;
- (b) General community relocation and development brochures;
- (c) City/county[City or county, or city-county] maps or directories that list businesses and services;
- (d)[Items related to theatrical productions, such as]Programs;
- (e)[.] Playbills;
- (f)[, or] Posters;
- (g)[(e)] Table tents;
- (h)[(f)] Material related to] Membership and subscription solicitation;
- (i)[(g)] Registration and entry forms;
- (j)[(h)] Event and contest category or regulation material;
- (k) Quick print materials such as flyers, handbills, and circulars;
- (l) Entertainment expenses;
- (m)[(i)] Entertainment expenses;
- (j) Excluding group tour marketplaces, registration expenses for conferences and meetings;
- (k) Research projects such as marketing or feasibility studies;
- (h) Unless requested in advance by a tourism region, expenses for[, bumper stickers, posters,] banners, flags, postcards, lapel pins, or bags[, or other types of specialty advertising;]
- (n)[(m)] Prizes, trophies, plaques, decorations, paint supplies, and poster board;
- (o)[(n)] Items for resale;
- (p)[(o)] Amounts paid for Kentucky sales tax;
- (q)[(p)] Except for tourism region organizations, stationery, letterhead, envelopes, general office supplies and material;
- (r)[(q)] Salaries or other compensation for the staff or personnel of a tourism region committee;
- (s)[(r)] General operating and administrative costs;
- (t)[(s)] Finance charges or late payment fees;[(t)] Quick-print material such as flyers, handbills, or circulars; and
- (u) Expenditures in violation of law.

Section 7. Matching Funds Application. (1) A Matching Funds Application may be submitted by a local organization that is not a convention and visitors' bureau, tourism commission, or designated marketing organization but is a nonprofit entity prior to May 1 for eligible:

- (a) Projects that have been or will be completed during the matching funds program cycle; and
- (b) Expenses totaling at least \$1,000 for a project, or several projects.
- (2) A Matching Funds Application shall include a detailed list of eligible tourism projects that will be completed during the current program cycle, and the following information for each project:
 - (a) Its direct relation to the promotion of tourism;
 - (b) Its ability to attract visitors from outside the immediate area;
 - (c) Its potential to enhance local, tourism region, or state economies; (d) The cost estimates; and

(e) The completion date.

(3) An applicant shall submit proof of the applicant's nonprofit status with the Matching Funds Application as follows:

- (a) A tourism region committee shall submit a copy of the committee's:
 - 1. Articles of incorporation as a nonprofit, nonstock corporation pursuant to KRS 273.161 through 273.405; and
 - 2. Bylaws.
- (b) A local tourism commission shall submit a copy of the ordinance establishing the commission.
- (c) Other local organizations shall submit a copy of the:
 - 1. Federal or state determination of tax exempt status; or
 - 2. Articles of incorporation as a nonprofit, nonstock corporation pursuant to KRS 273.161 through 273.405.
- (4) Guidance regarding the application process is established in the Samples of Completed Forms.

Section 8. Approval of Matching Applications. (1) The state matching funds program manager shall:

- (a) Review each Matching Funds Application and determine the applicant's eligibility for reimbursement in accordance with Sections 2, 5, 6, 7, and 9 of this administrative regulation; and
- (b) Transmit copies of eligible Matching Funds Applications to the members of appropriate tourism region committees.
- (2) The state matching funds program manager or assistant state matching funds program manager shall hold allocation meetings in each of the nine (9) tourism regions with the tourism region committee for the region to:
 - (a) Discuss the regional marketing and matching funds program;
 - (b) Review and establish priorities for local organization Matching Funds Applications;
 - (c) Screen local Matching Funds Applications for eligibility;
 - (d) Discuss each project's:
 - 1. Direct relationship to tourism promotion;
 - 2. Ability to attract visitors into the tourism region;
 - 3. Impact on local, tourism region, and state economies; and
 - 4. Compatibility with the marketing goals of the tourism region;
 - (e) Recommend the distribution of local funds; and
 - (f) Review and discuss the tourism region Matching Funds Application.
- (c) A tourism region committee shall submit a recommendation for each applicant within the tourism region to the state matching funds program manager.
- (d) The state matching funds program manager shall base the allocation determination on:
 - (a) The items specified in subsection (2) of this section;
 - (b) If applicable, an applicant's successful completion of similar projects; and
 - (c) The availability of funds.
- (5) The state matching funds program manager shall mail to each applicant a:
 - (a) "Project Agreement" form to each approved applicant stating the amount of the state matching funds allocation for the matching funds program cycle; or
 - (b) Letter stating why an applicant's projects have been denied funding; and
 - (c) Copy of the Matching Funds Application submitted by each applicant, indicating approved and disapproved projects.
- (6) An applicant shall sign and return the Project Agreement form to the state matching funds program manager.

Section 9. Reimbursement. (1)(a) A local project shall be eligible for reimbursement for eighty (80) or fifty (50) percent of its total expenditures that do not exceed the amount allocated by the state matching funds program.

- (b) A tourism region project shall be eligible for reimbursement for 100 percent of the project's total expenditures that do not exceed the amount allocated by the state matching funds program.
- (2) Requests for reimbursement shall not be made until at least \$1,000 has been expended.
- (3) Reimbursement shall be limited to projects that:
 - (a) Were included on a Matching Funds Application;

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~~(b) Were compliant with the eligibility and reimbursement requirements established in Sections 2, 5, 6, 7, and 9 of this administrative regulation; and~~

~~(c) Have been completed.~~

~~(4)]~~

~~(u) In-kind contributions shall not be reimbursed, and shall not be included as part of an applicant's match; and[-]~~

~~(v) Expenditures in violation of law.[-](5) A request for reimbursement shall be made on the Reimbursement Request form which shall:~~

~~(a) Be submitted to the state matching funds program manager on or before February 1 or August 1;~~

~~(b) Be signed; and~~

~~(c) State the federal identification number of the organization.~~

~~(6) Checks submitted as documentation shall be issued by the organization that applied for matching funds.~~

~~(7) The following information shall be attached to the Reimbursement Request form:~~

~~(a) A copy of each vendor's invoice;~~

~~(b) A copy of the front and back of each canceled check;~~

~~(c) For local projects, proof of payment of all expenditures;~~

~~(d) For tourism region projects, proof of payment of twenty (20) percent of expenditures;~~

~~(e) Four (4) completed brochures;~~

~~(f) For publications or videos, a copy of invoices, with a breakdown of layout and design costs, the number of copies printed, and other related expenses;~~

~~(g) If printing costs exceed \$1,000, a copy of three (3) written bids;~~

~~(h) One (1) duplicate of a completed video, CD, or DVD;~~

~~(i) One (1) original tear sheet of advertisements as they appeared in the print media including date of issue and, for regional projects, a cover of the publication;~~

~~(j) One (1) typed transcript or a tape of a radio; television; or videotape, CD, or DVD travelogue advertisement;~~

~~(k) A copy of a press kit;~~

~~(l) Documentation of the distance of media from the event, attraction, or area promoted;~~

~~(m) One (1) photograph of a completed billboard and signage advertisement;~~

~~(n) Documentation of the location and dates of service for billboard and signage rentals;~~

~~(o) Documentation of the location, distribution routes, and dates for distribution services;~~

~~(p) Documentation of postage expenses, including postage invoices or paid receipts, list of names, addresses, and material mailed;~~

~~(q) Verification of attendance at consumer travel shows or group tour marketplaces, including signed agreements or contracts;~~

~~(r) Verification of regional travel show or group tour marketplace per diem, including a completed and signed Tourism Region Per Diem Reimbursement Form; and~~

~~(8) For tourism region projects, proof of payment of the remaining eighty (80) percent of expenditures shall be submitted after receipt of state matching funds; and~~

~~(9) Guidance regarding the reimbursement process is established in the:~~

~~(a) List of Documentation and Requirements for Reimbursement Per Project; and~~

~~(b) Samples of Completed Forms.[-]~~

Section 19.[40:] Forfeited and Unused Funds. (1) Funds allocated to an approved project shall be forfeited if:

(a) Documentation required by the provisions of this administrative regulation is not submitted timely;~~[before February 1 and August 1;]~~

(b) An approved project does not materialize; or

(c) A completed project did not remain in compliance with program requirement[s];

~~(2) At the end of a Tourism Marketing Incentive[-](d) Funding is denied because the expenses of an approved project are improperly documented;~~

~~(e) Funds were spent on the project.~~

~~(2) At the end of a Regional and Matching Funds] Program year[cycle], forfeited and unused funds shall remain in the Tourism Meeting, and Convention Fund, to be used[be utilized] by the Department of Tourism for advertising and marketing promotions.~~

Section 20[44]. Audits. (1) The department may request the State Auditor to audit a tourism project governed by this administrative regulation.

Section 21[42]. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Tourism Marketing Incentive Program Application", August 2019;

(b) "Application Project Description Form", August 2019;

(c) "Tourism Marketing Incentive Program Reimbursement Request", August 2019;

(d) ["Matching Funds Application", September 2007;

(b) "Reimbursement Request", September 2007;

(c) "Project Agreement", September 2007;

(d) "List of Documentation & Requirements for]Reimbursement [Per]Project Description Form", August 2019;

(e) "Regional Ad Sale Form", one (1) page, August 2019;

(f) ["", September 2007;

(e) "Tourism Region Per Diem Reimbursement Form", August 2019; and

(g) [-, 1996;

(f) [-] "Tourism Regions Map", 1996; and

(h) [-, 1996;

(g) "Samples of Completed Forms", September 2007; and

(h) "Designated Marketing Organization", August 2019.[2007;]

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, from the Department of Tourism, Division of Tourism Services[Marketing and Advertising, Capital Plaza Tower], 500 Mero Street, 5th Floor[Room 2200], Frankfort Kentucky 40601, phone (502) 564-4930, fax (502) 564-5695, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available at the Department of Tourism's Web site at www.kytourism.com/industry/mfunds.

JAY HALL, Commissioner

DON PARKINSON, Secretary

APPROVED BY AGENCY: August 23, 2019

FILED WITH LRC: August 23, 2019 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 21, 2019 at 10:00 a.m. at the Department of Aviation, 90 Airport Road, Building 400, Frankfort Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by five business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation through November 30, 2019. Send written notification of intent attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Becky Cottongim, Executive Staff Advisor, Tourism, Arts, and Heritage Cabinet, 100 Airport Road, 2nd floor, Frankfort, Kentucky 40601, phone (502) 564-4270, fax (502) 564-1079, email becky.cottongim@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Becky Cottongim

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures for uniform and consistent administration of the application, participation, and reimbursement requirements of the Tourism Marketing Incentive

Program.

(b) The necessity of this administrative regulation: This regulation is necessary so that those promotional projects within the tourism regional and local nonprofit organizations will be aware of the process for participation in the program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 148.525(3) authorizes the department to promulgate administrative regulations to implement or carry out the purposes of KRS Chapter 148.525(2).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statute by establishing a process to implement the marketing incentives.

(2) If 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 administrative regulation and provides procedures for the programs seeking reimbursement for new projects to include costs associated to include conventions, meetings or sports marketing expenses; sponsorship of tourism trade shows and events; bid fees associated with bringing events to Kentucky; and Internet and website costs.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to update the reimbursements that are tourism marketing related.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 148.525 (2) and (3) states that the Division of Advertising Services shall be responsible for the program and the Commissioner is authorized to promulgate administration regulations to carry out the process of this provision. This administrative regulation establishes the procedures, requirements and components with in the marketing incentive program for the Department of Tourism.

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

(3) List the type and number of individuals, businesses, organizations or state and local governments affected by this administrative regulation: The Department of Travel anticipates ninety (90) applicants to participate in this 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 regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendments. The department does not anticipate any impact as this amendment simplifies the process of applying and seeking reimbursement.

(b) In complying with this administrative regulation or amendment, how much will it costs each of the entities identified in question (3): There will be no cost to the entities to apply for the incentive program.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The benefit that will accrue will be that tourism regions and nonprofits can participate in more marketing events. There will be more opportunity for participation in the marketing efforts where reimbursement can be made.

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

(a) Initially: No expenses or an unknown amount will be incurred.

(b) On a continuing basis: No expenses or an unknown amount will be incurred.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: 1% transient tax 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 does not establish or create a fee or increase funding.

(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 directly or indirectly.

(9) TIERING: Is tiering applied? No. All applicants who apply for incentives are treated the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Tourism and the Regional Marketing and Matching Funds Program 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 148.525 authorizes the Commissioner of the Department of Tourism to promulgate administrative regulations to carry out the provisions of KRS 148.522. KRS 148.522 includes the authority and responsibility for the promotion, development and support services for the tourism industry in Kentucky. The Regional Marketing and Matching Funds Program is organized within the Marketing and Advertising Division established in KRS 148.522.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. Expenditures and revenues for the Kentucky Department of Tourism will not change. The current budget of the Department of Tourism funds the administrative costs of the Regional Marketing Funds Program. Two staff persons within the Department of Tourism administer the program. The monies that the Regional Marketing and Matching Funds Program distributes within the tourism regions from the 1% transient room tax (KRS 142.400) are for tourism projects and are not used to administer the program.

(a) How much 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 administration of this regulation generates no revenue. The Regional Marketing Funds Program is funded via the transient room tax (KRS 142.400). For fiscal year '19 – '20 the program has \$2.5 million dollars annually to distribute to applicants. This amount has remained the same for several years.

(b) How 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 money for state or local government with its application; there is no fee for applicants. However, the program does generate money (see KRS 142.400, 142.402, 142.404 and 142.406) through transient room tax.

(c) How much will it cost to administer this program for the first year? The program originated over twenty (20) years ago. The Department of Tourism staff has continuously administered the program since its inception. Salaries have fluctuated since the first year of the program. Two members of the department staff have administered the program for several years. There is no need for additional staff or administrative expenditures.

(d) How much will it cost to administer this program for subsequent years? There are no additional 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 (+/-): \$0 change

Expenditures (+/-): \$0 change

Other Explanation: N/A

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

301 KAR 3:100. Special commission permits.

RELATES TO: KRS 150.170, 150.175, 26 U.S.C. 501(c)(3)

STATUTORY AUTHORITY: KRS 150.025, 150.177, 150.195(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025 authorizes the department to promulgate administrative regulations to establish hunting seasons, bag limits, and the methods of taking wildlife. KRS 150.177 authorizes the department to issue a special permit to an incorporated nonprofit wildlife conservation organization. KRS 150.195(1) requires the department to promulgate administrative regulations pertaining to the issuance of licenses and permits. This administrative regulation establishes the requirements for the issuance and use of Special Commission Permits.

Section 1. Definitions. (1) "Incorporated nonprofit wildlife conservation organization" means an entity that:

(a) Has a stated[primary] purpose, as expressed in its articles of incorporation or bylaws, to conserve and enhance fish and wildlife resources to provide opportunities for hunting, fishing, trapping, wildlife education, habitat enhancement, or related activities such as shooting sports, hunter and angler education and training, boating, etc.;

(b)1. Holds status as a nonprofit organization pursuant to 26 U.S.C. Section 501(c)(3); and

2. Is incorporated under the laws of this state or any other state; or

(c) Is an affiliated regional, state, or local chapter of a parent organization that meets the requirements of subsection (1)(b) of this section[Holds a charter status under an incorporated parent organization].

(2) "Proceeds" means the amount of money received by an incorporated nonprofit wildlife conservation organization from the sale or transfer of a special commission permit minus all expenses directly attributable to the sale of the permit.

(3) "Project" means an enterprise designed to achieve stated purposes, which shall conserve and enhance fish and wildlife resources within Kentucky by enhancing habitat or providing opportunities for hunting, fishing, trapping, wildlife education, habitat enhancement, or related activities such as shooting sports, hunter and angler education and training, boating, etc.

(4) "Special commission permit" means a species-specific permit issued by the Kentucky Fish and Wildlife Commission to an incorporated nonprofit wildlife conservation organization that allows the permit recipient, depending on the species listed on the permit, to harvest:

(a) One (1) additional deer of either sex[antlered or antlerless deer] per license year;

(b) One (1) additional turkey of either sex per license year;

(c) One (1) elk of either sex per license year; or

(d) Up to a daily bag limit of waterfowl per day.

Section 2. Issuance and Sale of Special Commission Permit.

(1) There shall be no more than ten (10) special commission permits issued per species per license year.

(2) An incorporated nonprofit wildlife conservation organization may apply for one (1) special commission permit per species. The incorporated nonprofit wildlife conservation organization shall accurately complete a Special Commission Permits Application Form.

(3) A national organization and its affiliated regional, state, and local chapters shall all be eligible to apply for a special commission permit in the same year if each organization meets the definition in Section 1(1)(2) of this administrative regulation.

(4) No[A national organization and its affiliated regional, state, and local chapters shall not be eligible to be awarded] more than one (1) special commission permit per species shall be awarded per[unless each applicant has a separate and distinct nonprofit organization status under 26 U.S.C. 501(c)(3) and a separate and distinct Internal Revenue Service Employer Identification Number (EIN)[tax identification number].

(5) In addition to the completed application, the organization shall also submit:

(a) A[4. One (1)] copy of the organization's articles of incorporation;

(b) A copy of the Internal Revenue Service determination letter establishing the organization's current tax-exempt status, including the applicant's Employer Identification Number (EIN);

(c) A copy of the organization's[or bylaws that state the purpose of the organization; or

2. A separate charter status from a parent organization and the parent organization's articles of incorporation or] bylaws that state the purposes[purpose] of the[parent] organization, if the purposes[;

(b) Written proof] of the organization are not stated in the articles of incorporation[organization's tax-exempt status including the applicant's tax identification number]; and

(d)[(e)] A letter, dated within ninety (90) days of the application, from the organization's parent organization, if applicable, stating[that states] that the chapter organization is in good-standing and is recognized by the parent organization.

(6) The completed application and accompanying documents listed in subsection (5) of this section shall be postmarked or delivered to the department by May 1 of each year.

(7) Applications shall be disqualified from the awards process for the criteria[The items] listed in paragraphs (a) through (d)[(e)] of this subsection:

(a) Failure to submit the required application and accompanying documents to the department by the deadline established in subsection (6) of this section[shall be grounds for disqualification from the award process:

(a) An incomplete application];

(b) An incomplete[Incomplete] or missing Special Commission Permits Application Form or accompanying documents required[.] pursuant to subsection (5) of this section;

(c) Failure to qualify as an incorporated nonprofit wildlife conservation organization; or

(d) Beginning in 2022, the[submit the required application and accompanying documents to the department by the May 1 deadline;

(d) The] wildlife conservation organization applicant failed to:

1. Sell[did not use or transfer] a special commission permit awarded in the[a] previous two (2) years;

2. Comply with the requirements of subsections (11)(b) and 11(c) of this section during the previous two (2) years[year]; or

3. Timely submit all of the information required by subsections (11)(d) and 11(f) of this section during the previous two (2) years

(e) Failure to qualify as an incorporated nonprofit wildlife conservation organization].

(8) Prior to selecting special commission permit recipients, the Fish and Wildlife Commission shall review and consider all applications and documents submitted by each wildlife conservation organization that has not been disqualified pursuant to subsection (7)(5) of this section.

(9) The department shall provide the Fish and Wildlife Commission with information concerning each applicant's relative standing with regard to:

(a)[Content and quality of submitted application materials;

(b) Past compliance;[(c) Ability to generate funds;] and

(b) History of funds generated[(d) The proposed conservation project's potential for enhancing fish and wildlife, habitats, fish and wildlife education, or fish and wildlife-related recreation in Kentucky].

(10) The Fish and Wildlife Commission shall select permit recipients based on the information listed in subsection (9) of this section and the information contained within the organization's application.

(11) An incorporated nonprofit wildlife conservation organization that is awarded a special commission permit shall:

(a) Generate proceeds through the sale of each permit awarded;

(b) Use the[all] proceeds from the sale of the permits only for the project listed in the application;

(c) Remit to the department any proceeds from the sale of the permit that are not expended by the May first (1) reporting deadline three (3) years after the submission deadline of the application for which the special commission permits were awarded;

(d) Submit[permit for conservation projects in Kentucky as approved by the Fish and Wildlife Commission;

(b) Underwrite all promotional and administrative costs for the selling of the permit;

(c) Sell each permit as stated in the application;

(d) Submit, by June first (1) of the year the permit is valid, to the department the information listed in subparagraphs 1. through 5. [4.] of this paragraph ~~for~~on the hunter ~~to whom~~who receives the permit shall be issued. Failure to submit the required information by the applicable deadline will result in no permit being issued ~~from the nonprofit wildlife conservation organization~~.

1. Name;
2. Address;
3. Date of birth; ~~and~~
4. A copy of the hunter's valid Kentucky Hunting license; and
5. For waterfowl, the requested location and date of the hunt.

(e) The information to be submitted, as established in paragraph (d) of this section, shall be submitted to the department no later than the following dates during the license year for which the permit is valid:

1. March 1 for turkey;
2. August 1 for elk;
3. August 1 for deer; and
4. September 1 for waterfowl.

(f) Submit to the Department of Fish and Wildlife Resources, by May 1 of the following year, and each subsequent year until all funds generated by the sale of the permit are expended or remitted to the department ~~(e) Submit, by May 1 of the following year~~, a report, subject to audit, that includes:

1. A financial statement containing:
 - a. Total funds raised;
 - b. A detailed list of expenditures directly attributable~~Overhead costs or expenses related~~ to the sale of the permit;~~and~~
 - c. Net profit;
 - d. A detailed list of expenditures attributable to the conservation project with receipts attached; and
 - e. Balance of funds remaining;
2. A summary of the:
 - a. ~~The~~ conservation project; and ~~b. Expenditures related to the conservation project; and~~
 3. A synopsis of the project's impact in regards to the goals stated in the application~~impact the conservation project had on enhancing fish and wildlife, habitats, fish and wildlife education, or fish and wildlife-related recreation~~.

(12) Once a special commission permit has been issued to a hunter, it shall not be transferred to another hunter.

Section 3. Special Permit Use. (1) A special permit shall only be valid for the:

- (a) Individual named on the permit;
- (b) Species of wildlife listed on the permit; and
- (c) The first season for that species in the license~~calendar~~ year following the quarterly commission meeting that the special permit was awarded, except that during 2020, permits ~~for the special commission permit~~ for deer and ~~for~~ waterfowl, ~~which~~ shall also be awarded ~~be valid~~ for the current license year ~~first season following the quarterly commission meeting that the special permit was awarded~~.

(2) A special commission permit holder shall comply with all other department statutes and KAR Title 301 [KAR].

(3) A holder of a special commission permit to hunt deer may hunt on any Wildlife Management Area during an open deer season or nonmobility impaired quota hunt pursuant to 301 KAR 2:178, except:

- (a) Hunting shall not be allowed on closed waterfowl refuges, pursuant to 301 KAR 2:222;
- (b) A permit holder shall contact the wildlife area manager at least forty-eight (48) hours before hunting; and
- (c) A permit holder shall notify the area manager upon leaving a Wildlife Management Area.

(4) A holder of a special commission permit to hunt wild turkey shall not hunt on a Wildlife Management Area that is closed to turkey hunting.

(5) A holder of a special commission permit to hunt waterfowl may, subject to the timely submission of all applicable information

by the wildlife conservation organization, hunt on Ballard, Boatwright, or Sloughs Wildlife Management Areas from one (1) of the areas' hunting units during~~permanent waterfowl blinds by:~~

- (a) Contacting the department no later than September 30; and
- (b) Reserving a blind ~~for~~ one (1) of the available hunt periods established by the department, pursuant to 301 KAR 2:222.

(6) Each special commission permit to hunt elk shall be randomly assigned a hunting unit at the time of the selection of the wildlife conservation organizations to be awarded special commission permits. Each unit will be assigned once prior to assigning a second permit to the unit. No unit will be assigned more than two (2) permits. The permit holder shall be restricted to hunting in the assigned unit only.

(7) A holder of any special commission permit may hunt on private land with the permission of the landowner. ~~(7) Unless specific equipment is prohibited on a Wildlife Management Area, a special permit holder shall only harvest game with hunting equipment that is allowed for the season during which the permit holder is hunting.~~

Section 4. Incorporation by Reference. (1) "Special Commission Permits Application Form", 2019~~2015~~ edition, is incorporated by reference.

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

RICH STORM, Commissioner
DON PARKINSON, Secretary

APPROVED BY AGENCY: September 12, 2019

FILED WITH LRC: September 13, 2019 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 25, 2019 at 10:00 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation through November 30, 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, fax (502) 564-0506, 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: The administrative regulation authorizes the Fish and Wildlife Commission to issue special permits to qualified incorporated nonprofit wildlife conservation organizations for the organizations to use as a fundraising tool to create wildlife conservation projects that enhance fish and wildlife, habitats, fish and wildlife education, or fish and wildlife-related recreation.

(b) The necessity of this administrative regulation: The administrative regulation is necessary to establish the procedures and requirements for the issuance of special commission permits.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025 authorizes the department to promulgate administrative regulations to establish hunting seasons, bag limits, and the methods of taking wildlife.

KRS 150.177 authorizes the department to issue special game permits to incorporated non-profit wildlife conservation organizations. KRS 150.195(1) authorizes the department to promulgate administrative regulations pertaining to the issuance of licenses and permits.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation defines the process and criteria for applying for a special permit, the selection process used by the Commission, and report requirements for wildlife conservation organizations.

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

(a) How the amendment will change this existing administrative regulation: Amendments to this regulation will resolve inconsistencies within the regulation and more clearly define the process and criteria for applying for a permit, the selection process used by the Commission, and report requirements for wildlife conservation organizations.

(b) The necessity of the amendment to this administrative regulation: The amendments to this regulation are necessary to resolve inconsistencies within the regulation and to more clearly define the process and criteria for applying for a permit, the selection process used by the Commission, and report requirements for wildlife conservation organizations.

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: In 2019, there were approximately 19 organizations that applied for at least one permit. 14 organizations received at least one permit.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Each incorporated nonprofit wildlife conservation organization will need to meet eligibility requirements and follow the application and reporting procedures and requirements.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is not a cost to comply with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The conservation organizations that receive a permit will benefit by using the permit for fundraising events that will, in turn, be used for wildlife conservation projects, thus furthering their missions in Kentucky.

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

(a) Initially: There will be a small cost to administer and coordinate the permit application and selection process.

(b) On a continuing basis: There will be a small cost to the agency on a continuing basis to administer and coordinate the permit application and selection process.

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

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

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

(9) TIERING: Is tiering applied? Tiering is not applied, as all incorporated nonprofit wildlife conservation organizations applying

for special permits are treated the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Wildlife Division and Administrative Services Division of the Department will be impacted.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025, 150.177, and 150.195(1).

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated for the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated in subsequent years, except that organizations will be required to remit to the department any proceeds from the sale of a permit that are not expended by the May 1 reporting deadline three years after the submission deadline of the application for which the special commission permits were awarded.

(c) How much will it cost to administer this program for the first year? There will be a small cost associated with administering and coordinating this regulation for the first year.

(d) How much will it cost to administer this program for subsequent years? There will be a small cost in subsequent years.

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

Revenues (+/-):

Expenditures (+/-): A small cost relative to employees' time about once a year, plus some mailing costs.

Other Explanation:

GENERAL GOVERNMENT Department of Agriculture Office of Agricultural Marketing (Amendment)

302 KAR 50:050. THC sampling and testing; post-testing actions.

RELATES TO: KRS 260.850-260.869, 7 U.S.C. 5940

STATUTORY AUTHORITY: KRS 260.862, 250.355

NECESSITY, FUNCTION, AND CONFORMITY: KRS 260.862(1)(a) authorizes the department to promulgate administrative regulations for any industrial hemp research pilot program in the Commonwealth of Kentucky. KRS 260.862(1)(e) authorizes the department to prescribe sampling and testing procedures to ensure that industrial hemp and industrial hemp products cultivated, handled, processed, or marketed pursuant to KRS 260.862 do not exceed the concentration levels defined in 7 U.S.C. 5940. KRS 250.355 requires the director of the Agricultural Experiment Station or his or her designee to receive samples and test industrial hemp plants, plant parts, and materials grown or located within the Commonwealth in order to determine if the industrial hemp plants, plant parts, and materials are in compliance with the provisions of KRS 260.850 through 260.869 and 302 Chapter 50. This administrative regulation establishes the procedures and requirements for sampling, testing, and post-testing.

Section 1. Definitions. (1) "Department" is defined by KRS 260.850(3).

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(2) "UK DRS" means the University of Kentucky Division of Regulatory Services.

Section 2. Department Procedures. (1) The department shall collect and handle hemp samples in accordance with the department SOP# KDA-HEMP-20171214-1 (Procedures for Sampling, THC Testing, and Post-Testing Actions), Sections II through VII.

(2) UK DRS shall receive, prepare, and release hemp samples in accordance with the UK DRS SOP# HM-LB-001 (Procedures for Receiving, Preparing and Releasing Hemp Samples)

(3) UK DRS shall measure delta-9-THC content in accordance with the UK DRS SOP# HMP-LB-002 (Procedures for Measuring Delta 9 THC Content in Industrial Hemp by Gas Chromatography with Flame Ionization Detection).

(4) Following the delivery of THC testing results from UK DRS, the department shall undertake post-testing actions in accordance with the Department SOP# KDA-HEMP-20171214-1 (Procedures for Sampling, THC Testing, and Post-Testing Actions), Section IX.

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

(a) SOP# KDA-HEMP-20171214-1 (Procedures for Sampling, THC Testing, and Post-Testing Actions), December 14, 2017 edition;

(b) UK DRS SOP# HMP-LB-002 (Procedures for Measuring Delta 9 THC Content in Industrial Hemp by Gas Chromatography with Flame Ionization Detection), July 2019[April 4, 2018] edition; and

(c) SOP# HM-LB-001 (Procedures for Receiving, Preparing and Releasing Hemp Samples), August 2019[April 3, 2018] edition.

(2) These materials may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Agriculture, Office of Agricultural Marketing, 105 Corporate Drive, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m. These materials may also be obtained at www.kyagr.com.

RYAN F. QUARLES, Commissioner

APPROVED BY AGENCY: August 30, 2019

FILED WITH LRC: August 30, 2019 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 25, 2019, at 2:00 p.m., at the Kentucky Department of Agriculture, 111 Corporate Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through November 30, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 107 Corporate Drive, Frankfort Kentucky 40601, phone (502) 330-6360, fax (502) 564-2133, email clint.quarles@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Clint Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation established the guidelines for participation in the Industrial Hemp Program administered by the Kentucky Department of Agriculture.

(b) The necessity of this administrative regulation: This regulation is necessary to establish provisions for growing, movement, processing and possession of industrial hemp.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 260.850-260.869 requires the

Kentucky Department of Agriculture to regulate industrial hemp. This administrative regulation satisfies this mandate.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation codifies the industrial hemp program that has been administered by the KDA since the 2014 growing season.

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

(a) How the amendment will change this existing administrative regulation: This amendment updates material incorporated by reference.

(b) The necessity of the amendment to this administrative regulation: This amendment updates material incorporated by reference, replacing older versions.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment updates material incorporated by reference, replacing older versions of protocols.

(d) How the amendment will assist in the effective administration of the statutes: This filing will make clear with material incorporated by reference is current.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The KDA has 1,178 growers and processors currently. Additionally, this regulation affects the KDA and the University Of Kentucky Division Of Regulatory Services.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Participants wishing to grow, process, or handle industrial hemp must comply with the administrative requirements listed in this filing.

(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 add no cost to the entities listed above.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities will be allowed to grow, process, and handle industrial hemp.

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

(a) Initially: The administrative regulation itself adds very little cost to the KDA over previous growing seasons. The KDA employs 17 full time staff and seasonal contractors, and the partial staff time of several employees to administer the pilot program. This particular filing does not add to any current program cost.

(b) On a continuing basis: The KDA anticipates that the growing market demand for the crop may necessitate additional staff and resources in the future.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funds to administer come from the fees established in administrative regulation, as well as the KDA general fund.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This administrative regulation creates no new fees. The KDA will evaluate after a period of time to determine if fee amounts will cover expenses of administration of the program.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are directly established in this filing.

(9) TIERING: Is tiering applied? No. All regulated entities have the same requirements.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 7 U.S.C. § 5940.

2. State compliance standards. KRS 260.850-260.869

3. Minimum or uniform standards contained in the federal mandate. 7 U.S.C. § 5940. establish requirements for industrial hemp pilot programs. This administrative regulation establishes the requirements for participation in Kentucky.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No, this administrative regulation does not impose stricter, additional, or different requirements or responsibilities than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter, additional, or different requirements or responsibilities than those required by the federal mandate.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Agriculture for the administration of the program, and the University of Kentucky Division of Regulatory Services.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 260.850-260.869 and 7 U.S.C. § 5940.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. The KDA cannot estimate the costs of other agencies, but would reasonably guess that marginal costs increases may be anticipated due to program popularity.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This particular filing raises no revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This particular filing raises no revenue.

(c) How much will it cost to administer this program for the first year? The KDA fully anticipates the revenue generated by participation fees to cover only a fraction of the costs to administer the program.

(d) How much will it cost to administer this program for subsequent years? The KDA cannot estimate this amount as it is based on number of applicants and growing addresses.

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

Revenues (+/-): This particular filing raises no revenue.

Expenditures (+/-): Well in excess of \$250,000

Other Explanation:

ENERGY AND ENVIRONMENT CABINET Department for Natural Resources Division of Mine Reclamation and Enforcement (Amendment)

405 KAR 5:002. Definitions for 405 KAR Chapter 5.

RELATES TO: KRS 350.010(2), 350.240, 350.300

STATUTORY AUTHORITY: KRS 350.028, 350.029, 350.240, 350.300

NECESSITY, FUNCTION, AND CONFORMITY: KRS 350.028 authorizes the Energy and Environment [Environmental and Public Protection] Cabinet to promulgate administrative regulations pertaining to noncoal mineral operations to minimize their adverse effects on the citizens and the environment of the commonwealth. KRS 350.029 authorizes the cabinet to promulgate reasonable administrative regulations to establish effective programs for the

control of surface soil disturbance in connection with mining as defined by the Interstate Mining Compact. KRS 350.240 authorizes the cabinet to promulgate reasonable administrative regulations for the reclamation of land disturbed or removed in the mining of clay. KRS 350.300 authorizes the cabinet to formulate and establish an effective program and standards for the conservation and use of mined land. This administrative regulation establishes definitions of certain essential terms used in 405 KAR Chapter 5.

Section 1. Definitions. (1) "Access road" means a road designed and constructed to gain access from a public road to the mineral operation.

(2) "Acid drainage" means water with a pH of less than six (6.0) and in which total acidity exceeds total alkalinity, discharge from an active, inactive or abandoned mine or from an area affected by a mineral operation.

(3) "Acid-forming materials" means earth materials or rock that contain sulfide minerals or other minerals which, if exposed to air, water or weathering processes, form acids that may create acid drainage.

(4) "Affected area" means any land area which is used to facilitate, or is physically altered by strip mining; surface disturbance from an underground mine; surface disturbance from dredging operations; any area covered by dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, holes or depressions, repair areas, roads, storage areas, shipping areas and processing plants.

(5) "Backfill" means excavated overburden material used to regrade a mined area.

(6) "Cabinet" is defined in KRS 350.010(10).

(7) "Check dam" means a small structure placed in ditches, usually constructed of rock, intended to reduce runoff velocity for deterring erosion.

(8) "Clay" means a natural substance or soft rock which, when finely ground and mixed with water, forms a pasty, moldable mass that preserves its shape when air dried; the particles soften and coalesce upon being highly heated and form a stony mass upon cooling.

(9) "Compaction" means the reduction of pore spaces among the particles of soil or rock generally as a result of running heavy equipment over the materials.

(10) "Cropland" means land used for the production of adapted crops for harvest alone or in rotation with grasses or legumes, and includes: row crops, small grain crops, hay crops, nursery crops, orchard crops and other similar specialty crops. Land used for facilities in support of cropland farming operations which is adjacent to, or an integral part of, these operations is also included for purposes of this land use category.

(11) "Department" means the Kentucky Department for Natural Resources.

(12) "Disturbed area" means an area where vegetation, topsoil, or overburden is removed or upon which topsoil, spoil, mineral processing waste, underground development waste or similar waste is placed by mining activities. The disturbed area also includes those areas in which diversion ditches, sedimentation ponds, roads, or other features related to a mineral operation, are installed. Those areas are classified as "disturbed" until reclamation is complete, bond monies or permit have been released and processing plant and stockpile areas have been moved.

(13) "Diversion ditch" means a channel constructed to direct water from one location to another.

(14) "Division" means the Division of Mine Reclamation and Enforcement [Field Services of the Kentucky Department for Natural Resources].

(15) "Dolomite" means a sedimentary rock composed primarily of the crystalline carbonate mineral dolomite, CaMg (CO₃)₂. Many limestones contain small amounts of dolomite; however, the term dolomite is reserved for rocks which contain fifteen (15) percent or more magnesium carbonate.

(16) "Dredging operation" means surface disturbance of dredging river or creek sand and gravel.

(17) "Edge effect" means the phenomena by which wildlife is

enhanced and wildlife diversity is typically increased as a result of two (2) or more different habitat types occurring in close proximity to each other. Where two (2) habitats meet is referred to as an "edge".

(18) "Embankment" means an artificial deposit of material that is raised above the natural surface of land and used to contain, divert, or store water, support roads or railways, or other similar purposes.

(19) "Ephemeral stream" means a stream which only flows in direct response to precipitation in the immediate watershed, or in response to the melting of a cover of snow and ice, and that [which] has a channel bottom that is always above the local water table.

(20) "Erosion" means the detachment and movement of soil or rock fragments by water, wind, ice, or gravity.

(21) "Fish and wildlife land use" means an area which is characterized by an intermixed combination of habitat types including: woodlots or forested areas, shrub scrub areas, grass legume or open areas, and wetland or open water areas arranged in a manner as to promote edge effect for wildlife.

(22) "Floodplain" means the area along, adjacent to and including, a stream which is inundated by a 100 year frequency flood.

(23) "Fluorspar" means an ore of the mineral Fluorite CaF_2 . This occurs in veins and as bedding replacements found in Western Kentucky, as part of a mining district referred to as the Cave-In-Rock District and in Central Kentucky, as the Central Kentucky Vein and Fault System. Its origin is the result of hydrothermal activity.

(24) "Forest land" means lands dominated by canopy forming trees, or from a postmining land use standpoint, areas planted throughout with trees.

(25) "General permit" means any KPDES permit authorizing a category of discharges under KRS Chapter 224 within a geographical area, issued under 401 KAR 5:055.

(26) "Gravel" means a sedimentary rock type that implies a loosely, compacted, coarse sediment that is generally larger than 4mm, but smaller than boulders; a naturally occurring aggregate.

(27) "Ground cover" means the area of ground covered by the combined aerial parts of live vegetation and the litter produced and distributed naturally and seasonally on site, expressed as a percentage of the total area of measurement.

(28) "Ground water" means water which is in the zone of saturation or any subterranean waters flowing in well defined channels and having a demonstrable hydrologic connection with the surface. It is differentiated from water held in the soil, from water in downward motion under the force of gravity in the unsaturated zone, and from water held in chemical or electrostatic bondage.

(29) "Growing season" means the period during a one (1) year cycle, from the last killing frost in spring to the first killing frost in fall, in which climatic conditions are favorable for plant growth. In Kentucky, this period normally extends from mid-April to mid-October.

(30) "Highwall" means the face of exposed overburden and mineral to be mined, in an open cut of a strip mine or for entry to an underground mine.

(31) "Hollowfill" means a fill structure placed in a hollow where the side slopes of the existing hollow, measured at the steepest point, are greater than twenty (20) degrees or the average slope of the profile of the hollow, from the toe of the fill to the top of the fill, is greater than ten (10) degrees.

(32) "Imminent danger to the health and safety of the public" means the existence of any condition, or practice, or any violation of a permit or other requirement of KRS Chapters 350 through 353[or 405 KAR Chapters 1 through 30]; which condition, practice, or violation could reasonably be expected to cause substantial, physical harm to persons outside the permit area before the condition, practice, or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same condition or practice giving rise to the peril, would avoid exposure[not expose himself] to the danger during the time necessary for the abatement.

(33) "Impoundment" means a closed basin formed naturally or artificially built, which is dammed or excavated for the retention of water, sediment, or waste.

(34) "Industrial/commercial land use" means lands used for:

(a) The extraction or transformation of materials, for fabrication of products, wholesaling of products or for long term storage of products; and heavy and light manufacturing facilities. Land used for facilities in support of these operations, which is adjacent to, or an integral part of, that operation is also included; or

(b) The retail or trade of goods or services, including: hotels, motels, stores, restaurants, and other commercial establishments. Land used for facilities in support of these operations, which is adjacent to, or an integral part of, that operation is also included.

(35) "Intermittent stream" means a stream or reach of stream that:

(a)[A stream, or reach of stream, that] Drains a watershed of one (1) square mile or more but does not flow continuously throughout the calendar year; or

(b)[A stream, or reach of stream, that] Is below the local water table for at least some part of the year, and obtains its flow from both surface water and ground water discharge. This term does not include ephemeral streams.

(36) "Land use" means the specific functions, uses, or management related activities of the proposed permit area, including both premining use and postmining use.

(37) "Limestone" means a crystalline sedimentary rock that is primarily composed of the mineral calcite CaCO_3 . However, it may be considered as any sedimentary rock composed essentially of carbonates, chiefly calcite or dolomite, but may contain small amounts of iron-carbonates (siderite).

(38) "Mast" means nuts, acorns, and fruit produced by certain woody plant species.

(39) "Mineral operation" means noncoal mining activities including: mining of limestone and dolomite; mining of sand and gravel; surface disturbance of dredging of river or creek sand and gravel; mining of clay; mining of tar sand or rock asphalt; mining of fluorspar and other vein minerals. Mineral operations include the surface disturbance of underground mining as well as strip mining. This term includes mining activities and all activities necessary and incident to the reclamation of the mine or dredging operation as required by this title. This term does not include coal mining or oil shale mining.

(40) "Mineral operator" means any person, partnership, or corporation engaged in mineral operations.

(41) "Mineral permittee" means a mineral operator or person holding a permit, or required under KRS Chapter 350 or 405 KAR Chapter 5, to hold a permit to conduct mineral operations during the permit term and until all reclamation obligations imposed by KRS Chapter 350 and 405 KAR Chapter 5 are satisfied.

(42) "Natural drainways" means ephemeral areas, gullies, ravines, streams, and similar topographical features occurring naturally in an area which control the direction of surface water flow.

(43) "Natural hazard lands" means geographic areas in which natural conditions exist that pose or, as a result of mineral operations, may pose a threat to the health, safety, or welfare of people, property, or the environment, including, [but not limited to,] areas subject to landslides, cave-ins, subsidence, substantial erosion, unstable geology, or frequent flooding.

(44) "Noxious plants" means species that have been included on state and federal lists of noxious plants.

(45) "Outslope" means the face of the spoil, natural ground, or embankment sloping downward from the highest elevation to the lowest elevation.

(46) "Outstanding resource waters" means surface waters designated by the cabinet, pursuant to 401 KAR 10:031[401 KAR 5:031, Section 7].

(47) "Pastureland" means land used primarily for the long term production of adapted, domesticated, forage plants to be grazed by livestock or occasionally cut and cured for livestock feed. Land used for facilities in support of pastureland which is adjacent to, or an integral part of, these operations is also included.

(48) "Perennial stream" means a stream, or stream reach, that

flows continuously during all of the calendar year as a result of ground water discharge or surface runoff.

(49) "Permanent impoundment" means an impounded body of water, that is formed in the pit during mining or retained by a constructed embankment or dugout, which will be retained after mineral operations are complete and which has been approved for retention by the cabinet and other appropriate Kentucky and federal agencies.

(50) "Permit" means written approval issued by the cabinet to conduct mineral operations.

(51) "Permit area" means the area of land and water within boundaries designated in the approved permit application, that includes~~[which shall include, at a minimum,]~~ all areas which are or will be affected by mineral operations under that permit.

(52) "pH" means the index used to describe the hydrogen ion activity of a system defined as the reciprocal of the logarithm of the hydrogen ion concentration at base ten (10). The range of this index is zero to fourteen (14), with seven (7) being neutral.

(53) "PLS" means pure live seed.

(54) "Point source" is defined in 401 KAR 5:050.

(55) "Recreation land use" means land used for public or private leisure time use, including developed recreation facilities including ~~[such as]~~, parks, camps, and amusement areas, as well as areas for less intensive uses including~~[such as]~~, hiking, canoeing, and other undeveloped recreational uses.

(56) "Residential land use" means tracts employed for single and multifamily housing, mobile home parks, and other residential lodgings. Also included, is land used for support facilities such as, vehicle parking, open space, and other facilities which directly relate to the residential use of the land.

(57) "Roads"

(a) Means haul roads and access roads constructed, used, reconstructed, improved or maintained for use in mining and stockpiling finished products, within permit boundaries.

(b) Does not mean~~[The term excludes]~~ any roadways located in the mining pit area.

(58) "Runoff" means precipitation that flows overland before entering a defined stream channel and becoming stream flow.

(59) "Safety factor" means the ratio of the available shear strength to the developed shear stress, or the ratio of the sum of the resisting forces to the sum of the loading or driving forces, as determined by engineering practices.

(60) "Sand" means a sedimentary rock type that implies a loosely, compacted, fine sediment that is generally composed of particles that range in size from 1/16mm to 2mm. Most sands are predominantly composed of quartz grains or fragments of siliceous rocks.

(61) "Sediment" means undissolved organic and inorganic material transported or deposited by water.

(62) "Sedimentation pond" means any natural or artificial structure or depression used to remove sediment from water and store sediment or other debris.

(63) "Significant, imminent environmental harm to land, air, or water resources" means a situation which is determined as follows:

(a) An environmental harm is an adverse impact on land, air, or water resources, including, ~~[but not limited to,]~~ plant and animal life.

(b) An environmental harm is imminent if a condition, practice, or violation exists which:

1. Is causing the harm; or

2. May be reasonably expected to cause the harm at any time before the end of the reasonable abatement time.

(c) An environmental harm is significant, if that harm is appreciable, and not immediately repairable.

(64) "Slope" means average inclination of a surface, measured from the horizontal, generally expressed as the ratio of a unit of vertical distance to a given number of units of horizontal distance. It may also be expressed as a percent or in degrees.

(65) "Soil horizons" means contrasting layers of soil parallel, or nearly parallel to, the land surface. Soil horizons are differentiated on the basis of field characteristics and laboratory data. The four (4) master soil horizons are:

(a) "A horizon". The uppermost mineral layer, often called the

surface soil. It is the part of the soil in which organic matter is then most abundant, and leaching of soluble or suspended particles is typically the greatest.

(b) "E horizon". The layer commonly near the surface below the A horizon and above the B horizon. The E horizon is most commonly differentiated from the overlying A horizon by a lighter color and generally measurably less organic matter. The E horizon is most commonly differentiated from the B horizon in the same sequence by color of higher value or lower chroma, by coarser texture or by a combination of these properties.

(c) "B horizon". The layer that is immediately below the E horizon and often called the subsoil. This middle layer commonly contains more clay, iron, or aluminum than the A, E, or C horizons.

(d) "C horizon". The deepest layer of soil profile. It consists of loose material or weathered rock that is relatively unaffected by biological activity.

(66) "Spoil" means overburden which has been removed during mineral operations.

(67) "Stabilize" means any method used to prevent movement of soil, spoil piles, or areas of disturbed earth, and includes increasing bearing capacity, increasing shear strength, draining, compacting, riprapping, or by vegetation.

(68) "Stream buffer zone" means an area of forest or field left untouched and undisturbed by the mineral operator during mining, including haul road construction.

(69) "Strip mining" is defined in KRS 350.010(2).

(70) "Surface disturbance of dredging river or creek sand and gravel" means the surface and land disturbed on the banks of a creek or river for haul roads, storage areas, processing areas, maintenance and repair areas, or any other disturbance to the banks and land created by the dredging of sand and gravel out of rivers or creeks.

(71) "Surface disturbance of underground mining" means above ground activities incidental to subsurface mineral extraction or in situ processing, including construction, use, maintenance, and reclamation of roads; above-ground repair areas, storage areas, processing areas, and shipping areas; areas upon which are sited support facilities including, hoist and ventilating ducts, areas used for the disposal and storage of waste, and areas on which materials incidental to underground mining activities are placed.

(72) "Surface waters" means those waters having well defined banks and beds, either constantly or intermittently flowing; lakes and impounded waters; and marshes and wetlands. Effluent ditches and lagoons used for waste treatment which are situated on property owned, leased, or under valid easement by a permitted discharger, are not considered to be surface waters of the commonwealth.

(73) "Suspended solids" means organic or inorganic materials carried or held in suspension in water that will remain on a 0.45 micron filter.

(74) "Tar sand or rock asphalt" means a porous, consolidated or unconsolidated sand or sandstone whose interstices contain asphalt or bitumen.

(75) "Temporary mineral operation" means a mineral operation that operates for a total of six (6) months or less at a location.

(76) "Topsoil" means the A and E horizon layers of the four (4) master soil horizons.

(77) "Toxic forming materials" means earth materials or wastes which, if acted upon by air, water, weathering, or microbiological processes, are likely to produce chemical or physical conditions in soils or water that are detrimental to biota or uses of water.

(78) "Waste" means materials which are washed, (otherwise separated or left from a mineral product) slurried or otherwise transported from the processing facilities or preparation plants of any kind.

(79) "Water table" means the upper surface of a zone of saturation, where the body of ground water is not confined by an overlying impermeable zone.

(80) "Water withdrawal permit" means the written approval issued by the cabinet involving the actual removal or taking of water from any stream, water course, or other body of public water pursuant to KRS 151.140.

(81) "Wetland" means land that has a predominance of hydric

soils and that is inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions.

(a) "Hydric soil" means soil that, in its undrained condition, is saturated, flooded, or ponded long enough during the growing season to develop an anaerobic condition (without oxygen) that supports the growth and regeneration of hydrophytic vegetation.

(b) "Hydrophytic vegetation" means a plant growing in:

1. Water; or

2. A substance that is at least periodically deficient in oxygen during a growing season as a result of excessive water content.

(82) "Wild river" means a water which has been designated as a wild river by the General Assembly pursuant to KRS 146.241. approved for filing.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: September 13, 2019

FILED WITH LRC: September 13, 2019 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 26, 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 November 30, 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 definitions of certain essential terms used in 405 KAR Chapter 5.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to define terms essential for the correct interpretation of 405 KAR Chapter 5.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 350.029 authorizes the cabinet to promulgate reasonable administrative regulations to establish effective programs for the control of surface soil disturbance in connection with mining as defined by the Interstate Mining Compact. This administrative regulation defines terms that are necessary for the proper interpretation of the administrative regulations promulgated under the authority of KRS 350.029.

(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 providing terms for the proper interpretation of terms used in 405 KAR Chapter 5.

(2) If 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 a series of citations in the definition of "Imminent danger".

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to remove old citations to 405 KAR Chapters 1 and 3 and remove an incorrect citation to KRS Chapter 353.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment corrects citations in the definition of imminent danger.

(d) How the amendment will assist in the effective administration of statutes: This amendment removes a citation to out administrative regulations that were repealed and removes a citation to KRS Chapter 353, which the department believes was incorrect.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. There are approximately 153 noncoal mines in 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:

(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 use the revised definition of imminent danger.

(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 comply with the amended definition.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, entities will have a definition of imminent danger that has correct citations.

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

(a) Initially: The division will not incur any additional costs for the implementation of this administrative regulation.

(b) On a continuing basis: The division 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: A combination of general and restricted funds 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? No, tiering was not used. The definitions in this administrative regulation will apply equally to all noncoal operators.

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? This administrative regulation will apply to the Division of Mine Reclamation and Enforcement.

2. Identify each state or federal statute or federal regulation that requires or authorizes action taken by the administrative regulation. KRS 350.028, 350.029, 350.240, and 350.300

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

**ENERGY AND ENVIRONMENT CABINET
Department for Natural Resources
Division of Mine Reclamation and Enforcement
(Amendment)**

405 KAR 5:032. Permit requirements.

RELATES TO: KRS 350.010(2), 350.130, 350.240, 350.300

STATUTORY AUTHORITY: KRS 350.028, 350.029, 350.240, 350.300

NECESSITY, FUNCTION, AND CONFORMITY: KRS 350.028 authorizes the Energy and Environment Cabinet to promulgate administrative regulations pertaining to noncoal mineral operations to minimize their adverse effects on the citizens and the environment of the commonwealth. KRS 350.029 authorizes the cabinet to promulgate reasonable administrative regulations to establish effective programs for the control of surface soil disturbance in connection with mining as defined by the Interstate Mining Compact. KRS 350.240 authorizes the cabinet to promulgate reasonable administrative regulations for the reclamation of land disturbed or removed in the mining of clay. KRS 350.300 authorizes the cabinet to formulate and establish an effective program and standards for the conservation and use of mined land. This administrative regulation specifies information to be submitted by the applicant relating to legal status, financial information, general site information, map requirements, cultural and environmental resource information, and mining and reclamation plans. This administrative regulation also addresses the waivers and approvals necessary to conduct noncoal mineral operations, including those of other agencies, and establishes provisions concerning review of permits and other permit related procedural matters.

Section 1. General. (1) This administrative regulation shall pertain to a person who applies for a permit to conduct mineral operations.

(2) Preliminary permit requirements.

(a) A person or mineral operator desiring a permit shall submit a preliminary map at a scale one (1) inch equals 400 feet or 500 feet, marked to show the proposed permit area and adjacent areas, including location of access roads, spoil or waste areas, and sedimentation ponds.

(b) Personnel of the cabinet shall conduct, within fifteen (15) working days after filing, an on-site investigation of the area with appropriate persons including appropriate representatives of the applicant.

(3) Permanent permit requirements. An original and two (2) complete, separately bound and distinct copies of the application shall be submitted to the cabinet, at the Department for Natural Resources, Division of Mine Reclamation and Enforcement, Noncoal Review Branch, 300 Sower Boulevard, Frankfort, Kentucky 40601, or at one (1) of the following regional offices:

(a) ~~London Regional Office, Regional State Office Building, 85 State Police Road, London, Kentucky 40741-9011;~~

(b) ~~Madisonville Regional Office, 625 Hospital Drive, Madisonville, Kentucky 42431-1683;~~

~~(b) Middlesboro Regional Office, 1804 East Cumberland Avenue, Middlesboro, Kentucky 40965-1229;~~

~~(c) Pikeville Regional Office, 121 Mays Branch Road, Pikeville, Kentucky 41501-9331; or~~

~~(d) Hazard Regional Office, 556 Village Lane, P.O. Box 851, Hazard, Kentucky 41702; (e) Prestonsburg Regional Office, 3140 South Lake Drive, Suite 6, Prestonsburg, Kentucky 41653-1410].~~

Section 2. Identification of Interests. (1) Each permit application shall contain the names and addresses of:

(a) The applicant, including phone number;

(b) The registered agent for service of process, if applicable, including phone number;

(c) Owners, partners, or if a corporation, officers or stockholders owning ten (10) percent or more stock;

(d) The project engineer, along with registration number and name of associated firm;

(e) The company and engineer to which correspondence concerning the subject permit shall be addressed;

(f) Surface owners of record within the area proposed for mining, including areas overlying underground workings;

(g) Mineral owners of record within the area proposed for mining, including areas overlying underground workings; and

(h) Surface owners of record within 500 feet of the proposed permit boundary and areas overlying underground workings.

(2) If the company has undergone a name change or changes during the previous five (5) years, the applicant shall list the names.

(3) The legal structure of the applicant shall be specified.

(4) If the business is owned by an individual or is a partnership, and is performed under an assumed name, the applicant shall specify the county and state where the name is registered.

(5) The applicant shall list previous Kentucky permits held by the applicant or an individual, partnership, or corporation associated with the applicant.

(6) The applicant shall provide the name of the contact person at the site, including phone number.

(7) The applicant shall specify the type of application, along with the permit number.

Section 3. Bond Information. (1) If bond is required pursuant to 405 KAR 5:082, the following information shall be provided in the permit application:

(a) The bond amount per acre;

(b) The total amount of bond; and

(c) The bond type.

(2) If a surety is used, the applicant shall provide the bond number and surety.

(3) If a certificate of deposit is used, the applicant shall provide the bank name and CD number.

(4) If a letter of credit is used, the applicant shall provide the bank name and letter of credit number.

Section 4. Equipment Inventory. The permit application shall contain a list of all equipment, model numbers, and condition of the equipment proposed to be used for removing overburden and reclaiming the affected area of the proposed mineral operation.

Section 5. Waivers and Approvals. (1) If blasting will occur within 300 feet of an occupied dwelling or if mineral extraction will occur within 100 feet of an occupied dwelling, the permit application shall contain a waiver from the owner, acknowledging approval of the activity.

(2) Except where mine access roads or haul roads join the right-of-way, if the proposed mineral operation will occur within 100 feet of the right-of-way of a public road, or if relocation of a public road is proposed, the permit application shall contain proof of notification to and required approvals from the appropriate agency or local government with jurisdiction over the road.

(3) If a permanent pond other than a final pit impoundment with no embankment is proposed, approval from the landowner for the structure and a written acknowledgment from the landowner that the mineral permittee shall not have continuing maintenance

responsibility after permit release shall be required.

(4) If relocation, channelization, or other significant disturbance to an intermittent or perennial stream is proposed, or if the proposed mineral operation will occur within, or in any way impact, a floodplain, wetland, or other water of the commonwealth, the applicant shall obtain the appropriate permits and approvals from the United States Army Corps of Engineers and the Kentucky Division of Water. Approval shall also be required by the cabinet for disturbances within 100 feet of an intermittent or perennial stream.

(5) If a sedimentation pond or other point source discharge is proposed, a KPDES permit from the Kentucky Division of Water shall be required.

(6) If water withdrawal is proposed, a Water Withdrawal Permit, pursuant to 401 KAR 4:010, shall be obtained from the Kentucky Division of Water.

(7) If there are local zoning regulations, the applicant shall state this in the application to the Division of Mine Reclamation and Enforcement.

(8) If applicable, approval from the owner of the utilities and facilities as provided in 405 KAR 5:015, Section 4(6) shall be required.

Section 6. Right to Mine. The permit application shall contain a signed statement by the applicant attesting that the applicant has the legal right to mine, along with the appropriate date.

Section 7. Verification of Application. The permit application shall contain a statement, signed by the applicant, acknowledging that all statements and representations, made in the application, are true and correct.

Section 8. Map Requirements. The permit application shall include original and two (2) copies of a section of the appropriate United States Geological Survey Topographical Map or an equivalent format which shall:

(1) Delineate the proposed permit area and areas, if applicable overlying proposed underground workings;

(2) Be of a scale of not more than one (1) inch to 400 feet;

(3) Show all other mine operations within 500 feet of the proposed permit boundaries and proposed underground workings, including those within the proposed permit boundaries;

(4) Delineate the property boundaries of all landowners within the proposed permit area and areas overlying proposed underground workings and all landowners within 500 feet of the proposed permit boundary and areas overlying proposed underground workings, along with the names of all the landowners;

(5) Delineate all proposed access roads onto the proposed mineral operation;

(6) Show the site slope;

(7) Show the name and location of all streams, rivers, lakes, outstanding resource waters pursuant to 401 KAR 10:031, or other public water bodies; proposed stream buffer zones; roads, cemeteries, houses, churches, schools and other public buildings; oil and gas wells; public properties such as, parks, Wildlife Management Areas, and nature preserves, and utility lines on the area to be affected, and within 1,000 feet of the proposed permit boundary;

(8) Locate sites listed on the National Register of Historic Places and known archaeological sites;

(9) Delineate wetlands that may be affected by the proposed mineral operation;

(10) Show the drainage pattern on and away from the area to be affected, including the direction of flow, proposed constructed drainways, natural drainways to be used for drainage, and the streams or tributaries to receive discharges from the proposed mineral operation;

(11) Show proposed pit area, sediment structures, storage areas, and other facilities and features related to the mineral operation;

(12) Provide a north point arrow;

(13) Contain a legend, which shall:

(a) Provide the company name;

(b) Provide the application number;

(c) Provide the county and quadrangle names;

(d) Provide the site coordinates;

(e) Provide the site address;

(f) Provide the map scale and contour interval;

(g) Provide a description of the site location including:

1. The nearest stream; and

2. The distance and direction from the nearest road intersection or town;

(h) Identify each insignia, symbol, number, or letter used to designate features, facilities, or areas;

(i) Provide acreage breakdowns of the various mineral operation features and facilities including, pit areas, storage areas, sediment structures, access roads, and the total number of acres of area to be affected; and

(j) Specify the deposit to be mined; and

(14) Provide a signed, notarized statement that the map has been prepared and certified by a professional engineer, registered pursuant to the provisions of KRS Chapter 322. This statement shall read, "I, the undersigned, hereby certify that this map is correct, and shows to the best of my knowledge and belief all the information required by the mineral operation laws and administrative regulations of the state". This statement shall include:

(a) The engineer's registration number; and

(b) The date on which the map was prepared.

Section 9. General Site Information. The permit application shall contain the following general site information:

(1) Location of the mineral operation to include:

(a) Latitude and longitude;

(b) The nearest community;

(c) The name of the nearest stream;

(d) The nearest public road intersection; and

(e) The name of the United States Geological Survey quadrangle or quadrangles, in which the proposed mineral operation will occur;

(2) A county by county list of the types of disturbances planned, accompanied by the acreage to be involved with each disturbance;

(3) Specification of the mineral to be extracted;

(4) Specification of the major watershed or watersheds, which will be affected, by the proposed mineral operation;

(5) Specification if active discharges exist that may affect the proposed mineral operation. If so, provide the following information:

(a) The pH of the discharge; and

(b) The source of the discharge;

(6) Specification if underground workings will be encountered, and the distance, in feet, to the nearest active deep mine; and

(7) Specification of the types of disturbances planned for the proposed mineral operation.

Section 10. Cultural Resource Information. The applicant shall specify if sites listed on the National Register of Historic Places or known archaeological sites exist within, or adjacent to, the proposed permit boundary.

Section 11. Environmental Resources Information. (1) The applicant shall indicate if there are Wildlife Management Areas, wildlife refuges, nature preserves, state or national parks, state or national forests, or similar public lands within the vicinity of the proposed mineral operation. If these lands exist, the applicant shall delineate them on the map.

(2) The applicant shall indicate if disturbances within the channel of, or within 100 feet of, an intermittent or perennial stream are proposed.

(3) The applicant shall indicate if there are outstanding resource waters, pursuant to 401 KAR 10:031, within the vicinity of the proposed mineral operation. If so, the applicant shall delineate these waters on the map.

Section 12. Surface Water Quantity and Quality Protection

Plan. The permit application shall contain a surface water quantity and quality protection plan, which shall demonstrate to the satisfaction of the cabinet compliance with 405 KAR 5:050 and 405 KAR 5:055, and shall include the following information:

(1) The number of sedimentation ponds proposed, accompanied by designs, drawings, and specifications for each structure to include:

- (a) The structure number;
- (b) The number of acres to be disturbed within the drainage area;
- (c) The number of acres in the drainage area;
- (d) Sediment storage capacity;
- (e) Storage capacity at the principal spillway;
- (f) Storage capacity at the emergency spillway;
- (g) Spillway capacities;
- (h) Structure height measured from the downstream toe; and
- (i) All other engineering designs, dimensions, and calculations required to demonstrate compliance with 405 KAR 5:050 and 5:055.

(2) If sediment removal becomes necessary, the permit application shall contain a description of how sediment shall be removed and disposed.

(3) The applicant shall state if any permanent sedimentation ponds are proposed.

(4) The permit application shall contain descriptions, designs, diagrams, figures, and calculations as necessary to adequately explain and illustrate all other sediment control structures.

(5) The permit application shall contain descriptions, designs, diagrams, figures, and calculations as necessary to adequately explain and illustrate other methods proposed for protecting surface waters.

Section 13. Permanent and Temporary Impoundments. If an impoundment is part of the plan of reclamation or method of mineral operation, the permit application shall contain detailed designs and specifications for the impoundment that demonstrates compliance with 405 KAR 5:055.

Section 14. Spoil Handling Plan. The permit application shall contain or be accompanied by a plan for the handling and disposal of spoil, in excess of that involved with backfilling and grading, which shall demonstrate to the satisfaction of the cabinet, compliance with the requirements of 405 KAR 5:062.

Section 15. Toxic Materials Handling Plan. The permit application shall contain, or be accompanied by, a plan for the handling of acid-forming or toxic-forming materials, waste materials, or other unstable materials that shall demonstrate, to the satisfaction of the cabinet, compliance with the requirements of 405 KAR 5:062.

Section 16. Backfilling and Grading Plan. The permit application shall contain, or be accompanied by, a plan for backfilling and grading, which shall demonstrate to the satisfaction of the cabinet, compliance with the requirements of 405 KAR 5:062.

Section 17. Topsoil Handling and Restoration Plan. The permit application shall contain, or be accompanied by, a plan for the handling and restoration of topsoil, which shall demonstrate to the satisfaction of the cabinet, compliance with the requirements of 405 KAR 5:062.

Section 18. Land Use Plan. (1) The permit application shall contain a land use plan, which demonstrates compliance with 405 KAR 5:065, and is consistent with 405 KAR 5:070, that:

- (a) Specifies the premining use or uses within, and adjacent to, the proposed permit boundary;
 - (b) Specifies the intended postmining land use for the proposed permit area; and
 - (c) If the postmining land use is different from the premining land use, shall provide a discussion justifying the change.
- (2) The land uses are listed at 405 KAR 5:065, and are defined

in 405 KAR 5:002.

Section 19. Revegetation Plan. The permit application shall contain a revegetation plan which shall demonstrate, to the satisfaction of the cabinet, compliance with the requirements of 405 KAR 5:070, and is consistent with 405 KAR 5:065 and that provides the following information:

- (1) Identification of the material that will be redistributed on the regraded area as a plant growth medium;
- (2) Permanent grass species, permanent legume species, and quick cover species to be seeded during revegetation, along with their application rates (pounds/acre);
- (3) Tree and shrub species to be planted during revegetation, along with their stocking rates (number/acre); and
- (4) The type of mulch to be used, along with the mulching rate (pounds or tons/acre), or other soil stabilization practices to be incorporated.

Section 20. Designs and Attachments. (1) The permit application shall be accompanied by appropriate descriptions, designs, diagrams, figures, and calculations as necessary to adequately explain and illustrate proposed sediment control structures, as required under Sections 12 and 13 of this administrative regulation; spoil disposal fills; access and haul roads; stream crossings; and ditches.

(2) Access and haul road designs shall conform to the specifications established in 405 KAR 5:040.

(3) The designs and plans shall demonstrate, to the satisfaction of the cabinet, compliance with all pertinent requirements of 405 KAR Chapter 5, and shall be certified by a Kentucky-registered professional engineer.

Section 21. Newspaper Advertisement: Publication of Notice of Intention to Mine. (1) An applicant for a new permit required pursuant to KRS Chapter 350, shall publish at least once, a public notice of the application for that permit.

(a) The publication shall be made by advertisement in the newspaper of largest bona fide circulation, in the county where the proposed mining site is located.

(b) If the proposed mining site is in more than one (1) county, publication shall be required in the newspaper of largest bona fide circulation in each county.

(2) The publication shall be made not less than ten (10) nor more than thirty (30) days prior to the filing of the permit application with the department.

(3) The public notice of the intention to file an application shall be entitled, "Notice of Intention to Mine Noncoal Minerals", and may be in a manner and form prescribed by the department and shall include at a minimum the following:

- (a) Name and address of the applicant;
- (b) Permit application number;
- (c) The location of the proposed mining site; and
- (d) A brief description of the kind of mining activity proposed, together with a statement of the amount of acreage affected by the proposed mineral operations.

(4) The applicant for a new permit required by KRS Chapter 350 shall establish the date and place that the "Notice of Intention to Mine Noncoal Minerals" was published, by attaching to the application proof of the time, place, and content of the published notice.

Section 22. Permit Revisions. A revision to a permit shall be obtained if the mineral permittee desires to modify the mineral operations or make changes to the original permit that does not involve increased acreage. The following stipulations shall apply to permit revisions:

(1) The application for revision shall be filed with the cabinet and approved prior to the date on which the mineral permittee expects to revise the mineral operation;

(2) The term of a permit shall remain unchanged by a revision; and

(3) The application for revision shall be submitted using the "Application for Surface Disturbance Mining Permit Noncoal

Mining", Form NCR-2.

Section 23. Permit Amendments. Upon application by the mineral permittee, the cabinet may amend a valid existing permit, so as to increase the permitted area to be affected by mineral operations under the permit. Applications for amendment may be filed at any time during the term of the permit. (1) The mineral permittee shall file an application in the same form and with the same content as required for an original permit pursuant to this administrative regulation.

(2) The mineral permittee may need to file a supplemental bond with the cabinet in an amount to be determined, as provided under 405 KAR 5:082, for each additional acre or fraction of an acre.

Section 24. Permit Renewals. A valid permit issued pursuant to 405 KAR Chapter 5 shall carry with it, the right of successive renewal upon expiration of the term of the permit. Successive renewal shall be allowed only for those areas specifically within the boundaries of the existing permit. (1) An application for renewal of a permit shall be filed with the cabinet at least sixty (60) days prior to the expiration date of the permit.

(2) If an application for renewal of a valid existing permit includes a proposal to extend the mineral operation beyond the boundaries authorized pursuant to the existing permit, the portion of the application that addresses a new land area shall be subject to all requirements of 405 KAR Chapter 5, and a new original permit application shall be required for these areas.

(3) The permit renewal shall be issued if the following requirements are met:

(a) The application for renewal shall be submitted using the "Application for Surface Disturbance Mining Permit Noncoal Mining", Form NCR-2;

(b) The mineral permittee shall submit all revised or updated information required by the cabinet, including at a minimum:

1. An updated operational plan current to the date of request for renewal; and

2. Specification of the status and extent of all mineral operations on the existing permit area;

(c) The present mineral operation is in compliance with KRS Chapter 350 and 405 KAR Chapter 5; and

(d) The mineral permittee shall provide additional bond required in accordance with 405 KAR 5:082.

Section 25. Permit Succession. (1) There shall not be succession on the permitted area without the prior written approval of the cabinet.

(2) The initial mineral permittee shall notify the cabinet, in writing, of a proposed succession.

(3) The cabinet may release the first mineral operator from reclamation responsibility pursuant to 405 KAR Chapter 5 as to that particular mineral operation, except that:

(a) There shall not be release until the successive mineral operator has been issued a permit and has otherwise complied with the requirements of 405 KAR Chapter 5; and

(b) The successor shall immediately assume, as a part of his obligation pursuant to 405 KAR Chapter 5, all liability for the reclamation of the area affected by the former permitted mineral operation.

(4) If the cabinet has given its prior written approval to the succession, a successor in interest to a mineral permittee who applies for a successor permit within thirty (30) days of succeeding to the interest, and who obtains immediate bond coverage at least equivalent to the amount of the bond of the original mineral permittee, may continue mineral operations according to the approved permit plan of the original mineral permittee until the successor's application is granted or denied.

(5) The bond coverage provided by the successor in interest shall take effect immediately upon the commencement of mineral operations by the successor.

Section 26. Review of Permits. (1) Within thirty (30) working days of receiving the permit application, the cabinet shall make one

(1) of three (3) decisions:

(a) To technically withdraw the permit application;

(b) To deny the permit application; or

(c) To approve the permit application.

(2) If the permit application is technically withdrawn or denied, the thirty (30) working day period shall be stopped on the date of this decision.

(3) The time period shall restart on the date the permit application is returned with deficiencies corrected.

(4) If the application is not approved, the cabinet shall state the reasons, in writing, for which the application is not approved; and the cabinet may propose modifications, delete areas, or reject the entire application.

(5) If the mineral permittee disagrees with the decision of the cabinet the mineral permittee he or she may, by written notice, request a hearing by the cabinet, pursuant to 400 KAR 1:120.

(6) The cabinet shall notify the applicant by registered mail within twenty (20) days after a decision is made.

Section 27. Criteria for Permit Approval and Denial. An application for a permit and mineral operation shall not be approved unless the application affirmatively demonstrates and the cabinet determines on the basis of information stated in the application, and other available pertinent information, that:

(1) The permit application is accurate, complete, and that the applicant has complied with all requirements of 405 KAR Chapter 5;

(2) The mineral operation proposed can be carried out under the method of mineral operation outlined in the permit application in a manner that will satisfy all requirements of 405 KAR Chapter 5;

(3) The proposed mineral operation shall not constitute a hazard to, or do physical damage to life, to an occupied dwelling, public building, school, church, cemetery, commercial or institutional building, public road, stream, lake, other public property, or to members of the public or their real and personal property.

(a) All necessary measures shall be included in the method of mineral operation in order to eliminate the hazard or damage.

(b) If it is not technologically feasible to eliminate the hazard or damage by adopting specifications in the method of mineral operation, then that part of the mineral operation that constitutes the cause of the hazard or damage shall be deleted from the application and mineral operation;

(4) The proposed mineral operation shall not adversely affect natural hazard lands or a wild river established pursuant to KRS Chapter 146;

(5) The proposed mineral operation shall not be inconsistent with other mineral operations anticipated in areas adjacent to the proposed permit area; and

(6) The proposed permit area is:

(a) Not included within the boundaries of the National Park System, the National Wildlife Refuge System, including study rivers designated under Section 5(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1276(a)), and the National Recreation Areas designated by Act of Congress;

(b) Not included within 300 feet, measured horizontally, of a public park, public building, school, church, community, or institutional building;

(c) Not included within 100 feet, measured horizontally, of a cemetery, and access to be provided to a cemetery at all times;

(d) Not within 100 feet, measured horizontally, of the outside right-of-way line of a public road, except:

1. Where mine access roads or haul roads join the right-of-way; or

2. Where the cabinet allows the roads to be relocated or allows disturbances within 100 feet of the roads, once the applicant has obtained necessary approval from the governmental authority with jurisdiction over the public road, as required under Section 5 of this administrative regulation; and if after public notice and opportunity for public hearing a written finding is made, by the cabinet, that the interest of the public and the landowners affected thereby shall be protected;

(e) Not within the distances specified in Section 5 of this

administrative regulation, measured horizontally, of an occupied dwelling unless the applicant submits with the permit application a written affidavit from the owner of the dwelling specifying an allowance, as required by Section 5 of this administrative regulation.

1. This waiver shall be knowingly and intelligently executed, and be separate from a lease or deed, unless the lease or deed contains an explicit waiver.

2.a. A waiver obtained from previous owners shall remain effective for subsequent owners who had actual or constructive knowledge of the existing waiver when the dwelling was purchased.

b. A subsequent owner shall be deemed to have constructive knowledge if the waiver has been properly filed in public property records pursuant to KRS 382.110 or if the mining has proceeded to within the distance limit prior to the date of purchase; and

(f) Not within 100 feet of an intermittent or perennial stream unless appropriate permits and approvals, required pursuant to Section 5 of this administrative regulation, have been obtained authorizing mineral operations at a closer distance to, or through, the stream. The authorization shall not be given unless the applicant demonstrates to the satisfaction of the cabinet that the authorization is environmentally sound and that KRS Chapter 350 and 405 KAR Chapter 5 have been satisfied.

Section 28. Permit Conditions; Permit Term. (1) Permits issued by the cabinet may contain certain conditions necessary to ensure that the mineral operation shall be conducted in compliance with KRS Chapter 350 and 405 KAR Chapter 5.

(2) All mineral operations shall be conducted in accordance with KRS Chapter 350 and 405 KAR Chapter 5 and conditions of the permit.

(3) Each permit shall be issued for a fixed term not to exceed five (5) years.

Section 29. Denial of a Permit for Past Violations. (1) A mineral operator or person whose permit has been revoked or suspended shall not be eligible to receive another permit or begin another mineral operation, or be eligible to have suspended permits or mineral operations reinstated until he has complied with all applicable requirements of KRS Chapter 350 and 405 KAR Chapter 5 with respect to all permits issued him.

(2) A mineral operator or person whose surface coal mining operation permit has been revoked or suspended shall not be eligible to receive another permit or begin another mineral operation, or be eligible to have suspended permits or mineral operations reinstated until he has complied with all applicable requirements of KRS Chapter 350, 405 KAR Chapters [1, 3, and] 7 through 24 with respect to all surface coal mining operation permits issued him.

(3) A mineral operator or person who has forfeited any bond filed with the cabinet for a mineral operation or a surface coal mining operation shall not be eligible to receive another permit or begin another mineral operation unless:

(a) The land for which the bond was forfeited has been reclaimed without cost to the state; or

(b) The mineral operator or person has paid a sum determined by the cabinet after the Division of Abandoned Mine Lands has prepared an estimate of the cost to reclaim the lands, based upon site specific conditions.

(4) If the applicant, mineral operator, a subcontractor, or a person acting on behalf of the applicant has either conducted activities with a demonstrated pattern of willful violations of 405 KAR Chapter 5, or has repeatedly been in noncompliance of this chapter, then the permit application shall be denied. A mineral permittee shall not be relieved of responsibility with respect to a permit issued to him.

(5) If the cabinet determines that an activity of the applicant regulated pursuant to 405 KAR Chapter 5 is currently in violation of KRS Chapters 149, 151, 224, 350 through ~~353~~[354], 400 KAR Chapters 1 through 3, 401 KAR Chapters 4 through 100, 402 KAR Chapter 3, or 405 KAR Chapters ~~2~~[4] through 30, then the cabinet shall require the applicant, before the issuance of the permit, to

either:

(a) Submit proof that can be substantiated by the cabinet that the violation has been corrected, or is in the process of being corrected in good faith; or

(b) Establish, by proof that can be substantiated by the cabinet, that the applicant has filed and is presently pursuing, a good faith administrative or judicial appeal to contest the validity of the violation.

(6) If the applicant submits the proof specified pursuant to subsection (5) of this section, then the cabinet may issue the permit with an appropriate condition that either the reclamation work be continued in good faith until completion or that if the applicant loses his action contesting the violation that the violation be corrected within a specified time. Failure to comply with a condition shall be grounds for revocation of the permit.

(7) If the applicant disagrees with the cabinet's determination pursuant to this section, then he or she has the right to request an administrative hearing pursuant to 400 KAR 1:120.

Section 30. Permit Conference and Public Comment. (1) Procedures for requests. A person whose interests are or may be adversely affected by the issuance of the application, including the officer or head of any federal, state or local government agency or authority, may request that the cabinet hold an informal conference on an application for a permit. The request shall:

(a) Briefly summarize the issues to be raised by the requester at the conference; and

(b) Be filed with the cabinet within fifteen (15) days of the newspaper advertisement.

(2)(a) The conference shall be held at the Division of Mine Reclamation and Enforcement.

(b) The conference shall be held within fifteen (15) days of the date of the request. The date, time, and location of the conference shall be sent to the applicant and parties requesting the conference.

(c) The conference shall be conducted by a representative of the cabinet who shall accept oral or written statements and other relevant information from a party to the conference.

(d) If all parties requesting the conference stipulate agreement before the requested conference and withdraw their requests, the conference shall not be held.

(e) All comments and evidence shall be taken into consideration by the Division of Mine Reclamation and Enforcement in Frankfort before a final decision is made on the disposition of the application.

(f) The record shall be maintained and shall be accessible to the parties during the life of the mineral operation.

(3) A person whose interests are or may be adversely affected by the issuance of the application, including the officer or head of a federal, state, or local government agency or authority, may submit written comments to the cabinet.

Section 31. Existing Mineral Operations. (1)~~Existing mineral operations that were not permitted or regulated prior to February 1995 shall obtain a permit within 180 days of February 1995.~~

(2)~~] The cabinet may grant limited variances from the distance limitations of Section 27(6) of this administrative regulation if an existing disturbance within those limits was made prior to February 1995 by an existing mineral operation that was not permitted or regulated prior to February 1995. These variances shall only be granted if practical and reasonable remedial compliance measures cannot be identified.~~

~~2] [(3) The distance limitations of Section 27(6) of this administrative regulation shall not apply if lesser distance limitations have been approved in a valid permit issued prior to February 1995. The distance limitations established in those permits shall continue to apply.~~

Section 32. Incorporation by Reference. (1) "Application for Surface Disturbance Mining Permit Noncoal Mining, NCR-2", July 2005, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Natural

VOLUME 46, NUMBER 4– OCTOBER 1, 2019

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: September 13, 2019

FILED WITH LRC: September 13, 2019 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 26, 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 November 30, 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 specifies information to be submitted by the applicant relating to legal status, financial information, general site information, map requirements, cultural and environmental resource information, and mining and reclamation plans.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to obtain a permit to mine noncoal minerals.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 350.029 authorizes the cabinet to promulgate reasonable administrative regulations to establish effective programs for the control of surface soil disturbance in connection with mining as defined by the Interstate Mining Compact. This administrative regulation conforms to the authorizing statutes by establishing a reasonable permitting program.

(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 a permitting system for the mining of noncoal minerals.

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

(a) How the amendment will change this existing administrative regulation: This amendment removes incorrect citations to administrative regulations that have been repealed.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to remove incorrect citations and to revise the list of regional offices.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the authorizing statutes by ensuring the citations used in the administrative regulation are correct.

(d) How the amendment will assist in the effective administration of the statutes: KRS 350.029 authorizes the cabinet to promulgate reasonable administrative regulations to establish effective programs for the control of surface soil disturbance in connection with mining as defined by the Interstate Mining Compact. These amendments are necessary to correct citations.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this

administrative regulation: This provision would apply to any entity that operates a noncoal mine within Kentucky. There are approximately 153 noncoal operators in 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:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities listed in question (3) above will need to review the list of field offices as well as the corrected citations in Section 29(5) of this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is not a cost increase associated with the proposed amendments.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities identified in question (3) will benefit by having a correct list of field office locations as well as corrected citations as it relates to violations that could prevent entities from obtaining a permit.

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

(a) Initially: There will be no costs to the department associated with implementation of this amendment.

(b) On a continuing basis: There will be no costs to the department associated with implementation of this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The funding for implementation of the amendments to this administrative regulation will be a combination of general funds and restricted funds.

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

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

(9) TIERING: Is tiering applied? No. All entities that operate a noncoal mine will be required to meet the same requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will apply to the Division of Mine Reclamation and Enforcement.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 350.028, 350.029, 350.240, 350.300.

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

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

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

(c) How much will it cost to administer this program for the first year? There will not be a cost increase associated with the amendments to this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? Future costs will remain essentially unchanged

related to this amendment.

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

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

**ENERGY AND ENVIRONMENT CABINET
Department for Natural Resources
Division of Mine Reclamation and Enforcement
(Amendment)**

405 KAR 7:040. General obligations of operators and permittees.

RELATES TO: KRS 350.050, 350.057, 350.060, 350.410, 350.450

STATUTORY AUTHORITY: KRS 350.020, 350.028, 350.057, 350.060, 350.090, 350.151, 350.465

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 350[in pertinent part] requires the cabinet to promulgate[rules and] administrative regulations pertaining to surface coal mining and reclamation operations. This administrative regulation sets forth the basic requirements and general obligations of operators and permittees. This administrative regulation prescribes certain methods of disposal of materials and other obligations of operators and permittees.

Section 1. General Requirements for Permits and Exploration Approvals. (1) Requirement to obtain a permit. No person or operator shall engage in surface coal mining and reclamation operations without first having obtained from the cabinet a valid permit covering the area of land to be affected.

(2) Requirement to obtain exploration approval. Subject to the provisions of 405 KAR 8:020, no person or operator shall engage in coal exploration operations without first having filed a written notice of intention to explore or having obtained written approval from the cabinet.

(3) Requirement to comply with permit or exploration approval. A permittee or person issued a coal exploration approval shall comply with all terms and conditions placed upon the permit or exploration approval by the cabinet and with all plans submitted as part of the application approved by the cabinet.

Section 2. Disposal of Materials. A person or operator engaged in surface coal mining and reclamation operations shall not throw, pile, dump or permit the throwing, piling, dumping or otherwise placing of any overburden, stones, rocks, coal, particles of coal, earth, soil, dirt, debris, trees, wood, logs, or any other materials or substances of any kind or nature beyond or outside of an area of land which is under permit and for which bond has been posted pursuant to KRS Chapter 350, nor place such materials herein described in such a way that normal erosion or slides brought about by natural physical changes will permit such materials to go beyond or outside of an area of land which is under permit and for which bond has been posted pursuant to KRS Chapter 350.

Section 3. Unsafe Practices. (1) A person or operator engaged in surface coal mining and reclamation operations shall not engage in any operations which result in a condition or constitute a practice that creates an imminent danger to the health or safety of the public.

(2) A person or operator engaged in surface coal mining and reclamation operations shall not engage in any operations which result in a condition or constitute a practice that causes or can reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources.

(3) Upon development of any emergency conditions which threaten the life, health, or property of the public, the operator shall immediately notify the persons whose life, health or property are so

threatened, shall take any and all reasonable actions to eliminate the conditions creating the emergency, and shall immediately provide notice of the emergency conditions to the cabinet, to local law enforcement officials and to appropriate local government officials. Any emergency action taken by an operator pursuant to this subsection shall not relieve the operator of other obligations pursuant to 405 KAR Chapters 7 through 24 or of obligations under other applicable local, state or federal laws and regulations.

~~Section 4.[Existing Structures on Areas Sought to be Permitted. (1) Except as provided in subsection (2) of this section, no application for a permit or a revision which proposes to use an existing structure in connection with or to facilitate the proposed coal exploration or surface coal mining and reclamation operation shall be approved, unless the applicant demonstrates and the cabinet finds, in writing, on the basis of complete information set forth in the complete application that:~~

~~(a) Irrespective of whether the structure meets the design requirements of 405 KAR Chapters 16 through 20, the existing structure will operate in compliance with the performance standards set forth in 405 KAR Chapters 16 through 20;~~

~~(b) No significant harm to the environment or public health or safety will result from the use of the structure; and~~

~~(c) The applicant will monitor the structure as required by the cabinet to determine compliance with the performance standards of 405 KAR Chapters 16 through 20.~~

~~(2) In the event the applicant fails to demonstrate that the existing structure meets the requirements of subsection (1) of this section, no application for a permit or revision which proposes to use such an existing structure in connection with or to facilitate the proposed coal exploration or surface coal mining and reclamation operation shall be approved unless the applicant demonstrates and the cabinet finds, in writing, on the basis of complete information set forth in the complete application that:~~

~~(a) Such existing structure complies with the performance standards of 405 KAR Chapter 1 or 3; and~~

~~(b) 405 KAR Chapters 16 through 20 require performance standards for such existing structure which either are not required by, or are more stringent than the performance standards of 405 KAR Chapter 1 or 3; and~~

~~(c) The applicant has included as a part of the application a compliance plan for modification or reconstruction of the structure demonstrating:~~

~~1. That the modification or reconstruction of the structure will bring the structure into compliance with the performance standards of 405 KAR Chapters 16 through 20 as soon as possible but not later than six (6) months from the date of issuance of the permit unless the applicant demonstrates to the satisfaction of the cabinet that a longer time is necessary due to the scope and nature of the reconstruction;~~

~~2. That the risk of harm to the environment or to public health or safety is not significant during the period of modification or reconstruction; and~~

~~3. The applicant will monitor the structure as required by the cabinet to determine compliance with the performance standards of 405 KAR Chapters 16 through 20.~~

~~(d) Should the cabinet find that the existing structure cannot be reconstructed without causing significant harm to the environment or public health or safety, the applicant will be required to abandon or remove the existing structure in the manner provided in 405 KAR 16:010 or 405 KAR 18:010. The structure shall not be used for or to facilitate surface coal mining operations after the date a permanent program permit is required under 405 KAR 8:010.~~

~~(3) In the event that 405 KAR Chapter 1 or 3 prescribes a performance standard applicable to any such existing structure which performance standard has not been complied with by the applicant, no permit shall be issued by the cabinet unless the applicant shall have redesigned and reconstructed such existing structure in accordance with the design requirements of 405 KAR Chapters 16 through 20.~~

~~(4) Existing structures allowed to operate subsequent to permit approval as provided in subsection (1) of this section shall not include coal waste piles used either temporarily or permanently as~~

dams or embankments. Such existing coal waste piles allowed to operate subsequent to permit approval as provided in subsection (2) of this section must be modified or reconstructed in order to comply with the design requirements of 405 KAR Chapters 16 through 20 in addition to the performance standards.

(5) Any structures or facilities which must be reconstructed pursuant to subsection (2) of this section shall be reconstructed according to engineering plans prepared and certified by a registered professional engineer. Upon completion of reconstruction, the responsible engineer shall certify to the cabinet, within fourteen (14) days thereafter, that the reconstruction was performed in accordance with the approved design plans.

Section 5.] Hazard Classifications for Impoundments. (1) For proposed new sedimentation ponds or other new impoundments[and those proposed for reconstruction pursuant to Section 4(2) and (3) of this administrative regulation], the responsible design engineer shall determine the structure hazard classification according to the classification descriptions. For structures classified (B) - moderate hazard or (C) - high hazard, the operator shall obtain a permit from the cabinet pursuant to KRS 151.250, and administrative regulations adopted pursuant thereto, prior to beginning[reconstruction or] construction.

(2) Structure hazard classifications are as follows: The following broad classes of structures are established to permit the association of criteria with the damage that might result from a sudden major breach of the structure:

(a) Class (A); low hazard: structures located such that failure would cause loss of the structure itself but little or no additional damage to other property. Such structures will generally be located in rural or agricultural areas where failure may damage farm buildings other than residences, agricultural lands, or county roads.

(b) Class (B); moderate hazard: structures located such that failure may cause significant damage to property and project operation, but loss of human life is not envisioned. Such structures will generally be located in predominantly rural agricultural areas where failures may damage isolated homes, main highways or major railroads, or cause interruptions of use or service of relatively important public utilities.

(c) Class (C); high hazard: structures located such that failure may cause loss of life, or serious damage to homes, industrial or commercial buildings, important public utilities, main highways or major railroads. This classification shall[~~must~~] be used if failure would cause probable loss of human life.

(3) The responsible engineer shall determine the classification of the structure after considering the characteristics of the valley below the site and probable future development. Establishment of minimum criteria does not preclude provisions for greater safety when deemed necessary in the judgment of the engineer. Considerations other than those mentioned in the above classifications may require that the established minimum criteria be exceeded, as determined by the cabinet. A statement of the classification established by the responsible engineer shall be clearly shown on the first sheet of the design drawings.

(4) When structures are spaced so that the failure of an upper structure could endanger the safety of a lower structure, the possibility of a multiple failure shall[~~must~~] be considered in assigning the structure classification of the upstream structure.

Section 5)[6]. Reports Required. The operator shall submit such reports, documentation, certifications, or other information as the cabinet may require, or as may be required by KRS Chapter 350 and administrative regulations adopted pursuant thereto.

Section 6)[7]. Coal Exploration. (1) Any person conducting coal exploration[on or after the date specified in Section 11 of this administrative regulation] shall either file a Notice of Intention to Explore or obtain approval of the cabinet as required by 405 KAR 8:020.

(2) The coal exploration performance standards in 405 KAR 20:010 shall apply to coal exploration which substantially disturbs the natural land surface [two (2) months after the date specified in Section 11 of this administrative regulation].

Section 7)[8]. Compliance with 405 KAR Chapters 7 through 24 does not relieve any person or operator from the obligation to comply with other applicable administrative regulations of the cabinet.

Section 8)[9]. The requirement to restore the approximate original contour of the land shall apply regardless of any reconstruction of any existing structure allowed[pursuant to Section 4 of this administrative regulation].

Section 9)[10]. Certifications by Registered Professional Engineers. (1) A document required to be certified shall be rejected by the cabinet as incomplete if its accuracy is not so attested.

(2) Certification by a qualified registered professional engineer as required by 405 KAR Chapters 7 - 24 means a good faith representation to the best of his or her knowledge and belief, based on adequate knowledge of the requirements of KRS Chapter 350 and 405 KAR Chapters 7 - 24, related experience, best professional judgment, accepted engineering practices and recognized professional standards, and standard practice as it relates to direct participation by the registered professional engineer or supervision of the registered professional engineer's employees or subordinates. Such certification shall not be construed to constitute a warranty or guarantee.

(3) Certification of maps, plans, and drawings. Where 405 KAR requires that maps, plans, and drawings be certified by a qualified registered professional engineer, the registered professional engineer shall certify:

(a) That the information or documentation contained in the map, plan, or drawing is correct as determined by accepted engineering practices; and

(b) That the map, plan or drawing includes all the information required by KRS Chapter 350 and 405 KAR Chapters 7 - 24.

(4) Certification of designs. Where 405 KAR Chapters 7 - 24 requires that a qualified registered professional engineer design and certify a facility, he or she shall certify that:

(a) The design is in accordance with accepted engineering practices and recognized professional standards;

(b) The design complies with the design requirements of KRS Chapter 350 and 405 KAR Chapters 7 - 24; and

(c) Provided the facility is properly constructed, operated, and maintained, the design is adequate for the facility to meet the applicable performance standards of KRS Chapter 350 and 405 KAR Chapters 7 - 24 insofar as such performance can reasonably be predicted by accepted engineering practices.

(5) Certification of construction.

(a) Where 405 KAR Chapters 7 - 24 requires that a qualified registered professional engineer certify that a facility was constructed in accordance with the design approved by the cabinet, he or she shall certify:

1. That adequate inspections were conducted by the qualified registered professional engineer or by persons under his or her supervision;

2. That the construction was performed in accordance with accepted construction practices; and

3. Either that the facility was constructed in accordance with the design approved by the cabinet, or that the facility was constructed in accordance with the design approved by the cabinet except for certain minor deviations which will not adversely affect the performance of the facility nor render the facility in violation of KRS Chapter 350 and 405 KAR Chapters 7 - 24.

(b) Any minor deviations shall be described in the certification document and the effect of the deviations upon the performance of the facility shall be explained.

(c) As-built drawings shall be submitted as a part of the certification.

(6) Certification of maintenance. Where 405 KAR Chapters 7 - 24 requires that a qualified registered professional engineer certify the maintenance of a structure, he or she shall certify that:

(a) An inspection of the structure was conducted by the registered professional engineer or by a person under his or her supervision; and

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(b) Based on that inspection, the registered professional engineer has determined that the structure has been maintained as required by 405 KAR Chapters 7 - 24.

(7) Certifications shall be made in the form prescribed by the cabinet, and the cabinet may reject any certification which is not made in such form.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: September 13, 2019

FILED WITH LRC: September 13, 2019 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 26, 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 November 30, 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 prescribes certain methods of disposal of materials and other obligations of operators and permittees.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish methods of disposal of materials and other obligations of operators and permittees.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 350.028 authorizes the cabinet to adopt administrative regulations pertaining to surface coal mining operations to accomplish the purposes of KRS Chapter 350. This administrative regulation prescribes certain methods of disposal of materials and other obligations of operators and permittees as authorized by KRS 350.028.

(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 providing information related to methods of disposal of materials and other obligations of operators and permittees.

(2) If 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 deletes language that allowed an entity to use an existing structure that was used under the interim program to be used as part of a new permanent program permit application if it meets certain criteria or would meet them in the future.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to remove language that allowed an entity to use an existing structure that was used under the interim program to be used as part of a new permanent program permit application if it meets certain criteria or would meet them in the future. The cabinet believes this language is no longer necessary.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the authorizing statutes by correcting a section of the administrative regulation that

had information related to a process that the cabinet believes is no longer necessary.

(d) How the amendment will assist in the effective administration of statutes: These amendments removes language that allowed an entity to use an existing structure that was used under the interim program to be used as part of a new permanent program permit application if it meets certain criteria or would meet them in the future. The amendment removes this ability as the cabinet believes that no structure will be used as a permit application request.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. This provision could apply to any entity that operates coal mines within Kentucky. There are 175 licensed mines in 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:

(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 allowed to use an existing structure that was used under the old interim program as part of a new permit application.

(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 associated with these amendments. If an entity intends on using an existing structure as part of their permit application then it would need to meet permanent program standards.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): These amendments will clearly establish standards regarding existing structures.

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

(a) Initially: The division will not incur any additional costs for the implementation of this administrative regulation.

(b) On a continuing basis: The division 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: A combination of general and restricted funds 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? No, tiering was not used. The provisions in this administrative regulation will apply equally to all coal operators.

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? This administrative regulation applies to the Division of Mine Permits and the Division of Mine Reclamation and Enforcement.

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, 350.057, 350.060, 350.090, 350.151, 350.465

3. Estimate the effect of this administrative regulation on the 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. 30 C.F. R. 701.11

2. State Compliance Standards. KRS 350.028 and 350.060.

3. Minimum or uniform standards contained in the federal mandate. The C.F.R. citations listed above provides the general information related to permits.

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 not make the program more stringent than the federal program.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. NA

ENERGY AND ENVIRONMENT CABINET Department for Natural Resources Division of Mine Reclamation and Enforcement (Amendment)

405 KAR 7:050. Coal processing waste disposal sites.

RELATES TO: KRS 151.125, 151.297, 224.071, 350.020, 350.090(1), 350.420

STATUTORY AUTHORITY: KRS 151.125, 224.033, 350.020

NECESSITY, FUNCTION, AND CONFORMITY: KRS 350.020 states that unregulated surface coal mining operations create hazards dangerous to life and property and that it is the purpose of KRS Chapter 350 to provide such regulation and control of these operations in order to minimize or prevent injurious effects on the people and resources of the Commonwealth. KRS 350.020 directs the cabinet to adopt whatever administrative regulations are found necessary to accomplish the purpose of KRS Chapter 350. Furthermore, KRS 151.125 and 151.297 provide for the issuance of remedial orders whenever life or property are or may be endangered by the failure of any dam, reservoir, levee, embankment, or other water barrier. In addition, KRS 224.071 provides for the issuance of abate and alleviate orders when there is a danger to the health or welfare of the people of the Commonwealth or to natural resources. This administrative regulation provides for the control of coal processing waste dams, waste impoundments, and waste banks in order to prevent loss of life, damage to property, and injurious effects on the environment of the Commonwealth due to structural failure of these facilities and is necessary because such facilities are not otherwise adequately regulated. This administrative regulation provides[; among other things,] for submittal of engineering reports,

performance standards, and remedial measures to correct dangerous facilities.

Section 1. Applicability. This administrative regulation applies to all coal processing waste disposal sites, whether dams, waste impoundments, or waste banks, that were constructed or utilized after August 3, 1977, regardless of whether or not the sites are or have been under permit or bond under KRS Chapter 350.

Section 2. Reports. (1)~~Within sixty (60) days of September 21, 1982,~~ Operators or owners of coal processing waste disposal sites shall submit two (2) copies of the following to the cabinet regional office:

(a) All existing information currently available to the operator or owner including complete design of the facility, stability analyses, and a description of the coal processing waste material at the site including moisture content and particle size gradation. This shall also include copies of plans submitted to ~~and~~for approved by MSHA. If such plans submitted to MSHA include all of the information required by this paragraph, then submittal of copies of such plans shall suffice. Where information required by this paragraph has already been submitted to the cabinet as a part of a permit application, the operator or owner shall so notify the cabinet regional office in writing and need not resubmit duplicate material.

(b) As-built drawings of the current phase of construction or of the completed facility as applicable, including a map showing the location of the facility.

(2) Analyses and descriptions submitted under subsection (1)(a) of this section shall be based upon current information available to the operator or owner. However, on a case-by-case basis, at any time, the cabinet may require the operator or owner to submit such additional plans and analyses or to conduct such investigations and testing of materials as necessary to determine the stability of the facility where failure of the facility could cause damage to life or property or injurious effects on the environment of the Commonwealth. This may include~~[-but is not limited to,]~~ seepage investigations, settlement studies based on compressibility and mining subsidence, foundation investigations including borings or test pits, laboratory testing of foundation materials, and determination of strength parameters based on laboratory testing of site specific coal processing waste materials.

Section 3. Performance Standards. (1) Any coal processing waste disposal site impounding water, or impounding coal processing waste which is physically unstable due to excessive moisture content or excessive fine-grained material, and any dam containing coal processing waste in the embankment shall comply with ~~405 KAR 16:100 or 405 KAR 18:100~~~~either 405 KAR 4:210 or 405 KAR 3:180~~.

(2) All other coal processing waste disposal sites shall comply with 30 C.F.R. 77.214 as amended at 36 Fed. Reg. 13,143 (1971) and 30 C.F.R. 77.215 as amended at 40 Fed. Reg. 41,776 (1975), provided, however, no facility shall be constructed in such manner that it may cause loss of life, damage to property, or injurious effects on the environment of the Commonwealth due to structural failure of the facility.

(3) Those portions of structures that have already been constructed and structures that have been completed need not be reconstructed except where reconstruction is determined by the cabinet to be necessary to ensure stability of the facility in order to eliminate potential hazards to life or property or to prevent injurious effects on the environment of the Commonwealth.

(4) Nothing in this administrative regulation shall be construed as relieving an operator from the obligation to comply with any other provision of 405 KAR Chapters 7 - 24, including, but not limited to, compliance with the permanent program performance standards and the requirements for existing structures in 405 KAR 7:040, Section 4.

Section 4. Remedial Measures. Operators or owners of coal processing waste disposal sites may be required by the cabinet to revise the facility design and/or to implement such remedial measures as necessary to comply with Section 3 of this

administrative regulation.

Section 5. Certifications. (1) All designs, maps, plans, and drawings submitted under this administrative regulation shall be prepared and certified by a qualified registered professional engineer.

(2) Construction or reconstruction of coal processing waste disposal sites shall be inspected during and after construction by a qualified registered professional engineer or by qualified persons under the engineer's supervision and the facility shall be certified within two (2) weeks of each inspection by the responsible qualified registered professional engineer as having been constructed in accordance with the design approved by the cabinet. Where the cabinet has not yet reviewed and approved the design, the engineer shall make the certifications based upon the design approved by MSHA.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: September 13, 2019

FILED WITH LRC: September 13, 2019 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 26, 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 November 30, 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 provides for submittal of engineering reports, performance standards, and remedial measures to correct dangerous facilities.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide information related to submittal of engineering reports, performance standards, and remedial measures to correct dangerous facilities.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 350.020 directs the cabinet to adopt whatever administrative regulations are found necessary to accomplish the purpose of KRS Chapter 350. This administrative regulation provides information on performance standards, the submittal of reports, and remedial measures to correct dangerous facilities.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by providing the regulated community information related to submittal of engineering reports, performance standards, and remedial measures to correct dangerous facilities.

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

(a) How the amendment will change this existing administrative regulation: This amendment inserts citations in place of references to the interim program administrative regulations that were repealed related to coal processing waste disposal sites that are

impounding water, or impounding coal processing waste. The interim program administrative regulations were repealed in 2018.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to insert citations to administrative regulations to replace citations to the interim program administrative regulations that were repealed in 2018.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the authorizing statutes by inserting correct citations that are necessary for the proper regulation of coal processing waste disposal impoundments that are impounding water, or impounding coal processing waste.

(d) How the amendment will assist in the effective administration of the statutes: KRS 350.020 directs the cabinet to adopt whatever administrative regulations are found necessary to accomplish the purpose of KRS Chapter 350. This amendment assists in the effective administration of the statutes by providing information related to coal processing waste disposal sites that are impounding water, or impounding coal processing waste.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment would apply to any entity that operates coal mines within Kentucky. There are approximately 175 licensed mines in 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:

(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 continue to operate as normally. The citations that are being inserted will not change the manner in which coal processing waste disposal sites impounding water or coal processing waste will be regulated. It is simply replacing citations to administrative regulations that were repealed in 2018.

(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 associated with these amendments.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, coal operators will simply have an updated administrative regulation citation that contains all the information for the proper regulation of coal processing waste disposal site impounding water, or impounding coal processing waste.

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

(a) Initially: There will be no costs to the department associated with implementation of this amendment.

(b) On a continuing basis: There will be no costs to the department associated with implementation of this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The funding for implementation of the amendments to this administrative regulation will be a combination of general funds and restricted funds.

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

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

(9) TIERING: Is tiering applied? No, tiering was not used. The provisions in this administrative regulation will apply equally to all coal operators.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will

be impacted by this administrative regulation? The Division of Mine Permits and Division of Mine Reclamation of Enforcement.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 151.125, 224.033, 350.020.

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

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

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

(c) How much will it cost to administer this program for the first year? There will not be a cost increase associated with the amendments to this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? Future costs would remain essentially unchanged related to this amendment.

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

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 30 C.F. R. 717.18(b)(5)

2. State Compliance Standards. KRS 350.020.

3. Minimum or uniform standards contained in the federal mandate. The C.F.R. citations listed above set the minimum information related to removal of vegetative growth on dams.

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 not make Kentucky's program more stringent than the federal regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. NA

ENERGY AND ENVIRONMENT CABINET Department for Natural Resources Division of Mine Permits (Amendment)

405 KAR 8:010. General provisions for permits.

RELATES TO: KRS 61.870-61.884, 146.200-146.360, 322.010(3), 322.340, 350.020, 350.055, 350.060, 350.070, 350.085, 350.090, 350.130, 350.135, 350.450, 350.465, 350.500-350.521, 424.110-424.120, 27 C.F.R. 555.206, 555.218, 555.219, 555.220, 30 C.F.R. 77.1301(c), 730-733, 735, 775, 777, 778.17, 870, 917, 16 U.S.C. 470aa-mm, 470x-6, 661-667e16, 668-668d, 703-712, 1531-1544, 30 U.S.C. 1253, 1255-1261, 1263-1266, 1272

STATUTORY AUTHORITY: KRS 350.020, 350.028, 350.060, 350.135, 350.450, 350.465, 350.515, 30 C.F.R. Parts 730-733, 735, 773-775, 777, 778.17, 917, 16 U.S.C. 661-667e16, 668a, 703-712, 1531-1544, 30 U.S.C. 1253, 1255-1261, 1263-1266, 1272

NECESSITY, FUNCTION, AND CONFORMITY: KRS 350.028 and 350.465 require the cabinet to promulgate rules and administrative regulations pertaining to permits for surface coal

mining and reclamation operations. This administrative regulation establishes provisions for permits to conduct these operations, including the conditions for which permits are required, application deadlines, requirements for applications for permanent program permits, fees, verification of applications, public notice requirements, submission of comments on permit applications, the right to file objections, informal conferences, review of the permit applications, criteria for application approval or denial and relevant actions, term of the permits, conditions of permits, review of outstanding permits, revisions of permits, amendments, renewals, transfers, assignments, sales of permit rights, administrative and judicial review, and procedures relating to improvidently issued permits.

Section 1. Applicability. Excluding coal exploration operations, this administrative regulation shall apply to applications, actions regarding permits, and surface coal mining and reclamation operations.

Section 2. General Requirements. (1) Permanent program permits required. A person shall not engage in surface coal mining and reclamation operations unless that person has first obtained a valid permanent program permit pursuant to 405 KAR Chapter 8.

(2) General filing requirements for permanent program permit applications.

(a) Each person who intends to engage in surface coal mining and reclamation operations or underground only operations shall file a complete and accurate application for a permanent program permit that shall comply fully with applicable requirements of KRS Chapter 350 and 405 KAR Chapters 7 through 24, and shall not begin the operation until the permit has been granted.

(b) Renewal of valid permanent program permits. An application for renewal of a permit pursuant to Section 21 of this administrative regulation shall be filed with the cabinet at least 120 days before the expiration of the permit.

(c) Revision of permanent program permits. A permittee may apply for a revision of a permit, but shall not vary from the requirements of the permit until the revision has been approved by the cabinet. The term of a permit shall remain unchanged by a revision.

(d) Succession to rights granted pursuant to prior permanent program permits.

1. An application for the transfer, sale, or assignment of rights granted pursuant to a permit may be submitted.

2. The actual transfer, sale, or assignment of permit rights shall not take place until written permission has been granted by the cabinet pursuant to 405 KAR Chapters 7 through 24.

(e) Amendment of permanent program permits. A permittee may apply for an amendment to a permit pursuant to Section 23 of this administrative regulation, but shall not begin surface coal mining and reclamation operations on the areas until the amendment has been approved by the cabinet. The term of a permit shall remain unchanged by an amendment.

(3) Compliance with permits. A person engaging in surface coal mining and reclamation operations pursuant to a permit issued pursuant to KRS Chapter 350 shall comply with the terms and conditions of the permit, including the plans and other documents submitted as part of the application and approved by the cabinet and the applicable requirements of KRS Chapter 350 and 405 KAR Chapters 7 through 24.

Section 3. Coordination of Review of Permit Applications. (1) For the purposes of avoiding duplication, the cabinet shall coordinate the review and issuance of permits for surface coal mining and reclamation operations with:

(a) Any other federal or Kentucky permit process applicable to the proposed operations, as required by Section 503 of SMCRA, 30 U.S.C. 1201 - 1328 and 30 C.F.R. 700 - 955; and

(b) Applicable requirements of the Endangered Species Act of 1973, 16 U.S.C. 1531-1544; the Fish and Wildlife Coordination Act of 1934, 16 U.S.C. 661-667d; the Migratory Bird Treaty Act of 1918, 16 U.S.C. 703-712; the National Historic Preservation Act of 1966, (54 U.S.C. 300101 – 307108; and the Bald Eagle Protection

Act of 1940, 16 U.S.C. 668-668d, as required by 30 C.F.R. 773.12.

(2) This coordination shall be accomplished by providing the appropriate agencies with an opportunity to comment on permit applications as established in Section 8(6) and (7) of this administrative regulation and, if necessary, by any other measures the cabinet and interested parties agree are appropriate.

Section 4. Preliminary Requirements. (1) A person desiring a permit may submit to the cabinet a Preliminary Application, MPA-00.

(2) If the permittee chooses to submit a Preliminary Application, the Preliminary Application shall contain pertinent information, including a map at a scale of one (1) inch equals 400 or 500 feet, marked to show the proposed permit area, shadow area, and adjacent areas; and the areas of land to be affected, including, for example, locations of the coal seam or seams to be mined, access roads, haul roads, spoil or coal waste disposal areas, and sedimentation ponds.

(a) Areas delineated on the map shall be physically marked at the site; and

(b) Pursuant to KRS Chapter 350 and 405 KAR Chapters 7 – 24, personnel of the cabinet shall conduct, within fifteen (15) working days after the filing of the Preliminary Application, an on-site investigation of the area with the person or his or her representatives and representatives of appropriate local, state, or federal agencies, after which the person may submit a permit application.

Section 5. General Format and Content of Applications. (1)(a) Applications for permits to conduct surface coal mining and reclamation operations shall be filed in the number, form, and content required by the cabinet, in accordance with KRS 350.060(5) and (6), including a copy to be filed for public inspection pursuant to Section 8(8) of this administrative regulation.

(b) The application and copies shall be prepared, assembled, and submitted with attachments, plans, maps, certifications, drawings, calculations, or other documentation necessary for the cabinet to review the proposed surface coal mining and reclamation operations.

(c) The following forms shall be submitted by an applicant:

1. Permittee Information for a Mining Permit, MPA-01;
2. Operator Information for a Mining Permit, MPA-02;
3. Technical Information for Mining Permit, MPA-03;
4. Surface Owner's Affidavit: Lands Historically Used for Cropland, MPA-03-20.1.B.;
5. Disinterested Third Party Affidavit: Lands Historically Used for Cropland, MPA-03.20.1.C.;
6. Update of Permittee or Operator Information, MPA-05;
7. Change of Corporate Owners, Officers or Directors, MPA-06;
8. Application to Transfer a Mining Permit, MPA-07;
9. Revision Application to Change Operator, MPA-08;
10. Application for Renewal of a Mining Permit, MPA-09;
11. Application for a Coal Marketing Deferment, MPA-10; and
12. Minor Field Revision Application Form, SME 80.

(d) The application shall be complete with respect to all information required by 405 KAR Chapters 7 - 24~~[KAR Title 405]~~ and include, at a minimum for:

1. Surface mining activities, all the applicable information required pursuant to 405 KAR 8:030;
2. Underground mining activities, all the information required pursuant to 405 KAR 8:040; and
3. Special types of surface coal mining and reclamation operations, all the information required pursuant to 405 KAR 8:050.

(e) An application shall not be determined to be administratively complete unless all design plans for the permit area are in detailed form.

(2) Information established in the application shall be current, presented clearly and concisely, and supported by appropriate references to technical and other written material available to the cabinet.

(3) The collection and analysis of technical data submitted in the application shall be planned by or conducted under the

direction of a professional qualified in the subject to be analyzed and shall be accompanied by:

(a) Names of persons or organizations that collected and analyzed the data;

(b) Dates of the collection and analyses; and

(c) Descriptions of methodology used to collect and analyze the data.

(4) The application shall state the name, address, and position of officials of each private or academic research organization or governmental agency that provided information that has been made a part of the application regarding land uses; soils; geology; vegetation; fish and wildlife; water quantity and quality; air quality; and archaeological, cultural, and historic features.

(5)(a) The applicant shall designate in the permit application either the applicant or some other person to serve as agent for service of notices and orders.

1. The designation shall identify the person by full name and complete mailing address, and if a natural person, the person's Social Security number.

2. The person shall continue as agent for service of process until a written revision of the permit has been made to designate another person as agent.

(b) The applicant may authorize a person to submit application modifications to the cabinet. If the designation has not been made in the application, or in separate correspondence, the cabinet shall accept modifications only from the applicant.

(6) General requirements for maps and plans.

(a) If information marked on the preliminary map required pursuant to Section 4 of this administrative regulation has changed, the application shall contain an updated USGS seven and one-half (7 1/2) minute topographic map marked as required in Section 4 of this administrative regulation.

(b)1. Maps submitted with applications shall be presented in a consolidated format, to the extent possible, and shall include the types of information established on topographic maps of the U.S. Geological Survey of the 1:24,000 scale series.

2. Maps of the permit area, shadow area, and adjacent areas shall be at a scale of 400 or 500 feet to the inch, inclusive; and the scale shall be clearly shown on the map.

3. A map of scale larger than 400 feet to the inch shall be provided by the applicant if the larger scaled map is needed to adequately show mine site details.

4. The map required by 405 KAR 8:030, Section 23(1)(a) or 405 KAR 8:040, Section 23(1)(a), regarding additional areas on which permits will be sought, shall be a USGS seven and one-half (7 1/2) minute (1:24,000) topographic map.

(c) If a map or drawing is required to be certified by a qualified professional engineer, as defined by KRS 322.010(3), the map or drawing shall bear the seal and signature of the engineer as required by KRS 322.340, and shall be certified in accordance with 405 KAR 7:040, Section 10.

(d) All engineering design plans submitted with an application shall be prepared by or under the direction of a qualified professional engineer and shall bear the engineer's seal, signature, and certification as required by KRS 322.340 and 405 KAR 7:040, Section 10.

(e) Maps and plans submitted with the application shall clearly identify all previously mined areas as defined in 405 KAR 16:190, Section 7(2)(c) or 405 KAR 18:190, Section 5(2)(c).

(7) Referenced materials. If used in the application, referenced materials shall either be provided to the cabinet by the applicant or be readily available to the cabinet. If provided, relevant portions of referenced published materials shall be presented briefly and concisely in the application by photocopying or abstracting and with explicit citations.

Section 6. Application and Acreage Fees. (1) Each application for a surface coal mining and reclamation permit shall be accompanied by the fees established in this administrative regulation. The fee may be less than, but shall not exceed the actual or anticipated cost of reviewing, administering, and enforcing the permit.

(2) An applicant shall submit an application fee of \$2,500 for an

original application or \$1,750 for an amendment.

(3) An applicant shall also submit an additional seventy-five (75) dollars for each acre or fraction thereof of the area of land to be affected by the operation.

(a) If the cabinet approves an incremental bonding plan submitted by the applicant, the acreage fees may be paid individually as the bond for each increment is submitted.

(b) An acreage fee shall not be required for surface areas overlying underground or auger workings that will not be affected by surface operations and facilities.

(4) The fee shall accompany the application in the form of a cashier's check or money order payable to the Kentucky State Treasurer. A permit application shall not be processed unless the application fee has been paid.

Section 7. Verification of Application. Applications for permits; revisions; amendments; renewals; or transfers, sales, or assignments of permit rights shall be verified under oath, before a notary public, by the applicant or the applicant's authorized representative, that the information contained in the application is true and correct to the best of the official's information and belief.

Section 8. Public Notice of Filing of Permit Applications. (1) An applicant for a permit, major revision, amendment, or renewal of a permit shall place an advertisement in the newspaper of largest bona fide circulation as established in KRS 424.110 to 424.120, in the county where the proposed surface coal mining and reclamation operations are to be located.

(2)(a) The first advertisement shall be published on or after the date the:

1. Application is submitted to the cabinet; or

2. Applicant receives the notification from the cabinet pursuant to Section 13(2) of this administrative regulation that the application has been deemed administratively complete and ready for technical review.

(b) The advertisement shall be published at least once each week for four (4) consecutive weeks, with the final consecutive weekly advertisement being published after the applicant's receipt of written notice from the cabinet that the application has been deemed administratively complete and ready for technical review.

(c) The final consecutive weekly advertisement shall clearly state that it is the final advertisement and that written objections to the application shall be submitted to the cabinet until thirty (30) days after the date of the final advertisement.

(3) Within fifteen (15) days of the final date of publication of the advertisement, the applicant shall submit to the cabinet proof of publication of the required final four (4) consecutive weekly notices, in accordance with this section that shall consist of an affidavit from the publishing newspaper certifying the dates, place, and content of the advertisements.

(4) The advertisement shall be entitled "Notice of Intention to Mine" and shall be as established in subsection (5) of this section.

(5) The advertisement shall contain, at a minimum:

(a) The name and business address of the applicant;

(b) A map or description that shall:

1. Clearly show or describe towns, rivers, streams, and other bodies of water, local landmarks, and any other information, including routes, streets, or roads and accurate distance measurements, necessary to allow local residents to readily identify the proposed permit area;

2. Clearly show or describe the exact location and boundaries of the proposed permit area;

3. State the name of the U.S. Geological Survey 7.5 minute quadrangle map that contains the area shown or described; and

4. Show the north arrow and map scale, if a map is used;

(c) The location where a copy of the application shall be available for public inspection pursuant to subsection (8) of this section;

(d) The name and address of the cabinet to which written comments, objections, or requests for permit conferences on the application may be submitted pursuant to Sections 9, 10, and 11 of this administrative regulation;

(e) If an applicant seeks a permit to mine within 100 feet of the

outside right-of-way of a public road or to relocate or close a public road; except if public notice and hearing have been previously provided for this particular part of road in accordance with 405 KAR 24:040, Section 2(6); a concise statement describing the public road, the particular part to be relocated or closed, and the approximate timing and duration of the relocation or closing;

(f) A statement, if the application includes a request for an experimental practice pursuant to 405 KAR 7:060, indicating that an experimental practice is requested that identifies the regulatory requirement for which a variance is requested; and

(g) The application number.

(6) Within five (5) working days after the application for a permit, major revision, amendment, or renewal of a permit has been determined to be administratively complete, the cabinet shall issue written notification of:

(a) The applicant's intention to conduct surface coal mining and reclamation operations on a particularly described tract of land;

(b) The application number;

(c) Where a copy of the application may be inspected; and

(d) Where comments on the application may be submitted pursuant to Section 9 of this administrative regulation.

(7) The written notifications required by subsection (6) of this section shall be sent to:

(a) Local government agencies with jurisdiction over or an interest in the area of the proposed operations, including:

1. Planning agencies;

2. Sewage or water treatment authorities; and

3. Water companies, either providing sewage or water services to users in the area of the proposed operations or having water sources or collection, treatment, or distribution facilities located in these areas;

(b) All federal and Kentucky governmental agencies that have the authority to issue permits and licenses applicable to the proposed surface coal mining and reclamation operation and that are a part of the permit coordination process required by Section 3 of this administrative regulation; and

(c) Those agencies with an interest in the particular proposed operation including the:

1. USDA Soil Conservation Service State Conservationist;

2. Local U.S. Army Corps of Engineers district engineer;

3. National Park Service;

4. U.S. Department of Fish and Wildlife and Kentucky Department of Fish and Wildlife Resources; and

5. State historic preservation officer.

(8) In accordance with Section 12 of this administrative regulation, the cabinet shall, upon receipt of the application:

(a) Make the application available for public inspection and copying during all normal working hours at the appropriate regional office of the cabinet where the mining has been proposed; and

(b) Provide reasonable assistance to the public in the inspection and copying of the application.

Section 9. Submission of Comments or Objections by Public Agencies. (1) Written comments or objections on applications for permits, major revisions, amendments, and renewals of permits may be submitted to the cabinet by the public agencies to whom notification has been provided pursuant to Section 8(6) and (7) of this administrative regulation with respect to the effects of the proposed mining operations on the environment within the public agency's area of responsibility.

(2) These comments or objections shall be submitted to the cabinet within thirty (30) calendar days after the date of the written notification by the cabinet pursuant to Section 8(6) and (7) of this administrative regulation.

(3) The cabinet shall immediately file a copy of all comments or objections at the appropriate regional office of the cabinet for public inspection pursuant to Section 8(8) of this administrative regulation. A copy shall also be transmitted to the applicant.

Section 10. Right to File Written Objections. (1) Any person whose interests are or may be adversely affected or an officer or head of any federal, state, or local government agency or authority to be notified pursuant to Section 8 of this administrative regulation

shall have the right to file written objections to an application for a permit, major revision, amendment, or renewal of a permit with the cabinet, within thirty (30) days after the last publication of the newspaper notice required by Section 8(1) of this administrative regulation.

(2) The cabinet shall, immediately upon receipt of any written objections:

(a) Transmit a copy of the objections to the applicant; and

(b) File a copy at the appropriate regional office of the cabinet for public inspection pursuant to Section 8(8) of this administrative regulation.

Section 11. Permit Conferences. (1) Procedure for requests. Any person whose interests are or may be adversely affected by the decision on the application, or the officer or head of any federal, state, or local government agency or authority to be notified pursuant to Section 8 of this administrative regulation may, in writing, request that the cabinet hold an informal conference on any application for a permit, major revision, amendment, or renewal of a permit. The request shall:

(a) Briefly summarize the issues to be raised by the person requesting at the conference;

(b) State if the person requesting desires to have the conference conducted in the locality of the proposed mining operations; and

(c) Be filed with the cabinet not later than thirty (30) days after the last publication of the newspaper advertisement placed by the applicant pursuant to Section 8(1) of this administrative regulation.

(2) If a permit conference has been requested in accordance with subsection (1) of this section, then the cabinet shall hold a conference within twenty (20) working days after the last date to request a conference under subsection (1)(c) of this section.

(3) The conference shall be conducted according to the following:

(a) If requested pursuant to subsection (1)(b) of this section, the conference shall be held in the locality of the proposed mining;

(b) The date, time, and location of the conference shall be sent to the applicant and parties requesting the conference and advertised once by the cabinet in the newspaper of largest bona fide circulation, pursuant to KRS 424.110 to 424.120, in the county where the proposed surface coal mining and reclamation operations are to be located, at least two (2) weeks prior to the scheduled conference; and

(c) If requested, in writing, by a person requesting the conference in a reasonable time prior to the conference, the cabinet shall arrange with the applicant to grant parties to the conference access to the permit area and, to the extent that the applicant has the right to grant access, to the adjacent areas prior to the established date of the conference for the purpose of gathering information relevant to the conference; ~~and~~

~~(d) The requirements of 405 KAR 1:090 and 1:110 shall not apply to the conduct of the conference.~~

1. The conference shall be conducted by a representative of the cabinet, who shall accept oral or written statements and any other relevant information from any party to the conference.

2. An electronic or stenographic record shall be made of the conference proceedings, unless waived by all the parties.

3. The record shall be maintained and accessible to the parties of the conference until final release of the applicant's performance bond or other equivalent guarantee pursuant to 405 KAR Chapter 10.

(4) If all parties requesting the conference stipulate agreement before the requested conference and withdraw their requests, the conference shall not be held.

(5) Permit conferences held in accordance with this section may be used by the cabinet as the public hearing required pursuant to 405 KAR 24:040, Section 2(6) on proposed relocation and closure of public roads.

Section 12. Public Availability of Information in Permit Applications on File with the Cabinet. (1) General availability.

(a) The cabinet shall make an application for a permit, revision, amendment, or renewal of a permit or an application for transfer,

assignment, or sale of permit rights available for the public to inspect and copy by placing a full copy of the application at the regional office for the area in which mining shall occur.

1. The application shall be made available by the cabinet for public inspection and copying, at reasonable times, in accordance with Kentucky open records statutes, KRS 61.870 to 61.884.

2. This copy need not include confidential information exempt from disclosure pursuant to subsection (3) of this section.

(b) The application required by paragraph (a) of this subsection shall be placed at the appropriate regional office no later than the first date of newspaper advertisement of the application.

(c) The applicant shall be responsible for placing all changes in the copy of the application retained at the regional office upon the changes being submitted to the Division of Mine Permits.

(2) Information pertaining to coal seams, test borings, core samples, and soil samples in applications shall be made available for inspection and copying to any person with an interest that is or may be adversely affected.

(3) Confidentiality.

(a) The cabinet shall provide for procedures to ensure the confidentiality of qualified confidential information.

(b) Confidential information shall be clearly identified by the applicant and submitted separately from the remainder of the application.

(c) If a dispute arises concerning the disclosure or nondisclosure of confidential information, the cabinet shall provide notice and convene a hearing in accordance with 400 KAR 1:110, Section 9.

(d) Confidential information shall be limited to:

1. That pertains only to the analysis of the chemical and physical properties of the coal to be mined, except information on components of the coal that are potentially toxic in the environment; and

2. On the nature and location of archaeological resources on public land and Indian land as required pursuant to the Archaeological Resources Protection Act of 1979, 16 U.S.C. 470aa - mm.

Section 13. Department Review of Applications for Permits, Revisions, Amendments, and Renewals. (1) General.

(a) The cabinet shall review the application for a permit, revision, amendment, or renewal; written comments and objections submitted; and records of any permit conference held on the application and make a written decision, within the time frames listed in Section 16(1) of this administrative regulation, concerning approval of, requiring modification of, or concerning rejection of the application.

(b) An applicant for a permit, revision, or amendment shall have the burden of establishing that the application is in compliance with all requirements of KRS Chapter 350 and 405 KAR Chapters 7 through 24.

(2)(a) Administrative completeness determination.

1. Within ten (10) working days of initial receipt of the application the cabinet shall provide written notification to the applicant as to the administrative completeness of the application.

2. If the application is incomplete, the cabinet shall notify the applicant within ten (10) working days after initial receipt of the application by certified mail, return receipt requested, or by registered mail, of the deficiencies that render the application incomplete.

3. The applicant shall submit supplemental information to correct the identified deficiencies for a period of ten (10) working days after the applicant's receipt of the initial notice of incompleteness.

4. If, after ten (10) working days, the application is still incomplete, the cabinet shall return the incomplete application to the applicant with written notification of the reasons for the determination.

(b)1. An application shall not be deemed administratively complete if one (1) or more major elements are found to be absent from the application, which, by virtue of their absence, would require that the permit be denied.

2. A determination that an application is administratively

complete shall not mean that the application is complete in every detail, nor shall it mean that any aspect of the application is technically sufficient or approvable.

(3) Processing of the administratively complete application. Within the time periods established in Section 16 of this administrative regulation, the cabinet shall either notify the applicant:

(a) Of the cabinet's decision to issue or deny the application; or

(b) 1. In writing, by certified mail, return receipt requested, or by registered mail, promptly upon discovery of deficiencies in the application and allow the application to be temporarily withdrawn for the purpose of correcting the deficiencies.

2. Temporary withdrawal periods shall not be counted against the time available to the cabinet for consideration of the application.

(4) Review of violations.

(a) The cabinet shall not issue a permit if any surface coal mining reclamation operation owned or controlled by either the applicant or by any person who owns or controls the applicant is currently in violation of SMCRA, 30 U.S.C. 1201 - 1328 and 30 C.F.R. 700 - 955, KRS Chapter 350 and 405 KAR Chapters 7 - 24, any other state's laws or administrative regulations pursuant to SMCRA, or any other law, rule, or administrative regulation referred to in this subsection. The denial of the permit shall be based on available information concerning:

1. Failure-to-abate cessation orders issued by OSM, Kentucky, or any other state;

2. Unabated imminent harm cessation orders issued by OSM, Kentucky, or any other state;

3. Delinquent civil penalties assessed pursuant to SMCRA, federal regulations enacted pursuant to SMCRA, KRS Chapter 350 and 405 KAR Chapters 7 - 24, or any other state's laws or administrative regulations pursuant to SMCRA;

4. Bond forfeitures by OSM, Kentucky, or any other state in which violations upon which the forfeitures were based have not been corrected;

5. Delinquent abandoned mine reclamation fees; and

6. Unabated violations of federal, Kentucky, and any other state's laws, rules and administrative regulations pertaining to air or water environmental protection incurred in connection with any surface coal mining operation.

(b) In the absence of a failure-to-abate cessation order, the cabinet may presume that a notice of violation issued by OSM, Kentucky, or any other state pursuant to its laws and administrative regulations pursuant to SMCRA has been or is being corrected to the satisfaction of the agency with jurisdiction over the violation, except if evidence to the contrary is established in the permit application, or if the violation is for nonpayment of abandoned mine reclamation fees or civil penalties.

(c) If a current violation exists, the cabinet shall require the applicant or person who owns or controls the applicant, before issuance of the permit, to either:

1. Submit to the cabinet proof that the current violation has been or is in the process of being corrected to the satisfaction of the agency that has jurisdiction over the violation; or

2. Establish for the cabinet that the applicant, or any person owned or controlled by either the applicant or any person who owns or controls the applicant, has filed and is presently pursuing, in good faith, a direct administrative or judicial appeal to contest the validity of the current violation. If the initial judicial review authority affirms the violation, then the applicant shall within thirty (30) days of the judicial action submit proof required pursuant to subparagraph (1) of this paragraph.

(d) Any permit that is issued on the basis of proof submitted pursuant to paragraph (a)1. of this subsection that a violation is in the process of being corrected, or pending the outcome of an appeal established in paragraph (a)2 of this subsection, shall be conditionally issued.

(e) 1. If the cabinet makes a finding that the applicant, anyone who owns or controls the applicant, or the operator established in the application, controls or has controlled surface coal mining and reclamation operations with a demonstrated pattern of willful violations of KRS Chapter 350 and 405 KAR Chapters 7 - 24 of a

nature and duration, and with resulting irreparable damage to the environment as to indicate an intent not to comply with those laws or administrative regulations, a permit shall not be issued.

2. Before a finding becomes final, the applicant or operator shall be afforded an opportunity for an adjudicatory hearing on the determination as provided for in 400 KAR 1:110, Section 8.

(5) Final compliance review. After an application is approved, but before the permit is issued, the cabinet shall reconsider its decision to approve the application, based on the compliance review required by subsection (4)(a) of this section in light of any new information submitted under 405 KAR 8:030, Sections 2(11) and 3(4), or 405 KAR 8:040, Sections 2(11) and 3(4).

Section 14. Criteria for Application Approval or Denial. An application for a permit, revision (as applicable), or amendment of a permit shall not be approved unless the application affirmatively demonstrates and the cabinet finds, in writing, on the basis of information established in the application or from information otherwise available, which has been documented in the approval, that:

(1) The permit application is complete and accurate and in compliance with all requirements of KRS Chapter 350 and 405 KAR Chapters 7 through 24;

(2) The applicant has demonstrated that surface coal mining and reclamation operations, as required by KRS Chapter 350 and 405 KAR Chapters 7 through 24 can be feasibly accomplished in accordance with the mining and reclamation plan contained in the application;

(3) The assessment of the probable cumulative impacts of all anticipated coal mining in the cumulative impact area on the hydrologic balance has been made by the cabinet and the operations proposed pursuant to the application have been designed to prevent material damage to the hydrologic balance outside the proposed permit area and shadow area;

(4) The proposed permit area is:

(a) Not included within an area designated unsuitable for surface coal mining operations pursuant to 405 KAR 24:030;

(b) Not within an area under study for designation as unsuitable for surface coal mining operations in an administrative proceeding begun under 405 KAR 24:030, unless the applicant demonstrates that, before January 4, 1977, he or she made substantial legal and financial commitments in relation to the operation for which he or she is applying for a permit;

(c) Not on any lands subject to the prohibitions or limitations of 405 KAR 24:040, Section 2(1), (2), or (3);

(d) Not within 100 feet of the outside right-of-way line of any public road, except as provided for in 405 KAR 24:040, Section 2(6); and

(e) Not within 300 feet from any occupied dwelling, except as established in 405 KAR 24:040, Section 2(5);

(5)(a) The proposed operations will not adversely affect any publicly-owned parks or any places included on the National Register of Historic Places, except as established in 405 KAR 24:040, Section 2(4); and

(b) The cabinet has taken into account the effect of the proposed operations on properties listed and eligible for listing on the National Register of Historic Places. This finding may be supported in part by inclusion of appropriate permit conditions or changes in the mining and reclamation plan to protect historic resources, or a documented decision that additional protection measures are not necessary;

(6) For operations involving the surface mining of coal in which the private mineral estate to be mined has been severed from the private surface estate, the applicant has submitted to the cabinet the documentation required pursuant to 405 KAR 8:030, Section 4(2) or 405 KAR 8:040, Section 4(2);

(7) With regard to current violations, the applicant has either:

(a) Submitted the proof required by Section 13(4)(a) of this administrative regulation; or

(b) Made the demonstration required by Section 13(4)(b) of this administrative regulation;

(8) The applicant has paid all reclamation fees from previous and existing operations as required by 30 C.F.R. 870, or has

entered into a payment schedule approved by OSM. If the applicant has entered into a payment schedule approved by OSM, a permit may be issued only if it includes a condition that the permittee comply with the approved payment schedule;

(9) The applicant or the operator, if other than the applicant, does not control and has not controlled mining operations with a demonstrated pattern of willful violations of SMCRA or KRS Chapter 350 of a nature and duration and with resulting irreparable damage to the environment to indicate an intent not to comply with SMCRA or KRS Chapter 350;

(10) The applicant has demonstrated that any existing structure will comply with 405 KAR 8:030, Section 25 and 405 KAR 8:040, Section 25, and the applicable performance standards of KAR 405 KAR Chapters 16 and 18;

(11) The applicant has, if applicable, satisfied the requirements established in 405 KAR 16:210 and 405 KAR 18:220 for approval of a long-term, intensive agricultural postmining land use;

(12) The applicant may reasonably be expected to submit the performance bond or other equivalent guarantee required pursuant to 405 KAR Chapter 10 prior to the issuance of the permit;

(13) The applicant has, with respect to prime farmland obtained either a negative determination or satisfied the requirements of 405 KAR 8:050, Section 3;

(14) The applicant has satisfied the applicable requirements of 405 KAR 8:050 regarding special categories of mining;

(15) The cabinet has made all specific approvals required pursuant to 405 KAR Chapters 16 through 20;

(16) The cabinet has found that the activities would not affect the continued existence of endangered or threatened species or result in the destruction or adverse modification of their critical habitats as determined pursuant to the Endangered Species Act of 1973 (16 U.S.C. 1531-1544);

(17) The applicant has not forfeited any bond pursuant to KRS Chapter 350. If the applicant has forfeited a bond, the permit may be issued if the land for which the bond was forfeited has been satisfactorily reclaimed without cost to the state or the operator or person has paid a sum that the cabinet finds is adequate to reclaim the land;

(18) The applicant has not had a permit revoked, suspended, or terminated pursuant to KRS Chapter 350. If the applicant has had a permit revoked, suspended, or terminated, another permit may be issued, or a suspended permit may be reinstated, only if the applicant has complied with all of the requirements of KRS Chapter 350 or submitted proof that the violation has been corrected or is in the process of being corrected, in respect to all permits issued to him or her;

(19) The operation will not constitute a hazard to or do physical damage to a dwelling house, public building, school, church, cemetery, commercial or institutional building, public road, stream, lake, or other public property;

(20) The surface coal mining operation will not adversely affect a wild river established pursuant to KRS Chapter 146 or a state park unless adequate screening and other measures have been incorporated into the permit application and the surface coal mining operation has been jointly approved by all affected agencies as established in 405 KAR 24:040; or

(21) For a proposed remining operation that the applicant intends to reclaim in accordance with the requirements of 405 KAR 16:190, Section 7, or 405 KAR 18:190, Section 5, the applicant has demonstrated that the site of the operation will be a previously mined area as defined in those sections.

Section 15. Criteria for Application Approval or Denial Regarding Existing Structures. An application for a permit, revision, or amendment that proposes to use an existing structure in connection with or to facilitate the proposed surface coal mining and reclamation operation shall not be approved, unless the applicant demonstrates and the cabinet finds, in writing, on the basis of information established in the complete and accurate application, that the provisions of 405 KAR 7:040, Section 4, have been met.

Section 16. Application Approval or Denial Actions. (1) The

cabinet shall take action on applications within the following time periods as appropriate:

(a)1. Except as established in paragraph (b) of this subsection, for a complete and accurate application submitted pursuant to Section 2(2)(a), (b), (d), and (e) of this administrative regulation, a decision shall be made by the cabinet to approve, require modification of, or deny the application within sixty-five (65) working days after the notice of administrative completeness pursuant to Section 13(2) of this administrative regulation. Periods of temporary withdrawal pursuant to Section 13(3)(b) of this administrative regulation shall not be counted against the sixty-five (65) working-day period available to the cabinet.

2. Except as established in paragraph (b) of this subsection, for a complete and accurate application submitted pursuant to Section 2(2)(c) of this administrative regulation of a major revision as established in Section 20 of this administrative regulation, a decision shall be made by the cabinet to approve, require modification of, or deny the application within forty-five (45) working days after the notice of administrative completeness pursuant to Section 13(2) of this administrative regulation. Periods of temporary withdrawal pursuant to Section 13(3)(b) of this administrative regulation shall not be counted against the forty-five (45) working-day period available to the cabinet.

3. For a complete and accurate application for a minor revision as established in Section 20 of this administrative regulation, a decision shall be made by the cabinet to approve, require modification of, or deny the application.

a. The timeframes for review shall be:

(i) Fifteen (15) working days after the notice of administrative completeness pursuant to Section 13(2) of this administrative regulation; and

(ii) Thirty (30) working days after the notice of administrative completeness pursuant to Section 13(2) of this administrative regulation for minor revisions that require full cost bonding calculations.

b. Periods of temporary withdrawal pursuant to Section 13(3)(b) of this administrative regulation shall not be counted against the fifteen (15) or thirty (30) working day period available to the department; and

(b) If the notice, hearing, and conference procedures mandated by KRS Chapter 350 and KAR Title 405 prevent a decision from being made within the time periods established in paragraph (a) of this subsection, the cabinet shall have additional time to issue its decision, but not to exceed twenty (20) days from the completion of the notice, hearing, and conference procedures.

(2) The cabinet shall issue written notification of the decision to approve, modify, or deny the application, in whole or part, to the following persons and entities:

(a) The applicant;

(b) Each person who files comments or objections to the permit application;

(c) Each party to an informal permit conference, if held;

(d) The county judge-executive of the county and the chief executive officer of any municipality in which the permit area lies. This notice shall be sent within ten (10) days after the issuance of the permit and shall include a description of the location of the permit area; and

(e) The regional office manager of the Division of Mine Reclamation and Enforcement.

(3) If the application has been denied, the notification required in subsection (2) of this section, for the applicant, any person filing objections to the permit and parties to an informal conference, shall include specific reasons for the denial.

(4) If the cabinet approves the application, the cabinet shall require that the applicant file the performance bond before the permit is issued, in accordance with 405 KAR Chapter 10.

(5) The cabinet shall publish a summary of the decision in the newspaper of largest bona fide circulation, according to KRS 424.110 to 424.120, in the county where the proposed surface coal mining and reclamation operations are to be located.

Section 17. Term of Permit. (1) Each permit shall be issued for a fixed term not to exceed five (5) years. A longer fixed permit term

may be granted, pursuant to KRS 350.060(1)(a), only if:

(a) The application is complete and accurate for the specified longer term; and

(b) The applicant shows that a specified longer term is reasonably needed to allow the applicant to obtain necessary financing for equipment and for the opening of the operation with the need confirmed, in writing, by the applicant's proposed source for the financing.

(2)(a) A permit shall terminate, if the permittee has not begun the surface coal mining and reclamation operation covered by the permit within three (3) years of the issuance of the permit.

(b) The cabinet may grant reasonable extensions pursuant to KRS 350.060(16) of the time for commencement of these operations, upon receipt of a written statement showing that the extensions of time are necessary, if:

1. Litigation precludes the commencement or threatens substantial economic loss to the permittee; or

2. There are conditions beyond the control and without the fault or negligence of the permittee.

(c) With respect to coal to be mined for use in a synthetic fuel facility or specified major electric generating facility, the permittee shall have commenced surface mining operations if construction of the synthetic fuel or generating facility is initiated.

(d) Extensions of time granted by the cabinet pursuant to this subsection shall be specifically established in the permit, and notice of the extension shall be made to the public.

(3) Permits may be suspended, revoked, or modified by the cabinet, in accordance with Section 19 of this administrative regulation; 405 KAR 7:060, Section 3; 405 KAR 8:050, Sections 4, 6, and 7; and 405 KAR Chapter 12.

Section 18. Conditions of Permits. Actions by an applicant, permittee, or operator to submit an application to the cabinet, to accept a permit issued by the cabinet, or to begin operations pursuant to a permit issued by the cabinet, shall constitute knowledge and acceptance of the conditions established in this section, which shall be applicable to each permit issued by the cabinet pursuant to this chapter if the conditions have or have not been established in the permit. (1) General. The general conditions established in paragraphs (a) through (c) of this subsection shall apply to a permit issued by the cabinet.

(a) The permittee shall comply fully with all terms and conditions of the permit and all applicable performance standards of KRS Chapter 350 and 405 KAR Chapters 7 through 24.

(b) The permittee shall conduct all surface coal mining and reclamation operations as established in the approved application, except to the extent that the cabinet otherwise directs in the permit that specific actions be taken.

(c) The permittee shall conduct surface coal mining and reclamation operations only on those lands specifically designated as the permit area on the maps submitted pursuant to 405 KAR 8:030 or 405 KAR 8:040 and authorized for the term of the permit, and that are subject to the performance bond in effect pursuant to 405 KAR Chapter 10.

(2) Right of entry.

(a) Without advance notice, unreasonable delay, or a search warrant, and upon presentation of appropriate credentials, the permittee shall allow authorized representatives of the Secretary of the Interior and the cabinet to:

1. Have the rights of entry provided for in 405 KAR 12:010, Section 3; and

2. Be accompanied by private persons for the purpose of conducting a federal inspection if the inspection is in response to an alleged violation reported to the cabinet by the private person.

(b) The permittee shall allow the authorized representatives of the cabinet to be accompanied by private persons for the purpose of conducting an inspection pursuant to 405 KAR 12:030.

(3) Environment, public health, and safety.

(a) The permittee shall take all possible steps to minimize any adverse impact to the environment or public health and safety resulting from failure to comply with any term or condition of the permit, including:

1. Accelerated or additional monitoring necessary to determine

the nature and extent of failure to comply and the results of the failure to comply;

2. Immediate implementation of measures necessary to comply; and

3. Warning, as soon as possible after learning of the failure to comply, any person whose health and safety is in imminent danger due to the failure to comply.

(b) The permittee shall dispose of solids, sludge, filter backwash, or pollutants removed in the course of treatment or control of waters or emissions to the air in the manner required by 405 KAR Chapters 16 through 20, and that prevents violation of any other applicable Kentucky or federal law.

(c) The permittee shall conduct its operations:

1. In accordance with any measures established in the permit as necessary to prevent significant, imminent environmental harm that may affect the health or safety of the public; and

2. Utilizing any methods established in the permit by the cabinet in approving alternative methods of compliance with the performance standards of KRS Chapter 350 and 405 KAR Chapters 16 through 20, in accordance with KRS Chapter 350 and 405 KAR Chapters 16 through 20.

(4) Reclamation fees. The permittee shall pay all reclamation fees required by 30 C.F.R. 870 for coal produced pursuant to the permit for sale, transfer, or use, in the manner required by that subchapter.

(5) Within thirty (30) days after a cessation order is issued by OSM for operations conducted pursuant to the permit or after an order for cessation and immediate compliance is issued pursuant to 405 KAR 12:020, Section 3, for operations conducted pursuant to the permit, except if a stay of the order is granted and remains in effect, the permittee shall either notify the cabinet in writing that there has not been a change since the immediately preceding submittal of the information or submit to the cabinet the following information, current to the date the order was issued:

(a) Any new information needed to correct or update the information previously submitted to the cabinet by the permittee pursuant to 405 KAR 8:030, Section 2(3), or 405 KAR 8:040, Section 2(3); or

(b) If not previously submitted, the information required from a permit applicant by 405 KAR 8:030, Section 2(3), or 405 KAR 8:040, Section 2(3).

Section 19. Review of Permits. (1)(a) The cabinet shall review each permit issued pursuant to 405 KAR Chapter 8 during the term of the permit.

1. This review shall occur not later than the middle of the permit term and as required by 405 KAR 7:060 and 405 KAR 8:050, Sections 4, 6, and 7.

2. Issued permits shall be reevaluated in accordance with the terms of the permit and the requirements of KRS Chapter 350 and 405 KAR Chapters 7 through 24, including reevaluation of the bond.

(b) For permits of longer than five (5) year terms, a review of the permit shall be no less frequent than the permit midterm or every five (5) years, whichever is more frequent.

(2) The cabinet may, by order, require revision or modification of the permit provisions to ensure compliance with KRS Chapter 350 and 405 KAR Chapters 7 through 24.

(3) Copies of the decision of the cabinet shall be sent to the permittee.

(4) Any order of the cabinet requiring revision or modification of permits shall be based upon written findings and shall be subject to the provisions for administrative and judicial review of 400 KAR 1:110, Section 8.

Section 20. Permit Revisions. (1) General. A revision to a permit shall be obtained:

(a) For changes in the surface coal mining and reclamation operations established in the existing application and approved pursuant to the current permit;

(b) If a revision is required by an order issued pursuant to Section 19(4) of this administrative regulation;

(c) In order to continue operation after the cancellation or

material reduction of the liability insurance policy, performance bond, or other equivalent guarantee upon which the original permit was issued; or

(d) As otherwise required pursuant to 405 KAR Chapters 7 through 24.

(2) Major revisions.

(a) Except as established in subsections (3)(f) and (6) of this section, a revision shall be deemed a major revision if the proposed change is of a scope and nature that public notice is necessary to allow participation in the cabinet's decision by persons who have an interest that may be adversely affected by the proposed change. Major revisions shall include:

1. A change in the postmining land use;
2. Enlargement or relocation of impoundments so as to increase the safety hazard classification of the impoundment;
3. A variance to approximate original contour requirements;
4. Construction or relocation of a road, if the construction or relocation could adversely affect the interests of persons other than the surface owner;
5. A change that may adversely affect significant fish and wildlife habitats or endangered species;
6. A proposed experimental practice;
7. A change that may cause a major impact on the hydrologic balance;
8. An incidental boundary revision that affects a new watershed;
9. An incidental boundary revision that includes a diversion of a perennial stream.

(b) A major revision shall be subject to all of the requirements of Sections 5; 7 through 12; 13(1), (2), (3); 14(1) through (6), (8), (10) through (16), (19) through (21); 15; 16; 18; and 24 of this administrative regulation; and shall be submitted on forms MPA-01 and MPA-03 pursuant to KRS Chapter 350 and 405 KAR Chapters 7 - 24. In addition to the requirements of Section 8(5) of this administrative regulation, the advertisement shall contain a statement that the applicant proposes to revise the existing permit and shall contain a description of the proposed change.

(3) Minor revisions.

(a) A revision that is not determined by the cabinet under subsection (2) of this section to be a major revision, or that is not an operator change revision pursuant to subsection (6) of this section, shall be a minor revision and shall be subject to Sections 5; 7; 12; 13(1), (2), (3); 14(1) through (6), (10) through (16), (19) through (21); 15; 16(1) through (4); 18; and 24 of this administrative regulation, except that a minor field revision established in paragraph (d) of this subsection shall not be subject to the administrative completeness determination of Section 13(2) of this administrative regulation, and the time frame for review in Section 16(1)(a)3 of this administrative regulation shall begin at the time of application submittal.

(b) If a proposed minor revision is actually a major revision pursuant to Section 13 of this administrative regulation, the cabinet shall so inform the applicant and return the application.

(c)1. The cabinet shall notify, in writing, those persons that could have an interest or may be adversely affected by the proposed change.

2. Those persons shall have the right to file written objections to the revision within ten (10) days of the date of the notification.

(d) A minor field revision shall be reviewed and processed in accordance with this section by the appropriate regional office of the department, unless the number of persons that potentially could have an interest or may be adversely affected by the proposed change is large enough that public notice by newspaper advertisement rather than individual notice by letter from the cabinet is necessary, the regional administrator shall determine if the proposed minor revision is a major revision and shall not be processed pursuant to this paragraph. The following proposals shall be a minor field revision:

1. Proposals for minor relocation of underground mine entries if:
 - a. There are no structures or renewable resource lands (pursuant to paragraph (b) of the definition in 405 KAR 8:001(103) of "renewable resource lands") overlying the area;

- b. There is no proposed change to the permit boundary; and
- c. The proposed new location is on the same face-up area and coal seam as originally permitted, is within the same drainage area as the original location, is controlled by the same sedimentation pond, and there will be no additional disturbed acreage within the drainage area of that sedimentation pond;

2. A proposal for retention of a concrete platform or a small building if:

- a. There is no proposed change to the previously approved postmining land use; and
- b. The application contains a notarized letter from the surface owner requesting retention of the structure;

3.a. A proposal to leave roads as permanent, except proposals involving roads to impoundments, excess spoil fills, coal mine waste fills, or air shafts; roads within 100 feet of an intermittent or perennial stream; and roads within areas designated unsuitable for mining pursuant to 405 KAR 24:040, Section 2, regardless of if a previous waiver or approval has been granted.

b. The application shall contain a notarized letter from the surface owner including a request to retain the road and a statement acknowledging that the surface owner understands that the operator does not have responsibility for maintenance of the road after the performance bond has been released pursuant to 405 KAR 10:040 for the area in which the road is located.

4. A proposal to increase the diameter of a culvert used as a road crossdrain, not including a culvert used for a stream crossing, if the proposed culvert is the same type of pipe as the previously approved culvert;

5. A proposal to install an additional culvert used as a road crossdrain (not including a culvert used for a stream crossing), if the diameter of the proposed additional culvert is equal to the diameter of the nearest downstream crossdrain and if it is the same type of pipe as the nearest downstream crossdrain;

6. A proposal for a minor relocation of an on-bench sediment control structure (dugouts only) in order to locate the structure at a low spot on the same bench on which initially proposed, if:

- a. The drainage area to the structure shall remain the same as the original design;
- b. The proposed location shall not cause short-circuiting of the structure; and

c. There is no proposed change to the permit boundary;

7. A proposal to retain diversions of overland flow (not including stream diversions) as permanent facilities if:

- a. The application contains a notarized letter from the surface owner including a request to retain the diversion and a statement accepting maintenance responsibilities for the diversion; and
- b. The diversions have previously been designed to the standards for permanent diversions;

8. A proposal for relocation of topsoil storage areas if:

- a. There is no proposed change to the permit boundary; and
- b. The proposed new location was previously permitted as a disturbed area within the same drainage area as the original location, is controlled by the same sedimentation pond, and there will be no additional disturbed acreage within the drainage area of that sedimentation pond;

9. A proposal to substitute a plant species if:

a. The proposed species is of the same vegetative type (grass, legume, tree, or shrub) as the original species;

b. The proposed species will serve the equivalent function of the original species with respect to the previously approved revegetation plan, postmining land use plan, and the fish and wildlife protection and enhancement plan; and

c. The proposed species and its application or planting rate are compatible with the remainder of the previously approved species mixture to be planted;

10. A proposal to utilize hydroseeding for trees instead of planting trees or tree seedlings if:

- a. Hydroseeding is an appropriate method for the tree species being established; and
- b. A change in tree species is not involved unless concurrently approved pursuant to subparagraph 9 of this paragraph;

11. A proposal to change the type of mulch to be utilized on the permit area, including a revised rate of application consistent with

the different type of mulch proposed;

12. A proposal to retain small depressions in the reclaimed area;

13. A proposal required by the cabinet to increase frequency of air blast monitoring;

14. A proposal required by the cabinet to increase frequency of air pollution monitoring;

15. A proposal to employ more effective fugitive dust controls, and proposals required by the cabinet to employ additional fugitive dust controls;

16. A proposal to add a portable coal crusher if:

a. The crusher and associated conveying equipment are a completely portable, trailer-mounted unit;

b. The equipment shall be utilized to crush coal only from the permit area on which it is proposed to be located;

c. The operation shall not generate coal mine waste;

d. There is no proposed change to the permit boundary; and

e. The equipment shall always be located in the mining pit or other location previously permitted as a disturbed area controlled by a previously approved sedimentation pond and there shall be no additional disturbed acreage or delayed reclamation within the drainage area of any of the sedimentation ponds;

17. A proposal to change the time periods, or the types or patterns of warning or all-clear signals, when explosives are to be detonated;

18. A proposal to relocate an explosive storage area within the existing permit area in accordance with 27 C.F.R. 555.206, 555.218, 555.219, and 555.220, and 30 C.F.R. 77.1301(c);

19. Approval for minor relocation of a support facility such as a conveyor, hopper, or a coal stockpile if:

a. There is no proposed change to the permit boundary; and

b. The proposed new location was previously permitted as a disturbed area within the same drainage area as the original location, is controlled by the same sedimentation pond, and there will be no additional disturbed acreage within the drainage area of that sedimentation pond;

20. A proposal for a modification of a shared facility if that modification has already been approved in a revision for one (1) of the permittees by the Division of Mine Permits and no additional performance bond was required for the initial revision;

21. A proposal to add a hopper to a permitted area if:

a. There is no proposed change to the permit boundary; and

b. The proposed location was previously permitted as a disturbed area controlled by a previously approved sedimentation pond and there will be no additional disturbed acreage or delayed reclamation within the drainage area of that sedimentation pond;

22. A proposal to change the brush disposal plan, not including any proposals to bury brush in the backfill area on steep slopes or in excess spoil fills or coal mine waste fills;

23. A proposal to change the basis of judging revegetation from reference areas to the technical standards established in 405 KAR Chapters 7 - 24;

24.a. A proposal for an incidental boundary revision for a minor off-permit disturbance if:

(i) The total acreage of the minor off-permit disturbance is no more than one (1) acre combined per proposal;

(ii) The cumulative acreage limitation in subsection (5) of this section is not exceeded;

(iii) The area to be permitted does not include any wetlands, prime farmlands, stream buffer zones, federal lands, habitats of unusually high value for fish or wildlife, an area that may contain threatened or endangered species, or an area designated as unsuitable for mining pursuant to 405 KAR Chapter 24;

(iv) The off-permit disturbance was not a coal extraction area nor shall any future coal extraction occur on the area;

(v) There is no structure such as an excess spoil disposal fill, a coal mine waste disposal fill or impoundment, or a water impoundment involved;

(vi) The surface owner of the area to be permitted is a surface owner of a disturbed area pursuant to the existing permit; and

(vii) An additional performance bond in the amount of \$5,000 has been filed by the permittee.

b. The regional administrator, as established in paragraph (b)

of this subsection, may decline to review and process a proposal to permit an off-permit disturbance as a minor field revision and instead requires that an application be submitted to the Division of Mine Permits;

25. Except as established in clauses a. through e. of this subparagraph, a proposal to remove a sedimentation pond previously approved as a permanent impoundment if the application contains a notarized letter from the surface owner requesting the elimination of the impoundment, the application contains an acceptable plan for removal, and the criteria for sedimentation pond removal have been met. A proposal to remove a sedimentation pond shall not be processed as a minor field revision if the:

a. As established in 405 KAR 7:040, Section 5, structure has a hazard classification of B or C;

b. Impoundment is a developed water resource land use;

c. Removal or activities associated with the removal of the structure may adversely affect significant fish and wildlife habitats or threatened or endangered species;

d. Impoundment may be a necessary element in the achievement of the previously approved postmining land use (such as a stock pond for pastureland if no other nearby source of water is available to the livestock); or

e. Impoundment was originally planned to be left for the purpose, in whole or in part, of enhancing fish and wildlife and related environmental values;

26. A proposal to approve an exemption from the requirement to pass drainage through a sedimentation pond for a disturbed area that, due to unexpected field conditions, will not drain to an approved sedimentation pond if:

a. There has not been any acid drainage or drainage containing concentrations of total iron or manganese from this or nearby areas of the mine that could result in water quality violations if untreated and none is expected based on overburden analysis;

b. The application contains a justification that it is not feasible to control the drainage by a sedimentation pond;

c. The disturbed area is one (1) acre or less;

d. The application contains a plan to immediately implement alternate sedimentation control measures including, at a minimum, mulching, silt fences, straw bale dikes, and establishment of a quick growing temporary vegetative cover;

e. The application contains sufficient plan views and cross sections certified by a registered professional engineer to clearly illustrate the feasibility of the proposal and the location of the alternate control methods (minimum scale one (1) inch equals 100 feet); and

f. The application contains an MRP map certified by a professional engineer showing the location of the disturbed area and the drainage area clearly; and

27. A proposal to use the Reclamation Advisory Memorandum #124 reclamation practice on sites where the permittee is required to establish trees and shrubs as part of the approved reclamation plan if there is a letter of consent from the property owner.

(e) Proposed minor revisions that only seek to change the engineering design of impoundments and diversions of overland flow if no change in permit boundary is involved shall not be subject to the administrative completeness determination of Section 13(2) of this administrative regulation.

1. Within ten (10) days the cabinet shall process the application and provide a written notice stating the application has been determined to be subject to this paragraph and is being forwarded to technical review.

2. The time frame for review in Section 16(1)(a)3 of this administrative regulation shall begin at the time of this notice.

(f) An incidental boundary revision shall be deemed a minor revision if it:

1. Does not exceed ten (10) percent of the relevant surface or underground acreage in the original or amended permit area;

2. Is contiguous to the current permit area;

3. Is within the same watershed as the current permit area;

4. Is required for an orderly continuation of the mining operation;

5. Involves mining of the same coal seam or seams as in the current permit;

6. Involves only lands for which the hydrologic and geologic data and the probable hydrologic consequences determination in the current permit are applicable;

7. Does not involve a property on which mining is prohibited pursuant to KRS 350.085 and 405 KAR 24:040, unless a waiver has been obtained, or that has been designated as unsuitable for mining pursuant to 405 KAR 24:030, or is a property eligible for listing on the National Register of Historic Places;

8. Does not involve any of the categories of mining in 405 KAR 7:060 and 405 KAR 8:050 unless the current permit already includes the relevant category;

9. Does not constitute a change in the current method of mining; and

10. Shall be reclaimed in conformity with the current reclamation plan.

(g) Extensions of the underground mining area that are not incidental boundary revisions and do not include planned subsidence or other new proposed surface disturbances shall be minor revisions.

(4) An extension to the area covered by a permit, except for incidental boundary revisions, shall be made by application for a new or amended permit and shall not be approved pursuant to this section.

(5) Size limitations for incidental boundary revisions.

(a) For surface mining activities, an incidental boundary revision shall not exceed ten (10) percent of the acreage in the original or amended permit area and shall not exceed twenty (20) acres.

(b) For underground mining activities and auger mining, an incidental boundary revision for a surface operation and an incidental boundary revision for underground workings shall be determined separately.

1. For surface operations, an incidental boundary revision shall not exceed the greater of two (2) acres or ten (10) percent of the acreage of surface operations in the original or amended permit area and shall not exceed twenty (20) acres.

2. For underground workings, an incidental boundary revision shall not exceed ten (10) percent of the acreage of underground workings in the original or amended permit area and shall not exceed twenty (20) acres.

(c)1. Cumulative incidental acreage added by successive incidental boundary revisions shall not exceed the limitations in this subsection.

2. Acreage added by incidental boundary revisions prior to a permit amendment shall not be counted toward cumulative incidental acreage after the amendment.

(6) Operator change revisions.

(a) This subsection shall apply to all operator changes that do not constitute a transfer, assignment, or sale of permit rights.

(b) A permittee proposing to change the operator approved in the permit shall submit a complete and accurate application for approval of the change.

(c) The application shall include:

1. The permit number, the name and business address of the permittee, the telephone number of the permittee, and the identifying number assigned to the permittee by the cabinet;

2. The name, business address, and telephone number of the operator approved in the permit, and the identifying number, if any, assigned to the approved operator by the cabinet;

3. For the proposed operator and persons related to the proposed operator through ownership or control, the same information as required for applicants and persons related to applicants through ownership or control by Sections 2(1) through (4) and (8) of 405 KAR 8:030 and 405 KAR 8:040, and Sections 2(11) through (13) of those administrative regulations; and

4. For the proposed operator and persons related to the proposed operator through ownership or control, the same information as required for applicants and persons related to applicants through ownership or control by 405 KAR 8:030, Section 3 and 8:040 shall be required.

(d) The application shall be verified under oath by the

permittee and the proposed operator in the manner required pursuant to Section 7 of this administrative regulation.

(e) On or after the date the application has been submitted to the cabinet, the application shall be advertised in the newspaper of largest bona fide circulation, according to KRS 424.110 to 424.120, in the county where the proposed surface coal mining and reclamation operations are to be located.

1. The advertisement shall be entitled "Notice of Intention to Mine" and shall be as established in Section 8(5) of this administrative regulation.

2. A copy of the advertisement and proof of publication shall be filed with the cabinet and made a part of the application not later than fifteen (15) days after the date of publication. The advertisement shall include:

a. The permit number;

b. The geographic location of the permit area;

c. The name and business address of the permittee;

d. A statement that the permittee proposes to change the operator approved in the permit;

e. The names and business addresses of the currently approved operator and the proposed operator;

f. The cabinet address to which written comments may be sent pursuant to paragraph (f) of this subsection; and

g. The time available for submission of the comments.

(f) A person whose interests are or may be adversely affected by the cabinet's decision on the proposed operator change, including an officer of a federal, state, or local government agency, may submit written comments on the application to the cabinet within fifteen (15) days after the date of publication of the advertisement.

(g) The cabinet shall approve or disapprove the proposed operator change if it finds, in writing, that the proposed operator:

1. Is eligible to act as an operator pursuant to the criteria in Section 13(4) of this administrative regulation; and

2. Meets the other applicable requirements of KRS Chapter 350 or 405 KAR Chapters 7 through 24.

(h)1. The cabinet shall notify in writing the permittee, the proposed operator, and any commenters on the application, of its decision to approve or deny the application within fifteen (15) working days after the close of the public comment period pursuant to paragraph (f) of this subsection.

2. A period of temporary withdrawal shall not be counted against the fifteen (15) working day period available to the cabinet. If the notice, hearing, and conference procedures mandated by KRS Chapter 350 and KAR Title 405 prevent a decision from being made within the time period established in this paragraph, then the cabinet shall have additional time to issue its decision, but not to exceed twenty (20) days from the completion of the notice, hearing, and conference procedures.

(7) Fees. An application for a revision shall include a basic fee, except that a minor field revision and an operator change revision shall not have a basic fee.

(a) The fee for a revision shall be \$1,750 for a major revision and \$750 for a minor revision.

(b) If the revision application proposes an incidental boundary revision that would increase the acreage in the permit, an additional acreage fee of seventy-five (75) dollars per acre, or fraction thereof, shall be included with the application. An acreage fee shall not be required for shadow area that will not be affected by surface operations and facilities.

Section 21. Permit Renewals. (1) General requirements for renewal. Any valid, existing permit issued pursuant to 405 KAR Chapter 8 shall carry with it the right of successive renewal, within the approved boundaries of the existing permit, upon expiration of the term of the permit.

(2) Contents of renewal applications. An application for renewal of a permit shall be submitted within the time established by Section 2(2)(b) of this administrative regulation. Renewal applications shall be submitted on form MPA-09, Application for Renewal of a Mining Permit, and in accordance with this section, and shall include:

(a) The name and address of the permittee, the term of the

renewal requested and the permit number;

(b) A copy of the proposed newspaper notice and proof of publication of same pursuant to Section 8 of this administrative regulation;

(c) Evidence that liability insurance pursuant to 405 KAR 10:030, Section 4, for the proposed period of renewal;

(d) A renewal fee of \$750;

(e) Evidence that the performance bond shall continue in effect for any renewal requested, as well as any additional bond required by the cabinet pursuant to 405 KAR 10:020; and

(f) Any additional, updated, or revised information required to demonstrate compliance with KRS Chapter 350 and 405 KAR Chapters 7 - 24.

(3) An application for renewal shall be subject to the requirements of Sections 8 through 11, 13, and 16 of this administrative regulation.

(4) An application for renewal shall not include any proposed revisions to the permit. Revisions shall be made by separate application and shall be subject to the requirements of Section 20 of this administrative regulation.

(5) Term of renewal. Any permit renewal shall be for a term not to exceed the period of the original permit established pursuant to Section 17 of this administrative regulation.

(6) Approval or denial of renewal applications.

(a) The cabinet shall approve a complete and accurate application for permit renewal, unless it finds, in writing, that:

1. The terms and conditions of the existing permit are not being satisfactorily met;

2. The present surface coal mining and reclamation operations are not in compliance with the environmental protection standards pursuant to KRS Chapter 350 and 405 KAR Chapters 7 through 24;

3. The requested renewal substantially jeopardizes the applicant's continuing responsibility to comply with KRS Chapter 350 and 405 KAR Chapters 7 through 24 on existing permit areas;

4. The applicant has not provided evidence that any performance bond required for the operations shall continue in effect for the proposed period of renewal, as well as any additional bond the cabinet might require pursuant to 405 KAR Chapter 10;

5. Any additional revised or updated information required by the cabinet pursuant to this administrative regulation has not been provided by the applicant; or

6. The applicant has not provided evidence of having liability insurance in accordance with 405 KAR 10:030, Section 4.

(b) In determining if to approve or deny a renewal, the burden shall be on the opponents of renewal.

(c) The cabinet shall send copies of its decision to the applicant, any persons who filed objections or comments to the renewal, any persons who were parties to any informal conference held on the permit renewal, and to the field office director of the Office of Surface Mining Reclamation and Enforcement.

(d) Any person having an interest that is or may be adversely affected by the decision of the cabinet shall have the right to administrative and judicial review established in Section 24 of this administrative regulation.

Section 22. Transfer, Assignment, or Sale of Permit Rights. (1) General. A transfer, assignment, or sale of the rights granted pursuant to any permit issued pursuant to KAR Title 405 shall not be made without the prior written approval of the cabinet, in accordance with this section.

(2) Application requirements. An applicant (successor) for approval of the transfer, assignment, or sale of permit rights shall:

(a) Provide a complete and accurate application for the approval of the proposed transfer, assignment, or sale. The application shall be signed by both the existing holder of permit rights and the applicant for succession and the applicant shall submit:

1. The name and address of the existing permittee and the permit number;

2. A brief description of the proposed action requiring approval;

3. The legal, financial, compliance, and related information required by 405 KAR 8:030, Sections 2 through 10 and 405 KAR

8:040, Sections 2 through 10; and

4. A processing fee of \$750;

(b) Advertise the filing of the application in the newspaper of largest bona fide circulation, according to KRS 424.110 to 424.120, in the county where the operations are located, indicating the name and address of the applicant, the original permittee, the permit number, the geographic location of the permit, and the address to which written comments may be sent pursuant to subsection (3) of this section; and

(c) Obtain sufficient performance bond coverage that shall ensure reclamation of all lands affected by the permit, including areas previously affected by the existing permittee on the permit being transferred.

(3) Public participation. Any person whose interests are or may be adversely affected by a decision on the transfer, assignment, or sale of permit rights, including an official of any federal, state, or local government agency, may submit written comments on the application to the cabinet within fifteen (15) days of the date of publication of the advertisement.

(4) Criteria for approval. The cabinet may allow a permittee to transfer, assign, or sell permit rights to a successor if it finds, in writing, that the successor:

(a) Is eligible to receive a permit in accordance with the criteria established in Section 14 of this administrative regulation;

(b) Has submitted a performance bond, in accordance with 405 KAR Chapter 10, which shall ensure reclamation of all lands affected by the permit, including areas previously disturbed by the existing permittee on the permit being transferred and that is at least equivalent to the bond of the existing permittee; and

(c) Has submitted proof that liability insurance, as required by 405 KAR 10:030, Section 4, has been obtained; and

(d) Meets all requirements necessary to ensure compliance with KRS Chapter 350 or 405 KAR Chapters 7 through 24.

(5) Notice of decision. The cabinet shall notify the original permittee, the successor, any commenters or objectors, and the field office director of the Office of Surface Mining Reclamation and Enforcement of its final decision.

(6) Permit reissuance. After receiving the notice established in subsection (5) of this section, the successor shall immediately provide proof to the cabinet of the consummation of the transfer, assignment, or sale of permit rights. Upon submission of this proof, the cabinet shall reissue the original permit in the name of the successor.

(7) Rights of successor.

(a) All rights and liabilities pursuant to the original permit shall pass to the successor upon reissuance of the permit, except that the original permittee shall remain liable for any civil penalties resulting from violations occurring prior to the date of reissuance of the permit.

(b) The cabinet shall not approve transfer of a surface coal mining permit to any person who would be ineligible to receive a new permit pursuant to KRS 350.130(3).

(8) Requirements for new permits for persons succeeding to rights granted pursuant to a permit.

(a) A successor in interest who is able to obtain appropriate bond coverage may continue surface coal mining and reclamation operations according to the approved mining and reclamation plan and permit of the original permittee.

(b) A successor in interest seeking to change the conditions of mining or reclamation operations or any of the terms or conditions of the original permit shall make application for a new permit, revision, or amendment, as appropriate.

(9) Release of bond liability. The cabinet shall release the prior permittee from bond liability on the permit area if the successor in interest has:

(a) Filed a performance bond satisfactory to the cabinet;

(b) Received written approval of the cabinet for the transfer, sale, or assignment of rights;

(c) Submitted proof of execution of the agreement; and

(d) Assumed the liability pursuant to KAR Title 405 for the reclamation of the areas affected by all prior permittees.

Section 23. Amendments. (1) Except for an incidental

boundary revision, an extension to an area covered by a permit shall not be approved, as established in Sections 20 (permit revisions) or 21 (permit renewals) of this administrative regulation.

(a) An extension shall be made by application for another permit.

(b) If the permittee desires to add the new area to an existing permit in order to have existing areas and new areas under one (1) permit, the cabinet shall amend the original permit, if the applicant complies with procedures and requirements applicable to an application for an original permit in accordance with KAR Title 405 amend the original permit, but the application for the new area shall be subject to all procedures and requirements applicable to applications for original permits pursuant to KAR Title 405.

(2) A fee for an amendment to existing permits shall be submitted to the cabinet as established in Section 6(2) of this administrative regulation.

Section 24. Administrative and Judicial Review. (1) Following the final decision of the cabinet concerning the application for a permit, revision, or renewal thereof, application for transfer, sale, or assignment of rights or concerning an application for coal exploration, the applicant, permittee, or any person with an interest that may be adversely affected may request a hearing on the reasons for the final decision. The request shall be in accordance with 400 KAR 1:110, Section 8.

(2) Any applicant or any person with an interest that may be adversely affected and who has participated in the administrative proceedings as an objector shall have the right to:

(a) Judicial review as provided in KRS 350.0301 and 350.0305 if the applicant or person is aggrieved by the decision of the cabinet in an administrative hearing requested pursuant to subsection (1) of this section; or

(b) An action in mandamus pursuant to KRS 350.250 if the cabinet fails to act within time limits established in KRS Chapter 350 or 405 KAR Chapters 7 through 24.

Section 25. Improvidently Issued Permits. (1) Permit review. If the cabinet has reason to believe that it improvidently issued a surface coal mining and reclamation permit, the cabinet shall review the circumstances under which the permit was issued, using the criteria in subsection (2) of this section. If the cabinet finds that the permit was improvidently issued, the cabinet shall comply with subsection (3) of this section.

(2) Review criteria. The cabinet shall find that a surface coal mining and reclamation permit was improvidently issued if:

(a) Pursuant to the violation review criteria of the cabinet upon permit issuance:

1. The cabinet should not have issued the permit because of an unabated violation or a delinquent penalty or fee; or

2. The permit was issued on the presumption that a notice of violation was in the process of being corrected to the satisfaction of the agency with jurisdiction over the violation, but a cessation order subsequently was issued;

(b) The violation, penalty, or fee:

1. Remains unabated or delinquent; and

2. Is not the subject of a good faith appeal, or of an abatement plan or payment schedule with which the permittee or other person responsible is complying to the satisfaction of the responsible agency; and

(c) If the permittee was linked to the violation, penalty, or fee through ownership or control, pursuant to the violations review criteria of the regulatory program upon permit issuance an ownership or control link between the permittee and the person responsible for the violation, penalty, or fee still exists, or if the link was severed the permittee continues to be responsible for the violation, penalty, or fee.

(3) Remedial measures. If the cabinet, pursuant to subsection (2) of this section, finds that because of an unabated violation or a delinquent penalty or fee a permit was improvidently issued, the cabinet shall use one (1) or more of the following remedial measures:

(a) Implement, with the cooperation of the permittee or other person responsible, and of the responsible agency, a plan for

abatement of the violation or a schedule for payment of the penalty or fee;

(b) Impose on the permit a condition requiring that in a specified period of time the permittee or other person responsible abate the violation or pay the penalty or fee;

(c) Suspend the permit until the violation is abated or the penalty or fee is paid; or

(d) Rescind the permit pursuant to subsection (4) of this section.

(4) Rescission procedures. If the cabinet, pursuant to subsection (3)(d) of this section, elects to rescind an improvidently issued permit, the cabinet shall serve on the permittee a notice of proposed suspension and rescission that includes the reasons for the finding of the cabinet pursuant to subsection (2) of this section and states that:

(a) Automatic suspension and rescission. After a specified period of time not to exceed ninety (90) days the permit automatically shall become suspended, and not to exceed ninety (90) days thereafter rescinded, unless within those periods the permittee submits proof, and the cabinet finds, that:

1. The finding of the cabinet pursuant to subsection (2) of this section was erroneous;

2. The permittee or other person responsible has abated the violation on which the finding was based, or paid the penalty or fee, to the satisfaction of the responsible agency;

3. The violation, penalty, or fee is the subject of a good faith appeal, or of an abatement plan or payment schedule with which the permittee or other person responsible is complying to the satisfaction of the responsible agency; or

4. Since the finding was made, the permittee has severed any ownership or control link with the person responsible for, and does not continue to be responsible for, the violation, penalty, or fee;

(b) Cessation of operations. After permit suspension or rescission, the permittee shall cease all surface coal mining and reclamation operations pursuant to the permit, except for violation abatement and for reclamation and other environmental protection measures as required by the cabinet; and

(c) Right to request a formal hearing. Any permittee aggrieved by the notice may request a formal hearing. A formal hearing shall be in accordance with 400 KAR 1:110, Section 9.

Section 26. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Preliminary Application", MPA-00, October 2017;

(b) "Permittee Information for a Mining Permit", MPA-01, August 2010;

(c) "Operator Information for a Mining Permit", MPA-02, August 2010;

(d) "Technical Information for a Mining Permit", MPA-03, October 2017;

(e) "Surface Owner's Affidavit: Lands Historically Used for Cropland", MPA-03-20.1.B, November 1991;

(f) "Disinterested Third Party Affidavit: Lands Historically Used for Cropland", MPA-03-20.1.C, November 1991;

(g) "Update of Permittee or Operator Information", MPA-05, August 2010;

(h) "Change of Corporate Owners, Officers or Directors", MPA-06, October 2017;

(i) "Application to Transfer a Mining Permit", MPA-07, June 2013;

(j) "Revision Application to Change Operator", MPA-08, August 2010;

(k) "Application for Renewal of a Mining Permit", MPA-09, August 2017;

(l) "Application for a Coal Marketing Deferral", MPA-10, August 2017

(m) "Minor Field Revision Application Form", SME 80, revised August 2010; and

(n) "Reclamation Advisory Memorandum #124, Reforestation Initiative", March 1997.

(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: September 13, 2019

FILED WITH LRC: September 13, 2019 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 26, 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 November 30, 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 provisions for permits to conduct mining operations.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the coal mining permitting process.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 350.060 requires an entity to obtain a permit prior to conducting mining operations. This administrative regulation provides information related to the permitting process.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation currently assists in the effective administration of the statutes by providing permit standards that are to be followed by regulated entities that wish to obtain a permit.

(2) If 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 simply deletes a statement that includes outdated references and that only indicates the requirements from those two citations (405 KAR 1:090 and 405 KAR 1:110) do not apply. These two referenced administrative regulations have been repealed and therefore the citations are being deleted.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to remove citations to administrative regulations that have been repealed.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the authorizing statutes by ensuring incorrect citations are removed from the administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: KRS 350.028 and 350.465 require the cabinet to promulgate administrative regulations pertaining to permits for surface coal mining and reclamation operations. This administrative regulation simply removes citations to administrative regulations that were repealed in 2018.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This provision would apply to any entity that wishes to obtain a permit to mine coal within 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:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities listed in question (3) above will be subject to the same requirements prior to this amendment. The amendment simply deletes a reference to an administrative regulation that was repealed in 2018.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is not a cost increase associated with the proposed amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The benefit associated with this amendment will be minimal. The regulated entity will have an administrative regulation that has corrected information.

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

(a) Initially: There will be no costs to the department associated with implementation of this amendment.

(b) On a continuing basis: There will be no costs to the department associated with implementation of this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The funding for implementation of the amendments to this administrative regulation will be a combination of general funds and restricted funds.

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

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

(9) TIERING: Is tiering applied? No. All entities that want to obtain a coal mine permit will be required to meet the same requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Division of Mine Permits.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 350.020, 350.028, 350.060, 350.135, 350.450, 350.465, 350.515, 30 C.F.R. Parts 730-733, 735, 773-775, 777, 778.17, 917.

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

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

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

(c) How much will it cost to administer this program for the first year? There will not be a cost increase associated with the amendments to this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? Future costs would remain unchanged related

to this amendment.

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

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 30 C.F. R. Parts 777, 778, and 773-775.

2. State Compliance Standards. KRS 350.060

3. Minimum or uniform standards contained in the federal mandate. The C.F.R. citations listed above set the minimum information related to the issuance of surface mining permits.

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 simply remove outdated references to administrative regulations that were repealed in 2018. The removal of this information does not make the administrative regulation more stringent than the corresponding federal administrative regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. NA

ENERGY AND ENVIRONMENT CABINET Department for Natural Resources Division of Mine Permits (Amendment)

405 KAR 8:030. Surface coal mining permits.

RELATES TO: KRS 350.060, 350.465, 7 C.F.R. Part 657, 30 C.F.R. Parts 77.216-1, 77.216-2, 730-733, 735, 773.13(a), 778-780, 785.17(b), (d), 917, 40 C.F.R. Parts 136, 434, 16 U.S.C. 1276(a), 1531 – 1544, 30 U.S.C. 1253, 1255, 1257, 1258, 1267

STATUTORY AUTHORITY: KRS 350.020, 350.028, 350.060, 350.465, 7 C.F.R. Part 657, 30 C.F.R. Parts 77.216-1, 77.216-2, 730-733, 735, 773.13(a), 778-780, 785.17(b), (d), 917, 40 C.F.R. Parts 136, 434, 16 U.S.C. 1276(a), 1531 – 1544, 30 U.S.C. 1253, 1255, 1257, 1258, 1267

NECESSITY, FUNCTION, AND CONFORMITY: KRS 350.028(1), (5), 350.060(13), and 350.465(2) authorize the cabinet to promulgate administrative regulations relating to surface and underground coal mining operations. This administrative regulation establishes requirements for granting a surface coal mining permit. This administrative regulation differs from 30 C.F.R. 780.25. Section 34(3) and (5) of this administrative regulation require that the permit applicant submit to the cabinet after approval by the Mine Safety and Health Administration (MSHA), a: (1) Copy of the final approved design plans for impounding structures; (2) Copy of all correspondence with MSHA; (3) Copy of technical support documents requested by MSHA; and (4) Notarized statement by the applicant that the copy submitted to the cabinet is a complete and correct copy of the final plan approved by MSHA.

Section 1. General. (1) This administrative regulation applies to any person who applies for a permit to conduct surface mining activities.

(2) The requirements set forth in this administrative regulation specifically for applications for permits to conduct surface mining activities are in addition to the requirements applicable to all applications for permits to conduct surface coal mining and reclamation operations as set forth in 405 KAR 8:010.

(3) This administrative regulation sets forth information required to be contained in each application for a permit to conduct surface mining activities, including:

- (a) Legal, financial, compliance, and related information;
- (b) Environmental resources information; and

(c) Mining and reclamation plan information.

Section 2. Identification of Interests. (1) An application shall contain the following information, except that the submission of a Social Security number shall be voluntary:

(a) A statement identifying if the applicant is a corporation, partnership, single proprietorship, association, or other business entity;

(b) The name, address, telephone number and, as applicable, Social Security number, and employer identification number of the:

- 1. Applicant;
- 2. Applicant's resident agent; and
- 3. Person who will pay the abandoned mine land reclamation fee;

(c) For each person who owns or controls the applicant:

1. The person's name, address, Social Security number, and employer identification number;

2. The person's ownership or control relationship to the applicant, including percentage of ownership and location in organizational structure;

3. The title of the person's position, date position was assumed, and when submitted under 405 KAR 8:010, Section 18(5) date of departure from the position;

4. Each additional name and identifying number, including employer identification number, federal or state permit number, and MSHA number with date of issuance, under which the person owns or controls, or previously owned or controlled, a surface coal mining and reclamation operation in the United States within the five (5) years preceding the date of the application; and

5. The application number or other identifier of, and the regulatory authority for, any other pending surface coal mining operation permit application filed by the person in any state in the United States;

(d) For any surface coal mining operation owned or controlled by either the applicant or by any person who owns or controls the applicant, the operation's:

1. Name, address, identifying numbers, including employer identification number, federal or state permit number, and MSHA number, the date of issuance of the MSHA number, and the regulatory authority; and

2. Ownership or control relationship to the applicant, including percentage of ownership and location in organizational structure;

(e) The names and addresses of:

1. Every legal or equitable owner of record of the property to be mined;

2. The holders of record of any leasehold interest in the property to be mined; and

3. Any purchaser of record, under a real estate contract, of the property to be mined;

(f) The names and addresses of the owners of record of all surface and subsurface areas contiguous to any part of the proposed permit area;

(g) The name of the proposed mine and all MSHA identification numbers that have been assigned for the mine and all mine associated structures that require MSHA approval;

(h) Proof, such as a power of attorney or a resolution of the board of directors, that the individual signing the application has the power to represent the applicant in the permit matter; and

(i) A statement of all lands, interests in lands, options, or pending bids on interests held or made by the applicant for lands that are contiguous to the area to be covered by the permit.

(2) After an applicant has been notified that his or her application has been approved, but before the permit is issued, the applicant shall, as applicable, update, correct, or indicate that no change has occurred in the information previously submitted under subsection (1)(a) through (d) of this section.

(3) The permittee shall, in writing, inform the cabinet of any change of the permittee's address immediately if changed at any point prior to final bond release.

(4) The permittee shall submit updates of the information established in paragraphs (a) through (c) of this subsection in writing to the cabinet within thirty (30) days of the effective date of any change. An update shall be submitted for any changes that

occur at any point prior to final bond release. Failure to submit updated information shall constitute a violation of KRS Chapter 350 only upon the permittee's refusal or failure to timely submit the information to the cabinet upon request. After the permittee's refusal or failure to timely submit the information to the cabinet upon request, the cabinet may suspend the permit after opportunity for hearing pending compliance with this subsection:

(a) The names and addresses of every officer, partner, director, or person performing a function similar to a director of the permittee;

(b) The names and addresses of principal shareholders; and

(c) If the permittee or other persons specified in this subsection are subject to any of the provisions of KRS 350.130(3).

Section 3. Violation Information. (1) Each application shall contain:

(a) A statement identifying if the applicant or any subsidiary, affiliate, or persons controlled by or under common control with the applicant has:

1. Had a coal mining permit of the United States or any state suspended or revoked in the five (5) years preceding the date of submission of the application; or

2. Forfeited a coal mining performance bond or similar security deposited in lieu of bond;

(b) If any suspension, revocation, or forfeiture as established in paragraph (a) of this subsection has occurred, a statement of the facts involved, including:

1. Identification number and date of issuance of the permit, and date and amount of bond or similar security;

2. Identification of the authority that suspended or revoked the permit or forfeited the bond and the stated reasons for that action;

3. The current status of the permit, bond, or similar security involved;

4. The date, location, and type of any administrative or judicial proceedings initiated concerning the suspension, revocation, or forfeiture; and

5. The current status of these proceedings; and

(c) For any violation of a provision of SMCRA, federal regulations enacted pursuant to SMCRA, KRS Chapter 350 and administrative regulations adopted pursuant thereto, any other state's laws or regulations under SMCRA, any federal law, rule, or regulation pertaining to air or water environmental protection, or any Kentucky or other state's law, rule, or regulation enacted pursuant to federal law, rule, or regulation pertaining to air or water environmental protection incurred in connection with any surface coal mining operation, a list of all violation notices received by the applicant during the three (3) year period preceding the application date, and a list of all unabated cessation orders and unabated air and water quality violation notices received prior to the date of the application by any surface coal mining and reclamation operation owned or controlled by either the applicant or by any person who owns or controls the applicant. For each violation notice or cessation order reported, the lists shall include the following information, as applicable:

1. Any identifying numbers for the operation, including the federal or state permit number and MSHA number; the dates of issuance of the violation notice and MSHA number; the name of the person to whom the violation notice was issued; and the name of the issuing regulatory authority, department, or agency;

2. A brief description of the particular violation alleged in the notice;

3. The final resolution of each violation notice, if any; and

4. For each violation notice that has not been finally resolved:

a. The date, location, and type of any administrative or judicial proceedings initiated concerning the violation, including proceedings initiated by any person identified in this subsection to obtain administrative or judicial review of the violation;

b. The current status of the proceedings and of the violation notice; and

c. The actions, if any, taken or being taken by any person identified in this subsection to abate the violation.

(2) After an applicant has been notified that his or her application has been approved, but before the permit is issued, if

necessary, the applicant shall update the application to indicate what change, if any, has occurred in the information previously submitted under subsection (1) of this section.

(3) Upon request by a small operator, the cabinet shall provide to the small operator, with regard to persons under subsection (1) of this section who are identified by the small operator, the compliance information required by this section regarding suspension and revocation of permits and forfeiture of bonds under KRS Chapter 350, and information pertaining to violations of KRS Chapter 350 and administrative regulations promulgated thereunder.

Section 4. Right of Entry and Right to Surface Mine. (1) Each application shall contain a description of the documents upon which the applicant bases his or her legal right to enter and begin surface mining activities in the permit area and if that right is the subject of pending litigation. The description shall identify those documents by type and date of execution, identify the specific lands to which the document pertains, and explain the legal rights claimed by the applicant.

(2) If the private mineral estate to be mined has been severed from the private surface estate, the application shall contain:

(a) A copy of the written consent of the surface owner for the extraction of coal by surface mining methods;

(b) A copy of the conveyance that expressly grants or reserves the right to extract coal by surface mining methods; or

(c) If the conveyance does not expressly grant the right to extract the coal by surface mining methods, documentation that under applicable state law, the applicant has the legal authority to extract coal by those methods.

(3) Nothing in this section shall be construed to authorize the cabinet to adjudicate property rights disputes.

Section 5. Relationship to Areas Designated Unsuitable for Mining. (1) Each application shall contain a statement of available information identifying if the proposed permit area is within an area designated unsuitable for surface mining activities under 405 KAR Chapter 24 or under study for designation in an administrative proceeding under that chapter.

(2) If an applicant claims the exemption in 405 KAR 8:010, Section 14(4)(b), the application shall contain information supporting the applicant's assertion that the applicant made substantial legal and financial commitments before January 4, 1977, concerning the proposed surface mining activities.

(3) If an applicant proposes to conduct surface mining activities within 300 feet of an occupied dwelling, the application shall contain the waiver of the owner of the dwelling as required in 405 KAR 24:040, Section 2(5).

(4) If the applicant proposes to conduct surface mining activities within 100 feet of a public road, the requirements of 405 KAR 24:040, Section 2(6) shall be met.

Section 6. Permit Term Information. (1) Each application shall state the anticipated or actual starting and termination date of each phase of the surface mining activities and the anticipated number of acres of land to be affected for each phase of mining and over the total life of the permit.

(2) If the applicant proposes to conduct the surface mining activities in excess of five (5) years, the application shall contain the information needed for the showing required under 405 KAR 8:010, Section 17(1).

Section 7. Personal Injury and Property Damage Insurance Information. Each permit application shall contain a certificate of liability insurance according to 405 KAR 10:030, Section 4.

Section 8. Identification of Other Licenses and Permits. Each application shall contain a list of all other licenses and permits needed by the applicant to conduct the proposed surface mining activities. This list shall identify each license and permit by:

(1) Type of permit or license;

(2) Name and address of issuing authority;

(3) Identification numbers of applications for those permits or

licenses or, if issued, the identification numbers of the permits or licenses; and

(4) If a decision has been made, the date of approval or disapproval by each issuing authority.

Section 9. Identification of Location of Public Office for Filing of Application. Each application shall identify, by name and address, the appropriate regional office of the cabinet where the applicant will file a copy of the entire application for public inspection under 405 KAR 8:010, Section 8(8).

Section 10. Newspaper Advertisement and Proof of Publication. A copy of the newspaper advertisement of the application for a permit, major revision, amendment, transfer, or renewal of a permit and proof of publication of the advertisement, which is acceptable to the cabinet, shall be filed with the cabinet and made a part of the application, not later than fifteen (15) days after the last date of publication required under 405 KAR 8:010, Section 8(2).

Section 11. Environmental Resources Information. (1) Each permit application shall include a description of the existing environmental resources within the proposed permit area and adjacent areas as required by Sections 11 through 23 of this administrative regulation. The description required by this administrative regulation may, where appropriate, be based upon published texts or other public documents together with reasonable extrapolations from specific data available from existing permit areas or other appropriate areas.

(2)(a) Each application shall describe and identify the nature of cultural, historic, and archaeological resources listed or eligible for listing on the National Register of Historic Places and known archaeological sites within the proposed permit area and adjacent areas. The description shall be based on all available information, including information from the state Historic Preservation Officer and from local archaeological, historical, and cultural preservation agencies.

(b) According to historical databases, the cabinet may require the applicant to identify and evaluate important historic and archaeological resources that may be eligible for listing on the National Register of Historic Places, through collection of additional information, field investigations, or other appropriate analyses.

Section 12. General Requirements for Baseline Geologic and Hydrologic Information. (1) The application shall contain baseline geologic and hydrologic information that has been collected, analyzed, and submitted in the detail and manner sufficient to:

(a) Identify and describe protective measures pursuant to Section 32(1) of this administrative regulation that will be implemented during the mining and reclamation process to assure protection of the hydrologic balance or to demonstrate that protection of the hydrologic balance can be assured without the design and installation of protective measures, and to design necessary protective measures pursuant to Section 32(2) of this administrative regulation;

(b) Determine the probable hydrologic consequences of the mining and reclamation operations upon the hydrologic balance in the permit area and adjacent area pursuant to Section 32(3) of this administrative regulation so that an assessment can be made by the cabinet pursuant to 405 KAR 8:010, Section 14(3) of the probable cumulative impacts of all anticipated mining on the hydrologic balance in the cumulative impact area;

(c) Determine pursuant to 405 KAR 8:010, Section 14(2) and (3) if reclamation as required by 405 KAR can be accomplished and if the proposed operation has been designed to prevent material damage to the hydrologic balance; and

(d) Design surface and groundwater monitoring systems pursuant to Section 32(4) of this administrative regulation for the during-mining and postmining time period which, together with the baseline data collected under Sections 14(1) and 15(1) of this administrative regulation, shall demonstrate if the mining operation is meeting applicable effluent limitations and stream standards and protecting the hydrologic balance.

(2)(a) Geologic and hydrologic information pertaining to the area outside the permit and adjacent area but within the cumulative impact assessment area shall be provided to the applicant by the cabinet if this information is:

1. Needed in preparing the cumulative impact assessment; and
2. Available from an appropriate federal or state agency.

(b) If this information is needed by the cabinet for conducting the cumulative impact assessment and is not available from a federal or state agency, the applicant may gather and submit this information to the cabinet as part of the permit application.

(3) Interpolation, modeling, correlation, or other statistical methods, and other data extrapolation techniques may be used if the applicant can demonstrate that the data extrapolation techniques are valid and that information obtained through the techniques meets the requirements of subsection (1) of this section.

(4) Water quality analysis and sampling required by this chapter shall be conducted according to:

- (a) Standard Methods for the Examination of Water and Wastewater (14th Edition); or
- (b) 40 C.F.R. Parts 136 and 434.

Section 13. Baseline Geologic Information. (1) The application shall contain baseline geologic information collected from the permit area that shall meet the requirements of Section 12(1) of this administrative regulation and shall include at a minimum:

(a) The results of samples obtained from continuous cores; drill cuttings; channel cuttings from fresh, unweathered, rock outcrops; or other rock or soil material which has been collected using acceptable sampling techniques.

1. The vertical extent of sampling shall include those strata from the surface down to and including the stratum immediately below the lowest coal seam to be mined.

2. Where aquifers located within the permit area underlie the lowest coal seam to be mined and these aquifers may be adversely affected by the mining operation, the vertical extent of sampling shall also include those strata from the lowest coal seam to be mined down to and including the aquifers.

3. The area and vertical density of sampling shall, at a minimum, be sufficient to determine the distribution of strata that have a potential to produce acid drainage and to determine the area and vertical extent of aquifers that may be adversely affected.

4. If the vertical extent, and the area and vertical density of sampling specified in subparagraphs 1 through 3 of this paragraph are not sufficient to locate suitable strata for use as a topsoil substitute, or for other required design or analysis, additional sampling shall be conducted as necessary to furnish adequate geologic information;

(b) Chemical analyses including maximum potential acidity and neutralization potential of each overburden stratum and the stratum immediately below the lowest coal seam to be mined, to identify those strata which have a potential to produce acid or toxic drainage; and

(c) Chemical analyses of the coal seam to be mined to determine the potential to produce acid or toxic drainage, including the parameters of total sulfur and pyritic sulfur; except that the cabinet shall not require an analysis for pyritic sulfur if the applicant can demonstrate that an analysis for total sulfur provides adequate information to assure protection of the hydrologic balance.

(2) Collection of geologic information from the permit area as required in this subsection may be waived in whole or in part if:

(a) The applicant can demonstrate through geologic correlation or other procedures that information collected from outside the permit area is representative of the permit area and is sufficient to meet the requirements of Section 12(1) of this administrative regulation; or

(b) Other information equivalent to that required by this subsection is available to the cabinet and is made a part of the permit application; and

(c) The cabinet provides a written statement granting a waiver.

(3) The application shall contain a description of the geology of the proposed permit area and adjacent area that shall meet the requirements of Section 12(1) of this administrative regulation and

be based on the information required in subsection (1) of this section or other appropriate geologic information. The description shall include, at a minimum, geologic logs, cross-sections, fence diagrams, or other appropriate illustrations and written descriptions depicting:

(a) Within the permit area:

1. The structural geology and lithology of overburden strata and the stratum immediately below the lowest coal seam to be mined;

2. The thickness and chemical characteristics of each overburden stratum and the stratum immediately below the lowest coal seam to be mined; and

3. Where aquifers may be adversely affected by the mining operation, the structural geology, lithology, thickness, and area extent of the aquifers; and structural geology and lithology of strata, and thickness of each stratum, from the surface down to the aquifers; and

(b) Within the adjacent area, the approximate area extent and approximate thickness of aquifers that may be adversely affected by the mining operation.

(4) If necessary to assure adequate reclamation and protection of the hydrologic balance, the cabinet shall require geologic information and description in addition to that required by subsections (1) and (2) of this section including leaching tests of material from strata that may be disturbed by the operation to determine the potential for the operation to produce drainage with elevated levels of acidity, sulfate, and total dissolved solids, and the collection of information to greater depths within the proposed permit area or the collection of information for areas outside the proposed permit area.

Section 14. Baseline Groundwater Information. (1) The application shall contain baseline groundwater information for the permit area and adjacent area that shall be collected and submitted in a manner adequate to meet the requirements of Section 12(1) of this administrative regulation.

(2) Groundwater information shall include an inventory of wells, springs, underground mines, or other similar groundwater supply facilities currently being used, have been used in the past, or have a potential to be used for domestic, agricultural, industrial, or other beneficial purpose. The inventory shall include the location, ownership, type of usage, and if possible, other relevant information such as the depth and diameter of wells and approximate rate of usage, pumpage, or discharge from wells, springs, and other groundwater supply facilities.

(3) Groundwater information shall include seasonal groundwater quantity and quality data collected from monitoring wells, springs, underground mines, or other appropriate groundwater monitoring facilities, at a sufficient number of monitoring locations with adequate area distribution to meet the requirements of Section 12(1) of this administrative regulation. Seasonal groundwater quantity and quality data shall be provided for each water transmitting zone above, and potentially impacted water transmitting zone below, the lowest coal seam to be mined including at a minimum:

(a) Groundwater levels; and

(b) Total dissolved solids, or specific conductance corrected to twenty-five (25) degrees C, pH, dissolved iron, dissolved manganese, acidity, alkalinity, and sulfate. For data collected prior to August 13, 1985, total iron and total manganese may be substituted for dissolved iron and dissolved manganese.

(4) The groundwater information described in subsection (3) of this section shall be required in whole or in part for coal seams if the coal seams to be mined are serving as water supply sources or are otherwise significant in protecting the hydrologic balance.

(5) If additional information is needed to assess the need for protective measures, to design protective measures, to determine the probable hydrologic consequences of mining, or to conduct the cumulative impact assessment, the cabinet shall require groundwater information in addition to that described in subsections (2), (3), and (4) of this section including information pertaining to aquifer storage, yield, discharge, recharge capacity, and additional water quality parameters.

Section 15. Baseline Surface Water Information. (1) The application shall contain baseline surface water information for the permit area and adjacent area that shall be collected and submitted in a manner adequate to meet the requirements of Section 12(1) of this administrative regulation.

(2) Surface water information shall include an inventory of all streams, lakes, impoundments, or other surface water bodies in the permit and adjacent area that are currently being used for domestic, agricultural, industrial, or other beneficial purpose. The inventory shall include the name of the surface water body being used as a water supply source; the location, drainage area, ownership, and type of usage for the withdrawal; and if possible other relevant information such as the rate of withdrawal and seasonal variation.

(3) Surface water information shall include:

(a) The name, location, and ownership if appropriate, of all streams, lakes, impoundments, and other surface water bodies that receive run-off from watersheds that will be disturbed by the operation; and

(b) The location and description of any existing facilities located in watersheds that will be disturbed by the mining operation and may contribute to surface water pollution, such as existing or abandoned mining operations, oil wells, logging operations, or other similar facilities, including the location of any discharges that may be flowing from the facilities.

(4) Surface water information shall include seasonal quantity and quality data collected from a sufficient number of watersheds that will be disturbed by the operation with adequate area distribution to meet the requirements of Section 12(1) of this administrative regulation and include at a minimum:

(a) Flow rates; and

(b) Total dissolved solids, or specific conductance corrected to twenty-five (25) degrees C, total suspended solids, pH, total iron, total manganese, acidity, alkalinity, and sulfate.

(5) If additional information is needed to assess the need for protective measures, to design protective measures, to determine the probable hydrologic consequences of mining, or to conduct the cumulative impact assessment, the cabinet shall require surface water information in addition to that established in subsections (2), (3), and (4) of this section, including information pertaining to flood flows and additional water quality parameters.

Section 16. Alternative Water Supply Information. If the determination of probable hydrologic consequences required under Section 32 of this administrative regulation indicates that the proposed surface mining activities may proximately result in contamination, diminution, or interruption of an underground or surface source of water within the proposed permit area or adjacent area used for domestic, agricultural, industrial, or other legitimate use, then the application shall identify and describe the adequacy and suitability of the alternative sources of water supply that could be developed for existing premining uses and approved postmining land uses.

Section 17. Climatological Information. (1) Upon cabinet request, the application shall contain a statement of the climatological factors that are representative of the proposed permit area, including:

(a) The average seasonal precipitation;

(b) The average direction and velocity of prevailing winds; and

(c) Seasonal temperature ranges.

(2) The cabinet shall request additional data if necessary to ensure compliance with the requirements of this chapter.

Section 18. Soil Resources Information. (1) If soil survey information for the proposed permit area is available from SCS, the application shall include this information as a part of the description of premining land use capability and productivity required by Section 22(1)(b) of this administrative regulation.

(2) Where the applicant proposes to use selected overburden materials as a supplement or substitute for topsoil, the application shall provide results of analyses, trials, and tests as required under

405 KAR 16:050, Section 2(5).

Section 19. Vegetation Information. (1) The permit application shall contain a map that delineates existing vegetative types and a description of the plant communities within the proposed permit area and within any proposed reference area. This description shall include information adequate to predict the potential for reestablishing vegetation.

(2) If a map or aerial photograph is required, sufficient adjacent areas shall be included to allow evaluation of vegetation as important habitat for fish and wildlife.

Section 20. Fish and Wildlife Resources Information. (1) Each application shall include fish and wildlife resource information for the permit area and adjacent area. The scope and level of detail for this information shall be determined by the cabinet in consultation with the Kentucky Department of Fish and Wildlife Resources and the U.S. Department of the Interior, Fish and Wildlife Service, and shall be sufficient to design the protection and enhancement plan required under Section 36 of this administrative regulation.

(2) Site-specific resource information necessary to address the respective species or habitats shall be required if the permit area or adjacent area is likely to include:

(a) Listed or proposed endangered or threatened species of plants or animals or their critical habitats listed by the Secretary of the Interior under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 – 1544), or those species or habitats protected by similar state statutes;

(b) Habitats of unusually high value for fish and wildlife such as important streams, wetlands, riparian areas, cliffs supporting raptors, areas offering special shelter or protection, migration routes, or reproduction and wintering areas; or

(c) Other species or habitats identified through agency consultation as requiring special protection under state or federal law.

(3) Wetland delineations shall be conducted in accordance with:

(a) The Corps of Engineers Wetlands Delineation Manual;

(b) U. S. Army Corps of Engineers Regulatory Guidance Letter No. 90-7;

(c) National Lists of Plant Species that Occur in Wetlands and Biological Reports and Summary; and

(d) List of Hydric Soils of the United States, All Kentucky Counties.

(4) Upon request, the cabinet shall provide the resource information required under this section to the U.S. Department of the Interior, Fish and Wildlife Service regional or field office for their review. This information shall be provided within ten (10) days of receipt of the request from the Service.

(5)(a) Fish and wildlife resource information shall be required for amendments and revisions that:

1. Propose extension into a wetland;

2. Propose significant disturbance in a new watershed in which the permit area or adjacent area includes an important stream;

3. Seek to obtain a stream buffer zone variance under 405 KAR 16:060, Section 11, or seek to modify an existing stream buffer zone variance;

4. Propose extension of the permit boundary that involves a new surface disturbance of five (5) acres or more; or

5. Involve new permit or adjacent areas likely to contain, or that could reasonably be expected to contain, a state or federal endangered or threatened species or its critical habitat.

(b) For other amendments and revisions, a determination of fish and wildlife information is necessary, and the scope of information needed, shall be made on a case-by-case basis in consultation with Kentucky Department of Fish and Wildlife Resources and U.S. Fish and Wildlife.

(6) This section shall apply to applications for permits, amendments and revisions submitted to the cabinet on or after November 17, 1992.

Section 21. Prime Farmland Investigation. (1) The applicant shall before making application investigate the proposed permit

area to determine if lands within the area may be prime farmland.

(2) Land shall not be considered prime farmland if the applicant can demonstrate one (1) of the following:

(a) The land has not been historically used as cropland;

(b) The slope of the land is ten (10) percent or greater;

(c) Other relevant factors exist, which would preclude the soils from being defined as prime farmland according to 7 C.F.R. 657, such as a very rocky surface, or the land is flooded during the growing season more often than once in two (2) years, and the flooding has reduced crop yields; or

(d) On the basis of a soil survey of lands within the permit area, there are no soil map units that have been designated prime farmland by the U.S. SCS.

(3) If the investigation establishes that the lands are not prime farmland, the applicant shall submit with the permit application a request for a negative determination and results of the investigation that show that the land for which the negative determination is being sought meets one (1) of the criteria of subsection (2) of this section.

(4) If the investigation indicates that lands within the proposed permit area may be prime farmlands, the applicant shall contact the U.S. SCS to determine if a soil survey exists for those lands and if the applicable soil map units have been designated as prime farmlands. If no soil survey has been made for the lands within the proposed permit area, the applicant shall request the SCS to conduct a soil survey.

(a) If a soil survey of lands within the proposed permit area contains soil map units designated as prime farmlands, the applicant shall submit an application, in accordance with 405 KAR 8:050, Section 3 for the designated land.

(b) If a soil survey for lands within the proposed permit area contains no soil map units designated as prime farmland after review by the U.S. SCS, the applicant shall submit with the permit application a request for negative determination under subsection (2)(d) of this section for the nondesignated land.

(5) The cabinet shall decide to grant or deny a negative determination based upon documentation provided by the applicant and any other pertinent information, such as cropping history, available to the cabinet from other sources.

(6) The cabinet shall consult with the SCS in deciding on a request for negative determination under subsection (2)(c) of this section.

(7) The cabinet shall examine any records on crop history available from the Agriculture Stabilization and Conservation Service when deciding on a request for negative determination under subsection (2)(a) of this section.

Section 22. Land-use Information. (1) The application shall contain a statement of the condition, capability, and productivity of the land within the proposed permit area, including:

(a) A map and supporting narrative of the uses of the land existing when the application is filed. If the premining use of the land was changed within five (5) years before the date of application, the historic use of the land shall also be described; and

(b) A narrative of land use capability and productivity, which analyzes the land-use description in conjunction with other environmental resources information required under this administrative regulation. The narrative shall provide analyses of:

1. The capability of the land before any mining to support a variety of uses, giving consideration to soil and foundation characteristics, topography, vegetative cover, and the hydrology of the proposed permit area; and

2. The productivity of the proposed permit area before mining, expressed as average yield of food, fiber, forage, or wood products from the lands obtained under high levels of management. The productivity shall be determined by yield data or estimates for similar sites based on current data from the U.S. Department of Agriculture, state agricultural universities, or appropriate state natural resource or agricultural agencies.

(2) The application shall state if the proposed permit area has been previously mined, and, if so and, if available, the:

(a) Type of mining method used;

(b) Coal seams or other mineral strata mined;

- (c) Extent of coal or other minerals removed;
- (d) Approximate dates of past mining; and
- (e) Uses of the land preceding mining.

(3) The application shall contain a description of the existing land uses and local government land use classifications, if any, of the proposed permit area and adjacent areas.

(4) The application shall contain a description identifying the extent to which cities, towns, and municipalities, or parts thereof, are located within the proposed permit area.

Section 23. Maps and Drawings. (1) The permit application shall include a map or maps showing:

(a) The boundaries of all subareas proposed to be affected over the estimated total life of the proposed surface mining activities, with a description of the size, sequence, and timing of the surface mining operations for which it is anticipated that additional permits will be sought;

(b) Any land within the proposed permit area and adjacent area within the boundaries of any units of the National System of Trails or the Wild and Scenic Rivers System, including study rivers designated under Section 5(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1276(a)), or which is within the boundaries of a wild river established pursuant to KRS Chapter 146;

(c) The boundaries of any public park and locations of any cultural or historical resources listed on or eligible for listing on the National Register of Historic Places and known archaeological sites within the permit area and adjacent areas;

(d) The locations of water supply intakes for current users of surface water within a hydrologic area defined by the cabinet, and those surface waters that will receive discharges from affected areas in the proposed permit area;

(e) All boundaries of lands and names of present owners of record of those lands, both surface and subsurface, included in or contiguous to the permit area;

(f) The boundaries of land within the proposed permit area upon which the applicant has the legal right to enter and begin surface mining activities;

(g) The location of surface and subsurface manmade features within, passing through, or passing over the proposed permit area, including major electric transmission lines, pipelines, and agricultural drainage tile fields;

(h) The location and boundaries of any proposed reference areas for determining the success of revegetation for the permit area;

(i) The location of all buildings on and within 1,000 feet of the proposed permit area, with identification of the current use of the buildings;

(j) Each public road located in or within 100 feet of the proposed permit area;

(k) Each cemetery that is located in or within 100 feet of the proposed permit area; and

(l) Other relevant information required by 30 C.F.R. 779.24(l).

(2) The application shall include drawings, cross sections, and maps showing:

(a) Elevations and locations of test borings and core samplings;

(b) Elevations and locations of monitoring stations or other sampling points in the permit area and adjacent areas used to gather data on water quality and quantity, fish and wildlife, and air quality, if required, in preparation of the application, or which will be used for this data gathering during the term of the permit;

(c) Nature, depth, and thickness of the coal seams to be mined, any coal or rider seams above the seam to be mined, each stratum of the overburden, and the stratum immediately below the lowest coal seam to be mined, for the permit area;

(d) All coal crop lines and the strike and dip of the coal to be mined within the proposed permit area;

(e) Location and extent of known workings of active, inactive, or abandoned underground mines, including mine openings to the surface within the proposed permit area and adjacent areas;

(f) Location and extent of subsurface water, if encountered, within the proposed permit area or adjacent areas;

(g) Location of surface water bodies such as streams, lakes,

ponds, springs, constructed or natural drainage patterns, and irrigation ditches within the proposed permit area and adjacent areas;

(h) Location and extent of existing or previously surface-mined areas within the proposed permit area;

(i) Location, and depth if available, of gas and oil wells within the proposed permit area and water wells in the permit area and adjacent areas;

(j) Location and dimensions of existing areas of spoil, waste, and noncoal waste disposal, dams, embankments, other impoundments, and water treatment and air pollution control facilities within the proposed permit area; and

(k) Sufficient slope measurements to adequately represent the existing land surface configuration of the proposed permit area, measured and recorded according to the requirements established in subparagraphs 1. through 3. of this paragraph.

1. Each measurement shall consist of an angle of inclination along the prevailing slope extending 100 linear feet above and below or beyond the coal outcrop or the area to be disturbed or, if impractical, at locations and in a manner sufficient to demonstrate that the surface coal mining and reclamation operations, as required by KRS Chapter 350 and 405 KAR Chapters 7 through 24, can be feasibly accomplished in accordance with the mining and reclamation plan.

2. Where the area has been previously mined, the measurements shall extend at least 100 feet beyond the limits of mining disturbances, or any other distance representative of the premining configuration of the land.

3. Slope measurements shall take in account natural variations in slope, to provide accurate representation of the range of natural slopes and reflect geomorphic differences of the area to be disturbed.

(3) The permit application shall include the map information specified in Sections 22(1)(a), 24(3), 24(4)(c), 24(4)(h), 27(1), 28(1), 31, 32, 33, 34, and 38 of this administrative regulation, and 405 KAR 8:010, Section 5(6).

(4) Maps, drawings, and cross-sections included in a permit application that are required by this section shall be prepared by or under the direction of and certified by a qualified registered professional engineer, and shall be updated as required by the cabinet if there is a material change. The qualified registered professional engineer shall not be required to certify true ownership of property.

Section 24. Mining and Reclamation Plan; General Requirements. (1) Each application shall contain a detailed mining and reclamation plan (MRP) for the proposed permit area as set forth in this section through Section 38 of this administrative regulation, showing how the applicant will comply with KRS Chapter 350 and 405 KAR Chapters 16 through 20.

(2) Each application shall contain a description of the mining operations proposed to be conducted within the proposed permit area, including, at a minimum a narrative:

(a) Description of the type and method of coal mining procedures and proposed engineering techniques, anticipated annual and total production of coal, by tonnage, and the major equipment to be used for all aspects of those operations; and

(b) Explaining the construction, modification, use, maintenance, and removal of the following facilities (unless retention of the facilities is to be approved as necessary for postmining land use as specified in 405 KAR 16:210):

1. Dams, embankments, and other impoundments;

2. Overburden and topsoil handling and storage areas and structures;

3. Coal removal, handling, storage, cleaning, and transportation areas and structures;

4. Spoil, coal processing waste, and noncoal waste removal, handling, storage, transportation, and disposal areas and structures;

5. Mine facilities; and

6. Water and air pollution control facilities.

(3) Each application shall contain plans and maps of the proposed permit area and adjacent areas pursuant to paragraphs

(a) through (c) of this subsection.

(a) The plans and maps shall show the lands proposed to be affected throughout the operation and any change in a facility or feature to be caused by the proposed operations, if the facility or feature was shown under Section 23 of this administrative regulation.

(b) The following shall be shown for the proposed permit area:

1. Buildings, utility corridors, and facilities to be used;
2. The area of land to be affected within the proposed permit area, according to the sequence of mining and reclamation;
3. Each area of land for which a performance bond or other equivalent guarantee will be posted under 405 KAR Chapter 10;
4. Each coal storage, cleaning, and loading area;
5. Each topsoil, spoil, coal waste, and noncoal waste storage area;
6. Each water diversion, collection, conveyance, treatment, storage, and discharge facility to be used;
7. Each air pollution collection and control facility;
8. Each source of waste and each waste disposal facility relating to coal processing or pollution control;
9. Each facility to be used to protect and enhance fish and wildlife and related environmental values;
10. Each explosive storage and handling facility; and
11. Location of each sedimentation pond, permanent water impoundment, coal processing waste bank, and coal processing waste dam and embankment, in accordance with Section 34 of this administrative regulation, and fill area for the disposal of excess spoil in accordance with Section 27 of this administrative regulation.

(c) Plans, maps, and drawings required under this section shall be prepared by, or under the direction of, and certified by a qualified registered professional engineer.

(4) Each plan shall contain the following information for the proposed permit area:

(a) A projected timetable for the completion of each major step in the mining and reclamation plan;

(b) A detailed estimate of the cost of reclamation of the proposed operations required to be covered by a performance bond under 405 KAR Chapter 10, with supporting calculations for the estimates;

(c) A plan for backfilling, soil stabilization, compacting, and grading, with contour maps or cross-sections that show the anticipated final surface configuration of the proposed permit area, in accordance with 405 KAR 16:190;

(d) A plan for removal, storage, and redistribution of topsoil, subsoil, and other material to meet the requirements of 405 KAR 16:050 including a demonstration of suitability of any proposed topsoil substitutes or supplements;

(e) A plan for revegetation as required in 405 KAR 16:200, including descriptions of the: schedule of revegetation; species and amounts per acre of seeds and seedlings to be used; methods to be used in planting and seeding; mulching techniques; irrigation, if appropriate; pest and disease control measures, if any; and measures proposed to be used to determine the success of revegetation as required in 405 KAR 16:200, Section 6; and a soil testing plan for evaluation of the results of topsoil handling and reclamation procedures related to revegetation;

(f) A description of the measures to be used to maximize the use and conservation of the coal resource as required in 405 KAR 16:010, Section 2;

(g) A description of measures to be employed to ensure that all debris, acid-forming and toxic-forming materials, and materials constituting a fire hazard are disposed of in accordance with 405 KAR 16:150 and 16:190, Section 3, and a description of the contingency plans that have been developed to preclude sustained combustion of the materials;

(h) A description, including appropriate maps and drawings, of the measures to be used to seal or manage mine openings, and to plug, case, or manage exploration holes, other bore holes, wells, and other openings within the proposed permit area, in accordance with 405 KAR 16:040; and

(i) A description of steps to be taken to comply with the requirements of the Clean Air Act (42 U.S.C. Chapter 85), the

Clean Water Act (33 U.S.C. Chapter 26), and other applicable air and water quality laws and regulations and health and safety standards. This description shall, at a minimum, consist of identification of permits or approvals required by these laws and regulations which the applicant either has obtained, has applied for, or intends to apply for.

Section 25. MRP; Existing Structures. (1) Each application shall contain a description of each existing structure proposed to be used in connection with or to facilitate the surface coal mining and reclamation operation. The description shall include:

(a) Location;

(b) Plans of the structure that describe the structure's current condition;

(c) Approximate dates on which construction of the existing structure was begun and completed; and

(d) A showing, including relevant monitoring data or other evidence, ~~that if~~ the structure meets the performance standards of 405 KAR Chapters 16 through 20 ~~[or, if the structure does not meet those performance standards, a showing of if the structure meets the performance standards of the interim performance standards of 405 KAR Chapter 4].~~

(2) Each application shall contain a compliance plan for each existing structure proposed to be modified or reconstructed for use in connection with or to facilitate the surface coal mining and reclamation operation. The compliance plan shall include:

(a) Design specifications for the modification or reconstruction of the structure to meet the performance standards of 405 KAR Chapters 16 through 20;

(b) A construction schedule that shows dates for beginning and completing interim steps and final reconstruction;

(c) Provisions for monitoring the structure to ensure that the performance standards of 405 KAR Chapters 16 through 20 are met; and

(d) A showing that the risk of harm to the environment or to public health or safety will not be significant during the period of modification or reconstruction.

Section 26. MRP; Blasting. (1) Each application shall contain a blasting plan for the proposed permit area explaining how the applicant intends to comply with the requirements of 405 KAR 16:120. This plan shall include, at a minimum, information setting forth the limitations the permittee shall meet with regard to:

(a) Ground vibration and airblast;

(b) The bases for the ground vibration and airblast limitations; and

(c) The methods to be applied in controlling the adverse effects of blasting operations.

(2) Each application shall contain a description of the systems to be used to monitor compliance with the standards for ground vibration and airblast including identification of the types, capabilities, and sensitivities of blast monitoring equipment and identification of the monitoring procedures and locations.

(3) Blasting operations within 500 feet of active underground mines shall require approval of the cabinet, MSHA, and the Office of Mine Safety and Licensing.

Section 27. MRP; Disposal of Excess Spoil. (1) Each application shall contain descriptions, including appropriate maps and cross-section drawings, of the proposed disposal site and design of the spoil disposal structures according to 405 KAR 16:130. These plans shall describe the geotechnical investigation, design, construction, operation, maintenance, and removal if appropriate, of the site and structures.

(2) Each application shall contain the results of a geotechnical investigation of the proposed disposal site, including:

(a) The character of bedrock and any adverse geologic conditions in the disposal area;

(b) A survey identifying all springs, seepage, and groundwater flow observed or anticipated during wet periods in the area of the disposal site;

(c) An assessment of the potential effects of subsidence of the subsurface strata due to past and future mining operations;

(d) A technical description of the rock materials to be utilized in the construction of those disposal structures containing rock chimney cores or underlain by a rock drainage blanket; and

(e) A stability analysis including strength parameters, pore pressures, and long-term seepage conditions. These data shall be accompanied by a description of all engineering design assumptions and calculations and the alternatives considered in selecting the specific design specifications and methods.

(3) If, under 405 KAR 16:130, Section 1(4), rock toe buttresses or key way cuts are required, the application shall include:

(a) The number, location, and depth of borings or test pits that shall be determined with respect to the size of the spoil disposal structure and subsurface conditions; and

(b) Engineering specifications utilized to design the rock toe buttresses or key way cuts that shall be determined in accordance with subsection (2)(e) of this section.

Section 28. MRP; Transportation Facilities. (1) Each application shall contain a transportation facilities plan including a description of each road, conveyor, or rail system to be constructed, used, or maintained within the proposed permit area. The description shall include a map, appropriate cross-sections, and:

(a) Specifications for each road width, road gradient, road surface, road cut, fill embankment, culvert, bridge, drainage ditch, and drainage structure;

(b) A report of appropriate geotechnical analysis, if approval of the cabinet is required for alternative specifications, or for steep cut slopes under 405 KAR 16:220;

(c) A description of measures to be taken to obtain approval of the cabinet for alteration or relocation of a natural drainageway under 405 KAR 16:220; and

(d) A description of measures, other than use of a rock headwall, to be taken to protect the inlet end of a ditch relief culvert, for approval by the cabinet under 405 KAR 16:220.

(2) Each plan shall contain a general description of each road, conveyor, or rail system to be constructed, used, or maintained within the proposed permit area.

Section 29. MRP; Surface Mining Near Underground Mining. For surface mining activities within the proposed permit area to be conducted within 500 feet of an underground mine, the application shall describe the measures to be used to comply with 405 KAR 16:010, Section 3.

Section 30. MRP; Protection of Public Parks and Historic Places. (1) For any publicly-owned parks or any places listed on the National Register of Historic Places that may be adversely affected by the proposed operations, each plan shall describe the measures to be used to prevent adverse impact or, if valid existing rights exist or joint agency approval is to be obtained under 405 KAR 24:040, Section 2(4), to minimize adverse impacts.

(2) The cabinet may, pursuant to 30 C.F.R. 780.31, require the applicant to protect historic or archaeological properties listed or eligible for listing on the National Register of Historic Places through appropriate mitigation and treatment measures. These measures need not be completed prior to permit issuance, but shall be completed before the properties are affected by surface mining activities.

Section 31. MRP; Protection of Public Roads. Each application shall describe, with appropriate maps and drawings, the measures to be used to ensure that the interests of the public and landowners affected are protected if, under 405 KAR 24:040, Section 2(6), the applicant seeks to have the cabinet approve:

(1) Conducting the proposed surface mining activities within 100 feet of the right-of-way line of any public road, except where mine access or haul roads join that right-of-way; or

(2) Relocating a public road.

Section 32. MRP; Protection of the Hydrologic Balance. (1) Each application shall contain a description, as set forth in this subsection, of the measures to be taken to minimize disturbances

to the hydrologic balance within the permit area and adjacent area and to prevent material damage to the hydrologic balance outside the permit area.

(a) The description shall be based upon the baseline geologic, hydrologic, and other information required by Sections 12 through 16 of this administrative regulation and other appropriate information, shall be specific to local hydrologic conditions.

(b) The description shall identify the protective measures to be taken to enable the operation to meet, at a minimum, each of the hydrologic requirements referenced in this paragraph, or shall demonstrate that protective measures are not necessary for the operation to:

1. Meet applicable water quality statutes, administrative regulations, standards, and effluent limitations as required by 405 KAR 16:060, Section 1(3);

2. Avoid acid or toxic drainage as required by 405 KAR 16:060, Sections 4, 5, and 6;

3. Control the discharge of sediment to streams located outside the permit area as required by 405 KAR 16:060, Section 2;

4. Control the drainage and discharge of water within the permit area as required by 405 KAR 16:060, Sections 1(4), 3, 9, and 12, and 405 KAR 16:080;

5. Restore the approximate premining recharge capacity of the permit area as required by 405 KAR 16:060, Section 5; and

6. Protect or replace the water supply of present users as required by 405 KAR 16:060, Section 8.

(c) The cabinet may require that the description include protective measures in addition to those identified under paragraph (b) of this subsection, if additional measures are needed to protect the hydrologic balance in accordance with 405 KAR 16:060.

(2) Each application shall include the design of any necessary protective measures identified under subsection (1) of this section. The design shall be prepared in a manner and detail acceptable to the cabinet including, as appropriate, calculations, maps, drawings, and written explanations as necessary to document the design.

(3) Each application shall include a determination of the probable hydrologic consequences of the mining and reclamation operations for the permit area and adjacent area.

(a) The determination shall be based upon the baseline geologic, hydrologic, and other information required by Sections 12 through 16 of this administrative regulation and other appropriate information, and may include information statistically representative of the site.

(b) The determination shall be completed according to the parameters and in the detail necessary to enable the cabinet to prepare a cumulative impact assessment, and shall take into account the anticipated effects of protective measures required by this chapter.

(c) For surface water systems, the determination shall, at a minimum, include probable impacts on:

1. Peak discharge rates, emphasizing the potential for flooding;

2. Settleable solids at peak discharge;

3. Low-flow discharge rates, emphasizing the potential for water supply diminution;

4. Suspended solids at low flow; and

5. pH, at low flow, emphasizing the potential for acid drainage conditions, including depressed levels of alkalinity and elevated levels of iron, manganese, acidity, sulfate, and total dissolved solids or specific conductance, which are generally associated with acid drainage conditions.

(d) For groundwater systems, the determination shall, at a minimum, include probable impacts on:

1. Water quantity, emphasizing water levels and the potential for water supply diminution for existing users, and dewatering of aquifers that are not currently being used for water supply but have the potential to be developed as a water supply source; and

2. pH, emphasizing the potential for acid drainage conditions, including depressed levels of alkalinity and elevated levels of iron, manganese, acidity, sulfate, and total dissolved solids or specific conductance, which are generally associated with acid drainage conditions.

(e) The determination shall include a finding on if the proposed surface mining activities may proximately result in contamination,

diminution, or interruption of an underground or surface source of water within the permit area or adjacent areas that is used for domestic, agricultural, industrial, or other legitimate use upon application.

(f) An application for a major revision to a permit shall be reviewed by the cabinet to determine if a new or updated determination of the probable hydrologic consequences shall be required.

(4)(a) The application shall include a plan for the collection, recording, and reporting of groundwater and surface water quantity and quality data to monitor the effects of the mining and reclamation operations on the hydrologic balance, according to 405 KAR 16:110.

(b) The monitoring plan shall be based on the geologic and hydrologic baseline information, the mining and reclamation plan, and the determination of probable hydrologic consequences; and shall:

1. Identify the quantity and quality parameters to be monitored, sampling frequency, and monitoring site locations; and
2. Describe how the data may be used to determine the impacts of the operation on the hydrologic balance.

(5) An application for a major revision to a permit shall be reviewed by the cabinet to determine if a new or updated cumulative hydrologic impact assessment shall be made.

Section 33. MRP; Diversions. Each application shall contain descriptions, including maps and cross-sections, of stream channel diversions and other diversions to be constructed within the proposed permit area to achieve compliance with 405 KAR 16:080.

Section 34. MRP; Impoundments and Embankments. (1) General. Each application shall include detailed design plans for each proposed sedimentation pond, water impoundment, and coal mine waste bank, dam, or embankment within the proposed permit area. Each plan shall:

- (a) Be prepared by, or under the direction of, and certified by a qualified registered professional engineer;
- (b) Contain a description, map, and appropriate cross-sections and drawings of the structure and its location;
- (c) Contain all hydrologic and geologic information and computations necessary to demonstrate compliance with the design and performance standards of 405 KAR Chapter 16 and all information utilized by the applicant to determine the probable hydrologic consequences of the mining operations under Section 32(3) of this administrative regulation;
- (d) Contain an assessment of the potential effect on the structure from subsidence of the subsurface strata resulting from past underground mining operations if underground mining has occurred;
- (e) Include any geotechnical investigation, design, and construction requirements for the structure;
- (f) Describe the operation and maintenance requirements for each structure; and
- (g) Describe the timetable and plans to remove each structure, if appropriate.

(2) Sedimentation ponds. Sedimentation ponds, whether temporary or permanent, shall be designed in compliance with the requirements of 405 KAR 16:090 and 16:100.

(3) Permanent and temporary impoundments. Permanent and temporary impoundments shall be designed to comply with the requirements of 405 KAR 16:100. Each plan for an impoundment meeting the size or other criteria of MSHA, 30 C.F.R. 77.216(a), shall comply with the requirements of 30 C.F.R. 77.216-1 and 77.216-2. The plan required to be submitted to the district manager of MSHA under 30 C.F.R. 77.216 shall be submitted to the cabinet as part of the permit application. After the plan has been approved by MSHA, the applicant shall submit to the cabinet a copy of the final approved plan, a copy of all correspondence from MSHA regarding the plan, a copy of any technical support documents requested by MSHA during its review, and a notarized statement by the applicant that the copy submitted to the cabinet is a complete and correct copy of the final plan approved by MSHA.

(4) Coal mine waste banks. Coal mine waste banks shall be

designed to comply with the requirements of 405 KAR 16:140.

(5) Coal mine waste dams and embankments. Coal mine waste dams and embankments shall be designed to comply with the requirements of 405 KAR 16:100 and 16:160. The plan for an impounding structure that is required to be submitted to the district manager of MSHA under 30 C.F.R. 77.216 shall be submitted to the cabinet as part of the permit application. After the plan has been approved by MSHA, the applicant shall submit to the cabinet a copy of the final approved plan, a copy of all correspondence from MSHA regarding the plan, a copy of any technical support documents requested by MSHA during its review, and a notarized statement by the applicant that the copy submitted to the cabinet is a complete and correct copy of the final plan approved by MSHA. Each plan shall comply with the requirements of MSHA, 30 C.F.R. 77.216-1 and 77.216-2, and shall contain the results of a geotechnical investigation of the proposed dam or embankment foundation area, to determine the structural competence of the foundation that will support the proposed dam or embankment structure and the impounded material. The geotechnical investigation shall be planned and supervised by an engineer or engineering geologist, according to:

(a) The number, location, and depth of borings and test pits determined using current prudent engineering practice for the size of the dam or embankment, quantity or material to be impounded, and subsurface conditions;

(b) The character of the overburden and bedrock, the proposed abutment sites, and any adverse geotechnical conditions that may affect the particular dam, embankment, or reservoir site;

(c) All springs, seepage, and groundwater flow observed or anticipated during wet periods in the area of the proposed dam or embankment shall be identified on each plan; and

(d) Consideration of the possibility of mud flows, rock-debris falls, or other landslides into the dam, embankment, or impounded material.

(6) If the structure is Class B-moderate hazard or Class C-high hazard under 405 KAR 7:040, Section 5, and 401 KAR 4:030, or if the structure meets the size or other criteria of MSHA, 30 C.F.R. 77.216(a), each plan under subsections (2), (3), and (5) of this section shall include a stability analysis of the structure. The stability analysis shall include strength parameters, pore pressures, and long-term seepage conditions. The plan shall also contain a description of each engineering design assumption and calculation with a discussion of each alternative considered in selecting the specific design parameters and construction methods.

Section 35. MRP; Air Pollution Control. For all surface mining activity, the application shall contain an air pollution control plan that includes:

(1) An air quality monitoring program, if required by the cabinet, to provide sufficient data to evaluate the effectiveness of the fugitive dust control practices under subsection (2) of this section to comply with applicable federal and state air quality standards; and

(2) A plan for fugitive dust control practices, as required under 405 KAR 16:170.

Section 36. MRP; Fish and Wildlife Protection and Enhancement. (1) Each application shall include a description of how, to the extent possible using the best technology currently available, the permittee will minimize disturbances and adverse impacts on fish and wildlife and related environmental values, including compliance with the Endangered Species Act, during the surface coal mining and reclamation operations, and how enhancement of these resources will be achieved as practicable.

(2) This description shall:

(a) Apply, at a minimum, to species and habitats identified under Section 20 of this administrative regulation;

(b) Include protective measures that will be used during the active mining phase of operation. Protective measures may include the establishment of buffer zones, the selective location and special design of haul roads and powerlines, and the monitoring of surface water quality and quantity; and

(c) Include enhancement measures that will be used during the

reclamation and postmining phase of operation to develop aquatic and terrestrial habitat. Enhancement measures may include restoration of streams and other wetlands, retention of ponds and impoundments, establishment of vegetation for wildlife food and cover, and the replacement of perches and nest boxes. If the plan does not include enhancement measures, a statement shall be given explaining why enhancement is not practicable.

(3) Upon request, the cabinet shall provide the protection and enhancement plan required under this section to the U.S. Department of the Interior, Fish and Wildlife Service regional or field office for their review. This information shall be provided within ten (10) days of receipt of the request from the Service.

(4)(a) A fish and wildlife protection and enhancement plan shall be required for amendments and revisions that:

1. Propose extension into a wetland;
2. Propose significant disturbance in a new watershed in which the permit area or adjacent area includes an important stream;
3. Seek to obtain a stream buffer zone variance under 405 KAR 16:060, Section 11, or seek to modify an existing stream buffer zone variance;
4. Propose extension of the permit boundary that involves a new surface disturbance of five (5) acres or more; or
5. Involve new permit or adjacent areas likely to contain, or that could reasonably be expected to contain, a state or federal endangered or threatened species or its critical habitat.

(b) For other amendments and revisions, a determination of if a protection and enhancement plan is necessary shall be made on a case-by-case basis in consultation with Kentucky Department of Fish and Wildlife Resources and U.S. Fish and Wildlife.

(5) This section shall apply to applications for permits, amendments and revisions submitted to the cabinet on or after November 17, 1992.

Section 37. MRP; Postmining Land Use. (1) Each plan shall contain a description of the proposed land use or uses following reclamation of the land within the proposed permit area, including:

(a) A discussion of the utility and capacity of the reclaimed land to support a variety of alternative uses, and the relationship of the proposed use to existing land use policies and plans;

(b) A discussion of how the proposed postmining land use is to be achieved and the necessary support activities that may be needed to achieve the proposed land use, including management practices to be conducted during the liability period for the commercial forest land, cropland (including hayland), and pastureland land uses;

(c) If a land use different from the premining land use is proposed, all supporting documentation required for approval of the proposed alternative use under 405 KAR 16:210;

(d) A discussion of the consideration that has been given to making all of the proposed surface mining activities consistent with surface owner plans and applicable state and local land use plans and programs; and

(e) A copy of the comments concerning the proposed use from the legal or equitable owner of record of the surface of the proposed permit area and the state and local government agencies, if any, which would have to initiate, implement, approve, or authorize the proposed use of the land following reclamation.

(2) Approval of the initial postmining land use plan pursuant to this section, shall not preclude subsequent consideration and approval of a revised postmining land use plan in accordance with the applicable requirements of 405 KAR Chapters 7 through 24.

Section 38. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Standard Methods for the Examination of Water and Wastewater", (14th Edition, 1975), American Public Health Association, American Water Works Association, and Water Pollution Control Federation;

(b) "Corps of Engineers Wetlands Delineation Manual", (January, 1987 Edition), U. S. Army Corps of Engineers;

(c) "U. S. Army Corps of Engineers Regulatory Guidance Letter No. 90-7", (September 26, 1990), U. S. Army Corps of Engineers;

(d) "National Lists of Plant Species that Occur in Wetlands and

Biological Reports and Summary", (May, 1988 Edition), Fish and Wildlife Service, U. S. Department of the Interior; and

(e) "List of Hydric Soils of the United States, All Kentucky Counties", (December, 1991 Edition), Soil Conservation Service, U. S. Department of Agriculture;

(2) This material may be inspected, copied, or obtained at the 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: September 13, 2019

FILED WITH LRC: September 13, 2019 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 26, 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 November 30, 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 requirements specific to granting a surface coal mining permit.

(b) The necessity of this administrative regulation: This administrative regulation is necessary for issuing a surface coal mining permit.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 350.028(1), (5), 350.060(13), and 350.465(2) authorize the cabinet to promulgate administrative regulations relating to surface and underground coal mining operations. This administrative regulation conforms to the authorizing statutes by establishing requirements for issuing surface coal mine permits.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes requirements specific to issuing surface coal mine permits.

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

(a) How the amendment will change this existing administrative regulation: This amendment deletes language that allows existing structures to meet the requirements in the interim program administrative regulations. These administrative regulations were repealed in 2018.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to make remove references to the interim program administrative regulations that were repealed in 2018.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the authorizing statutes by removing a reference to the interim program administrative regulations.

(d) How the amendment will assist in the effective administration of the statutes: KRS 350.028(1), (5), 350.060(13),

and 350.465(2) authorize the cabinet to promulgate administrative regulations relating to surface and underground coal mining operations. These amendments are necessary to remove references to the interim program administrative regulations.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment would apply to any entity that wants to obtain a surface coal mine permit.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities listed in question (3) above will be required to ensure all existing structures meet the requirements of the permanent program administrative regulations (405 KAR Chapters 16-20).

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The entities listed in question (3) not experience an increased cost. The existing structures would still be required to meet the standards in the permanent program administrative regulations as established in Section 25(2) of this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The benefits that will be realized by the regulated entities are the result of the references to the interim program administrative regulations being removed.

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

(a) Initially: There will be no costs to the department associated with implementation of this amendment.

(b) On a continuing basis: There will be no costs to the department associated with implementation of this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The funding for implementation of the amendments to this administrative regulation will be a combination of general funds and restricted funds.

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

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

(9) TIERING: Is tiering applied? No. All entities that want a surface coal mining permit are required to meet the same requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Division of Mine Permits.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 350.020, 350.028, 350.060, 350.465, 7 C.F.R. Part 657, 30 C.F.R. Parts 77.216-1, 77.216-2, 730-733, 735, 773.13(a), 778-780, 785.17(b), (d), 917, 40 C.F.R. Parts 136, 434, 16 U.S.C. 1276(a), 1531 – 1544, 30 U.S.C. 1253, 1255, 1257, 1258, 1267.

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

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

This amended administrative regulation will not generate any new revenue for the state or local government.

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

(c) How much will it cost to administer this program for the first year? There will not be a cost increase associated with the amendments to this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? Future costs would remain essentially unchanged related to this amendment.

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

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 30 C.F. R. Parts 779 and 780

2. State Compliance Standards. KRS 350.060.

3. Minimum or uniform standards contained in the federal mandate. The C.F.R. citations listed above set the minimum information related to the issuance of surface mining permits.

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 simply remove outdated references to administrative regulations that were repealed in 2018. The removal of this information does not make the administrative regulation more stringent than the corresponding federal administrative regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. NA

ENERGY AND ENVIRONMENT CABINET Department for Natural Resources Division of Mine Permits (Amendment)

405 KAR 10:050. Bond forfeiture.

RELATES TO: KRS 350.020, 350.060, 350.064, 350.093, 350.095, 350.130, 350.131, 350.151, 350.465, 30 C.F.R. Parts 730-733, 735, 800.50, 917, 30 U.S.C. 1253, 1255

STATUTORY AUTHORITY: KRS Chapter 13A, 350.020, 350.028, 350.060, 350.064, 350.130, 350.151, 350.465, 30 C.F.R. Parts 730-733, 735, 800.50, 917, 30 U.S.C. 1253, 1255

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 350 ~~(in pertinent part)~~ requires the cabinet to regulate surface coal mining and reclamation operations in a manner as to insure that satisfactory reclamation is accomplished. This administrative regulation sets forth the procedures and criteria by means of which a bond may be forfeited to the cabinet. This administrative regulation sets forth that certain violations of KRS Chapter 350 and administrative regulations promulgated pursuant to that chapter may cause a bond to be forfeited. This administrative regulation sets forth that a hearing may be requested before forfeiture can be effected. This administrative regulation specifies a method to determine the amount of bond forfeiture. This administrative regulation establishes criteria under which unused forfeited bond funds shall be returned to the person from whom they were collected.

Section 1. General. (1) The cabinet shall forfeit all of the remaining bond amount for any permit or increment pursuant to the procedures and criteria of this administrative regulation.

(2) The cabinet may withhold forfeiture if the permittee or the surety agrees to a compliance schedule to correct the violations of the permit or bond conditions.

(3) The cabinet shall withhold forfeiture and allow the surety or other financial institution providing bond to complete the reclamation plan if the surety or other financial institution can demonstrate the ability to complete the reclamation plan, including achievement of the capability to support the postmining land use approved by the cabinet, and will undertake to do so within a reasonable time frame and agrees to a compliance schedule. Neither the surety company nor other financial institution shall employ anyone to perform the measures who has been barred from mining pursuant to the provisions of KRS Chapter 350.

Section 2. Procedures. (1) If forfeiture of the bond is required by Section 3 of this administrative regulation, the cabinet shall:

(a) Send written notification by certified mail, return receipt requested, to the permittee, and to the surety on the bond, if applicable, of the cabinet's determination to initiate forfeiture of the bond and the reasons for the forfeiture;

(b) Advise the permittee and surety, if applicable, of their right to challenge the determination pursuant to 400 KAR 1:110, Section 9; and

(c) If no hearing is requested within thirty (30) days following notification and the bond proceeds are not received, the secretary shall enter a final order of forfeiture and the cabinet shall proceed in an action for collection on the bond.

(2) The cabinet may, as an alternative to following the procedures of subsection (1) of this section, initiate formal hearing procedures concerning forfeiture of the bond alone or in conjunction with the cabinet's action for other appropriate remedies against the permittee pursuant to 400 KAR 1:110, Section 5.

(3) The cabinet shall utilize funds collected from bond forfeiture to complete the reclamation plan on the permit area or increment on which bond coverage applied, and to cover associated administrative expenses. The funds shall be deposited in an appropriate account for the payment of these costs. Funds remaining after reclamation shall be returned to the person from whom the forfeiture proceeds were received, subject to the cabinet's right to attach or setoff the proceeds under state law.

(4) In the event the amount forfeited is insufficient to pay for the full cost of reclamation, the permittee or operator shall be liable for remaining costs. The cabinet may complete, or authorize completion of, reclamation of the bonded area and may recover from the permittee or operator all costs of reclamation in excess of the amount forfeited.

(5) Return of unused forfeited bond funds for interim or permanent program permit area overlapped by permanent program permit area. If the cabinet has not completed the reclamation plan on a permit area under ~~30 C.F.R. Part 715~~~~405 KAR Chapter 1 or 3]~~ for which the bond was forfeited on or after July 15, 1988, or if the cabinet has not completed the reclamation plan on a permit area under 405 KAR Chapters 7-24 for which the bond was forfeited, and if the permit area and any related off-permit disturbances are entirely contained within the permit area of a subsequent valid permit under 405 KAR Chapters 7-24 for which the bond is in force, the cabinet shall retain the funds from the forfeited bond until the entire overlapped permit area and any related off-permit disturbances have been disturbed by the overlapping permittee and then shall return the unused funds to the person from whom the forfeiture proceeds were received, subject to the cabinet's right to attach or set off the proceeds under state law.

Section 3. Criteria for Forfeiture. (1) A bond for a permit area or increment shall be forfeited, if the cabinet finds that:

(a) The permittee has violated any of the terms or conditions of the bond and has failed to take corrective action;

(b) The permittee has failed to conduct the surface mining and reclamation operations in accordance with KRS Chapter 350, the conditions of the permit or 405 KAR Chapters 7 through 24 within the time required;

(c) The permit for the area or increment under bond has been

revoked or the operation terminated, unless the permittee, surety, or other financial institution providing bond assumes liability pursuant to an agreement for the completion of reclamation; or

(d) The permittee, surety, or other financial institution providing bond has failed to comply with a compliance schedule approved pursuant to Section 1(2) or (3) of this administrative regulation.

(2) A bond may be forfeited if the cabinet finds that:

(a)1. The permittee has become insolvent; or

2. A creditor of the permittee has attached or executed judgment against the permittee's equipment, materials, or facilities, at the permit area; and

(b) The permittee cannot demonstrate or prove the ability to continue to operate in compliance with KRS Chapter 350, 405 KAR Chapters 7 through 24, and the permit.

(3) The cabinet may forfeit a bond solely upon the permittee's failure to pay penalties or fines (if all reclamation requirements have been fully met) and retain the bond proceeds, or portion thereof as necessary to offset the penalty or fine owed (including administrative costs incurred by the cabinet), but the cabinet shall forfeit a bond under this circumstance only after the five (5) year liability period has expired; except that for surety bonds or bonds secured by a letter of credit:

(a) In no event shall the cabinet take any action to forfeit a surety bond or bond secured by a letter of credit under this circumstance until reclamation phase I and II monies have been released and the five (5) year liability period has expired; and

(b) If a forfeiture of a surety bond or a bond secured by a letter of credit under this circumstance has occurred, the cabinet shall not retain the surety bond or bond secured by letter of credit or any proceeds thereof and the permittee shall continue to be responsible for payment of the penalties or fines as well as administrative costs incurred by the cabinet.

Section 4. Forfeiture Amount. The cabinet shall forfeit the entire amount of the bond for the permit area or increment.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: September 13, 2019

FILED WITH LRC: September 13, 2019 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 26, 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 November 30, 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 certain violations of KRS Chapter 350 and administrative regulations that may cause a bond to be forfeited.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish procedures and criteria for forfeiting bonds.

(c) How this administrative regulation conforms to the content

of the authorizing statutes: KRS 350.060 authorizes the department to forfeit performance bonds for violations of KRS Chapter 350 and the permanent program administrative regulations. This administrative regulation conforms to the authorizing statutes by establishing those criteria.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the criteria and procedures for forfeiture of a performance bond.

(2) If 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 inserts a reference to 30 C.F.R. 715 which is the appropriate federal citation related to initial program administrative regulations.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to remove a reference to the interim program administrative regulations and inserting a citation to the federal initial program administrative regulations.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the authorizing statutes by removing a reference to the interim program administrative regulations.

(d) How the amendment will assist in the effective administration of the statutes: KRS 350.060 provides the department the authority to regulate coal mine bonding. These amendments are necessary to remove a reference to the interim program administrative regulations.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment would apply to any entity that operates coal mines within Kentucky. There are approximately 174 licensed mines in 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:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities listed in question (3) above will need to refer to 30 C.F.R. Part 715 in order to interpret Section 5(5) of this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is not a cost increase associated with the proposed amendments.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There will be minimal benefit associated with this amendment. The amendments simply inserts a reference to 30 C.F.R. 715 which is the appropriate federal citation related to initial program administrative 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 costs to the department associated with implementation of this amendment.

(b) On a continuing basis: There will be no costs to the department associated with implementation of this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The funding for implementation of the amendments to this administrative regulation will be a combination of general funds and restricted funds.

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

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

(9) TIERING: Is tiering applied? No. All entities that operate a coal mine in the Commonwealth will be subject to the same

requirements related to bonding.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Division of Mine Permits and the Division of Mine Reclamation and Enforcement.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 350.020, 350.028, 350.060, 350.064, 350.130, 350.151, 350.465, 30 C.F.R. Parts 730-733, 735, 800.50, 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 administrative regulation is to be in effect.

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

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

(c) How much will it cost to administer this program for the first year? There will not be a cost increase associated with the amendments to this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? Future costs would remain essentially unchanged related to this amendment.

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

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 30 C.F. R. 800.50

2. State Compliance Standards. KRS 350.060.

3. Minimum or uniform standards contained in the federal mandate. The C.F.R. citations listed above set the minimum information related to bond forfeiture.

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 simply inserts a federal citation in the place of the interim program administrative regulations which were repealed in 2018.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. NA

ENERGY AND ENVIRONMENT CABINET

Department for Natural Resources

Division of Mine Reclamation and Enforcement

(Amendment)

405 KAR 16:100. Permanent and temporary impoundments.

RELATES TO: KRS 151.100, 151.250(3), 350.100, 350.420, 350.455, 350.465, 30 C.F.R. Parts 730-733, 735, 816.49, 917, 30 U.S.C. 1253, 1255, 1265

STATUTORY AUTHORITY: KRS 350.028, 350.465, 30 C.F.R. Parts 730-733, 735, 816.49, 917, 30 U.S.C. 1253, 1255, 1265

NECESSITY, FUNCTION, AND CONFORMITY: KRS

350.028(2), (5), 350.151(1), and 350.465(2) authorize the cabinet to promulgate administrative regulations relating to surface and underground coal mining operations. This administrative regulation establishes the requirements for the design, construction, certification, inspection, and maintenance of temporary and permanent impoundments for surface mines. This administrative regulation differs from federal regulations as follows: (1) Section 1 of this administrative regulation provides criteria related to the stability, settlement, embankment height and width, and freeboard of impoundments which is not found in the federal regulations. These criteria have been retained because they have long been effective guidelines for embankment safety and stability. (2) Section 1(9)(c) of this administrative regulation provides an exemption from engineering inspection for certain types of impoundments without embankments. These inspections are unnecessary because the embankments do not present a safety hazard or environmental concern that would warrant routine, detailed inspection. (3) Section 1(10)(b) of this administrative regulation provides an exemption from quarterly inspections for certain small nonhazardous impoundments without embankment structures. These inspections are unnecessary because the structures cannot develop the hazardous conditions which the inspections were intended to detect.

Section 1. General Requirements. The requirements of this section apply to both temporary and permanent impoundments. (1)(a) Impoundments meeting the criteria of MSHA, 30 C.F.R. 77.216(a), shall comply with the requirements of 30 C.F.R. 77.216 and this administrative regulation. The plan required to be submitted to the district manager of MSHA under 30 C.F.R. 77.216 shall be submitted to the cabinet as part of the permit application in accordance with 405 KAR 8:030, Section 34(3). (b) All impoundments classified as Class B-moderate hazard or Class C-high hazard, and all permanent "dams," as defined in KRS 151.100, shall comply with 405 KAR 7:040, Section 5 and with 401 KAR 4:030.

(2) Design certification. The design of impoundments shall be certified by a qualified registered professional engineer as designed to meet the requirements of this administrative regulation using current, prudent engineering practices, and any design criteria established by the cabinet. The qualified registered professional engineer shall be experienced in the design and construction of impoundments.

(3) Stability.

(a)1. Permanent and temporary impoundments meeting the criteria of MSHA, 30 C.F.R. 77.216(a), all Class B and C impoundments, and all permanent impoundments, shall have a minimum static safety factor of 1.5 for the normal pool with steady seepage saturation conditions, and a seismic safety factor of at least 1.2. 2. Impoundments not included in subparagraph 1 of this paragraph, except coal mine waste impoundments, shall have a minimum static safety factor of 1.3 for the normal pool with steady state seepage saturation conditions.

(b) The constructed height of the dam shall be increased a minimum of five (5) percent over the design height to allow for settlement, unless it has been demonstrated to the cabinet that the material used and the design will ensure against all settlement.

(c) The minimum top width of the embankment shall not be less than the quotient of $(H+35)/5$, where H is the height, in feet, of the embankment as measured from the upstream toe of the embankment.

(d) Unless the cabinet approves steeper slopes, based upon a satisfactory demonstration of stability by the applicant acceptable to the cabinet, the sum of the upstream and downstream side slopes (h/v) of the settled embankment shall not be less than 5h:1v, with neither slope steeper than 2h:1v. Slopes shall be designed to be stable in all cases, even if flatter side slopes are required.

(e) The fill material shall be free of sod, large roots, other large vegetative matter, and frozen soil and shall not contain coal mine waste except for coal mine waste impounding structures pursuant to 405 KAR 16:160.

(f) The placing and spreading of fill material shall be started at

the lowest point of the foundation. The fill shall be brought up in horizontal layers of thickness as is required to facilitate compaction and meet the design requirement of this administrative regulation. Compaction shall be conducted as specified in the design approved by the cabinet.

(g) The entire embankment including the surrounding areas disturbed by construction shall be stabilized with respect to erosion by a vegetative cover or other means immediately after the embankment is completed. The active upstream face of the embankment where water will be impounded may be ripped or otherwise stabilized. Areas in which the vegetation is not successful or where rills and gullies develop shall be repaired and revegetated in accordance with 405 KAR 16:190, Section 6.

(h) Slope protection shall be provided to protect against surface erosion at the site and protect against sudden drawdown.

(4) Freeboard. Impoundments shall have adequate freeboard to resist overtopping by waves and by sudden increases in storage volume. The minimum elevation at the top of the settled embankment shall be one (1.0) foot above the water surface in the pond with the emergency spillway flowing at design depth. For embankments subject to settlement, this one (1.0) foot minimum elevation requirement shall apply at all times, including the period after settlement. Freeboard requirements shall not apply to incised impoundments which have no embankment or levee.

(5) Foundation.

(a)1. Foundation and abutments for the impounding structure shall be designed to be stable under all conditions of construction and operation of the impoundment and shall be designed based on adequate and accurate information on the foundation conditions.

2. For permanent and temporary impoundments meeting the criteria of MSHA, 30 C.F.R. 77.216(a), for all Class B and C impoundments, and for all permanent impoundments, foundation investigations as well as any necessary laboratory testing of materials shall be performed in order to determine the design requirements for foundation and embankment stability.

3. If an approved temporary impoundment has been constructed and the permittee subsequently seeks a permit revision to upgrade the structure to a permanent impoundment, the cabinet may waive the foundation investigations and laboratory testing required by subparagraph 2 of this paragraph under the following circumstances:

a. The structure has been recently verified as being a Class A-low hazard structure;

b. The structure does not meet the definition of the term "dam," as defined at KRS 151.100; and

c. The cabinet approves conservative, assumed values for the strength parameters used in the stability analyses to ensure compliance with subsection (3)(a) of this section.

(b) All vegetative and organic materials shall be removed and foundations excavated and prepared to resist failure. Cutoff trenches shall be installed if necessary to ensure stability.

(6) Impoundments shall include a combination of principal and emergency spillways which shall be designed and constructed to safely pass the design precipitation event specified in this subsection unless the cabinet requires a larger event. Twenty-four (24) hours may be used in lieu of six (6) hours for the duration of a design precipitation event specified in this subsection.

(a) Except as provided in paragraph (c) of this subsection, Class A structures that do not meet the criteria of MSHA, 30 C.F.R. 77.216(a), shall pass the:

1. Twenty-five (25) year, six (6) hour precipitation event if it is a temporary structure; or

2. The fifty (50) year, six (6) hour precipitation event if it is a permanent structure.

(b) Class A structures that meet the criteria of MSHA, 30 C.F.R. 77.216(a), shall pass the 100 year, six (6) hours precipitation event.

(c) Class B and C structures and all permanent dams as defined in KRS 151.100 shall comply with the criteria established in 401 KAR 4:030.

(7) Class A impoundments not meeting the criteria of MSHA, 30 C.F.R. 77.216(a), may use a single spillway (if allowed pursuant to subsection (1)(b) of this section) if the spillway:

(a) Is an open channel of nonerodible construction and capable of maintaining sustained flows; and

(b) Is not earth or grass lined.

(8) The vertical portion of any remaining highwall shall be located far enough below the low-water line along the full extent of the highwall to provide adequate safety and access for the proposed water users.

(9) Engineer inspections. A qualified registered professional engineer or other qualified professional specialist, under the direction of the professional engineer, shall inspect the impoundment. The professional engineer or specialist shall be experienced in the construction of impoundments.

(a) Inspections shall be made regularly during construction, upon completion of construction, and at least yearly until removal of the structure or release of the performance bond.

(b) The qualified registered professional engineer shall promptly, after each inspection, provide to the cabinet a certified report that the impoundment has been constructed and maintained as designed and in accordance with the plan approved in the permit and 405 KAR Chapters 7 through 24. The report shall include discussion of any appearances of instability, structural weakness or other hazardous conditions, depth and elevation of any impounded waters, existing storage capacity, any existing or required monitoring procedures and instrumentation and any other aspects of the structure affecting stability. The report shall also confirm the hazard classification of the impoundment, or if the hazard classification has changed, the report shall contain a detailed explanation of the change and the conditions causing the change. A copy of the report shall be retained at or near the mine site.

(c) An impoundment with no embankment structure, that is completely incised or is created by a depression left by backfilling and grading, that is not a sedimentation pond or coal mine waste impoundment and is not otherwise intended to facilitate active mining, shall be exempt from this subsection unless the cabinet determines on a case-by-case basis that engineering inspection and certification are necessary to insure public health and safety or environmental conditions, in which case the cabinet shall establish appropriate inspection and certification requirements for the impoundment that shall apply in lieu of the requirements of this subsection and shall notify the permittee in writing.

(10) Operator examinations.

(a) Impoundments subject to 30 C.F.R. 77.216, and Class B and C impoundments, shall be examined in accordance with 30 C.F.R. 77.216-3.

(b) Impoundments not included in paragraph (a) of this subsection shall be examined at least quarterly by a qualified person designated by the operator for appearance of structural weakness and other hazardous conditions. Quarterly examinations shall be conducted each calendar quarter (i.e., January-March, April-June, July-September, and October-December) and no two (2) examinations shall be within thirty (30) days of each other unless additional examination within a quarter are required. Reports of the examinations shall be retained at or near the mine site. An impoundment with no embankment structure, that is completely incised or is created by a depression left by backfilling and grading, shall be exempt from this paragraph.

(11) Emergency procedures. If any examination or inspection discloses that a potential hazard exists, the person who examined the impoundment shall immediately notify the department and the Kentucky Division of Water, or if these agencies cannot be reached, Disaster and Emergency Services. The permittee shall immediately implement emergency procedures formulated for public protection and remedial action. If adequate emergency procedures cannot be formulated or implemented by the permittee, the cabinet shall be notified, and the cabinet shall notify the appropriate agencies that other emergency procedures are required to protect the public.

(12) Maintenance. An owner or operator of an impoundment shall:

(a) Cut vegetative growth where necessary to facilitate inspection and repairs;

(b) Clean any ditches and spillways; and

(c) Remove any combustible material present on the surface, other than that used for stability such as mulch or dry vegetation.

Section 2. Permanent Impoundments. A permanent impoundment of water may be created, if authorized by the cabinet in the approved permit based upon the following demonstration:

(1) The size and configuration of the impoundment will be adequate for its intended purposes.

(2) The quality of impounded water will be suitable on a permanent basis for its intended use and, after reclamation, will meet applicable state and federal water quality standards, and discharges from the impoundment will meet applicable effluent limitations and will not degrade the quality of receiving water below applicable state and federal water quality standards.

(3) The water level will be sufficiently stable and be capable of supporting the intended use.

(4) Final grading will provided for adequate safety and access for proposed water users. Perimeter slopes shall be stable and shall be protected against erosion.

(5) The impoundment will not result in the diminution of the quality and quantity of water utilized by adjacent or surrounding landowners for agricultural, industrial, recreational, or domestic uses.

(6) The impoundment will be suitable for the approved postmining land use.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: September 13, 2019

FILED WITH LRC: September 13, 2019 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A

public hearing on this administrative regulation shall be held on November 26, 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 November 30, 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 the requirements for the design, construction, certification, inspection, and maintenance of temporary and permanent impoundments for surface mines.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish requirements for the design, construction, certification, inspection, and maintenance of temporary and permanent impoundments for surface mines.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 350.151(1) directs the cabinet to promulgate an administrative regulation setting forth the requirements for the mining and reclamation of land disturbed or removed by operations resulting from or incident to surface coal mining, including impoundments. This administrative regulation conforms to the authorizing statutes by establishing those requirements.

(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 requirements for the design, construction, certification, inspection, and maintenance of temporary and permanent impoundments for surface mines.

(2) If 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 includes information related to maintaining impoundments that was previously included in the interim program administrative regulations that were repealed in 2018.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to include requirements that were in the interim program administrative regulations that were repealed in 2018.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the authorizing statutes by including information related to maintaining impoundments that was previously in the interim program administrative regulations that were repealed in 2018.

(d) How the amendment will assist in the effective administration of the statutes: KRS 350.151 directs the cabinet to promulgate an administrative regulation setting forth the requirements for the mining and reclamation of land disturbed or removed by operations resulting from or incident to surface coal mining, including impoundments. This amendment inserts information related to maintaining impoundments.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment would apply to any entity that operates a surface coal mine within Kentucky. There are approximately 104 licensed surface mines in 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:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities listed in question (3) above will comply with information related to permanent and temporary impoundments. The information was previously included in the interim program administrative regulations and therefore, is not new.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is not a cost increase associated with the proposed amendments.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities listed in (3) will have information related maintaining impoundments in the permanent program administrative regulation related to impoundments.

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

(a) Initially: There will be no costs to the department associated with implementation of this amendment.

(b) On a continuing basis: There will be no costs to the department associated with implementation of this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The funding for implementation of the amendments to this administrative regulation will be a combination of general funds and restricted funds.

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

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

(9) TIERING: Is tiering applied? No. All entities that operate a surface coal mine will be required to meet the same requirements

related to maintaining impoundments.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Division of Mine Permits and the Division of Mine Reclamation and Enforcement.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 350.028, 350.465, 30 C.F.R. Parts 730-733, 735, 816.49, 917, 30 U.S.C. 1253, 1255, 1265.

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

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

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

(c) How much will it cost to administer this program for the first year? There will not be a cost increase associated with the amendments to this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? Future costs would remain essentially unchanged related to this amendment.

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

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 30 C.F. R. 816.84.

2. State Compliance Standards. KRS 350.151.

3. Minimum or uniform standards contained in the federal mandate. The C.F.R. citations listed above set the minimum information related to impounding structures.

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 make the administrative regulation more stringent than the corresponding federal regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. NA

ENERGY AND ENVIRONMENT CABINET Department for Natural Resources Division of Mine Reclamation and Enforcement (Amendment)

405 KAR 16:210. Postmining land use capability.

RELATES TO: KRS 350.093, 350.095, 350.100, 350.405, 350.410, 350.450, 350.465, 30 C.F.R. Parts 730-733, 735, 816.133, 917, 30 U.S.C. 1253, 1255, 1265

STATUTORY AUTHORITY: KRS Chapter 13A, 350.020, 350.028, 350.465, 30 C.F.R. Parts 730-733, 735, 816.133, 917, 30 U.S.C. 1253, 1255, 1265

NECESSITY, FUNCTION, AND CONFORMITY: KRS 350.465[KRS Chapter 350 in pertinent part] requires the cabinet to promulgate [rules and] administrative regulations establishing

performance standards for protection of people and property, land, water and other natural resources, and aesthetic values, during surface mining activities and for restoration and reclamation of surface areas affected by mining activities. This administrative regulation sets forth requirements for restoring land use capability after completion of surface mining activities, and specific criteria for approval of postmining land uses which differ from the premining land use.

Section 1. General. (1) Prior to the final release of performance bond, affected areas shall be restored in a timely manner:

(a) To conditions capable of supporting the uses which the areas were capable of supporting before any mining; or

(b) To conditions capable of supporting higher or better alternative uses as approved by the cabinet under Section 4 of this administrative regulation.

(2) The following land uses shall apply under this administrative regulation:

- (a) Cropland;
- (b) Pastureland;
- (c) Forest land;
- (d) Residential;
- (e) Industrial/commercial;
- (f) Recreation;
- (g) Fish and wildlife;
- (h) Developed water resources;
- (i) Undeveloped land or no current use or land management.

Section 2. Premining and Postmining Land Use. (1) The premining uses of land to which the postmining land use is compared shall be those uses which the land previously supported if the land has not been previously mined. The premining land use for a specific area shall be determined based on the prevalent or dominant use, vegetative types, and features present at that area; however, more than one (1) land use can exist within a proposed permit boundary.

(2)(a) The postmining land use for land that has been previously mined, and not reclaimed in compliance with 405 KAR[Chapter 1 or 3 or] Chapters 7 through 24, shall be judged on the basis of the land use that existed prior to any mining.[-except]

(b) If the land cannot be reclaimed to the land use that existed prior to any mining because of the previously mined condition, the postmining land use shall be judged on the basis of the highest and best use that can be achieved which is compatible with surrounding areas and does not require the disturbance of areas previously unaffected by mining.

(3) Prime farmland that has been historically used for cropland that is not exempted by 405 KAR 8:050, Section 3 shall have a postmining land use of cropland.

(4)(a) The land use category of "undeveloped land or no current use or land management" shall not be used to designate a postmining land use.

(b) If the premining land use is "undeveloped land or no current use or land management", and if consistent with subsection (2) of this section and Section 3 of this administrative regulation:

1. If trees are dominant on the area prior to mining, the area may be designated as forestland for the postmining land use without compliance with the procedures and criteria for an alternative postmining land use.

2. For all other cases, the area may be designated as fish and wildlife for the postmining land use without compliance with the procedures and criteria for an alternative postmining land use.

(5) Slope limitations for specific postmining land uses. These limitations shall apply to permits issued after the effective date of this amendment. Portions of the permit area with slopes greater than twenty (20) percent (eleven and three-tenths (11.3) degrees) shall not be designated as cropland, including hay production.

(6) Steep slope operations with variances from approximate original contour shall comply with the requirements of 405 KAR 20:060, Section 3(2), and mountaintop removal operations shall comply with 405 KAR 8:050, Section 4(3).

Section 3. Historical Land Use. If the premining use of the land

was changed within five (5) years of the date of application for a permit to conduct surface coal mining and reclamation operations, the historical use of the land as well as the land use immediately preceding the date of application shall be considered in establishing the premining capability of the land to support a variety of feasible uses.

Section 4. Alternative Postmining Land Use. Higher or better alternative postmining land uses may be approved by the cabinet if the following criteria are met:

(1) There is a reasonable likelihood that the land use will be achieved;

(2) The use will not be impractical or unreasonable;

(3) The landowner or the land management agency having jurisdiction over the lands has been consulted, and the proposed alternative postmining land use is consistent with applicable land use policies and plans;

(4) The proposed use will not present an actual or probable hazard to public health or safety or threat of water pollution or diminution of water availability;

(5) The proposed use will not involve unreasonable delays in implementation; and

(6) The proposed use will not cause or contribute to violation of federal, state, or local law.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: September 13, 2019

FILED WITH LRC: September 13, 2019 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 26, 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 November 30, 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 sets forth requirements for restoring land use capability after completion of surface mining activities, and specific criteria for approval of postmining land uses which differ from the premining land use.

(b) The necessity of this administrative regulation: This administrative regulation is necessary for restoring land use capability after completion of surface mining activities, and specific criteria for approval of postmining land uses which differ from the premining land use.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 350.450 authorizes the cabinet require operators to restore land use capability after completion of surface mining activities, and specific criteria for approval of postmining land uses which differ from the premining land use. This administrative regulation conforms to the authorizing statutes by establishing those requirements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This

administrative regulation establishes requirements and criteria for completing reclamation.

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

(a) How the amendment will change this existing administrative regulation: This amendment removes a citation to the interim program administrative regulations. These administrative regulations were repealed in 2018.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to remove the citations to the interim program administrative regulations, which were repealed in 2018.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the authorizing statutes by removing citations to the interim program administrative regulations. This provides the regulated entity correct citations to the permanent program administrative regulations.

(d) How the amendment will assist in the effective administration of the statutes: KRS 350.450 conforms to the authorizing statutes by requiring operators to restore land use capability after completion of surface mining activities, and specific criteria for approval of postmining land uses which differ from the premining land use. These amendments remove incorrect citations to the interim program administrative regulations.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment would apply to any entity that operates a surface coal mine within Kentucky. There are approximately 104 licensed surface mines in 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:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities listed in question (3) above will no longer have incorrect references to the interim program administrative regulations in this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is not a cost increase associated with the proposed amendments.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities listed in (3) will simply have correct citations in this administrative regulation.

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

(a) Initially: There will be no costs to the department associated with implementation of this amendment.

(b) On a continuing basis: There will be no costs to the department associated with implementation of this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The funding for implementation of the amendments to this administrative regulation will be a combination of general funds and restricted funds.

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

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

(9) TIERING: Is tiering applied? No. All entities that operate a surface coal mine will be required to meet the same requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Division of Mine

Permits and the Division of Mine Reclamation and Enforcement.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 350.020, 350.028, 350.465, 30 C.F.R. Parts 730-733, 735, 816.133, 917, 30 U.S.C. 1253, 1255, 1265.

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

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

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

(c) How much will it cost to administer this program for the first year? There will not be a cost increase associated with the amendments to this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? Future costs would remain essentially unchanged related to this amendment.

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

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 30 C.F. R. 816.133.

2. State Compliance Standards. KRS 350.450.

3. Minimum or uniform standards contained in the federal mandate. The C.F.R. citations listed above set the minimum information related to postmining land use.

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 make the administrative regulation more stringent than the corresponding federal regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. NA

ENERGY AND ENVIRONMENT CABINET

Department for Natural Resources

Division of Mine Reclamation and Enforcement

(Amendment)

405 KAR 18:100. Permanent and temporary impoundments.

RELATES TO: KRS 151.100, 151.250(3), 350.100, 350.151, 350.420, 350.455, 350.465, 30 C.F.R. Parts 730-733, 735, 817.49, 917, 30 U.S.C. 1253, 1255, 1266

STATUTORY AUTHORITY: KRS 350.028, 350.151, 350.465, 30 C.F.R. Parts 730-733, 735, 817.49, 917, 30 U.S.C. 1253, 1255, 1266

NECESSITY, FUNCTION, AND CONFORMITY: KRS 350.028(1), (5), 350.151(1), and 350.465(2) authorize the cabinet to promulgate administrative regulations relating to surface and underground coal mining operations. This administrative regulation establishes the requirements for the design, construction, certification, inspection, and maintenance of temporary and permanent impoundments for underground mines. This administrative regulation differs from federal regulations as follows: (1) Section 1 of this administrative regulation provides criteria related to the stability, settlement, embankment height and width,

and freeboard of impoundments which is not found in the federal regulations. These criteria have been retained because they have long been effective guidelines for embankment safety and stability. (2) Section 1(9)(c) of this administrative regulation provides an exemption from engineering inspection for certain types of impoundments without embankments. These inspections are unnecessary because the embankments do not present a safety hazard or environmental concern that would warrant routine, detailed inspection. (3) Section 1(10)(b) of this administrative regulation provides an exemption from quarterly inspections for certain small nonhazardous impoundments without embankment structures. These inspections are unnecessary because the structures cannot develop the hazardous conditions which the inspections were intended to detect.

Section 1. General Requirements. The requirements of this section apply to both temporary and permanent impoundments. (1)(a) Impoundments meeting the criteria of MSHA, 30 C.F.R. 77.216(a), shall comply with the requirements of 30 C.F.R. 77.216 and this administrative regulation. The plan required to be submitted to the district manager of MSHA under 30 C.F.R. 77.216 shall be submitted to the cabinet as part of the permit application after the plan has been approved by MSHA.

(b) All impoundments classified as Class B-moderate hazard or Class C-high hazard, and all permanent "dams," as defined in KRS 151.100, shall comply with 405 KAR 7:040, Section 5 and with 401 KAR 4:030.

(2) Design certification. The design of impoundments shall be certified by a qualified registered professional engineer as designed to meet the requirements of this administrative regulation using current, prudent engineering practices, and any design criteria established by the cabinet. The qualified registered professional engineer shall be experienced in the design and construction of impoundments.

(3) Stability.

(a)1. Permanent and temporary impoundments meeting the criteria of MSHA, 30 C.F.R. 77.216(a), all Class B and C impoundments, and all permanent impoundments, shall have a minimum static safety factor of 1.5 for the normal pool with steady seepage saturation conditions, and a seismic safety factor of at least 1.2. 2. Impoundments not included in subparagraph 1 of this paragraph, except coal mine waste impoundments, shall have a minimum static safety factor of 1.3 for the normal pool with steady state seepage saturation conditions.

(b) The constructed height of the dam shall be increased a minimum of five (5) percent over the design height to allow for settlement, unless it has been demonstrated to the cabinet that the material used and the design will ensure against all settlement.

(c) The minimum top width of the embankment shall not be less than the quotient of $(H+35)/5$, where H is the height, in feet, of the embankment as measured from the upstream toe of the embankment.

(d) Unless the cabinet approves steeper slopes, based upon a satisfactory demonstration of stability by the applicant acceptable to the cabinet, the sum of the upstream and downstream side slopes (h/v) of the settled embankment shall not be less than 5h:1v, with neither slope steeper than 2h:1v. Slopes shall be designed to be stable in all cases, even if flatter side slopes are required.

(e) The fill material shall be free of sod, large roots, other large vegetative matter, and frozen soil and shall not contain coal mine waste except for coal mine waste impounding structures pursuant to 405 KAR 18:160.

(f) The placing and spreading of fill material shall be started at the lowest point of the foundation. The fill shall be brought up in horizontal layers of thickness as is required to facilitate compaction and meet the design requirement of this administrative regulation. Compaction shall be conducted as specified in the design approved by the cabinet.

(g) The entire embankment including the surrounding areas disturbed by construction shall be stabilized with respect to erosion by a vegetative cover or other means immediately after the embankment is completed. The active upstream face of the

embankment where water will be impounded may be riprapped or otherwise stabilized. Areas in which the vegetation is not successful or where rills and gullies develop shall be repaired and revegetated in accordance with 405 KAR 18:190, Section 4.

(h) Slope protection shall be provided to protect against surface erosion at the site and protect against sudden drawdown.

(4) Freeboard. Impoundments shall have adequate freeboard to resist overtopping by waves and by sudden increases in storage volume. The minimum elevation at the top of the settled embankment shall be one (1.0) foot above the water surface in the pond with the emergency spillway flowing at design depth. For embankments subject to settlement, this one (1.0) foot minimum elevation requirement shall apply at all times, including the period after settlement. Freeboard requirements shall not apply to incised impoundments which have no embankment or levee.

(5) Foundation.

(a)1. Foundation and abutments for the impounding structure shall be designed to be stable under all conditions of construction and operation of the impoundment and shall be designed based on adequate and accurate information on the foundation conditions.

2. For permanent and temporary impoundments meeting the criteria of MSHA, 30 C.F.R. 77.216(a), for all Class B and C impoundments, and for all permanent impoundments, foundation investigations as well as any necessary laboratory testing of materials shall be performed in order to determine the design requirements for foundation and embankment stability.

3. If an approved temporary impoundment has been constructed and the permittee subsequently seeks a permit revision to upgrade the structure to a permanent impoundment, the cabinet may waive the foundation investigations and laboratory testing required by subparagraph 2 of this paragraph under the following circumstances:

a. The structure has been recently verified as being a Class A-low hazard structure; b. The structure does not meet the definition of the term "dam," as defined at KRS 151.100; and

c. The cabinet approves conservative, assumed values for the strength parameters used in the stability analyses to ensure compliance with subsection (3)(a) of this section.

(b) All vegetative and organic materials shall be removed and foundations excavated and prepared to resist failure. Cutoff trenches shall be installed if necessary to ensure stability.

(6) Impoundments shall include a combination of principal and emergency spillways which shall be designed and constructed to safely pass the design precipitation event specified in this subsection, unless the cabinet requires a larger event. Twenty-four (24) hours may be used in lieu of six (6) hours for the duration of a design precipitation event specified in this subsection.

(a) Except as provided in paragraph (c) of this subsection, Class A structures that do not meet the criteria of MSHA, 30 C.F.R. 77.216(a), shall pass the:

1. Twenty-five (25) year, six (6) hour precipitation event if it is a temporary structure; or

2. The fifty (50) year, six (6) hour precipitation event if it is a permanent structure.

(b) Class A structures that do meet the criteria of MSHA, 30 C.F.R. 77.216(a), shall pass the 100 year, six (6) hour precipitation event.

(c) Class B and C structures and all permanent dams as defined in KRS 151.100 shall comply with the criteria established in 401 KAR 4:030.

(7) Class A impoundments not meeting the criteria of MSHA, 30 C.F.R. 77.216(a), may use a single spillway (if allowed pursuant to subsection (1)(b) of this section) if the spillway: (a) Is an open channel of nonerodible construction and capable of maintaining sustained flows; and (b) Is not earth or grass lined.

(8) The vertical portion of any remaining highwall shall be located far enough below the low-water line along the full extent of the highwall to provide adequate safety and access for the proposed water users.

(9) Engineer inspections. A qualified registered professional engineer or other qualified professional specialist, under the direction of the professional engineer, shall inspect the impoundment. The professional engineer or specialist shall be

experienced in the design and construction of impoundments.

(a) Inspections shall be made regularly during construction, upon completion of construction, and at least yearly until removal of the structure or release of the performance bond.

(b) The qualified registered professional engineer shall promptly, after each inspection, provide to the cabinet a certified report that the impoundment has been constructed and maintained as designed and in accordance with the plan approved in the permit and 405 KAR Chapters 7 through 24. The report shall include discussion of any appearances of instability, structural weakness or other hazardous conditions, depth and elevation of any impounded waters, existing storage capacity, any existing or required monitoring procedures and instrumentation and any other aspects of the structure affecting stability. The report shall also confirm the hazard classification of the impoundment, or if the hazard classification has changed, the report shall contain a detailed explanation of the change and the conditions causing the change. A copy of the report shall be retained at or near the mine site.

(c) An impoundment with no embankment structure, that is completely incised or is created by a depression left by backfilling and grading, that is not a sedimentation pond or coal mine waste impoundment and is not otherwise intended to facilitate active mining, shall be exempt from this subsection unless the cabinet determines on a case-by-case basis that engineering inspection and certification are necessary to insure public health and safety or environmental conditions, in which case the cabinet shall establish appropriate inspection and certification requirements for the impoundment that shall apply in lieu of the requirements of this subsection and shall notify the permittee in writing.

(10) Operator examinations.

(a) Impoundments subject to 30 C.F.R. 77.216, and Class B and C impoundments, shall be examined in accordance with 30 C.F.R. 77.216-3.

(b) Impoundments not included in paragraph (a) of this subsection shall be examined at least quarterly by a qualified person designated by the operator for appearance of structural weakness and other hazardous conditions. Quarterly examinations shall be conducted each calendar quarter (i.e., January-March, April-June, July-September, and October-December) and no two (2) examinations shall be within thirty (30) days of each other unless additional examinations within a quarter are required. Reports of the examinations shall be retained at or near the mine site. An impoundment with no embankment structure, that is completely incised or is created by a depression left by backfilling and grading, shall be exempt from this paragraph.

(11) Emergency procedures. If any examination or inspection discloses that a potential hazard exists, the person who examined the impoundment shall immediately notify the department and the Kentucky Division of Water, or if these agencies cannot be reached, Disaster and Emergency Services. The permittee shall immediately implement emergency procedures formulated for public protection and remedial action. If adequate emergency procedures cannot be formulated or implemented by the permittee, the cabinet shall be notified, and the cabinet shall notify the appropriate agencies that other emergency procedures are required to protect the public.

(12) Maintenance. An owner or operator of an impoundment shall:

(1) Cut vegetative growth where necessary to facilitate inspection and repairs;

(2) Clean any ditches and spillways; and

(3) Remove any combustible material present on the surface, other than that used for stability such as mulch or dry vegetation.

Section 2. Permanent Impoundments. A permanent impoundment of water may be created, if authorized by the cabinet in the approved permit based upon the following demonstration:

(1) The size and configuration of the impoundment will be adequate for its intended purposes.

(2) The quality of impounded water will be suitable on a permanent basis for its intended use and, after reclamation, will meet applicable state and federal water quality standards, and

discharges from the impoundment will meet applicable effluent limitations and will not degrade the quality of receiving water below applicable state and federal water quality standards.

(3) The water level will be sufficiently stable and be capable of supporting the intended use.

(4) Final grading will provide for adequate safety and access for proposed water users. Perimeter slopes shall be stable and shall be protected against erosion.

(5) The impoundment will not result in the diminution of the quality and quantity of water utilized by adjacent or surrounding landowners for agricultural, industrial, recreational, or domestic uses.

(6) The impoundment will be suitable for the approved postmining land use

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: September 13, 2019

FILED WITH LRC: September 13, 2019 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 26, 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 November 30, 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 the requirements for the design, construction, certification, inspection, and maintenance of temporary and permanent impoundments for underground mines.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish requirements for coal mine waste dams and impoundments for underground mines.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 350.151(1) directs the cabinet to promulgate an administrative regulation setting forth the requirements for the mining and reclamation of land disturbed or removed by operations resulting from or incident to underground coal mining, including impoundments. This administrative regulation conforms to the authorizing statutes by establishing those requirements.

(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 requirements for impoundments for underground coal mines.

(2) If 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 includes information related to maintaining coal mine waste dams and impoundments that was previously included in the interim program administrative regulations that were repealed in 2018.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to include requirements

related to maintaining impoundments that were in the interim program administrative regulations that were repealed in 2018.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the authorizing statutes by including information related to maintaining impoundments that was previously in the interim program administrative regulations that were repealed in 2018.

(d) How the amendment will assist in the effective administration of the statutes: KRS 350.151 directs the cabinet to promulgate an administrative regulation setting forth the requirements for the mining and reclamation of land disturbed or removed by operations resulting from or incident to underground coal mining, including impoundments. This amendment inserts information related to maintaining impoundments.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment would apply to any entity that operates an underground coal mines within Kentucky. There are approximately 71 licensed underground mines in 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:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities listed in question (3) above will comply with information related to maintaining permanent and temporary impoundments. The information was previously included in the interim program administrative regulations and therefore, is not new.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is not an additional cost increase associated with the proposed amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities listed in (3) will have information related maintaining impoundments in the permanent program administrative regulation related to impoundments.

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

(a) Initially: There will be no additional costs to the department associated with implementation of this amendment.

(b) On a continuing basis: There will be no additional costs to the department associated with implementation of this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The funding for implementation of the amendments to this administrative regulation will be a combination of general funds and restricted funds.

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

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

(9) TIERING: Is tiering applied? No. All entities that operate an underground coal mine will be required to meet the same requirements related to maintaining impoundments.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Division of Mine Permits and the Division of Mine Reclamation and Enforcement.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 350.028, 350.151, 350.465, 30 C.F.R. Parts 730-733, 735, 817.49, 917, 30 U.S.C. 1253, 1255, 1266.

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

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

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

(c) How much will it cost to administer this program for the first year? There will not be a cost increase associated with the amendments to this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? Future costs would remain essentially unchanged related to this amendment.

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

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 30 C.F. R. 817.49.

2. State Compliance Standards. KRS 350.151.

3. Minimum or uniform standards contained in the federal mandate. The C.F.R. citations listed above set the minimum information related to impounding structures.

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 make the administrative regulation more stringent than the corresponding federal regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. NA

ENERGY AND ENVIRONMENT CABINET Department for Natural Resources Division of Mine Reclamation and Enforcement (Amendment)

405 KAR 18:220. Postmining land use capability.

RELATES TO: KRS 350.093, 350.095, 350.100, 350.151, 350.410, 350.450, 350.465, 30 C.F.R. Parts 730-733, 735, 817.133, 917, 30 U.S.C. 1253, 1255, 1266

STATUTORY AUTHORITY: KRS Chapter 13A, 350.020, 350.028, 350.151, 350.465, 30 C.F.R. Parts 730-733, 735, 817.133, 917, 30 U.S.C. 1253, 1255, 1266

NECESSITY, FUNCTION, AND CONFORMITY: KRS 350.465[KRS Chapter 350 in pertinent part] requires the cabinet to promulgate[~~rules and~~] administrative regulations establishing performance standards for protection of people and property, land, water and other natural resources, and aesthetic values, during underground mining activities and for restoration and reclamation of surface areas affected by underground mining activities. This administrative regulation sets forth requirements for restoring surface land use capability after completion of underground mining activities, and specific criteria for approval of postmining land uses which differ from the premining land use.

Section 1. General. (1) Prior to the final release of the performance bond, affected areas shall be restored in a timely manner:

(a) To conditions capable of supporting the uses which the areas were capable of supporting before any mining; or

(b) To conditions capable of supporting higher or better alternative uses as approved by the cabinet under Section 4 of this administrative regulation.

(2) The following land uses shall apply under this administrative regulation:

- (a) Cropland;
- (b) Pastureland;
- (c) Forest land;
- (d) Residential;
- (e) Industrial/commercial;
- (f) Recreation;
- (g) Fish and wildlife;
- (h) Developed water resources;
- (i) Undeveloped land or no current use or land management.

Section 2. Premining and Postmining Land Use. (1) The premining uses of land to which the postmining land use is compared shall be those uses which the land previously supported if the land has not been previously mined. The premining land use for a specific area shall be determined based on the prevalent or dominant use, vegetative types, and features present at that area; however, more than one (1) land use can exist within an area to be affected by surface operations and facilities.

(2) The postmining land use for land that has been previously mined, and not reclaimed in compliance with 405 KAR[Chapter 4 or 3 or] Chapters 7 through 24, shall be judged on the basis of the land use that existed prior to any mining[; except]

(b) If the land cannot be reclaimed to the land use that existed prior to any mining because of the previously mined condition, the postmining land use shall be judged on the basis of the highest and best use that can be achieved which is compatible with surrounding areas and does not require the disturbance of areas previously unaffected by mining.

(3) Prime farmland that has been historically used for cropland that is not exempted by 405 KAR 8:050, Section 3 shall have a postmining land use of cropland.

(4)(a) The land use category of "undeveloped land or no current use or land management" shall not be used to designate a postmining land use.

(b) If the premining land use is "undeveloped land or no current use or land management", and if consistent with subsection (2) of this section and Section 3 of this administrative regulation:

1. If trees are dominant on the area prior to mining, the area may be designated as forestland for the postmining land use without compliance with the procedures and criteria for an alternative postmining land use.

2. For all other cases, the area may be designated as fish and wildlife for the postmining land use without compliance with the procedures and criteria for an alternative postmining land use.

(5) Slope limitations for specific postmining land uses. These limitations shall apply to permits issued after the effective date of this amendment. Portions of the area affected by surface operations and facilities with slopes greater than twenty (20) percent (eleven and three-tenths (11.3) degrees) shall not be designated as cropland, including hay production.

(6) Steep slope operations with variances from approximate original contour shall comply with the requirements of 405 KAR 20:060, Section 3(2).

Section 3. Historical Land Use. If the premining use of the land was changed within five (5) years of the date of application for a permit to conduct surface coal mining and reclamation operations, the historical use of the land as well as the land use immediately preceding the date of application shall be considered in establishing the premining capability of the land to support a variety of feasible uses.

Section 4. Alternative Postmining Land Use. Higher or better alternative postmining land uses may be approved by the cabinet if the following criteria are met:

- (1) There is a reasonable likelihood that the land use will be

achieved;

- (2) The use will not be impractical or unreasonable;

(3) The landowner or the land management agency having jurisdiction over the lands has been consulted, and the proposed alternative postmining land use is consistent with applicable land use policies and plans;

(4) The proposed use will not present an actual or probable hazard to public health or safety or threat of water pollution or diminution of water availability;

(5) The proposed use will not involve unreasonable delays in implementation; and

(6) The proposed use will not cause or contribute to violation of federal, state, or local law.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: September 13, 2019

FILED WITH LRC: September 13, 2019 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 26, 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 November 30, 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 sets forth requirements for restoring surface land use capability after completion of underground mining activities, and specific criteria for approval of postmining land uses which differ from the premining land use.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish requirements for restoring surface land use capability after underground mining activities have been completed.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 350.151 directs the cabinet to promulgate an administrative regulation setting forth the requirements for the mining and reclamation of land disturbed or removed by operations resulting from or incident to underground coal mining. This administrative regulation conforms to the authorizing statutes by establishing those requirements.

(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 requirements for the mining and reclamation of land disturbed or removed by operations resulting from or incident to underground coal mining.

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

(a) How the amendment will change this existing administrative regulation: This amendment removes a citation to the interim program administrative regulations. The citations referenced a provision of reclamation requirements under the interim program administrative regulations. These administrative regulations were repealed in 2018.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to remove the citations to the interim program administrative regulations, which were repealed in 2018.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the authorizing statutes by removing citations to the interim program administrative regulations. This provides the regulated entity correct citations to the permanent program administrative regulations.

(d) How the amendment will assist in the effective administration of the statutes: KRS 350.151 directs the cabinet to promulgate an administrative regulation setting forth the requirements for the mining and reclamation of land disturbed or removed by operations resulting from or incident to underground coal mining. These amendments remove incorrect citations to the interim program administrative regulations.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment would apply to any entity that operates an underground coal mines within Kentucky. There are approximately 71 licensed underground mines in 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:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities listed in question (3) above will no longer have incorrect references to the interim program administrative regulations in this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is not a cost increase associated with the proposed amendments.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities listed in (3) will simply have correct citations in this administrative regulation.

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

(a) Initially: There will be no costs to the department associated with implementation of this amendment.

(b) On a continuing basis: There will be no costs to the department associated with implementation of this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The funding for implementation of the amendments to this administrative regulation will be a combination of general funds and restricted funds.

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

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

(9) TIERING: Is tiering applied? No. All entities that operate an underground coal mine will be required to meet the same requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Division of Mine Permits and the Division of Mine Reclamation and Enforcement.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 350.020, 350.028, 350.151, 350.465, 30 C.F.R. Parts 730-733, 735, 817.133, 917, 30 U.S.C. 1253, 1255, 1266.

3. Estimate the effect of this administrative regulation on the

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

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

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

(c) How much will it cost to administer this program for the first year? There will not be a cost increase associated with the amendments to this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? Future costs would remain essentially unchanged related to this amendment.

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

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 30 C.F. R. 817.133.

2. State Compliance Standards. KRS 350.151.

3. Minimum or uniform standards contained in the federal mandate. The C.F.R. citations listed above set the minimum information related to postmining land use.

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 make the administrative regulation more stringent than the corresponding federal regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. NA

ENERGY AND ENVIRONMENT CABINET Department for Natural Resources Division of Mine Reclamation and Enforcement (Amendment)

405 KAR 20:040. Prime farmland.

RELATES TO: KRS 350.100, 350.405, 350.415, 350.450, 350.465

STATUTORY AUTHORITY: KRS Chapter 13A, 350.028, 350.100, 350.450, 350.465

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 350 in pertinent part requires the cabinet to promulgate environmental protection performance standards specifically including special requirements for the protection of prime farmland. This administrative regulation specifies special requirements for the removal, stockpiling, replacement, and revegetation of prime farmland.

Section 1. Scope and Purpose. This administrative regulation sets forth special environmental protection performance, reclamation, and design standards for surface coal mining and reclamation operations on prime farmland.

Section 2. Responsibilities. (1) The federal regulations at 30 C.F.R. Part 823 require that the U.S. Soil Conservation Service (SCS) within each state establish specifications for prime farmland soil removal, storage, replacement, and reconstruction.

(2) The federal regulations at 30 C.F.R. Part 823 require that

the cabinet use the soil-reconstruction specifications established by the SCS, as referenced in subsection (1) of this section, to carry out its responsibilities.~~[Therefore, the following document is incorporated herein by reference: "Soil Conservation Service, Kentucky Standard and Specifications for Land Restoration, Currently Mined Prime Farmland," January 1986. Copies may be obtained from the Soil Conservation Service, 333 Waller Avenue, Lexington, Kentucky.]~~

Section 3. Applicability. The requirements of this administrative regulation, including the SCS prime farmland specifications of Section 2 of this administrative regulation, shall apply to prime farmland affected by surface coal mining and reclamation operations except that which has been excluded in accordance with 405 KAR 8:050, Section 3(1).

Section 4. Soil Removal and Stockpiling. (1) Prime farmland soils shall be removed from the areas to be disturbed before drilling, blasting, or mining.

(2) The minimum depth of soil and soil materials to be removed and stored for use in the reconstruction of prime farmland shall be sufficient to meet the requirements of Section 5(1) of this administrative regulation.

(3) Soil removal and stockpiling operations on prime farmland shall be conducted to:

(a) Separately remove the topsoil, or remove other suitable soil materials where such other soil materials will create a final soil having a greater productive capacity than that which exist prior to mining. If not utilized immediately, this material shall be placed in stockpiles separate from the spoil and all other excavated materials; and

(b) Separately remove the B or C horizon or other suitable soil material to provide the thickness of suitable soil required by Section 5(1) of this administrative regulation. If not utilized immediately, each horizon or other material shall be stockpiled separately from the spoil and all other excavated materials. Where combinations of such soil materials created by mixing have been shown to be equally or more favorable for plant growth than the B horizon, separate handling is not necessary.

(4) Stockpiles shall be placed within the permit area where they will not be disturbed or be subject to excessive erosion. If left in place for more than thirty (30) days, stockpiles shall meet the requirements of 405 KAR 16:050 or 18:050.

Section 5. Soil Replacement. (1) The minimum depth of soil and substitute soil material to be reconstructed shall be forty-eight (48) inches, or a lesser depth equal to the depth to a subsurface horizon in the natural soil that inhibits or prevents root penetration, or a greater depth if determined necessary to restore the original soil productive capacity. The determination of whether a horizon inhibits or prevents root penetration shall be in accordance with the SCS specifications under Section 2 of this administrative regulation.

(2) The operator shall replace and regrade the soil horizons or other root-zone material with proper compaction and uniform depth.

(3) The operator shall replace the B horizon, C horizon, or other suitable material specified in Section 4(3)(b) of this administrative regulation to the thickness needed to meet the requirements of subsection (1) of this section.

(4) The operator shall replace the topsoil or other suitable soil materials specified in Section 4(3)(a) of this administrative regulation as the final surface soil layer. This surface soil layer shall equal or exceed the thickness of the original surface soil layer, as determined by the soil survey.

Section 6. Revegetation and Restoration of Soil Productivity. (1) Requirements for revegetation and demonstration of successful restoration of soil productivity are set forth in "Kentucky Prime Farmland Revegetation and Crop Production Restoration After Mining," Kentucky Department for Natural Resources in consultation with the U.S. Soil Conservation Service~~[, June 1985. This document is incorporated herein by reference. Copies may be~~

~~obtained from the department].~~

(2) Data on crop yields from restored prime farmland soils shall be verified by the cabinet. The permittee shall notify the appropriate regional office of the department of harvest dates in order to provide the opportunity for cabinet personnel to monitor yield measurements. This notification shall be in writing at least thirty (30) days prior to anticipated harvest dates and shall be followed up by telephone prior to actual harvest dates.

~~(3)[Irrespective of the provisions of 405 KAR 1:005,]~~ This section shall also apply to prime farmland mined under the interim regulatory program under 30 C.F.R. Part 715[405-KAR-1:250].

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

(a) "Soil Conservation Service, Kentucky Standard and Specifications for Land Restoration, Currently Mined Prime Farmland," January 1986;

(b) "Kentucky Prime Farmland Revegetation and Crop Production Restoration after Mining," June 1985.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Mine Permits, 300 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: September 13, 2019

FILED WITH LRC: September 13, 2019 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 26, 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 November 30, 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 specifies special requirements for the removal, stockpiling, replacement, and revegetation of prime farmland.

(b) The necessity of this administrative regulation: This administrative regulation is necessary establish the requirements related to prime farmland.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 350.450 authorizes the department to regulate the mining of an area that contains prime farmland. This administrative regulation conforms to the authorizing statutes by establishing those requirements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the Commonwealth's requirements related to the mining of an area that contains prime farmland.

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

(a) How the amendment will change this existing administrative

regulation: This amendment removes references to the interim program administrative regulations.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary remove citations to the interim program administrative regulations, which were repealed in 2018.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the authorizing statutes by ensuring citations to the interim program administrative regulations are removed.

(d) How the amendment will assist in the effective administration of the statutes: KRS 350. 450 requires the cabinet to promulgate administrative regulations related to prime farmland. These amendments are necessary to remove citations to the interim program administrative regulations, which were repealed in 2018.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This provision would apply to any entity that operates a coal mine that could impact prime farmland.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities listed in question (3) above will be subject to the same requirements prior to the repeal of the interim program administrative regulations. The amendment simply removes citations to the interim program administrative regulations, which were repealed in 2018.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is not a cost increase associated with the proposed amendments.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities listed in questions (3) will benefit from this amendment by having an administrative regulation with the outdated citations removed.

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

(a) Initially: There will be no costs to the department associated with implementation of this amendment.

(b) On a continuing basis: There will be no costs to the department associated with implementation of this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The funding for implementation of the amendment to this administrative regulation will be a combination of general funds and restricted funds.

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

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

(9) TIERING: Is tiering applied? No. All entities that have a coal mine operation on prime farmland will be required to meet the same requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Division of Mine Permits and the Division of Mine Reclamation and Enforcement.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 350.028, 350.100, 350.450, 350.465.

3. Estimate the effect of this administrative regulation on the

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

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

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

(c) How much will it cost to administer this program for the first year? There will not be a cost increase associated with the amendments to this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? Future costs will remain unchanged related to this amendment.

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

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 30 C.F. R. Part 823.

2. State Compliance Standards. KRS 350.450.

3. Minimum or uniform standards contained in the federal mandate. The C.F.R. citations listed above set the minimum information related to coal operations on prime farmland.

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 simply remove outdated references to administrative regulations that were repealed in 2018. The removal of this information does not make the administrative regulation more stringent than the corresponding federal administrative regulations.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. NA

ENERGY AND ENVIRONMENT CABINET Department for Natural Resources Division of Oil and Gas (Amendment)

805 KAR 1:160. Posting of an identification sign and a danger sign on a crude oil tank battery site[facility used for the storage of oil].

RELATES TO: KRS 353.500, 353.656

STATUTORY AUTHORITY: KRS 353.540(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 353.656 requires a well operator to display a sign printed with the word "Danger" and other information specified by the department near or on a facility used for storage of oil, whether it is in active production or has been abandoned. This administrative regulation specifies the size, wording, coloration, and placement of a danger sign and identification[the] sign.

Section 1. Tank Battery Identification Signs. (1) An operator shall display a printed identification sign on tank battery facilities. The sign shall include the information in paragraphs (a) through (e) of this subsection.

(a) Tank battery operator (Company name).

(b) Lease name as identified by the tank battery operator.

(c) Global position system of the tank location using North

American Datum of 1983 and expressed in decimal degrees ⁽⁰⁾.

(d) Emergency twenty-four (24) hour phone number for the tank battery operator.

(e) Department for Environmental Protection Environmental Response Team Hotline twenty-four (24) hour phone number.

(2) The identification sign shall meet the size requirements in paragraphs (a) through (c) of this subsection.

(a) The sign shall not be less than seventeen (17) inches in height.

(b) The sign shall not be less than twenty-eight (28) inches in width.

(c) The letters on the identification sign shall not be less than two (2) inches in height.

(3) In the case of transfer of ownership of a tank battery, the new operator shall revise or replace the sign to reflect the change of tank battery ownership within sixty (60) days from the date of associated well transfer with the Division[Definitions. (1) "NFPA" means the National Fire Protection Association.

(2) "Tank battery" means a single storage tank or group of storage tanks that are interconnected or are less than three (3) feet apart, where oil is collected from a wellhead].

Section 2. (1) An operator shall display a printed sign on each tank battery, whether it is in active production or has been abandoned.

(2) Each sign shall contain the following words and phrases:

- (a) "Danger";
- (b) "No smoking or open flame";
- (c) "Extremely flammable liquid and vapor";
- (d) "May cause flash fire";
- (e) "No trespassing"; and
- (f) "Petroleum crude oil".

(3) Symbol. A no smoking symbol with a cigarette crossed through shall be displayed on each side of the words "no smoking or open flame".

Section 3. (1) The tank battery sign shall use the numbering system described in NFPA 704 "Standard System for the Identification of the[Fire] Hazards of Materials for Emergency Response," which provides a classification and marking system for identification of a fire hazard.

(2) A facility used for the storage of oil shall have a "health hazards" ranking of "1" identified by:

(a) A black "1" at the nine (9) o'clock position in a blue square located in a square-on-point field; or

(b) A blue "1" at the nine (9) o'clock position without the colored square.

(3) A facility used for the storage of oil shall have a "flammability hazards" ranking of "3" identified by:

(a) A black "3" at the twelve (12) o'clock position in a red square located in a square-on-point field; or

(b) A red "3" at the twelve (12) o'clock position without the colored square.

(4) A facility used for the storage of oil shall have a "reactivity hazards" ranking of "0" identified by:

(a) A black "0" at the three (3) o'clock position in a yellow square located in a square-on-point field; or

(b) A yellow "0" at the three (3) o'clock position without the colored square.

Section 4. Dimensions and Coloration of the Tank Battery Sign. (1) A sign shall not be smaller than:

- (a) Seventeen (17) inches in height; and
- (b) Twenty-eight (28) inches in width.

(2) The letter size for the required wording shall be as follows:

(a) The word "danger" shall:

- 1. Be in uniformly sized letters; and
- 2. Not be less than three (3) inches in height;
- (b) The words "no smoking or open flame" shall:

- 1. Be in uniformly sized letters; and
- 2. Not be less than one (1) inch in height; and

(c) The words set out in Section 2(2)(c) through (f) of this administrative regulation shall:

1. Be in uniformly sized letters; and

2. Not be less than one-half (1/2) inch in height.

(3) The "no smoking" symbol with a cigarette crossed through shall not be less than one and one-half (1 1/2) inches in height.

(4) The NFPA numbers shall not be less than one-half (1/2) inch in height.

(5) The background color of the sign shall contrast with the foreground color of the letters and the NFPA numbers to make them clearly visible (e.g., white background with black letters).

Section 5. (1) There shall be one (1) identification sign and one (1) danger sign per:

(a) Tank battery; or

(b) Tank, if the individual tanks in a battery are controlled by more than one (1) operator.

(2) These tank battery signs[A-sign] shall be:

(a) Displayed at:

- 1. Least five (5) feet from the ground; and
- 2. The most visible location from the approach;
- (b) Properly maintained; and
- (c) Replaced if it is:

- 1. Illegible;
- 2. Damaged;
- 3. Vandalized; or
- 4. Stolen.

Section 6. Signs in Existence Prior to this Administrative Regulation. (1) A danger sign or identification sign posted on a[tank-or] tank battery prior to promulgation of this administrative regulation may be retained by an operator if:

(a) The operator[He] files a written petition for a waiver seeking permission to retain the noncomplying sign; and

(b) The prior sign is clearly displayed:

- 1. On the tank or tank battery;[and]
- 2. At the most visible location from approach; and
- 3. Meets the requirements of this administrative regulation.

(2) A prior noncomplying[danger] sign shall be replaced with a sign that complies with this administrative regulation if it is:

- (a) Illegible;
- (b) Damaged;
- (c) Vandalized; or
- (d) Stolen.

Section 7. Violations for Failure to Post a Sign. (1) Upon locating a[tank-or] tank battery without a danger sign or the required identification sign, the inspector shall issue a notice of noncompliance to the last known operator.

(2) The notice of noncompliance shall be mailed to the operator by certified mail, return-receipt requested. If the violation is not corrected by the posting of a proper sign within forty-five (45) days of his receipt of the notice of noncompliance, the operator shall be subject to the penalties set out in KRS 353.991.

Section 8. Material Incorporated by Reference. (1)[The following material is incorporated by reference:] NFPA Edition 704, "Standard System for the Identification of the[Fire] Hazards of Materials for Emergency Response", 2017[1990] edition, is incorporated by reference[Chapters 1-4 and Figure 6-4].

(2) This material may be examined or copied, 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: September 13, 2019

FILED WITH LRC: September 13, 2019 a 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 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 November 30, 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 specifies the size, wording, coloration, and placement of the danger sign.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to notify owners and operators of storage facilities of signage requirements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 353.656 requires a well operator to display a sign printed with the word "Danger" and other information specified by the department near or on a facility used for storage of oil, whether it is in active production or has been abandoned. This administrative regulation designates the requirements for those signs.

(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 signage requirements to be used by owners and operators of oil storage facilities.

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

(a) How the amendment will change this existing administrative regulation: This amendment updates danger sign requirements as well as and creates a new requirement for owners and operators of storage tank batteries to include an identification sign on their tanks and administrative regulation includes requirements for those signs.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to require identification signs and to establish requirements for those signs.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the authorizing statutes by providing additional signage information for oil storage facilities.

(d) How the amendment will assist in the effective administration of the statutes: KRS 353.656 authorizes that the department the authority over danger signs on oil storage facilities. This amendment provides additional information on related to signage on oil storage facilities.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 1,060 active oil and gas operators in 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:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities listed in question (3) above will be required to add an additional sign to oil storage facilities. This provision was already required by 401 KAR 5:090. However, this administrative regulation is being repealed and the authority over storage tank batteries is being transferred to the Division of Oil and Gas.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Compliance with these amendments will not necessarily cost the regulated entity any additional funds. These requirements are currently contained in 401 KAR 5:090.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Oil and gas operators will benefit from having all the information related signage on storage tank batteries in one location.

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

(a) Initially: There will be no costs to the administrative body with implementation of this amendment.

(b) On a continuing basis: There will be no costs to the administrative body with implementation of this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The funding for implementation of the amendments to this administrative regulation will be a combination of general funds and restricted funds.

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

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

(9) TIERING: Is tiering applied? No. All entities that have storage tank batteries in the Commonwealth will be required to meet the same signage requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Division of Oil and Gas and the Division of Water.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 353.540 and 353.656.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 in subsequent years.

(c) How much will it cost to administer this program for the first year? There will not be a cost increase associated with the amendments to this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? Future costs would remain essentially unchanged related to this amendment.

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

Revenues (+/-): NA

Expenditures (+/-): NA

Other Explanation: NA

ENERGY AND ENVIRONMENT CABINET
Department for Natural Resources
Division of Mine Reclamation and Enforcement
(Amendment)

805 KAR 4:050. Records.

RELATES TO: KRS 351.330, 331.335, 331.360

STATUTORY AUTHORITY: KRS [~~Chapter 13A,~~] 351.335, 351.360

NECESSITY, FUNCTION, AND CONFORMITY: KRS 351.330 requires the Department for Natural Resources to require blasters to keep records. This administrative regulation specifies what records are to be kept and requires blasters that do not have a permit issued pursuant to KRS Chapter 350 or an agreement with the department, to provide notice of its blasting operations to the Department for Natural Resources.

Section 1. Blasting Records. A record of each blast shall be kept. All records including seismograph reports shall be retained at least five (5) years and shall be available for inspection by the Department for Natural Resources and shall contain the ~~following minimum~~ data in subsections (1) through (19) of this section:

- (1) Name of company or contractor.
- (2) Exact location of the blast, date and time of detonation.
- (3) Name, signature and license number of blaster in charge.
- (4) Type of material blasted.
- (5) Number of holes, burden and spacing.
- (6) Diameter and depth of holes.
- (7) Types of explosives used.
- (8) Total amount of explosives used.
- (9) Maximum amount of explosives per delay period of eight (8) milliseconds or greater.
- (10) Method of firing and type of circuit.
- (11) Direction, distance in feet, and identification of the nearest dwelling house, public building, school, church, commercial or institutional building neither owned nor leased by the person conducting the blasting.
- (12) Weather conditions.
- (13) Type and height or length of stemming.
- (14) A statement as to whether mats or other protections against flyrock were used.
- (15) Type of ~~delay electric~~ blasting caps used and delay periods used.
- (16) ~~The person taking the seismograph reading shall accurately indicate~~ exact location of the seismograph if used ~~and shall also show~~ the distance of the seismograph from the blast.
- (17) Seismograph records, ~~if where~~ required, shall include:
 - (a) Name of person and firm analyzing the seismograph record; and[-]
 - (b) Seismograph reading.
- (18) Maximum number of holes~~holes~~ per delay period of eight (8) milliseconds or greater.
- (19) Sketch of blast pattern including number of holes, burden and spacing distance delay pattern, and if decking is used, a hole profile.

Section 2. Notification of Blasting Operations on Construction, Demolition, and Industrial Sites. (1) Any person conducting blasting operations at a site that does not have a permit issued pursuant to KRS Chapter 350 or an agreement with the Department for Natural Resources, shall provide notice of its blasting operations to the Department for Natural Resources at least twenty four (24) hours prior to the commencement of blasting activities.

(2) The notice shall include:

(a) The identification of the person or company performing the blasting, including current contact information;

(b) The specific location of the site where blasting will occur, that may include physical address, latitudinal and longitudinal, or Global Positioning System coordinates;

(c) The date and time blasting operations are expected to commence; and

(d) The projected duration of the blasting operations.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: September 13, 2019

FILED WITH LRC: September 13, 2019 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 21, 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 November 30, 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 specifies which records are to be kept by individuals conducting blasting operations.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide blasters with information related to records retention.

(c) How this administrative regulation conforms to the content of the authorizing statutes:

KRS 351.335 requires blasters to keep records. This administrative regulation details the records to be kept and the amount of time the records are to be kept.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 351.335 requires blasters to keep records. This administrative regulation establishes records that are to be kept by blasters, which includes seismographs.

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

(a) How the amendment will change this existing administrative regulation: This amendment requires blasters to provide the department notification prior to blasting on construction, demolition, and industrial sites.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to require blasters on construction, demolition, and industrial sites to provide the department with notice prior to conducting blasting operations as is required in coal and non-coal mine blasting operations.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the authorizing statutes by requiring blasters conducting blasting operations on construction, demolition, and industrial sites to provide the department with notice prior to blasting on these sites.

(d) How the amendment will assist in the effective administration of the statutes: These amendments assist in the effective administration of the statutes by requiring blasters to give the department notice prior to blasting on construction, demolition, and industrial sites.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This provision would apply to blasters that conduct blasting operations on construction, demolition, and industrial sites.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities listed in question (3) above will be required to provide notice to the department at least 24 hours prior to the commencement of blasting activities.

(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 minimal cost associated with complying with these requirements. The department will simply setup a web-based portal where blasters can enter the required information.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities identified in question (3) will benefit by allowing the department to have information that could prevent individuals from falsely accusing a blaster of blasting related violations when the blaster may not have been blasting in the area when a complaint is filed.

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

(a) Initially: There will be no costs to the department associated with implementation of this amendment.

(b) On a continuing basis: There will be no costs to the department associated with implementation of this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The funding for implementation of the amendments to this administrative regulation will be a combination of general funds and restricted funds.

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

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

(9) TIERING: Is tiering applied? No. All entities that blast on construction, demolition, and industrial sites are required to provide prior notice as in other blasting areas regulated by the Department.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 351.335 and KRS 351.360.

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

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

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

(c) How much will it cost to administer this program for the first year? There will not be a cost increase associated with the amendments to this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? Future costs would remain essentially unchanged related to this amendment.

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

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

PUBLIC PROTECTION CABINET Department of Insurance (Amendment)

806 KAR 3:230. Standards for safeguarding customer information.

RELATES TO: KRS 304.99-020, 15 U.S.C. 6801, 6805(b), 6807

STATUTORY AUTHORITY: KRS 304.2-110(1), 15 U.S.C. 6801(b)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes the ~~commissioner~~[~~executive director~~] to promulgate reasonable administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code[~~, as defined in KRS 304.010~~]. The Gramm-Leach-Bliley Act [as] codified in 15 U.S.C. 6801(b) requires the state insurance regulatory authorities to establish appropriate standards relating to administrative, technical and physical safeguards: (1) to ensure the security and confidentiality of customer records and information; (2) to protect against any anticipated threats or hazards to the security or integrity of these records; and (3) to protect against unauthorized access to or use of records or information that could result in substantial harm or inconvenience to a customer. This administrative regulation establishes the appropriate standards for licensees of the ~~Department~~[~~Office~~] of Insurance to safeguard customer information. [~~The Gramm-Leach-Bliley Act extends particularly to financial institutions, however, this administrative regulation applies to all licensees of the office regardless of whether or not the licensee is considered a financial institution for purposes of the Gramm-Leach-Bliley Act.~~]

Section 1. Definitions. (1) "Consumer" means an individual who seeks to obtain, obtains, or has obtained an insurance product or service from a licensee that is to be used primarily for personal, family, or household purposes, and about whom the licensee has nonpublic personal information; or that individual's legal representative.

(2) "Customer" means a consumer who has a customer relationship with a licensee.

(3) "Customer information" means nonpublic personal information about a customer, whether in paper, electronic or other form, that is maintained by or on behalf of the licensee.

(4) "Customer information systems" means the electronic or physical methods used to access, collect, store, use, transmit, protect or dispose of customer information.

(5) "Customer relationship" means a continuing relationship between a consumer and a licensee under which the licensee provides one (1) or more insurance products or services to the consumer that are to be used primarily for personal, family, or household purposes.

(6) "Licensee" means all insurers holding a certificate of authority, licensed producers, companies, or business entities licensed or required to be licensed, or authorized or required to be authorized, or registered, excluding service contract makers, or required to be registered pursuant to the Kentucky Insurance Code[~~as defined in KRS 304.1-010~~].

(7) "Service provider" means a person that maintains, processes or otherwise is permitted access to customer information through its provision of services directly to the licensee.

Section 2. Information Security Program. Each licensee shall implement a comprehensive written information security program that includes administrative, technical and physical safeguards for

the protection of customer information. The administrative, technical and physical safeguards included in the information security program shall be appropriate to the size and complexity of the licensee and the nature and scope of its activities.

Section 3. Objectives of Information Security Program. A licensee's information security program shall be designed to:

- (1) Ensure the security and confidentiality of customer information;
- (2) Protect against any anticipated threats or hazards to the security or integrity of the information; and
- (3) Protect against unauthorized access to or use of the information that could result in substantial harm or inconvenience to any customer.

Section 4. Determined Violation. A violation of this administrative regulation may constitute an unfair trade practice in the business of insurance and shall subject the licensee to a civil penalty authorized by KRS 304.99-020.~~[Section 5. Effective Date. Each licensee shall establish and implement an information security program, including appropriate policies and systems pursuant to Sections 1 to 3 of this administrative regulation, within 180 days of the effective date of this administrative regulation.]~~

~~Section 6. Incorporated by Reference. (1) SAFE-1, "Examples of Methods of Development and Implementation (August 2003 Ed)" is incorporated by reference.~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Insurance, 215 West Main Street, P.O. Box 517, Frankfort, Kentucky 40602, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available at <http://doi.ppr.ky.gov/kentucky/>.~~

NANCY G. ATKINS, Commissioner

K. GAIL RUSSELL, Secretary

APPROVED BY AGENCY: September 13, 2019

FILED WITH LRC: September 13, 2019 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 22, 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 November 30, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Patrick O'Connor II, Deputy Commissioner, Policy, 215 W. Main St., Frankfort, Kentucky 40601, phone 1-502-564-6026, fax 1-502-564-1453, email patrick.oconnor@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Patrick O'Connor II

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes standards for Department of Insurance licensees regarding the safeguarding of consumer information.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure appropriate safeguarding of consumer information by Department of Insurance licensees in satisfaction of requirements established by the federal Gramm-Leach Bliley Act at 15 U.S.C. 6801(b).

(c) How this administrative regulation conforms to the content

of the authorizing statutes: KRS 304.2-110(1) authorizes the Commissioner to promulgate reasonable administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. 15 U.S.C. 6801(b) requires state insurance commissioners and other financial regulators to establish appropriate standards for the financial institutions subject to their jurisdiction relating to administrative, technical, and physical safeguards (1) to ensure the security and confidentiality of customer records and information; (2) to protect against any anticipated threats or hazards to the security or integrity of such records; and (3) to protect against unauthorized access to or use of such records or information which could result in substantial harm or inconvenience to any customer.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of KRS 304.2-110 and the requirements of 15 U.S.C. 6801(b) by specifying requirements for Department of Insurance licensees.

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

(a) How the amendment will change this existing administrative regulation: This amendment updates the necessity, function, and conformity paragraph for accuracy with the title of the Commissioner of Insurance and the Department of Insurance. The amendment also eliminates Sections 5 and 6 of the regulation, which are no longer necessary.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to update titles for accuracy and remove outdated incorporated material.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to KRS 304.2-110 and the requirements of 15 U.S.C. 6801(b) by specifying requirements for Department of Insurance licensees.

(d) How the amendment will assist in the effective administration of the statutes: This amendment updates the necessity, function, and conformity paragraph for accuracy with the title of the Commissioner of Insurance and the Department of Insurance. The amendment also eliminates Sections 5 and 6 of the regulation, which are no longer necessary.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All Department of Insurance licensees will be affected by 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: Department licensees must continue to comply with existing requirements governing customer information; this amendment does not change substantive requirements.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: There will be no additional cost to regulated entities to comply with this amendment; they should already have systems in place to protect consumer information.

(c) As a result of compliance, what benefits will accrue to the entities: Regulated entities complying with this administrative regulation will avoid regulatory action for failure to satisfy consumer information safeguarding requirements.

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

(a) Initially: There will be no additional costs to the Department to enforce and implement this amendment.

(b) On a continuing basis: There will be no additional costs to the Department to enforce and implement this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No new funding is necessary for the implementation and enforcement of this amendment.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative

regulation, if new, or by the change if it is an amendment: No new funding is necessary for the implementation and enforcement of this amendment.

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

(9) TIERING: Is tiering applied? Tiering is not applied; this administrative regulation applies similarly to similarly situated licensees.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Insurance will be affected by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation is necessary to ensure appropriate safeguarding of consumer information by Department of Insurance licensees in satisfaction of requirements established by the federal Gramm-Leach Bliley Act at 15 U.S.C. 6801(b).

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 will be no cost to the Department of Insurance 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 cost to the Department of Insurance 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.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 15 U.S.C. 6801(b)

(2) State compliance standards. This administrative regulation requires Department of Insurance licensees (1) to ensure the security and confidentiality of customer records and information; (2) to protect against any anticipated threats or hazards to the security or integrity of such records; and (3) to protect against unauthorized access to or use of such records or information which could result in substantial harm or inconvenience to any customer.

(3) Minimum or uniform standards contained in the federal mandate. 15 U.S.C. 6801(b) requires state insurance commissioners and other financial regulators to establish appropriate standards for the financial institutions subject to their jurisdiction relating to administrative, technical, and physical safeguards (1) to ensure the security and confidentiality of customer records and information; (2) to protect against any anticipated threats or hazards to the security or integrity of such

records; and (3) to protect against unauthorized access to or use of such records or information which could result in substantial harm or inconvenience to any customer.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. N/A

PUBLIC PROTECTION CABINET Department Of Insurance (Amendment)

806 KAR 5:060. Registration of service contracts for consumer products.

RELATES TO: KRS 304.5-070

STATUTORY AUTHORITY: KRS 304.5-070(1)(g)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.5-070 requires that makers of service contracts who repair, replace, or maintain consumer products register with the Commissioner ~~and maintain registration with the office~~ to be exempt from the definition of casualty insurance. This administrative regulation establishes ~~sets forth~~ the filing requirements for that registration.

Section 1. Definitions. "Maker of service contract" or "maker" is the entity contractually obligated under the terms of the service contract.

Section 2. Registration Required. A maker of a service contract seeking exemption from the definition of casualty insurance shall register with the commissioner by submitting:

~~(1) [office by providing]~~ The name and address of its principal office; and either

~~(2) Evidence of the other required information or documentation pursuant to Section 3 of this administrative regulation.~~

~~Section 3. Service contracts to repair, replace, or maintain consumer products shall not be considered casualty insurance if the maker of the service contract meets one (1) of the following requirements:~~

~~(1)(a) Maintains a net worth of at least \$100,000,000 [100 million] dollars in net worth; or~~

~~(3) Evidence of and registers with the executive director by providing the following:~~

~~1. Its current annual report;~~
~~2. A copy of its 10K or 20F form as filed with Securities Exchange Commission; or~~

~~3. A financial statement audited by an independent certified public accountant in conformity with generally accepted accounting practices;~~

~~(b) Immediately notifies the office in writing of any change that would decrease the net worth of the maker below 100 million dollars;~~

~~(2)(a) Maintains] an insurance policy or performance bond that: [1. Assures performance of the duties of the maker for all service contracts issued in Kentucky;~~

~~2.] (a) Shall not be terminated unless at least thirty (30) days prior written notice is given to the commissioner;~~

~~(b) States [executive director; and~~

~~3. Shall state] that the holder of a [the] service contract shall be entitled to make a direct claim against the insurer upon the failure of the maker to pay any claim within sixty (60) days after the claim has been filed with the maker; and either~~

~~(c) Assures performance of the duties of the maker for all service contracts issued in Kentucky; or~~

~~(d) [(b) Provide a copy of the insurance policy or performance bond; or~~

~~(3)(a) Maintain an insurance policy or performance bond that:~~

~~4.] Is written for an amount of \$50,000 or twenty-five (25) percent of the maker's annual revenues from the service contracts issued in Kentucky, whichever is greater.];~~

Section 3. Establishing Evidence for Registration. A maker of a service contract providing evidence required by Section 2 may submit:

- (1) A current annual report;
- (2) A copy of its 10K or 20F form as filed with the Securities Exchange Commission;
- (3) A financial statement audited by an independent certified public accountant in conformity with generally accepted accounting practices; or
- (4) A copy of the insurance policy or performance bond, accompanied by the following information, signed and certified under oath by an officer of the company:

(a)[2.] Shall not be terminated unless at least thirty (30) days prior written notice is given to the executive director; and

3. Shall state that the holder of the service contract shall be entitled to make a direct claim against the insurer upon the failure of the maker to pay any claim within sixty (60) days after the claim has been filed with the maker; and

(b) Register with the executive director by providing the following:

- 1. A copy of the insurance policy or performance bond;
- 2.] The amount of annual revenues from the sales of service contracts in Kentucky for the previous year ending December 31; and

(b)[3.] A projection of the revenue from service contracts to be sold in Kentucky for the current year.

Section 4. Changes to Registration. A registered maker of a service contract shall immediately notify the commissioner in writing of any change that would:

(1) Decrease the net worth of the maker below \$100,000,000 dollars; or

(2) Result in the termination of the insurance policy or performance bond[; (c) The document giving the required information shall be signed and certified under oath by an officer of the company].

Section 5[4]. Registration Approval, Renewal, Cessation, and Revocation. (1) If the initial registration has not been affirmatively accepted or rejected by the commissioner[executive director] within thirty (30) days of filing, [then the] registration requirements shall be deemed met.

(2)[(a)] After the initial registration, each maker of a service contract shall file an updated report annually, on or before March 1.

(3)[, file a report that sets forth or is accompanied by the information required in Section 3 of this administrative regulation;

(b)] If a maker ceases issuing service contracts, the maker[annual reports] shall continue to file annual reports[be filed] through the duration of all outstanding service contracts[;]

(4)[(3)] If at any time, the maker fails to demonstrate compliance with[Section 3 of] this administrative regulation, the commissioner[executive director] may revoke the maker's registration. Upon revocation of registration, the maker shall immediately cease issuing service contracts to consumers in Kentucky[;]

Section 5. (1) Each service contract shall conspicuously state the name and address of the maker of the service contract; and

(2) If the maker of the service contract has an insurance policy or performance bond to assure contractual duties, the following must be stated in the service contract:

(a) Name and address of authorized underwriting insurer issuing insurance policy or performance bond; and

(b) A statement that the holder of the service contract shall be entitled to make a direct claim against the insurer upon the failure of the maker to pay any claim within sixty (60) days after the claim has been filed with the maker[;]

NANCY G. ATKINS, Commissioner

K. GAIL RUSSELL, Secretary

APPROVED BY AGENCY: September 13, 2019

FILED WITH LRC: September 13, 2019 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A

public hearing on this administrative regulation shall be held on November 22, 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 November 30, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Patrick O'Connor II, Deputy Commissioner, Policy, 215 W. Main St., Frankfort, Kentucky 40601, phone 1-502-564-6026, fax 1-502-564-1453, email patrick.oconnor@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Patrick O'Connor II

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the filing requirements for the registration of makers of service contracts who repair, replace, or maintain consumer products as required by KRS 304.5-070.

(b) The necessity of this administrative regulation: KRS 304.5-070(1)(q) requires service contract providers to register with the Commissioner of Insurance and provide evidence of financial security.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.5-070(1)(q) requires service contract providers to register with the Commissioner of Insurance and provide evidence of financial security.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation establishes details regarding requirements to satisfy statutory requirements of service contract providers doing business in the Commonwealth.

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

(a) How the amendment will change this existing administrative regulation: This amendment updates requirements to accurately reflect titles, corrects grammatical errors, and simplifies the requirements for ease of compliance.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to clarify and simplify registration and documentation requirements for service contract providers doing business in the Commonwealth.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment clarifies the registration and documentation process required by KRS 304.5-070(1)(q).

(d) How the amendment will assist in the effective administration of the statutes: This amendment simplifies and clarifies for ease of use the process for service contract providers to register with the Commissioner.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All service contract providers in Kentucky will be affected by 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: A maker of a service contract seeking exemption from the definition of casualty insurance will have to submit information and documentation to the commissioner showing that financial stability requirements are met.

(b) In complying with this administrative regulation or

amendment, how much will it cost each of the entities: There should be no additional cost to regulated entities to comply with this amendment; the simplified language should facilitate compliance and reduce the amount of time and effort expended by service contract providers to comply.

(c) As a result of compliance, what benefits will accrue to the entities: Properly registered service contract providers will be exempt from the definition of casualty insurance.

(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 amendment.

(b) On a continuing basis: There will be no cost to the department to implement this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is necessary for the implementation and enforcement of this amendment.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied because similarly situated regulated entities 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 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 304.5-070(1)(q)

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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? No additional cost is anticipated to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? No additional cost is anticipated to administer this program for subsequent years.

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

Revenues (+/-): Neutral.

Expenditures (+/-): Neutral.

Other Explanation: None.

PUBLIC PROTECTION CABINET Department Of Insurance (Amendment)

806 KAR 9:265. Rental vehicle agent license[and managing employee].

RELATES TO: KRS 304.4-010, 304.9-505[304.9-295, 304.9-504, 304.9-505, 304.9-513]

STATUTORY AUTHORITY: KRS 304.2-110, 304.9-505[304.9-513]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 authorizes the commissioner[~~executive director~~] to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, KRS 304.9-505[~~as defined in KRS 304.1-010. KRS 304.9-513~~] authorizes the commissioner to issue licenses to act as a rental vehicle agent and requires the commissioner to prescribe an application form for a business entity seeking to act as a rental vehicle agent[~~executive director to promulgate administrative regulations to carry out the purpose of KRS 304.9-501 to 304.9-513~~]. This administrative regulation establishes the information to be included in the application for rental vehicle agent business entity and managing employee licenses; the requirements for precursing education, course examinations[~~continuing education for rental vehicle managing employees~~]; and recordkeeping for rental vehicle agents and their employees who sell rental vehicle insurance.

Section 1. License Application. To apply for a rental vehicle agent license, an applicant shall submit:

(1) The appropriate completed form:

(a)[Definitions. (1) "Executive director" means the Executive Director of the Office of Insurance.

(2) "Office" means the Office of Insurance.

Section 2. The license application shall be submitted as a package, and shall include:

(1) Form 8301-BE, incorporated by reference in 806 KAR 9:340, for the business entity rental vehicle agent applicant or Form 8301, incorporated by reference in 806 KAR 9:340, for [the] individual managing employees, Form 8301[rental vehicle agent applicant signed by the applicant and Form 8302-AP], incorporated by reference in 806 KAR 9:025;

(b) For Business Entities, Form 8301-BE[340, completed by the appointing insurer;

(2) Form 8301, incorporated by reference in 806 KAR 9:340, for each managing employee applicant signed by the applicant and Form 8302-AP], incorporated by reference in 806 KAR 9:025; and

(c) Listings, signed by the[340, completed by the appointing insurer;

(3) Form 8301-BGC, incorporated by reference in 806 KAR 9:340, for resident] rental vehicle agent applicant, of:

1. All business locations proposed to be licensed; and

2. The name and assigned licensed[or managing employee applicants;

(4) Form 8301-RV, incorporated by reference in 806 KAR 9:340, signed by the rental vehicle agent applicant and each] managing employee for each business location.

(2) The corresponding fees established by[applicant; and

(5) The fees specified in KRS 304.4-010 and] 806 KAR 4:010.

Section 2[3]. Register. (1) A[(1) A licensed rental vehicle agent shall keep current the information required to be disclosed in its application for license by reporting within thirty (30) days all material changes and additions on applicable forms required in Section 1 of this administrative regulation on Form 8303, incorporated by reference in 806 KAR 9:340.

(2) A business entity] licensed[as a] rental vehicle agent shall maintain a register that includes:

(a) A[not sell, solicit, or negotiate insurance at any business location that does not have a licensed managing employee assigned to that location.

Section 4. A licensed rental vehicle agent shall maintain a] current list of every unlicensed employee authorized to act under the license;

(b) Records[and the name] of all precicensing study and course examinations completed by[the assigned licensed managing employee for each business location.

Section 5. (1) The licensed rental vehicle agent shall:

(a) Adopt and utilize the office's preapproved precicensing course of study for its] managing employees; and

(c) Records of all disclosure training completed by unlicensed[or

(b) Submit to the executive director for approval in accordance with subsection (2) of this section, a precicensing course of study for its managing] employees.

(2) The register[(a) A precicensing course of study] shall be made available to the Department upon request.

Section 3. Licensed Rental Vehicle Agent Responsibilities. The licensed rental vehicle agent shall:

(1) Provide[approved by the executive director or its designee prior to authorized use and shall be renewed biennially.

(b) Submission of the precicensing course of study shall be filed with Form CE/PL-100, incorporated by reference in 806 KAR 9:340 or electronically through the office's Web site, <http://doi.ppr.ky.gov>.

(c) In approving] a precicensing course of study[;] for its managing employees, approved by the commissioner;

(2) Administer an[the executive director or its designees shall consider whether the course of study covers, at a minimum, the materials designated in a course outline provided by the office.

(3) The licensed rental vehicle agent shall be responsible for the insurance activities of its licensed managing employees and its unlicensed employees and representatives.

Section 6. (1) The licensed rental vehicle agent shall submit its proposed licensing] examination to [be given to its] managing employees that is approved by the commissioner and includes[to the executive director, or his designee, for approval.

(2) The examination for the managing employees shall include] at least twenty-five (25) questions on the topics in the Department[office]'s course outline. The managing employee applicant shall attain a score of seventy (70) percent or better to pass the examination and be eligible for the license[;]

(3) Be responsible for the[Section 7. (1) The licensed rental vehicle agent shall submit its proposed continuing education courses for its licensed managing employees and its unlicensed employees or representatives to the executive director for approval.

(2) The licensed managing employee shall successfully complete at least six (6) hours of continuing education during each continuing education biennium. At least four (4) hours shall be related to property and casualty] insurance activities of its licensed[and at least two (2) hours shall be related to ethics.

(3) The licensed rental vehicle agent's unlicensed employees or representatives shall receive one (1) hour of continuing education relating to consumer disclosures each year.

(4) Only continuing education courses approved in accordance with subsection (1) of this section or 806 KAR 9:220 may be used to satisfy the continuing education requirements of this section. These continuing education courses shall be taught by approved providers and instructors, which may include the licensed rental vehicle agent.

(5) The] managing employees and[employee license of any individual failing to comply with the continuing education requirements of this section shall be terminated and promptly surrendered to the executive director without demand.

Section 8. (1) The rental vehicle agent licensee shall certify to the executive director on Form CE/RV-302, as prescribed in 806 KAR 9:340, that each licensed managing employee has successfully completed the continuing education required by Section 6 of this administrative regulation for each continuing

education biennium in accordance with KRS 304.9-295.

(2) The rental vehicle agent licensee shall certify to the executive director on Form CE/RV-303, as prescribed in 806 KAR 9:340, that] its unlicensed employees and representatives; and

(4) Report all material changes and additions to the Department within thirty (30) days[have successfully completed the continuing education required by Section 6 of this administrative regulation for each continuing education biennium in accordance with KRS 304.9-295.

(3) The rental vehicle agent licensee shall maintain complete records of the precicensing study and course examination for the managing employees and continuing education for the managing employees and unlicensed employees or representatives for at least three (3) years.

Section 9. The licensed managing employee shall certify to the executive director on Form CE/RV-302, as prescribed in 806 KAR 9:340, that he or she has successfully completed the continuing education required by Section 6 of this administrative regulation for each continuing education biennium in accordance with KRS 304.9-295].

NANCY G. ATKINS, Commissioner

K. GAIL RUSSELL, Secretary

APPROVED BY AGENCY: September 13, 2019

FILED WITH LRC: September 13, 2019 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 22, 2019, at 10:00 a.m. at 215 W. Main Street, Frankfort, Kentucky 40602. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on November 30, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Patrick O'Connor II, Deputy Commissioner, Policy, 215 W. Main Street, Frankfort, Kentucky 40602, phone 1-502-564-6026, fax 1-502-564-1453, email patrick.oconnor@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Patrick O'Connor II

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the application process and responsibilities of a licensed rental vehicle agent selling insurance.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish an application process and clarify the responsibilities of a rental vehicle agent licensed by the Department of Insurance.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110 authorizes the commissioner to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. KRS 304.9-505 authorizes the commissioner to issue licenses to act as a rental vehicle agent and requires the commissioner to prescribe an application form for a business entity seeking to act as a rental vehicle agent.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is necessary to establish an application process and clarify the responsibilities of a rental vehicle agent licensed by the Department of Insurance.

(2) If 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 eliminates numerous duplicative requirements and forms to focus on items the Department needs to fulfill its statutory obligations.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to make compliance easier.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 304.2-110 authorizes the commissioner to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. KRS 304.9-505 authorizes the commissioner to issue licenses to act as a rental vehicle agent and requires the commissioner to prescribe an application form for a business entity seeking to act as a rental vehicle agent.

(d) How the amendment will assist in the effective administration of the statutes: This amendment eliminates numerous duplicative requirements and forms to focus on items the Department needs to fulfill its statutory obligations.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All vehicle rental locations in the Commonwealth will be affected by 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: Rental vehicle agent licensees will have to apply, maintain a registry to be made available to the department upon request, and pay applicable fees.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: Costs will vary depending on the size and activities of a particular rental vehicle agent licensee. This amendment does not change any fees, which are established in a different administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities: Rental vehicle licensees will have significantly increased ease of compliance as a result of this amendment.

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

(a) Initially: No cost is anticipated as a result of this amendment.

(b) On a continuing basis: No cost is anticipated as a result of this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is needed 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 funding is needed for the implementation and enforcement of this amendment.

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

(9) TIERING: Is tiering applied? Tiering is not applied because similarly situated applicants 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 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, 304.9-505

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency

(including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. 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? No additional cost is anticipated to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? No additional cost is anticipated to administer this program for subsequent years.

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

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: None

CABINET FOR HEALTH AND FAMILY SERVICES

Office of Inspector General

Division of Health Care

(Amendment)

902 KAR 20:280. Prescribed pediatric extended care centers.

RELATES TO: KRS 198B.260, 216.875, 216.880, 216.885, 311.571, 314.041, 319A.010(3), 327.010(2), 334A.020(3), 335.090, 620.030

STATUTORY AUTHORITY: KRS 216B.042(1), 216.890

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.042(1) requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary for the proper administration of the licensure function, which includes establishing licensure standards and procedures to ensure safe, adequate, and efficient health facilities and health services. KRS 216.890 requires the Cabinet for Health and Family Services to promulgate administrative regulations to implement the provisions of KRS 216.875 to 216.890, which include standards related to the operation of prescribed pediatric extended care (PPEC) centers. This administrative regulation establishes the requirements for prescribed pediatric extended care centers.

Section 1. Definitions. (1) "Child life specialist" means an individual who has:

(a) A minimum bachelor's degree with an educational emphasis on:

1. Human growth and development;
2. Education, which may include early childhood education;
3. Psychology; or
4. A related field of study; and

(b) Current experience in planning and implementing developmental stimulation programs for children.

(2) "Developmentalist" means a master's prepared individual with current experience in:

(a) Transdisciplinary evaluation; and

(b) Treatment planning for children who are at risk for or experiencing developmental delay.

(3) "Medical director" means a board certified pediatrician who:

(a) Serves as the liaison between the PPEC center and the medical community;

(b) Reviews the quality and appropriateness of PPEC center

services; and

- (c) Is available for consultation to PPEC center staff.
- (4) "Medically dependent or technologically dependent child" is defined by KRS 216.875(6).
- (5) "Nursing director" means a registered nurse who:
 - (a) Is licensed pursuant to KRS 314.041;
 - (b) Is responsible for providing continuous supervision of PPEC center services; and
 - (c) Manages the daily operations of the facility.
- (6) "Occupational therapist" is defined by KRS 319A.010(3).
- (7) "Physical therapist" is defined by KRS 327.010(2).
- (8) "Prescribed pediatric extended care center" or "PPEC center" is defined by KRS 216.875(1).
- (9) "Prescribing physician" means a physician who:
 - (a) Is licensed in Kentucky to practice medicine or osteopathy in accordance with KRS 311.571; and
 - (b) Signs the order admitting a child to the PPEC center.
- (10) "Primary care provider" means a health care practitioner who:
 - (a) Is licensed to practice in Kentucky;
 - (b) Maintains overall responsibility for a child's medical management; and
 - (c) Is available for consultation and collaboration with PPEC center staff.
- (11) "Protocol of care" means a comprehensive plan for implementation of the following services:
 - (a) Medical;
 - (b) Nursing;
 - (c) Psychosocial;
 - (d) Developmental; and
 - (e) Educational therapies.
- (12) "Social worker" means an individual who is:
 - (a) Licensed pursuant to KRS 335.090; and
 - (b) A graduate of a school of social work accredited by the Council on Social Worker Education.
- (13) "Speech-language pathologist" is defined by KRS 334A.020(3).

Section 2. Scope of Operation and Services. A PPEC center shall be a nonresidential health care service that provides:

- (1) A link in the continuum of care for medically dependent or technologically dependent children; and
- (2) The following triad of services for children and their parents:
 - (a) Day health care;
 - (b) Developmental interventions; and
 - (c) Parent training programs.

Section 3. Applicability. Each PPEC center shall:

- (1) Be equipped and staffed to accommodate no fewer than three (3) medically dependent or technologically dependent children;
- (2) Be in compliance with this administrative regulation and federal, state, and local laws and regulations pertaining to the operation of PPEC centers;
- (3) Have a minimum full-time equivalent staff of two (2) registered nurses and one (1) nursing assistant; and
- (4) Meet the following ratios:

3-12 children	2 RNs plus 2 others
13-18 children	2 RNs, 1 LPN, plus 3 others
19-24 children	2 RNs, 2 LPNs, plus 4 others
If the PPEC center has a census of more than twenty-four (24) children, the number of <u>licensed</u> [registered] nurses and other staff shall increase by one (1) each for up to six (6) additional children enrolled.	

Section 4. Criteria for Admission. Each child admitted to a PPEC center shall meet at least the following criteria:

- (1) An infant or child considered for admission to the PPEC center shall be medically dependent or technologically dependent with a complex condition requiring continual care, which may include:
 - (a) Supplemental oxygen;
 - (b) Ventilator dependence;

- (c) Cystic fibrosis;
- (d) Apnea;
- (e) Spinal cord injury; or
- (f) Malignancy;

(2) An infant or child shall not, prior to admission, present significant risk of infection to other children or personnel. The medical and nursing director may review, on a case-by-case basis, any child with a suspected infectious disease to determine appropriateness of admission;

(3) The child shall be medically stabilized, require skilled nursing care or other interventions, and be appropriate for outpatient care; and

(4) The primary care provider, in consultation with the parent or legal guardian, shall be responsible for recommending placement in a PPEC center upon consideration of medical, emotional, psychosocial, and environmental factors.

Section 5. Preadmission Conference. (1) If a child meets the admission criteria established in Section 4 of this administrative regulation, the primary care provider or designee shall contact the medical or nursing director of the PPEC center to schedule a preadmission conference.

(2) If a child is hospitalized at the time of referral, preadmission planning shall include:

- (a) The parent or legal guardian; and
- (b) Relevant hospital medical, nursing, social services, and developmental staff to assure that the discharge plans shall be implemented upon admission to the PPEC center.

(3) If a child is not hospitalized at the time of referral, preadmission planning shall be conducted with the:

- (a) Primary care provider;
- (b) Parent or legal guardian;
- (c) PPEC center representatives; and
- (d) Representatives of other relevant agencies as determined by the primary care provider and nursing director.

(4) A preadmission planning conference shall:

- (a) Be scheduled at least seventy-two (72) hours prior to placement; and
- (b) Allow sufficient time to assure that the therapeutic plan can be implemented upon placement in the PPEC center.

(5) The protocol of care shall:

- (a) Be developed under the direction of the PPEC center's nursing director during the preadmission planning conference;
- (b) Specify the treatment plan needed to accommodate the medical, nursing, psychosocial, and educational needs of the child and family;
- (c) Identify specific goals for care, including plans for achieving those goals;

- (d) Include a schedule for evaluation of progress;
- (e) Include procedures to follow in an emergency situation;
- (f) Include criteria for discharge from the PPEC center; and
- (g) Be signed by the:

- 1. Physician;
- 2. Authorized representative of the PPEC center; and
- 3. Parent or legal guardian.

(6) A consent form outlining the purpose of the PPEC center, family responsibilities, authorized treatment, appropriate liability release, and emergency disposition plans shall be:

- (a) Signed by the parent or legal guardian; and
- (b) Witnessed prior to admission to the PPEC center.

(7) A copy of the consent form shall be:

- (a) Provided to the parent or legal guardian; and
- (b) Maintained in the child's medical record.

Section 6. Admission Procedure. (1) In consultation with the parent or legal guardian, a child may be referred to the PPEC center medical or nursing director for determination of placement.

(2)(a) Each child admitted to a PPEC center shall be admitted in accordance with a physician's written order placed in the child's medical record.

(b) A copy of the order shall be provided to the child's parent or legal guardian.

Section 7. Provision of Services. (1) Medical staff services.

(a) Each child admitted to a PPEC center shall be admitted upon prescription by the:

1. Child's prescribing physician; or
2. Medical director.

(b) The child's primary care provider shall maintain responsibility for the overall medical therapeutic plan.

(c) The medical director shall participate in review of the protocol of care. Prescribed therapies shall be adjusted in consultation with the primary care provider to accommodate the child's condition.

(d) The PPEC center shall coordinate the prescribed therapies for the child.

(2) Nursing staff services.

(a) A PPEC center nursing staff member shall participate in preadmission planning.

(b) Nursing personnel, under the direction of the nursing director, shall be responsible for implementing the nursing care.

(c) Nursing personnel shall be responsible for monitoring and documenting the effects of prescribed therapies.

(d) Nursing personnel shall inform the primary care provider and medical director of the results of therapeutic interventions.

(e) Nursing personnel shall participate in interdisciplinary staff meetings regarding the child's progress.

(f) Nursing personnel shall assure that the PPEC center provides an environment conducive to the:

1. Stabilization of the child's medical condition; and
2. Promotion of the child's development.

(g) Nursing personnel shall be responsible for maintaining the child's record in accordance with facility policies and procedures.

(h) Nursing personnel shall instruct the parent or legal guardian in how to provide the necessary therapies in the home.

(3) Developmental services.

(a)1. Each child shall have a functional assessment and an individualized program plan to accommodate the child's developmental needs.

2. The following functional areas shall be included as appropriate:

- a. Self-care;
- b. Communication skills;
- c. Social skills;
- d. Motor skills;
- e. Cognitive areas;
- f. Play; and
- g. Growth and development appropriate for age.

(b) The child's program plan shall:

1. Include specific programs and action steps to facilitate developmental progress;
2. Be reviewed at least quarterly;
3. Include measurable goals in need areas, or goals to enhance and normalize independent functioning in daily activities;
4. Describe the child's strengths and present performance level with respect to each goal;
5. Document skill areas in priority order; and
6. Include anticipatory planning for specific areas identified as at-risk for future problems.

(c) The child life specialist shall participate in interdisciplinary staff meetings.

(d) Each PPEC center shall:

1. Include the parent or legal guardian in care-related conferences; and
2. Train the parent or legal guardian on how to:
 - a. Perform necessary therapies; and
 - b. Meet the developmental and psychosocial needs of their child at home.

(e) PPEC center staff shall:

1. Make referrals to appropriate resources;
2. Refer to community, social, educational, and financial services; and
3. Refer or provide counseling to enhance coping skills, interpersonal relationships, and family functioning.

(4) Nutritional services.

(a) Therapeutic diets shall be maintained in the child's file.

(b) A registered dietician shall be available to provide assistance with:

1. Nutritional needs;
2. Special diets of individual children; and
3. The development of policies and procedures for the handling, serving, and storage of food.

(c) All food and formula, except for specialized formula, shall be provided by PPEC center staff under the supervision of the nursing director.

(d) Prepared foods shall be:

1. Kept under refrigeration with identifying dates; and
2. Labeled with the child's name.

Section 8. Quality Assurance. (1) Each PPEC center shall have a quality assurance program to evaluate the provision of patient care.

(2) The quality assurance program shall:

- (a) Be ongoing; and
- (b) Have a written plan of implementation.

(3)(a) All organized services related to patient care, including services furnished by a contractor, shall be evaluated at least every six (6) months.

(b) Nosocomial infections and medication therapy shall be evaluated.

(c) Evidence of involvement by the parent or legal guardian shall be evaluated at least every six (6) months.

Section 9. Administration. (1) Each PPEC center shall develop, implement, and maintain written policies and procedures governing all child care and related medical or other services provided.

(2) Personnel policies and procedures shall specify qualifications and required ratios for staff employed by the PPEC center.

(3) Each PPEC center shall:

- (a) Maintain a personnel record for each employee;
- (b) Develop and maintain a current job description for each employee;
- (c) Provide each employee with access to written personnel policies governing conditions of employment; and
- (d) Provide an orientation and development program for all PPEC center employees.

(4) Policies and procedures pertaining to PPEC center services shall:

- (a) Be available to the public; and
- (b) Include a procedure manual with specifications for each therapeutic intervention. The manual shall be:
 1. Available for use by all staff involved in the care of the children; and
 2. Reviewed every six (6) months to assure that procedures conform to prevailing and acceptable treatment modalities.

(5) Each PPEC center shall maintain an admission and discharge register that:

- (a) Lists children admitted by name with identifying information about each and the source from which the child was admitted;
 - (b) Identifies the reason for disposition; and
 - (c) Identifies the place to which the child is to be discharged.
- (6) Each PPEC center shall maintain:
- (a) A daily census record;
 - (b) An accident and incident record; and
 - (c) A complete medical and nursing history for each child.

(7) Each PPEC center shall:

- (a) Conduct a review of each child's protocol of care quarterly and revise upon a change in the child's condition; and
- (b) Include any recommendations or revisions to the protocol based on consultation with other professionals involved in the child's care.

(8) Any changes in the orders shall be documented and signed by the primary care provider.

(9) Prior to a discharge, a conference involving PPEC center staff, the primary care provider, the parent or legal guardian, and staff of other agencies involved in the patient's care shall be held to discuss postdischarge care and follow-up.

(10) A discharge order written by the primary care provider

shall be documented and entered in the child's record.

(11) A discharge summary, including the reason for discharge, shall also be included in the child's record.

(12) Except in an emergency situation, other agencies involved in the care of the child shall be notified prior to the discharge date.

(13) Each PPEC center shall have linkage agreements through written agreements with providers of other levels of care that may be medically needed to supplement the services available at the center.

(14) Each PPEC center shall have written policies to ensure the reporting of cases of abuse, neglect, or exploitation of children to the Cabinet for Health and Family Services pursuant to KRS 620.030.

Section 10. Personnel. (1) A board certified pediatrician shall serve as the medical director for the PPEC center. Responsibilities of the medical director shall include:

(a) Participation in preadmission planning to establish a protocol of care as described in Section 5(5) of this administrative regulation;

(b) Review of services to assure acceptable levels of quality of care;

(c) Maintenance of a liaison role with the medical community;

(d) Advisement on the development of new programs and modifications of existing programs; and

(e) Assurance that medical consultation shall be available if the medical director is absent.

(2) A nursing director shall be employed to provide continuous supervision of PPEC center services. The nursing director shall be responsible for:

(a) Daily operations of the PPEC center;

(b) All services rendered at the center;

(c) Personnel management;

(d) Organization and implementation of in-service education programs for staff;

(e) Assistance to the medical director in determining patient eligibility for admission to PPEC center;

(f) Assurance of adequate nursing representation at preadmission conference;

(g) Supervision of all patient records; and

(h) Documentation of the PPEC center's activities to assure compliance with rules and administrative regulations.

(3) Nursing services shall be provided within the nurse's scope of practice pursuant to KRS Chapter 314 and any administrative regulations promulgated thereunder.

(4) The nursing director shall have at least two (2) years nursing experience of which at least six (6) months shall have been spent in a pediatric intensive care, neonatal intensive care setting, PPEC center, or similar care setting in which the nurse provided care to medically fragile children.

(5) Staffing.

(a) The PPEC center shall employ nursing and ancillary staff that are necessary to:

1. Provide the services essential to the center's operation; and

2. Meet the level of care needs of the children enrolled.

(b) There shall be an individual personnel record for each person employed by the center, which includes the following:

1. Resume with employee's training and experience;

2. Evidence of current licensure or registration;

3. Reports of all accidents occurring on duty; and

4. Current certification in basic life support.

(c) The following categories of personnel shall be available to the PPEC center on an in-house or consultant basis:

1. Developmentalist;

2. Child life specialist;

3. Occupational therapist;

4. Physical therapist;

5. Speech-language pathologist; and

6. Social worker.

Section 11. In-service Training for Staff, Parents, and Legal Guardians. (1) Monthly staff development programs appropriate to the category of personnel shall be conducted to maintain quality

patient care.

(2) All staff development programs shall be documented.

(3) All personnel shall maintain current certification in basic life support.

(4) Each new employee shall participate in orientation to acquaint the employee with the philosophy, organization, program, practices, and goals of the PPEC center.

(5) A comprehensive orientation to acquaint the parent or legal guardian with the philosophy and services shall be provided at the time of the child's placement in the PPEC center.

(6) Staff development programs shall be provided to:

(a) Facilitate the ability of the staff to function as a member of an interdisciplinary team that includes health professionals and the parent or legal guardian;

(b) Improve communication skills to facilitate a collaborative relationship between the parent or legal guardian and professionals;

(c) Increase understanding of the effects that childhood illness has on the child's development and the parent or guardian;

(d) Increase understanding of and how to cope with the effects of childhood illnesses;

(e) Cover a variety of topics including:

1. Issues of death and dying;

2. Awareness of services available at the following:

a. Hospital;

b. School; and

c. Community, state, and professional organizations; and

3. Fostering of advocacy skills; and

(f) Develop case management skills to assist the family in:

1. Setting priorities; and

2. Planning and implementing the child's care at home.

(7) Each PPEC center shall provide training in the implementation of new technology.

Section 12. Physical Environment. (1) The building shall:

(a) Be suitable for the purpose intended; and

(b) Maintain a minimum of sixty (60) square feet of space per child, exclusive of the following:

1. Kitchen;

2. Bathroom;

3. Storage areas;

4. Stairways;

5. Unfinished basements; and

6. Attics.

(2) The PPEC center shall conform to or exceed the minimum standards for day care centers as specified in the most current version of the Kentucky Building Code, incorporated by reference in 815 KAR 7:120.

(3) Plumbing approval. Prior to licensure, all specifications shall be approved by the Kentucky Division of Plumbing, Department of Housing, Buildings and Construction.

(4) Transportation. Emergency transportation to a hospital shall be achieved within twenty (20) minutes normal driving time or less, with a PPEC center staff member accompanying the child unless the child's parent or legal guardian is immediately available to accompany the child to the hospital.

(5) Unless medically contraindicated, the PPEC center shall maintain a temperature range of seventy-two (72) degrees to eighty (80) degrees Fahrenheit.

(6) Accessibility. Each PPEC center shall meet requirements for making buildings and facilities accessible to and usable by persons with a disability pursuant to KRS 198B.260 and 815 KAR Chapter 7.

(7) Fire safety. Each PPEC center shall:

(a) Be approved by the State Fire Marshal's office prior to licensure; and

(b) Retain a copy of the current fire inspection report on file.

(8) Housekeeping and maintenance services.

(a) Housekeeping. Each PPEC center shall:

1. Maintain a clean and safe facility free of unpleasant odors; and

2. Ensure that odors are eliminated at their source by prompt and thorough cleaning of commodes, urinals, bedpans, and other

sources.

(b) Maintenance. The premises shall be well kept and in good repair as follows:

1. The center shall insure that the grounds are well kept and the exterior of the building, including the sidewalks, steps, porches, ramps, and fences are in good repair;

2. The interior of the building including walls, ceilings, floors, windows, window coverings, doors, plumbing, and electrical fixtures shall be in good repair;

3. Garbage and trash shall be stored in areas separate from those used for the preparation and storage of food and shall be removed from the premises regularly. Containers shall be cleaned regularly;

4. A pest control program shall be in operation in each center. Pest control services shall be provided by maintenance personnel of the facility or by contract with a pest control company. The compounds shall be stored under lock;

5.a. Sharp wastes, including needles, scalpels, razors, or other sharp instruments used for patient care procedures shall be segregated from other wastes and aggregated in puncture resistant containers immediately after use.

b. Needles and syringes shall not be recapped, cut, dismantled, or destroyed after use, but shall be placed intact directly into a puncture resistant container.

c. The containers of sharp wastes shall either be incinerated, on site or off site, or disposed of in a sanitary landfill approved pursuant to 401 KAR 47:005 through 401 KAR 47:180; and

6. The center shall establish a written policy for the handling and disposal of all infectious, pathological, and contaminated waste if the center generates them. Any incinerator used for the disposal of waste shall be in compliance with 401 KAR 59:020 or 401 KAR 61:010.

a.(i) Infectious waste shall be placed in double impervious plastic bags and each bag shall be two (2) mils in thickness.

(ii) A bag, when full, shall not exceed twenty-five (25) pounds.

(iii) All bags shall be securely closed and a tag, which reads "INFECTIOUS WASTE" and identifies the center from which the waste is being removed, shall be attached to the bag in a conspicuous manner.

b. The following wastes shall be disposed of by incineration, be autoclaved before disposal, or be carefully poured down a drain connected to a sanitary sewer:

(i) Blood;

(ii) Blood specimens;

(iii) Used blood tubes; or

(iv) Blood products.

Section 13. Emergency Procedures. (1) There shall be a working telephone, which is neither locked nor a pay station, in the center.

(2) Emergency telephone numbers shall be posted on or in the immediate vicinity of all telephones.

STEVEN D. DAVIS, Inspector General

ADAM M. MEIER, Secretary

APPROVED BY AGENCY: September 5, 2019

FILED WITH LRC: September 13, 2019 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on November 25, 2019, at 9:00 a.m. in Suites A & B, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by November 18, 2019, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until November 30, 2019. Send written notification of intent to attend the public hearing or written comments on the

proposed administrative regulation to the contact person. In accordance with KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: Donna Little, Deputy Executive Director, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746, fax 502-564-7091, email CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Stephanie Brammer-Barnes, email: stephanie.brammer@ky.gov, phone: 502-564-2888, and Donna Little

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the minimum standards for the licensure as a prescribed pediatric extended care (PPEC) center.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 216B.042(1), which requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary for the proper administration of the licensure function, including licensure standards and procedures to ensure safe, adequate, and efficient health services. KRS 216.890 requires the cabinet to promulgate administrative regulations to implement the provisions of KRS 216.875 to 216.890, which include standards related to the operation of PPEC centers.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 216B.042(1) and KRS 216.890 by establishing the minimum standards for licensure as a PPEC center.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing the minimum standards for licensure as a PPEC center.

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

(a) How the amendment will change this existing administrative regulation: In response to issues brought to the Cabinet's attention by PPEC licensees, this amendment removes the requirement for registered nurses (RN) to be added if the PPEC center has a census of more than twenty-four (24) children. The proposed change will allow for licensed practical nurses (LPN) to meet the additional staffing requirement.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to make the revision described above.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of KRS 216B.042(1)(b) and KRS 216.890 by establishing the minimum standards for licensure as a PPEC center.

(d) How the amendment will assist in the effective administration of the statutes: This amendment assists in the effective administration of KRS 216B.042(1)(b) and KRS 216.890 by establishing the minimum standards for licensure as a PPEC center.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation impacts licensed PPEC centers. There are currently nine (9) PPEC centers.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: In accordance with the proposed amendment, PPEC centers serving more than twenty-four (24)

children will be able to add LPNs in lieu of RNs to meet the additional staffing requirement.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): PPEC centers will not incur additional costs under the proposed amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The overall impact of the proposed amendment will result in a cost savings to PPEC centers.

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

(a) Initially: There are no additional costs to the cabinet for implementation of this amendment.

(b) On a continuing basis: There are no additional costs to the cabinet for implementation of this amendment on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State general funds and agency monies will be used to implement and enforce this administrative regulation.

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

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

(9) TIERING: Is tiering applied? Tiering is not applicable as compliance with this administrative regulation applies equally to all individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts licensed PPEC centers and the Cabinet for Health and Family Services, Office of Inspector General.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216B.042(1) and KRS 216.890

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 for the Cabinet.

(b) How 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 for the Cabinet in subsequent years.

(c) How much will it cost to administer this program for the first year? No additional costs are necessary to implement this amendment.

(d) How much will it cost to administer this program for subsequent years? No additional costs are necessary to implement this amendment.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

NEW ADMINISTRATIVE REGULATIONS

EDUCATION AND WORKFORCE DEVELOPMENT CABINET Education Professional Standards Board (Repealer)

16 KAR 6:031. Repeal of 16 KAR 6:030.

RELATES TO: KRS 13A.310

STATUTORY AUTHORITY: KRS 161.020, 161.027

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.020 requires a certificate of legal credentials for any public school position for which a certificate is issued. KRS 161.027 requires the Education Professional Standards Board to develop or select appropriate tests, establish minimum scores for successful completion, and establish a reasonable fee to be charged for actual cost of administration of the tests, for an applicant seeking certification as principal. KRS 161.027 further requires that each applicant for certification as school principal with less than two (2) years of appropriate experience complete a one (1) year internship program developed by the Education Professional Standards Board. This administrative regulation repeals the administrative regulation on examination prerequisites which has been included in the new administrative regulation 16 KAR 3:090.

Section 1. 16 KAR 6:030, Examination prerequisites for principal certification, is hereby repealed.

DONNA HEDGEPATH, Board Chair

APPROVED BY AGENCY: August 19, 2019

FILED WITH LRC: September 13, 2019 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on November 21, 2019, at 10:00 a.m. in the State Board Room, Fifth Floor, 300 Sower Boulevard, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through November 30, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Deanna L. Durrett, General Counsel, Kentucky Department of Education, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321; email regcomments@education.ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Deanna L. Durrett

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals 16 KAR 6:030 which establishes the examination requirements for administrative certification.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to avoid confusion with the new regulation 16 KAR 3:090 which establishes the certifications for Advanced Educational Leaders, and includes the examination requirements for all Advanced Educational Leaders, including principals.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 13A.310 allows the Board to repeal regulations that it wishes to no longer be effective. This regulation repeals 16 KAR 6:030 because the subject matter of that regulation is covered by 16 KAR 3:090.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This

administrative regulation repeals 16 KAR 6:030, to avoid confusion with 16 KAR 3:090.

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

(a) How the amendment will change this existing administrative regulation:

(b) The necessity of the amendment to this administrative regulation:

(c) How the amendment conforms to the content of the authorizing statutes:

(d) How the amendment will assist in the effective administration of the statutes:

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All applicants seeking principal certification.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This regulation will repeal 16 KAR 6:030 to avoid confusion. This repealer will not require action from the applicants.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no expected cost for applicants.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Repeal of 16 KAR 6:030, will avoid any confusion regarding the examination requirements for principals established in 16 KAR 3:090.

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

(a) Initially: None.

(b) On a continuing basis: None.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is needed as it will simply repeal 16 KAR 6:030.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: Certification fees are established by 16 KAR 4:040. No additional fees are established by this regulation.

(9) TIERING: Is tiering applied? Tiering is not applicable to the requirements of this regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Education Professional Standards Board.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 13A.310

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? There will be no additional revenues created by this repealer.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? There will be no additional revenues created by this

repealer.

(c) How much will it cost to administer this program for the first year? There are no costs associated with the repealer.

(d) How much will it cost to administer this program for subsequent years? There are no costs associated with the repealer.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: This is not a fee generating or a cost incurring program but, rather, repeals regulations to avoid confusion with the new regulation 16 KAR 3:090.

**FINANCE AND ADMINISTRATION CABINET
Department of Revenue
(Repealer)**

103 KAR 40:091. Repeal of 103 KAR 40:090.

RELATES TO: KRS 243.720

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. 103 KAR 40:090 provides guidance in converting metric equivalents into U.S. measurements equivalent tax rates to comply with KRS 243.720 (1) and (2). KRS 243.720 sets out the applicable tax rates and provides sufficient guidance concerning the U.S. measurements. Metric conversion tools are easily assessable; therefore, this administrative regulation is no longer needed and will not be updated in the future.

Section 1. 103 KAR 40:090, Consumer tax rates is hereby repealed.

DANIEL BORK, Commissioner

APPROVED BY AGENCY: September 12, 2019

FILED WITH LRC: September 13, 2019 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 21, 2019 at 10:00 a.m. in Room 9B, State Office Building, 501 High Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through November 30, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Lisa Swiger, Tax Policy Research Consultant II, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky 40601, phone (502) 564-9526, fax (502) 564-3875, email Lisa.Swiger@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lisa Swiger

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals 103 KAR 40:090. The language contained in this administrative regulation is outdated and sufficient guidance is now contained in KRS 243.720. (See the NECESSITY, FUNCTION & CONFORMITY statement.)

(b) The necessity of this administrative regulation: KRS 13A

requires that all regulations made inactive or ineffective by statute revision, or that the promulgating agency will no longer be updating in the future, to be repealed.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation seeks to repeal a regulation that is no longer needed, and would eventually become deficient and in violation of KRS 13A if not repealed.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will insure that the Department of Revenue is in compliance with KRS Chapter 13A.

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

(a) How the amendment will change this existing administrative regulation: N/A

(b) The necessity of the amendment to this administrative regulation: N/A

(c) How the amendment conforms to the content of the authorizing statutes: N/A

(d) How the amendment will assist in the effective administration of the statutes: N/A

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: None.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: None.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): None.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): None.

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

(a) Initially: None.

(b) On a continuing basis: None.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: None.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No.

(9) TIERING: Is tiering applied? Tiering is not applied. The repeal of this administrative regulation will require all taxpayers previously impacted by its provisions to now reference the authorizing statutes for guidance.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Only the Finance and Administration Cabinet, Department of Revenue will be impacted.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS Chapter 13A and 131.130.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There will be no effect on expenditures and revenues for government agencies because of repealing this administrative regulation.

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

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

(c) How much will it cost to administer this program for the first year? None.

(d) How much will it cost to administer this program for subsequent years? None.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**FINANCE AND ADMINISTRATION CABINET
Department of Revenue
(Repealer)**

103 KAR 41:031. Repeal of 103 KAR 41:030, 103 KAR 41:050, 103 KAR 41:060 and 103 KAR 41:200.

RELATES TO: KRS 138.135, 138.143, 138.146, and 138.195

STATUTORY AUTHORITY: KRS 131.130(1), (3), 131.250

NECESSITY, FUNCTION AND CONFORMITY: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations for the administration and enforcement of all tax laws of this state. 103 KAR 41:220, filed by the Department of Revenue on July 12, 2019, requires electronic filing for applications, reports, returns, and related statements for cigarettes and tobacco products in accordance with KRS 138.135, 138.143, 138.146, and 138.195. Therefore, 103 KAR 41:220 has replaced the need for the regulations listed herein and they are no longer needed.

Section 1. The following regulations are hereby repealed:

- (1) 103 KAR 41:030, Wholesalers, resident and nonresident;
- (2) 103 KAR 41:050, Transporters;
- (3) 103 KAR 41:060, Diversified operators; and
- (4) 103 KAR 41:200, Manufacturer's report.

DANIEL BORK, Commissioner

APPROVED BY AGENCY: September 12, 2019

FILED WITH LRC: September 13, 2019 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 21, 2019 at 10:00 a.m. in Room 9B, State Office Building, 501 High Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through November 30, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Lisa Swiger, Tax Policy Research Consultant II, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky 40601, phone (502) 564-9526, fax (502) 564-3875, email Lisa.Swiger@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lisa Swiger

(1) Provide a brief summary of:

(a) What this administrative regulation does: Repeals four (4) regulations that are no longer needed due to the filing of 103 KAR 41:220 on July 12, 2019. All reports, returns, etc. required to be filed with the Department of Revenue under these four regulations are now required to be submitted electronically under the authority of 103 KAR 41:220. Therefore, these regulations are no longer needed.

(b) The necessity of this administrative regulation: KRS 13A requires a regulation that will no longer be updated or effective to be repealed.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation filing is required per the provisions of KRS Chapter 13A to repeal regulations that will no longer be in effect. The authority of these regulations is now superseded by 103 KAR 41:220.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will insure that the Department of Revenue is in compliance with KRS Chapter 13A.

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

(a) How the amendment will change this existing administrative regulation: N/A.

(b) The necessity of the amendment to this administrative regulation: N/A

(c) How the amendment conforms to the content of the authorizing statutes: N/A

(d) How the amendment will assist in the effective administration of the statutes: N/A

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: None.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: None. They will continue to report under the provisions of 103 KAR 41:220.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no costs expected with this repeal.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): None.

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

(a) Initially: None.

(b) On a continuing basis: None.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current budgetary funding and personnel within the Department of Revenue.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees are established or increased by this regulation.

(9) TIERING: Is tiering applied? Tiering was not applied for this regulation as it is a repeal of an administrative regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Finance and Administration Cabinet, primarily the Department of Revenue, will be impacted.

2. Identify each state or federal statute or federal regulation

that requires or authorizes the action taken by the administrative regulation. KRS Chapter 13A

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There will be no effect on expenditures and revenues for government agencies.

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

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

(c) How much will it cost to administer this program for the first year? None

(d) How much will it cost to administer this program for subsequent years? None

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT
Department of Agriculture
Office of the State Veterinarian
(New Administrative Regulation)

302 KAR 22:010. Authority to inspect, test, identify, remove and dispose of livestock and poultry and fish.

RELATES TO: KRS, 257.020, 257.030

STATUTORY AUTHORITY: KRS 246.210, 246.220, 257.010, 257.020, 257.030, 257.110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 257.030(4) authorizes the Board of Agriculture to promulgate administrative regulations necessary to administer KRS Chapter 257. This administrative regulation establishes the authority to access farms or other places for the purpose of testing, inspecting or examining livestock, poultry and fish for communicable disease.

Section 1. After reasonable notice and upon suspicion of communicable disease that presents a risk to livestock, poultry, fish or public health, the State Veterinarian or the State Veterinarian's representative may enter upon any farm, stockyard, auction barn, or any other place or premises, market or conveyance where livestock, poultry or fish are handled, for the purpose of inspecting, examining, or testing the livestock, poultry or fish for infectious or communicable diseases. The State Veterinarian may brand, tag, or otherwise identify the livestock, poultry or fish found diseased or exposed to disease and may order quarantine, and after reasonable notice and appraisal, removal or disposition of the livestock, poultry or fish found to be diseased.

Section 2. The State Veterinarian or an authorized representative may enter any sale or exhibition premises for the purpose of surveillance testing. Surveillance testing may be done at sale and exhibition events for infectious or communicable diseases that present a risk to animal health or to public health.

(1) Testing may be done randomly.

(2) The owner of the animals shall provide premises of origin information, either by an identifier given by the State Veterinarian or a physical road address, on the species being tested, as well as the physical and mailing address of the owners and contact information.

(3) The owner of the animals shall not be responsible for any testing fees for any surveillance program, unless expressly a

condition of the sale or event.

(4) Test results shall be provided to the owner, if requested at the time of the sample collection.

DR. ROBERT STOUT, State Veterinarian

APPROVED BY AGENCY: September 13, 2019

FILED WITH LRC: September 13, 2019 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 25, 2019 at 11:00 a.m., at the Kentucky Department of Agriculture, 111 Corporate Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through November 30, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 107 Corporate Drive, Frankfort Kentucky 40601, phone (502) 330-6360, fax (502) 564-2133, email clint.quarles@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Clint Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation gives representatives of the office of the state veterinarian authority to inspect livestock, poultry, or fish for communicable diseases at farms and other places.

(b) The necessity of this administrative regulation: This regulation is necessary to provide access to inspectors to prevent the spread of communicable diseases.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 257.030(4) vests authority in the Board of Agriculture to create and enforce regulatory law to accomplish the purpose of KRS Chapter 257, and this filing does so.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in effective administration by providing otherwise restricted access to inspectors to farms and other places to assist in the prevention of the spread of communicable diseases.

(2) If 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 filing is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This filing is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This filing is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This filing is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky Department of Agriculture, livestock, poultry and fish breeders, and owners of farms, stockyards, auction barns and any other place where livestock, poultry, or fish are handled, potentially in all 120 counties.

(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 Kentucky Department of Agriculture

will have to inform individuals who own the land on which they plan to enter for inspection purposes that they are entering the land to inspect livestock, poultry, or fish. Livestock, poultry, and fish breeders and owners of farms, stockyards, auction barns and any other place where livestock, poultry, or fish are handled will be required to allow KDA inspectors to enter their land to inspect livestock, poultry, or fish if the inspector has reason to believe there are livestock, poultry, or fish who may have been infected by a communicable disease.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No fees or costs are associated with this filing.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Administrative ease on behalf of the KDA and clear guidance for entities.

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

(a) Initially: None for this filing.

(b) On a continuing basis: None for this filing.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This administrative regulation does not establish fees.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Minimal fees are necessary at this time.

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

(9) TIERING: Is tiering applied? No. All regulated entities have the same requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Department of Agriculture shall be affected by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 246.210, 246.220, 257.010, 257.020, and 257.030.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? 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? Minimal costs are expected to be involved in the administration of this program.

(d) How much will it cost to administer this program for subsequent years? The KDA does not expect to accrue any cost in the administration of this program in subsequent years.

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

Revenues (+/-): None

Expenditures (+/-): None or negligible.

Other Explanation:

GENERAL GOVERNMENT Department of Agriculture Office of the State Veterinarian (New Administrative Regulation)

302 KAR 22:020. Restriction of transportation of livestock, poultry and fish.

RELATES TO: KRS 257.020

STATUTORY AUTHORITY: KRS 257.030

NECESSITY, FUNCTION, AND CONFORMITY: To prevent and control the spread of communicable disease in livestock, poultry and fish by restricting movement of animals.

Section 1. The movement or transportation of livestock, poultry and fish known or suspected to be infected with, or exposed to, a communicable or reportable disease or exhibiting clinical symptoms of a communicable or reportable disease, shall not be moved through or within Kentucky until such time as the State Veterinarian shall authorize such livestock's movement.

DR. ROBERT STOUT, State Veterinarian

APPROVED BY AGENCY: September 13, 2019

FILED WITH LRC: September 13, 2019 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 25, 2019 at 11:00 a.m., at the Kentucky Department of Agriculture, 111 Corporate Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through November 30, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 107 Corporate Drive, Frankfort Kentucky 40601, phone (502) 330-6360, fax (502) 564-2133, email clint.quarles@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Clint Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation prohibits the transportation of livestock, poultry, or fish known or suspected to be infected with or exposed to a communicable disease until the state veterinarian approves of movement.

(b) The necessity of this administrative regulation: This regulation is necessary to prevent the transmission of communicable diseases to humans or other animals.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 257.030(2) vests authority in the Board of Agriculture to prevent the spread of communicable disease through livestock, poultry and fish into, through, or within the state and this filing does so.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in effective administration by making rules clear for owners of livestock, poultry, or fish suspected or known to have contracted or recently interacted with another that is suspected or known to have contracted a communicable disease.

(2) If 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 filing is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This filing is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This filing is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This filing is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky Department of Agriculture, State Veterinarian, and owners and transporters of livestock, poultry, or fish who plan to transport said animals.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Entities will be required to follow the individual regulatory instructions in the administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No fees or costs are associated with this filing.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Administrative ease on behalf of the KDA and clear guidance for entities. The entities will also have security against further spread of communicable diseases.

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

(a) Initially: None for this filing.

(b) On a continuing basis: None for this filing.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This administrative regulation does not establish fees.

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

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

(9) TIERING: Is tiering applied? No. All regulated entities have the same requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Department of Agriculture shall be affected by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 257.030

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? 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? This program will require minimal costs to administer for the first year.

(d) How much will it cost to administer this program for subsequent years? The KDA expect to incur costs to administer this program for subsequent years.

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

Revenues (+/-): None

Expenditures (+/-): None or negligible.

Other Explanation:

GENERAL GOVERNMENT Department of Agriculture Office of the State Veterinarian (New Administrative Regulation)

302 KAR 22:040. Carcass transport and composting.

RELATES TO: KRS 257.030, 257.160

STATUTORY AUTHORITY: KRS 257.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 257.160 authorizes the State Board of Agriculture to establish the requirements for disposition of livestock, fish, and poultry carcasses. This administrative regulation creates guidelines for carcass movement and other disposition details.

Section 1. Carcass Transportation. (1) In fulfilling the requirements of KRS 257.160, a carcass shall only be transported when:

(a) The carcass is covered with a tarpaulin or other heavy material so that no portion of the dead carcass can be exposed; and

(b) The bottom and sides of the truck or trailer used for transport are made of solid material that will not allow for leaks.

(2) The carcass shall not be transported in a truck or trailer with no sides or with sides made of slat material with openings between slats.

(3) Commercial collection services shall follow the requirements found in KRS 263.

Section 2. Composting Site Registration. (1) Commercial or regional composting facilities, not on an agriculture operation, shall register with the State Veterinarian by submitting in writing the name and address of the composting facility owner, the location of the composting facility, and a description of the facility.

(2) Registration of composting facilities shall not be required for an agriculture operation, if composting is not for a commercial purpose.

Section 3. Composting Facilities. (1) All composting facilities shall be constructed to meet:

(a) Guidelines established by the University of Kentucky College of Agriculture Cooperative Extension Service publication "On-Farm Composting of Animal Mortalities: ID-166"; and

(b) The requirements of the Kentucky Agriculture Water Quality Plan.

(2) All processing of dead livestock, fish, and poultry shall be done within the composting facility.

(3) Hazardous materials shall not be used in the composting procedure.

(4) Reasonable and cost-effective efforts shall be taken to prevent odor, insects, and pests. All carcasses shall be inaccessible to scavengers, livestock, and poultry.

(5) Ruminant livestock may have the rumen vented prior to composting.

(6) Any carcasses not completely composted shall be disposed of in a manner consistent with KRS 257.160.

(7) All composting facilities shall be subject to inspection by the State Veterinarian or his representative.

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

(a) University of Kentucky College of Agriculture Cooperative Extension Service publication "On-Farm Composting of Animal Mortalities: ID-166", 5-2013; and

(b) Kentucky Agriculture Water Quality Plan (December 2018).

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Agriculture, Division of Animal Health, 111 Corporate Drive,

VOLUME 46, NUMBER 4– OCTOBER 1, 2019

Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

DR. ROBERT STOUT, State Veterinarian

APPROVED BY AGENCY: September 13, 2019

FILED WITH LRC: September 13, 2019 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 25, 2019 at 11:00 a.m., at the Kentucky Department of Agriculture, 111 Corporate Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through November 30, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 107 Corporate Drive, Frankfort Kentucky 40601, phone (502) 330-6360, fax (502) 564-2133, email clint.quarles@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Clint Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This establishes the guidelines of University of Kentucky College of Agriculture Cooperative Extension Service publication, "On-Farm Composting of Animal Mortalities: ID-166" and the Kentucky Agriculture Water Quality Plan as the industry standard for disposition of livestock, fish, and poultry carcasses.

(b) The necessity of this administrative regulation: This regulation is necessary to prevent the spread of disease.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 257.160 authorizes the State Board of Agriculture to establish the requirements for disposition of livestock, fish, and poultry carcasses.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in effective administration by making rules clear for owners of carcasses, transporters of carcasses, and commercial composters.

(2) If 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 filing is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This filing is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This filing is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This filing is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky Department of Agriculture, owners of carcasses, transporters of carcasses, and commercial composters.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Entities will be required to follow the individual regulatory instructions in each section.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in

question (3): No fees or costs are associated with this filing.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Administrative ease on behalf of the KDA and clear guidance for entities.

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

(a) Initially: None for this filing.

(b) On a continuing basis: None for this filing.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This administrative regulation does not establish fees.

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

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

(9) TIERING: Is tiering applied? No. All regulated entities have the same requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Department of Agriculture shall be affected by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 257.160

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

(a) How much 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? This program will accrue minimal costs if any cost at all.

(d) How much will it cost to administer this program for subsequent years? This program will accrue minimal costs if any cost at all.

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 or negligible.

Other Explanation:

**GENERAL GOVERNMENT
Department of Agriculture
Office of the State Veterinarian
(New Administrative Regulation)**

302 KAR 22:080. Feed restrictions.

RELATES TO: KRS 257.020

STATUTORY AUTHORITY: KRS 257.020(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 257.600 requires the Department of Agriculture to promulgate administrative regulations governing the feeding of untreated garbage to swine to prevent the transmission of disease. KRS 257.020(3) requires the Board of Agriculture to prevent, control, and eradicate any communicable disease of livestock. This administrative regulation prohibits the feeding of treated or untreated garbage to swine to prevent the transmission of viral,

bacterial, and parasitical diseases to people and animals.

Section 1. Feeding Garbage to Swine Prohibited. A person shall not feed treated or untreated garbage to swine. "Garbage" means all animal and vegetable waste resulting from the handling, preparation, consuming, and cooking of food; unconsumed food in all public and private establishments and residences; and the offal and carcasses of dead animals, poultry, and fish or parts thereof.

Section 2. Penalties. The department may file an action in the court of jurisdiction to seek injunctive relief for a violation of this administrative regulation. Each day upon which a violation occurs shall constitute a separate violation.

DR. ROBERT STOUT, State Veterinarian

APPROVED BY AGENCY: September 13, 2019

FILED WITH LRC: September 13, 2019 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 25, 2019 at 11:00 a.m., at the Kentucky Department of Agriculture, 111 Corporate Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through November 30, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 107 Corporate Drive, Frankfort Kentucky 40601, phone (502) 330-6360, fax (502) 564-2133, email clint.quarles@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Clint Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation prohibits the use of treated or untreated garbage in swine feed.

(b) The necessity of this administrative regulation: This regulation is necessary to prevent the transmission of disease to animals or humans.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 257.600 requires the Department of Agriculture to promulgate administrative regulations governing the feeding of untreated garbage to swine to prevent the transmission of disease, this filing does so. KRS 257.020(3) requires the Board of Agriculture to prevent, control, and eradicate any communicable disease of livestock, this filing does so.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in effective administration by explicitly preventing persons from feeding garbage to swine and providing a penalty for violations of said prohibition.

(2) If 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 filing is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This filing is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This filing is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This filing is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky Department of Agriculture, producers of swine feed, and owners of swine.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Entities will be required to follow the individual regulatory instructions in section 1. The Kentucky Department of Agriculture may file an action in court if the instructions in Section 1 are violated.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No fees or costs are associated with this filing.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Clear guidance on behalf of swine owners, and legal remedies on behalf of the Kentucky Department of Agriculture.

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

(a) Initially: None for this filing.

(b) On a continuing basis: None for this filing.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This administrative regulation does not establish fees.

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

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

(9) TIERING: Is tiering applied? No. All regulated entities have the same requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Department of Agriculture shall be affected by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 257.600 and KRS 257.020(3)

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated.

(c) How much will it cost to administer this program for the first year? The KDA does not expect to incur costs to administer this program for the first year other than possible enforcement costs.

(d) How much will it cost to administer this program for subsequent years? The KDA does not expect to incur costs to administer this program for subsequent years other than possible enforcement costs.

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

Revenues (+/-): None

Expenditures (+/-): Possible court costs may be associated with this regulation in the event that KDA decides to proceed against violators in court.

Other Explanation:

ENERGY AND ENVIRONMENT CABINET
Department for Natural Resources
Division of Mine Permits
(Repealer)

405 KAR 26:011. Repeal of 405 KAR 26:001.

RELATES TO: KRS Chapter 350, 350.010, 350.020, 350.028, 350.050, 350.055, 350.057, 350.060, 350.062, 350.064, 350.070, 350.085, 350.090, 350.093, 350.095, 350.100, 350.110, 350.113, 350.130, 350.135, 350.151, 350.445, 350.450, 350.465, 350.990

STATUTORY AUTHORITY: KRS 350.020, 350.028, 350.050, 350.060, 350.064, 350.093, 350.130, 350.135, 350.151, 350.450, 350.465

NECESSITY, FUNCTION, AND CONFORMITY: KRS 350.028(1) provides the Energy and Environment Cabinet the authority to promulgate administrative regulations. This administrative regulation repeals 405 KAR 26:001. The administrative regulation was established as a way to regulate less than two (2) acre permits. The authorizing provision in KRS 350.060 was repealed in the 2006 Legislative Session. Therefore, operations of less than two (2) acres are no longer permissible in the Commonwealth.

Section 1. 405 KAR 26:001, Operations of two (2) acres or less, is hereby repealed.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: September 13, 2019

FILED WITH LRC: September 13, 2019 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 26, 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 November 30, 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 repeals 405 KAR 26:001.

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to repeal 405 KAR 26:001. 405 KAR 26:001 contains the information related to coal mining operations of two acres or less.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 350.028(1) authorizes the cabinet to promulgate administrative regulations pertaining to surface coal mining operations. This administrative regulation repeals the 405 KAR 26:001 which contains information related to coal operations of two acres or less.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation repeals 405 KAR 26:001. Operations of two acres or less are no longer allowed in the Commonwealth and therefore the administrative regulation is being 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: The amendment repeals the administrative regulation pertaining to operations of two acres or less.

(b) The necessity of the amendment to this administrative regulation: The repeal is necessary because the information in 405 KAR 26:001 is no longer necessary.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the statute by repealing the administrative regulation pertaining to coal operations of two acres or less.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will repeal the requirements pertaining to coal operations of two acres or less.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The repeal of this regulation will have no impact, as coal operations of two acres or less is no longer allowed in 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:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No action will need to be taken to comply with this repealer.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no costs associated with this repealer.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There are no benefits associated with complying with this repealer.

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

(a) Initially: There are no costs associated with the repeal of this administrative regulation.

(b) On a continuing basis: There are no costs associated with the repeal of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding source is required to repeal these administrative regulations.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This repealer does not involve any fees.

(9) TIERING: Is tiering applied? No, this is a repeal of an administrative regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Division of Mine Permits and the Division of Mine Reclamation and Enforcement.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 350.020, 350.028, 350.050, 350.060, 350.064, 350.093, 350.130, 350.135, 350.151, 350.450, 350.465.

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

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

(b) How much revenue will this administrative regulation

generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This repeal will not generate revenue.

(c) How much will it cost to administer this program for the first year? This repeal will not cost the agency additional funding.

(d) How much will it cost to administer this program for subsequent years? This repeal will not cost the agency additional funding.

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

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

LABOR CABINET
Department of Workers' Claims
(New Administrative Regulation)

803 KAR 25:260. Treatment guidelines.

RELATES TO: KRS 342.0011(13), 342.020, 342.035.

STATUTORY AUTHORITY: 342.035, 342.260, 342.265, 342.270, 342.275.

NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.260(1) requires the commissioner to promulgate administrative regulations necessary to carry on the work of the department and the work of administrative law judges so long as those administrative regulations are consistent with KRS Chapter 342 and KRS Chapter 13A. KRS 342.035 requires the commissioner to develop or adopt practice parameters or evidence-based treatment guidelines for medical treatment for use by medical providers under KRS Chapter 342 and promulgate administrative regulations to implement the developed or adopted treatment guidelines. This administrative regulation adopts treatment guidelines and provides guidance to implement them.

Section 1. Definitions. (1) "Carrier" or "insurance carrier" means any insurer authorized to insure the liability of employers arising under Chapter 342 of the Kentucky Revised Statutes, an employer authorized by the commissioner to pay directly the compensation provided in Chapter 342 of the Kentucky Revised Statutes as those liabilities are incurred, a self-insured group, and any person acting on behalf of or as an agent of the insurer, self-insured employer, or self-insured group.

(2) "Commissioner" means the commissioner charged in KRS 342.228 to administer the Department of Workers' Claims and whose duties are stated in KRS 342.230.

(3) "Department" or "Department of Workers' Claims" means the governmental agency whose responsibilities are provided in KRS 342.228.

(4) "Employee" means those natural persons constituting an employee subject to the provisions of the Act as defined in KRS 342.640 and the employee's legal counsel.

(5) "Employer" means those persons constituting an employer as defined in KRS 342.630, the employer's insurance carrier, self-insured group or other payment obligor, third party administrator, other person acting on behalf of the employer in a workers' compensation matter, and the employer's legal counsel.

(6) "Evidence-based medicine" means the process and use of relevant information from peer-reviewed clinical and epidemiologic research to address a clinical issue thereby weighing the attendant risks and benefits to determine whether proposed diagnostic or therapeutic procedures are appropriate in light of their high probability of producing the best and most favorable outcome.

(7) "Maximum medical improvement" means the point of stabilization in an employee's recovery from a work injury where substantial improvement in the human organism is no longer likely.

(8) "Medical emergency" means the sudden onset of a medical condition manifested by acute symptoms of sufficient severity, including severe pain, that in the absence of immediate medical attention could reasonably be expected to result in placing the

patient's health or bodily functions in serious jeopardy or serious dysfunction of any body organ or part.

(9) "Medical provider" means physicians and surgeons, psychologists, optometrists, dentists, podiatrists, osteopathic and chiropractic practitioners, physician assistants, and advanced practice registered nurses, acting within the scope of their license;

(10) "Medically necessary" or "medical necessity" means healthcare services, including medications, that a medical provider, exercising prudent clinical judgment, would provide to a patient for the purpose of preventing, evaluating, diagnosing or treating an illness, injury, disease or its symptoms, and that are:

(a) In accordance with generally accepted standards of medical practice; and

(b) Clinically appropriate, in terms of type, frequency, extent, site and duration; and considered effective for the patient's illness, injury or disease. Treatment primarily for the convenience of the patient, physician, or other healthcare provider does not constitute medical necessity.

(11) "Preauthorization" means the process whereby payment for a medical service or course of treatment is assured in advance by a carrier.

(12) "Statement for services" is defined by 803 KAR 25:096, Section 1(5).

(13) "Treatment guidelines" or "guidelines" are the treatment guidelines developed or adopted by the commissioner pursuant to KRS 342.035(8)(a).

(14) "Utilization Review" is defined by 803 KAR 25:190, Section 1(6).

Section 2. Purpose and Adoption. (1) The purpose of the treatment guidelines is to facilitate safe and appropriate treatment of work-related injuries and occupational diseases.

(2) The commissioner adopts the current edition and any future published updates of the ODG treatment guidelines currently published by MCG Health for use by medical providers in the treatment of work related injuries and occupational diseases. The commissioner shall review the guidelines not less than annually and update or amend this administrative regulation, if necessary, to ensure that the guidelines are consistent with the provisions of KRS 342.020 and KRS 342.035.

Section 3. Application. (1) The treatment guidelines do not apply to treatment provided in a medical emergency.

(2) The treatment guidelines do not apply to urine drug screens. KRS 342.020(13) governs an employer's liability for urine drug screens.

(3) The treatment guidelines shall be applied in the utilization review decision-making process.

(4) Treatment recommended in the guidelines is presumed to be reasonable and necessary. This presumption shall apply to utilization review and in the resolution of medical disputes, and shall be rebuttable only by clear and convincing evidence.

(5) Treatment not recommended or not addressed in the guidelines shall require preauthorization.

(6) The employer shall not be responsible for payment of medical treatment not recommended or not addressed in the treatment guidelines unless it was provided in a medical emergency; was authorized by the employer; or was approved through the dispute resolution process by an administrative law judge.

(7) Medical providers proposing treatment not recommended or not addressed in the treatment guidelines shall articulate in writing sound medical reasoning for the proposed treatment, which may include:

(a) Documentation that reasonable treatment options allowable in the guidelines have been adequately tried and failed;

(b) The clinical rationale that justifies the proposed treatment plan, including criteria that will constitute a clinically meaningful benefit; or

(c) Any other circumstances that reasonably preclude recommended or approved treatment options.

(8) Before an employer denies preauthorization of treatment not recommended or not addressed in the treatment guidelines, it

must consider any sound medical reasoning furnished by the medical provider.

(9) The treatment guidelines are not intended to establish a standard for determining professional liability.

(10) The pharmaceutical formulary adopted in 803 KAR 25:270 shall be part of the medical treatment guidelines.

(11) Maximum medical improvement shall not preclude the provision of medical treatment necessary for the cure and relief from the effects of an injury or occupational disease if the treatment is medically necessary to maintain function at the maximum medical improvement level or to improve function following an exacerbation of the injured employee's condition.

Section 4. Preauthorization. (1) Requests for preauthorization shall be subject to utilization review unless the employer waives utilization review.

(2) Except as modified in this Section, 803 KAR 25:190, Sections 5, 7, and 8 apply to all treatment for which preauthorization is required or requested under this administrative regulation. If the medical provider has provided sound medical reasoning for treatment, the employer shall not deny the treatment solely on the basis that it is not recommended or not addressed in the guidelines.

(3) If the carrier denies preauthorization following utilization review, the medical provider may request reconsideration of the denial to include a peer-to-peer conference with a utilization review physician. The request for a peer-to-peer conference shall be made by electronic communication and shall provide:

(a) A telephone number for the reviewing physician to call;

(b) A date or dates for the conference not less than five (5) business days after the date of the request; and

(c) A one (1)-hour period during the date or dates specified during which the requesting medical provider, or a designee, will be available to participate in the conference between the hours of 8:00 a.m. and 6:00 p.m. (Eastern Time), Monday through Friday.

(4) The peer-to-peer conference must be conducted by a physician of the same specialty as the medical provider requesting reconsideration.

(5) Failure of the reviewing physician to participate during the date and time specified shall result in the approval of the request for preauthorization and approval of the recommended treatment unless good cause exists for the failure to participate. In the event of good cause for failure to participate in the peer-to-peer conference, the reviewing physician shall contact the requesting medical provider to reschedule the peer-to-peer conference. The rescheduled peer-to-peer conference shall be held no later than two (2) business days following the original conference date. Failure of the requesting medical provider or its designee to participate in the peer-to-peer conference during the time he or she specified availability may result in denial of the request for reconsideration.

(6) Pursuant to 803 KAR 25:190, Section 8(1)(c), a written reconsideration decision shall be rendered within five (5) days of date of the peer-to-peer conference. The written decision shall be entitled "FINAL UTILIZATION REVIEW DECISION."

(7) If a Final Utilization Review Decision is rendered denying authorization for treatment before an award has been entered by or agreement approved by an administrative law judge, the requesting medical provider or the injured employee may file a medical dispute pursuant to 803 KAR 25:012. If a Final Utilization Review Decision is rendered denying authorization for treatment after an award has been entered by or agreement approved by an administrative law judge, the employer shall file a medical dispute pursuant to 803 KAR 25:012.

(8) The employer shall not be required to file a medical dispute pursuant to 803 KAR 25:012, Section 1(6), to challenge a statement for services for treatment not recommended or not addressed by the guidelines when preauthorization was not requested. If the basis for denial of a statement for services is that the treatment was not recommended or not addressed in the guidelines, within two (2) business days of receipt of the statement for services, the insurance carrier shall provide notice to the employee and medical provider of the denial and the basis for the

denial.

(9) Pursuant to KRS 342.285(1), a decision of an administrative law judge on a medical dispute is subject to review by the workers' compensation board under the procedures set out in 803 KAR 25:010, Section 22.

Section 5. Effective Dates. (1) The treatment guidelines apply to all treatment administered on and after July 1, 2020. This

is to certify that the commissioner has reviewed and recommended this administrative regulation prior to its adoption, as required by KRS 342.260 and 342.035.

ROBERT L. SWISHER, Commissioner

APPROVED BY AGENCY: September 6, 2019

FILED WITH LRC: September 9, 2019 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 21, 2019, at 10:00 a.m. (EDT) at the offices of the Department of Workers' Claims, Prevention Park, 657 Chamberlin Avenue, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing of their intent to attend no later than five (5) workdays prior to the hearing. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through November 30, 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: B. Dale Hamblin, Jr., Assistant General Counsel, Workers' Claims Legal Division, Prevention Park, 657 Chamberlin Avenue, Frankfort, Kentucky 40601, phone (502) 782-4404, fax (502) 564-0681, email dale.hamblin@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: B. Dale Hamblin, Jr.

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation adopts treatment guidelines for treatment provided for the cure of and relief of a work injury or occupational disease and provides guidance for its implementation and use.

(b) The necessity of this administrative regulation: KRS 342.035(8) requires the commissioner to develop or adopt treatment guidelines and promulgate an administrative regulation to implement the treatment guidelines.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 342.035 requires the commissioner to develop or adopt treatment guidelines for the cure of and relief of a work injury or occupational disease and to promulgate an administrative regulation to implement the treatment guidelines.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 342.020 provides an employer is responsible to pay for the cure and relief from the effects of an injury or occupational disease as may reasonably be required at the time of injury and thereafter during disability or as may be required for the cure and treatment of an occupational disease. KRS 342.035 requires the commissioner to develop or adopt treatment guidelines for the cure of and relief of a work injury or occupational disease. This administrative regulation provides guidance to the employee and employer with respect to the treatment guidelines.

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

(a) How the amendment will change this existing administrative regulation: N/A

(b) The necessity of the amendment to this administrative regulation: N/A

(c) How the amendment conforms to the content of the authorizing statutes: N/A

(d) How the amendment will assist in the effective administration of the statutes: N/A

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All injured employees, physicians and medical providers providing services to injured workers pursuant to KRS Chapter 342, insurance carriers, self-insurance groups, self-insured employers, insured employers, and third party administrators.

(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: Physicians and medical providers are required to use the treatment guidelines adopted by the commissioner. Employers and their payment obligors will apply the treatment guidelines when reviewing and paying for treatment as required by KRS 342.020.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost to the payment obligors cannot be ascertained until treatment is sought and provided to the injured employee.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Injured employees are less likely to receive inappropriate treatment and more likely to receive the appropriate treatment in a more timely fashion. Employees may discover treatment is received in a more timely fashion and employers may experience a long-term reduction in medical benefit costs.

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

(a) Initially: None

(b) On a continuing basis: The cost associated with this administrative regulation is the cost of maintaining information about the treatment guidelines on the Cabinet's Web site.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Department of Workers' Claims normal budget is the source of funding.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied; the regulation applies to all parties equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Workers' Claims and all agencies or departments of government with employees.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 342.020, 342.035, 342.260, 342.265, 342.275.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There should be no direct effect on expenditures.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities,

counties, fire departments, or school districts) for the first year? No revenue will be generated.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated.

(c) How much will it cost to administer this program for the first year? The cost of maintaining information about the treatment guidelines on the cabinet's Web site is nominal.

(d) How much will it cost to administer this program for subsequent years? Other than the cost to maintain information about the treatment guidelines on the cabinet's Web site, it does not appear there will be additional costs.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: It is possible the application of the treatment guidelines will cause treatment costs to stabilize or reduce, providing a reduction of costs to the workers' compensation system as a whole.

ENERGY AND ENVIRONMENT CABINET Department for Natural Resources Division of Mine Safety (Repealer)

805 KAR 7:101. Repeal of 805 KAR 7:100.

RELATES TO: KRS 352.340

STATUTORY AUTHORITY: KRS 351.070

NECESSITY, FUNCTION, AND CONFORMITY: KRS 351.070

provides the Department for Natural Resources the authority to promulgate administrative regulations deemed necessary and suitable for the proper administration of the mine safety program. This administrative regulation repeals 805 KAR 7:100. 805 KAR 7:100 was established to implement the conduct of examinations, to test each applicant's knowledge and understanding of the instruction for belt examination. The administrative regulation is no longer needed because the training, testing, and examination requirements are the same as those for an assistant mine foreman.

Section 1. 805 KAR 7:100, Requirements for belt examiner, is hereby repealed.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: September 13, 2019

FILED WITH LRC: September 13, 2019 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 25, 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 November 30, 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 repeals 805 KAR 7:100.

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to repeal 805 KAR 7:100. This information is no longer needed. The requirements are duplicative with that of an assistant mine foreman.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 352.070 provides the Department for Natural Resources the authority to promulgate administrative regulations related mine safety requirements. This administrative regulation will repeal the requirements for a belt examiner.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation repeals 805 KAR 7:100. The administrative regulation is no longer needed as it is duplicative with the assistant mine foreman 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: The amendment repeals the regulation that establishes the requirements for a belt examiner.

(b) The necessity of the amendment to this administrative regulation: The repeal is necessary because the information in 805 KAR 7:100 is no longer necessary.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the statute by repealing the administrative regulations pertaining to the belt examiner requirements which are not necessary because they are the same as those of an assistant mine foreman.

(d) How the amendment will assist in the effective administration of the statutes: This repeal will delete the requirements pertaining to belt examiner. These requirements are the same as those of an assistant mine foreman.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This proposal will not impact miners in the Commonwealth. The requirements and testing are the same as an assistant mine foreman. Therefore, a certification can be obtained that will allow individuals to perform the duties of a belt examiner. A belt examiner certification has not been issued in at least the past four years. Miners that currently hold a belt examiner certification will not lose the certification.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No action will need to be taken to comply with this repealer.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no additional costs associated with this repealer. The requirements related to being a belt examiner are the same as those of an assistant mine foreman.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The regulated entities will benefit by no longer having duplicative certifications regarding belt examination.

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

(a) Initially: There are no costs associated with the repeal of this administrative regulation.

(b) On a continuing basis: There are no costs associated with the repeal of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding source is required to repeal these administrative regulations.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This repealer does not involve any fees.

(9) TIERING: Is tiering applied? No, this is a repeal of an administrative regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Division of Mine Safety.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 351.070 and 352.340.

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

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

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

(c) How much will it cost to administer this program for the first year? This repeal will not cost the agency additional funding.

(d) How much will it cost to administer this program for subsequent years? This repeal will not cost the agency additional funding.

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

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

**PUBLIC PROTECTION CABINET
Department of Insurance
(Repealer)**

806 KAR 7:021. Repeal of 806 KAR 7:020.

RELATES TO: KRS 304.7-010 - 304.7-350

STATUTORY AUTHORITY: KRS 304.2-110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 authorizes the commissioner 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. This administrative regulation repeals 806 KAR 7:020 because the term "person" is adequately defined in statute.

Section 1. 806 KAR 7:020, Person defined, is hereby repealed.

NANCY G. ATKINS, Commissioner

K. GAIL RUSSELL, Secretary

APPROVED BY AGENCY: September 13, 2019

FILED WITH LRC: September 13, 2019 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 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 November 30, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Patrick D. O'Connor, II, Deputy Commissioner, 215 W. Main St., Frankfort, Kentucky 40601, phone +1 (502) 564-6026, fax +1 (502) 564-1453, email patrick.oconnor@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Patrick D. O'Connor

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals 806 KAR 7:020 because the term "person" is defined in the insurance code and does not need to be further defined in regulation.

(b) The necessity of this administrative regulation: This administrative regulation repeals 806 KAR 7:020 because the term "person" is defined in the insurance code and does not need to be further defined in regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation repeals the definition to rely upon the statutory definition of "person."

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The repeal of this administrative regulation will eliminate any confusion regarding the definition of the term "person" for purposes of the insurance code.

(2) If 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: No businesses, organizations, or state and local governments will be affected by this repealer because the term "person" is already defined in the insurance code.

(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 action is required to comply with this repealer.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: There is no cost to comply with this repealer.

(c) As a result of compliance, what benefits will accrue to the entities: Regulated entities and insurance consumers can rely on the statutory definition of the word "person" rather than using this administrative regulation.

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

(a) Initially: There will be no cost to implement this repealer.

(b) On a continuing basis: There will be no cost to implement this repealer.

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

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

funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No funding is needed 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 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? The Kentucky Department of Insurance will be affected by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.2-110(1); 304.7-012(62)

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 is no cost to administer this administrative regulation repealer.

(d) How much will it cost to administer this program for subsequent years? There is no cost to administer this administrative regulation 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

CABINET FOR HEALTH AND FAMILY SERVICES

Office of Inspector General

Division of Health Care

(New Administrative Regulation)

902 KAR 20:450. Ambulatory infusion agencies.

RELATES TO: KRS 17.500(8), 216B.042, 439.3401, 42 C.F.R. 486.500–486.525, 42 C.F.R. 488.1000–488.1050, 45 C.F.R. Parts 160, 164, 42 U.S.C. 1320d-2–1320d-8

STATUTORY AUTHORITY: KRS 216B.042

NECESSITY, FUNCTION AND CONFORMITY: KRS 216B.042(1) requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary for the proper administration of the licensure function, which includes establishing licensure standards and procedures to ensure safe, adequate, and efficient health facilities and health services. This administrative regulation establishes minimum licensure requirements for the operation of ambulatory infusion agencies that provide infusion therapy services in a patient's home or in an ambulatory infusion center.

Section 1. Definitions. (1) "Ambulatory infusion center" means

an outpatient treatment center that provides infusion therapy services, excluding an off-campus, Kentucky-hospital owned center or service that meets the licensing exemption criteria of 900 KAR 6:130, Section 3(3).

(2) "Home" means a place of residence used as the home of an individual, including an institution that is used as a home. An institution used as a home shall not include a:

- (a) Hospital, including critical access hospital; or
- (b) Long-term care facility defined by KRS 216.510(1).

(3) "Infusion drug" means a parenteral drug or biological administered intravenously, or subcutaneously for an administration period of fifteen (15) minutes or more, in the patient's home or in an ambulatory infusion center through:

- (a) An injection; or
- (b) A pump that is an item of durable medical equipment, excluding:

- 1. An insulin pump system; or
- 2. A self-administered drug or biological on a self-administered drug exclusion list.

(4) "Infusion therapy services" means the preparation, administration, or furnishing of parenteral medications, parenteral nutritional services, or administration of drugs intrathecally to an individual in:

- (a) The individual's home; or
- (b) An ambulatory infusion center.

Section 2. Licensure Application and Fees. (1) An applicant for an initial, provisional license or annual renewal as an ambulatory infusion agency shall submit to the Office of Inspector General:

- (a) A completed Application for License to Operate an Ambulatory Infusion Agency; and
- (b) An accompanying fee in the amount of \$500, made payable to the Kentucky State Treasurer.

(2)(a) Name change. An ambulatory infusion agency shall:

- 1. Notify the Office of Inspector General in writing within ten (10) calendar days of the effective date of a change in the agency's name; and

2. Submit a processing fee of twenty-five (25) dollars.

(b) Change of location. An ambulatory infusion agency shall not change the location where a facility is operated until an Application for License to Operate an Ambulatory Infusion Agency accompanied by a fee of \$100 is filed with the Office of Inspector General.

(c) Change of ownership.

1. The new owner of an agency shall submit to the Office of Inspector General an Application for License to Operate an Ambulatory Infusion Agency accompanied by a fee of \$500 within ten (10) calendar days of the effective date of the ownership change.

2. A change of ownership for a license shall be deemed to occur if more than twenty-five (25) percent of an existing ambulatory infusion agency or capital stock or voting rights of a corporation is purchased, leased, or otherwise acquired by one (1) person from another.

(3) An extension site location shall not be allowed for any entity licensed under this administrative regulation.

(4) An ambulatory infusion agency shall have an office location in Kentucky.

Section 3. Scope of Operation and Services. (1) A licensee:

(a) Shall furnish infusion therapy services to an individual with an acute or chronic condition that requires administration of infusion drugs in the home or an ambulatory infusion center;

(b) Shall ensure the safe and effective provision and administration of infusion therapy services on a seven (7) day-a-week, twenty-four (24) hour-a-day basis, if provided in the patient's home;

(c) Shall be accredited by a national accrediting organization that meets the requirements of 42 C.F.R. 488.1000 to 488.1050 within one (1) year of initial, provisional licensure;

(d) Shall ensure that each patient's plan of care is established by a physician who shall be responsible for:

- 1. Prescribing the type, amount, and duration of the infusion

therapy services that are to be furnished; and

2. Review of each patient's plan of care:

- a. At least every thirty (30) days; or
- b. As often as deemed necessary in accordance with the physician's order on file in the patient's medical record;

(e) Shall provide the skilled nursing services component of infusion therapy services in accordance with the patient's plan of care, including:

1. Clinical notes that shall be signed, recorded, and incorporated in the patient's medical record within three (3) working days of providing the service;

2. Notifying the pharmacist, prescribing practitioner, and applicable agency staff regarding any significant change in the patient's condition; and

3. Patient education and monitoring; and

(f) May provide other professional services in addition to the skilled nursing services component, such as pharmacy services or durable medical equipment required for the delivery of infusion therapy services.

(2)(a) If an ambulatory infusion agency has not obtained accreditation in accordance with subsection (1)(c) of this section within one (1) year of initial licensure, the agency may request an extension to complete the accreditation process.

(b) A request for extension shall:

1. Be submitted in writing to the Office of Inspector General at least sixty (60) days prior to the date of annual renewal;

2. Include evidence that the agency has initiated the process of becoming accredited within sixty (60) days of initial, provisional licensure and is continuing its efforts to obtain accreditation; and

3. Include an estimated timeframe by which approval of accreditation is anticipated, not to exceed two (2) years from the date of initial, provisional licensure.

(3) A licensee's provisional licensure status shall end on the date that the agency obtains accreditation.

(4) Proof of accreditation shall be provided to the Office of Inspector General:

(a) Upon receiving accreditation; and

(b) At the time of annual renewal.

(5) If an ambulatory infusion agency loses its accreditation or becomes accredited by a different accrediting organization, the licensee shall notify the Office of Inspector General no later than thirty (30) days from the date that:

(a) The licensee's accreditation was terminated; or

(b) Accreditation by a different organization that meets the requirements of 42 C.F.R. 488.1000 to 488.1050 took effect.

(6) The cabinet shall revoke a license if an ambulatory infusion agency fails to meet one (1) of the following requirements:

(a) Become accredited in accordance with subsection (1)(c) of this section;

(b) Request an extension in accordance with subsection (2) of this section;

(c) Achieve accreditation within two (2) years from the date of initial, provisional licensure if a request for extension is submitted; or

(d) Maintain accreditation.

Section 4. Inspections. (1) If an ambulatory infusion agency demonstrates evidence of full accreditation, the annual renewal process shall not require an on-site survey by the cabinet.

(2) Nothing in this administrative regulation shall prevent the cabinet from:

(a) Conducting an investigation related to a complaint; or

(b) Making an on-site survey of a fully accredited ambulatory infusion agency if the cabinet deems necessary.

Section 5. Administration and Operation. (1) Licensee. The licensee shall be legally responsible for:

(a) The operation of the ambulatory infusion agency;

(b) Ensuring compliance with federal, state, and local laws and administrative regulations pertaining to the operation of the agency;

(c) Designating an administrator who shall be responsible for the daily operation of the agency;

(d) Establishing and implementing written administrative policies covering all aspects of operation, including:

1. A description of the agency's organizational structure, staffing, and allocation of responsibility and accountability;

2. Procedures for the evaluation of personnel performance; and

3. A narrative describing in detail:

a. The services offered by the agency; and

b. Qualifications of personnel involved in the delivery of services, including verification that each nurse employed directly or by contract has a license in good standing from the Kentucky Board of Nursing;

(e) Establishing procedures for the handling and administration of drugs and biologicals;

(f) Developing written infection control policies that are consistent with Centers for Disease Control guidelines, available at <https://www.cdc.gov/infectioncontrol/pdf/guidelines/environmental-guidelines-P.pdf>, including:

1. Prevention of disease transmission; and

2. Cleaning, disinfection, and sterilization methods used for equipment and the environment; and

(g) Establishing guidelines to ensure the coordination of treatment with other health facilities and practitioners that deliver services to patients of the agency.

(2) Background checks. All owners and agency personnel in a position that involves providing direct services shall:

(a) Have a criminal record check performed upon initial hire through the Administrative Office of the Courts or the Kentucky State Police;

(b) Not have a criminal conviction, or plea of guilty, to a:

1. Sex crime as specified in KRS 17.500(8);

2. Violent crime as specified in KRS 439.3401;

3. Felony offense related to:

a. Theft;

b. Abuse, possession, or sale of illegal drugs; or

c. Abuse, neglect, or exploitation of a child or an adult; or

4. Misdemeanor offense related to abuse, neglect, or exploitation of a child or an adult; and

(c) Not be listed on the following:

a. Central registry established by 922 KAR 1:470;

b. Nurse aide or home health aide abuse registry established by 906 KAR 1:100; or

c. Caregiver misconduct registry established by 922 KAR 5:120.

(3) Personnel record. A personnel record shall be kept on each staff member and shall contain the following items:

(a) Name and address;

(b) Verification of all training and experience, including documentation of the employee's professional licensure status, if applicable;

(c) Verification of submission to the background check requirements of subsection (2) of this section;

(d) Annual performance appraisals; and

(e) Employee incident reports.

Section 6. Patient records. (1) Ownership.

(a) Medical records shall be the property of the ambulatory infusion agency.

(b) The original medical record shall not be removed except by court order.

(c) Copies of medical records or portions thereof may be used and disclosed in accordance with the requirements established in this administrative regulation.

(2) Confidentiality and Security: Use and Disclosure.

(a) The agency shall maintain the confidentiality and security of patient records in compliance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. 1320d-2 to 1320d-8, and 45 C.F.R. Parts 160 and 164, as amended, including the security requirements mandated by subparts A and C of 45 C.F.R. Part 164, or as provided by applicable federal or state law.

(b) The agency may use and disclose patient records. Use and disclosure shall be as established or required by HIPAA, 42 U.S.C. 1320d-2 to 1320d-8, and 45 C.F.R. Parts 160 and 164, or as

established in this administrative regulation.

(c) An ambulatory infusion agency may establish higher levels of confidentiality and security than those required by HIPAA, 42 U.S.C. 1320d-2 to 1320d-8, and 45 C.F.R. Parts 160 and 164.

(d) Retention of records. After a patient's death or discharge, the completed medical record shall be placed in an inactive file and retained for at least:

1. Six (6) years; or

2. Three (3) years after the patient reaches the age of majority in accordance with KRS 2.015, whichever is longer.

(3) The agency shall:

(a) Designate a specific location for the maintenance and storage of the agency's medical records;

(b) Have provisions for storage of medical records in the event the agency ceases to operate; and

(c) Safeguard the record and its content against loss, defacement, or tampering.

Section 7. Material Incorporated by Reference. (1) The form, OIG 008, "Application for License to Operate an Ambulatory Infusion Agency", September 2019 edition, is incorporated by reference.

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

STEVEN D. DAVIS, Inspector General

ADAM M. MEIER, Secretary

APPROVED BY AGENCY: September 6, 2019

FILED WITH LRC: September 13, 2019 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on November 25, 2019, at 9:00 a.m. in Suites A & B, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by November 18, 2019, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until November 30, 2019. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. In accordance with KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: Donna Little, Deputy Executive Director, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 4062, phone 502-564-6746, fax 502-564-7091, email CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Stephanie Brammer-Barnes, email: stephanie.brammer@ky.gov; and Donna Little

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes minimum licensure requirements for the operation of ambulatory infusion agencies that provide infusion therapy services in a patient's home or in an ambulatory infusion center.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 216B.042(1), which requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary for the proper administration of the licensure function, including licensure standards and procedures to ensure safe, adequate, and

efficient health services. Moreover, it is important to note that infusion nursing services provided in accordance with this new administrative regulation are fundamentally different from home health nursing services, private duty nursing services, and other nursing services provided in outpatient clinics. The infusion nurse has specialized training and unique knowledge of, and experience in, vascular access devices (catheters) and maintenance, self-administration of sterile medications, preventing catheter infection and occlusion, patient education regarding the access device and infusion therapy, and maintaining a safe infusion environment in the home if infusion therapy is provided in the patient's place of residence. This new licensure category is therefore necessary to address gaps in the Cabinet's current licensure levels by establishing standards applicable to the provision of home infusion nursing services or infusion nursing services provided in an ambulatory infusion center.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 216B.042(1) by establishing standards for licensed ambulatory infusion agencies. Moreover, this administrative regulation aligns with the requirements of 42 C.F.R. 486.500 – 486.525, the Federal regulations that establish health and safety standards for home infusion therapy suppliers as a condition of participation in the Medicare program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing standards for licensed ambulatory infusion agencies. The provision of infusion therapy services in a patient's home or an ambulatory infusion center increases convenience and is a less costly alternative to treatment in a hospital.

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

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will impact entities seeking licensure as an ambulatory infusion agency. The Cabinet is aware of at least four (4) entities that may apply for licensure as an ambulatory infusion agency within the first year of implementation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Entities seeking licensure as an ambulatory infusion agency:

1. Shall furnish infusion therapy services to an individual with an acute or chronic condition that requires administration of infusion drugs in the home or an ambulatory infusion center;

2. Shall ensure the safe and effective provision and administration of infusion therapy services on a seven (7) day-a-week, twenty-four (24) hour-a-day basis, if provided in the patient's home;

3. Shall be accredited by a national accrediting organization that meets the requirements of 42 C.F.R. 488.1000 to 488.1050 within one (1) year of initial, provisional licensure;

4. Shall ensure that each patient's plan of care is established by a physician;

5. Shall provide the skilled nursing services component of infusion therapy services in accordance with the patient's plan of care;

6. May provide other professional services in addition to skilled nursing services, such as pharmacy services or durable medical equipment as required for the delivery of infusion therapy services;

7. Shall ensure compliance with federal, state, and local laws and administrative regulations pertaining to the operation of the agency;

8. Shall designate an administrator who is responsible for the daily operation of the agency;

9. Shall establish and implement written administrative policies covering all aspects of operation;

10. Shall establish procedures for the handling and administration of drugs and biologicals;

11. Shall establish written infection control policies that are consistent with the Centers for Disease Control guidelines;

12. Shall establish guidelines to ensure the coordination of treatment with other health facilities and practitioners that deliver services to patients of the agency; and

13. Shall ensure that all personnel in a position involving the provision of direct services shall submit to pre-employment background checks.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The Cabinet is not able to determine with accuracy how much it costs to set up a home or ambulatory infusion center, including costs for medical equipment, pharmaceuticals, and general operating expenses.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The licensure of ambulatory infusion agencies will help ensure adequate access to infusion therapy services provided in a patient's home or an ambulatory infusion center.

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

(a) Initially: There are no additional costs to the cabinet for implementation of this administrative regulation.

(b) On a continuing basis: There are no additional costs to the cabinet for implementation of this administrative regulation on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State general funds and agency monies will be used to implement and enforce this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Entities seeking licensure as an ambulatory infusion agency will be subject to a fee of \$500 for initial licensure and annual renewal. A licensee's change of name shall be subject to a twenty-five (25) dollar processing fee and a change of location shall be subject to a \$100 processing fee.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: Entities seeking licensure as an ambulatory infusion agency will be subject to a fee of \$500 for initial, provisional licensure and annual renewal.

(9) TIERING: Is tiering applied? Tiering is not applicable as compliance with this administrative regulation applies equally to all individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts entities seeking licensure as an ambulatory infusion agency and the Cabinet for Health and Family Services, Office of Inspector General.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216B.042(1), 42 C.F.R. 486.500 – 486.525

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

the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will generate an initial and annual licensing fee of \$500 for each entity licensed as an ambulatory infusion agency.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will generate an initial and annual licensing fee of \$500 for each entity licensed as an ambulatory infusion agency.

(c) How much will it cost to administer this program for the first year? This amendment imposes no additional costs on the administrative body.

(d) How much will it cost to administer this program for subsequent years? This amendment imposes no additional costs on the administrative body.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 42 C.F.R. 486.500 – 486.525, 42 C.F.R. 488.1000 – 488.1050, 45 C.F.R. Parts 160, 164, 42 U.S.C. 1320d-2 - 1320d-8

(2) State compliance standards. KRS 216B.042

(3) Minimum or uniform standards contained in the federal mandate. 42 C.F.R. 486.500 – 486.525 establishes the conditions that home infusion therapy suppliers must meet in order to participate in the Medicare program. The conditions for Medicare participation are considered necessary to ensure the health and safety of patients.

42 C.F.R. 488.1000 – 488.1050 sets forth the:

1. Application and reapplication procedures for national accrediting organizations seeking approval or reapproval of authority to accredit qualified home infusion therapy suppliers;

2. Ongoing Centers for Medicare and Medicaid (CMS) oversight processes for approved accrediting organizations that accredit qualified home infusion therapy suppliers; and

3. Appeal procedures for accrediting organizations that accredit qualified home infusion therapy suppliers.

45 C.F.R. 160, 164, and 42 U.S.C. 1320d-2 – 1320d-8 establish the HIPAA privacy rules to protect individuals' medical records and other personal health information.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation does not impose requirements that are more strict than federal laws or regulations.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of September 16, 2019

Call to Order and Roll Call

The September meeting of the Administrative Regulation Review Subcommittee was held on Monday, September 16, 2019 at 10:00 a.m. in Room 149 of the Capitol Annex. Representative Hale, Co-Chair, called the meeting to order, the roll call was taken. The minutes of the August 2019 were approved.

Present were:

Members: Senators Perry Clark, 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: Rosemary Holbrook, Personnel Cabinet; Todd Renner, Department of Revenue; Ryan Barrow, Office of Financial Management; Anthony Grey, Larry Hadley, Board of Pharmacy; Marc Manley, Board of Cosmetology; David Trimble, Board of Embalmers and Funeral Directors; Ron Brooks, Brent McCarty, Steven Phillips, Paul Wikes, Karen Waldrop, Department of Fish and Wildlife Resources; Jason Glass, Clint Quarles, Department of Agriculture; Sean Alteri, Amanda LeFevre, Department of Environmental Protection; Amy Barker, Brandon Lynch, Department of Corrections; William Codell, Lori Bradbury-Robinson; Tamara Hart, Elise Marti, Department of Juvenile Justice; Todd Allen, Steve Lyles, Department of Education; Michael Nemes, Bridget Papalia, Brooken Smith, Education and Workforce Development Cabinet; Joe Donohue, Department of Financial Institutions; Erica Brakefield, Julie Brooks, Leanna Caven, Frank Jackson, Devon McFadden, Department for Public Health; Stephanie Brammer-Barnes, Steven Davis, Office Inspector General; Jonathan Scott, Department for Medicaid Services; Shannon Gadd, Jessica Wayne, Tonia Wells, Department for Aging and Independent Living; Erika Bauford, Laura Begin, Kristy Kidd, Department for Community Based Services; Shawn Cox, William Dolan, Jon Dougherty, Ankur Gopal, Betsy Johnson, Joe Jurgensen, Marc Wilson, and Ron Wolf.

The Administrative Regulation Review Subcommittee met on Monday, September 16, 2019, and submits this report:

Administrative Regulations Reviewed by the Subcommittee:

PERSONNEL CABINET: Classified

101 KAR 2:102. Classified leave general requirements. Mary Elizabeth Bailey, commissioner, and Rosemary Holbrook, general counsel, represented the cabinet.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Unclassified

101 KAR 3:015. Leave requirements for unclassified service.

FINANCE AND ADMINISTRATION CABINET: Department of Revenue: Sales and Use Tax; Registration and Collection

103 KAR 25:131. Current month accelerated payment of sales and use taxes by larger taxpayers. 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 the RELATES TO; STATUTORY AUTHORITY; and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 2, 5, and 6 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Sales and Use Tax; Service and Professional Occupations

103 KAR 26:070. Contractors.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 through 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 26:090. Veterinarians and pet care providers.

A motion was made and seconded to approve the following amendments: to amend the TITLE; the RELATES TO 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.

Sales and Use Tax; Miscellaneous Retailer Occupations

103 KAR 27:180. Vending machines.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY paragraph and Sections 1, 2, and 4 through 6 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Sales and Use Tax; Miscellaneous Retail Transactions

103 KAR 28:010. Admissions.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and STATUTORY AUTHORITY paragraphs and Sections 1 through 4 and 6 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Sales and Use Tax; General Exemptions

103 KAR 30:170. Containers, wrapping, and packing materials.

A motion was made and seconded to approve the following amendments: to amend Sections 1 and 4 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Selective Excise Tax; Cigarettes

103 KAR 41:220. Applications, stamp orders, returns, reports, and statements to be filed electronically – waiver.

In response to a question by Co-Chair Hale, Mr. Renner stated that this administrative regulation did not adjust the cigarette tax. This administrative regulation required cigarette vendors to report tax information electronically in order to improve efficiency.

Office of Financial Management: State Investment Commission

200 KAR 14:201. Repeal of 200 KAR 014:200. Ryan Barrow, executive director, represented the commission.

BOARDS AND COMMISSIONS: Board of Pharmacy

201 KAR 2:165. Transfer of prescription information. Anthony Gray, general counsel, and Larry Hadley, executive director, represented the board.

Board of Cosmetology

201 KAR 12:030. Licensing, permits, and examinations. Marc Manley, counsel, represented the board.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph, Sections 9 through 11 and 20, and material incorporated by reference to comply with the drafting requirements of KRS Chapter 13A; and (2) to amend Section 14 to authorize a designee of the board inspector and board administrator to conduct an inspection of a school. Without objection, and with agreement of the agency, the amendments were approved.

Board of Embalmers and Funeral Directors

201 KAR 15:010. Definitions. David Trimble, general counsel, represented the board.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 15:015. Per Diem compensation of board members.

201 KAR 15:030. Fees.

In response to questions by Representative Marzian, Mr. Trimble stated that fee increases applied to licensees and funeral establishments. Fee increases ranged from twenty-five (25) dollars to fifty (50) dollars yearly, which raised fees to the statutory caps.

A motion was made and seconded to approve the following amendments: to amend Section 8 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency the amendments were approved.

201 KAR 15:040. Examination.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY paragraph and Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 15:050. Apprenticeship and supervision requirements.

A motion was made and seconded to approve the following amendments: to amend Sections 3, 4, and 6 and 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.

201 KAR 15:080. Complaints.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY paragraph and Sections 1 and 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 15:110. Funeral establishment criteria.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY paragraph; Sections 1 through 3, 5, 7, 10, and 11; and 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.

201 KAR 15:120. Requirements for applicants holding a license in another state.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY paragraph and Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 15:125. Surface Transportation Permit.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph; Sections 1 through 3 and 5; and material incorporated by reference to comply with the drafting

requirements of KRS Chapter 13A; and (2) to add a section to establish a renewal process and renewal fee for a Surface Transportation Permit. Without objection, and with agreement of the agency, the amendments were approved.

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

301 KAR 1:185. Pay lakes. Ron Brooks, director, Fisheries Division; Brent McCarty, branch manager, Recruitment, Retention, and Reactivation Branch; Steven Phillips, staff attorney; and Karen Waldrop, deputy commissioner, represented the department.

A motion was made and seconded to approve the following amendments: (1) to amend Section 3 to comply with the drafting requirements of KRS Chapter 13A; and (2) to make technical changes to the agency contact information. Without objection, and with agreement of the agency, the amendments were approved.

301 KAR 1:201. Taking of fish by traditional fishing methods.

A motion was made and seconded to approve the following amendments: to make technical changes to the agency contact information. Without objection, and with agreement of the agency, the amendments were approved.

301 KAR 1:410. Taking of fish by nontraditional fishing methods.

A motion was made and seconded to approve the following amendments: to make technical changes to the agency contact information. Without objection, and with agreement of the agency, the amendments were approved.

GENERAL GOVERNMENT: Department of Agriculture: Kentucky Grain Insurance and Grain Dealers

302 KAR 34:011. Repeal of 302 KAR 034:010, 302 KAR 034:020, 302 KAR 034:030, 302 KAR 034:040, 302 KAR 034:050, and 302 KAR 034:060. Jason Glass, director, and Clint Quarles, staff attorney, represented the department.

Grain Storage

302 KAR 35:011. Repeal of 302 KAR 035:020, 302 KAR 035:030, 302 KAR 035:040, 302 KAR 035:050, 302 KAR 035:060, and 302 KAR 035:070.

Bond and Grain Fund Distribution

302 KAR 36:011. Repeal of 302 KAR 036:010.

Regulation and Inspection; Packaging and Labeling

302 KAR 75:130. Packaging and labeling.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 and 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Regulation and Inspection; Method of Sale

302 KAR 76:100. Method of sale.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 and 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Regulation and Inspection; Scanner

302 KAR 80:010. Examination procedure for price verification.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 through 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Regulation and Inspection; Commercial Weighing and Measuring Devices

302 KAR 81:010. Technical requirements for commercial weighing and measuring devices.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 4 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

ENERGY AND ENVIRONMENT CABINET: Department for Environmental Protection: Division of Water: Water Quality

401 KAR 5:010. Operation of wastewater systems by certified operators. Sean Alteri, deputy commissioner, and Amanda LeFevre, director, represented the division.

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.

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.

A motion was made and seconded to approve the following amendment: to amend Section 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendment was approved.

401 KAR 11:040. Water treatment and distribution system operators; classification and qualifications.

A motion was made and seconded to approve the following amendment: to amend Section 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendment was approved.

401 KAR 11:050. Operator and training provider certification.

401 KAR 11:060. Operator and training provider certification fees.

JUSTICE AND PUBLIC SAFETY CABINET: Department of Corrections: Office of the Secretary

501 KAR 6:110. Roederer Correctional Complex. Amy Barker, assistant general counsel, and Brandon Lynch, program administrator, represented the department.

A motion was made and seconded to approve the following amendments: to amend Section 1 and Policy 16-01-01 to revise inmate visiting procedures, including: (1) establishing a two (2) hour limit for permanent inmates; (2) specifying that accepting additional visitors shall not restart the time limit; (3) prohibiting visitor movement during count times; (4) increasing the number of night-visit inmates from fifteen (15) to twenty-one (21); and (5) replacing a set time for night visits with a posted time. Without objection, and with agreement of the agency, the amendments were approved.

Department of Juvenile Justice: Child Welfare

505 KAR 1:160. Department of Juvenile Justice Policy and Procedures Manual: juvenile sexual offender treatment program. William Codell, attorney; Lori Bradbury – Robinson, licensed psychologist and program administrator; Tamara Hart, licensed psychological associate; and Elise Marti, staff attorney, represented the department.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY paragraph, Section 1, and 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.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET: Board of Education: Department of Education: Office of Chief State School Officer

701 KAR 5:090. Teacher disciplinary hearings. Todd Allen, deputy general counsel, represented the office.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY paragraph and Sections 1, 2, and 5 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Office of District Support Services: School Administration and Finance

702 KAR 3:130. Internal accounting.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Apprenticeship Standards

787 KAR 3:010. Registration of apprenticeship programs. Michael Nemes, deputy secretary; Bridget Papalia, general counsel; and Brooken Smith, chief of staff, represented the department. Shawn Cox, director of external affairs, Ion Apex Electric; Jon Dougherty, education director, AMTECK; Ankur Gopal, CEO, Interapt LLC; Marc Wilson, Top Shelf Lobby, LLC and Associated Builders and Contractors; and Ron Wolf, director of external relations, AGC of Kentucky, appeared in support of this administrative regulation.

In response to a question by Co-Chair Hale, Mr. Nemes stated that changes applied to the Registered Apprenticeship Program only. This did not affect licensing policy and was a superior training program. Businesses were having difficulty finding skilled workforces, especially in the areas of electrical work, carpentry, and plumbing. Kentucky apprenticeship requirements were burdensome and hindered developing the needed skilled workforces. The Registered Apprenticeship Program established safe and efficient training.

In response to a question by Co-Chair Hale, Mr. Smith stated that these changes adjusted journeyworker to apprentice ratio requirements. The proposed baseline ratio would be one (1) apprentice per journeyworker and authorized a second apprentice once the first had over 2,000 on-the job experience hours. Only low and medium-risk occupations were eligible for the ratio modifications. Changes did not impact more stringent employer requirements or collective bargaining agreements that established different ratios.

In response to a question by Co-Chair Hale, Mr. Gopal stated that the Registered Apprenticeship Program was a successful model for developing a workforce with the needed aptitude. This model allowed Interapt LLC to remain in Louisville, rather than the company seeking a workforce elsewhere.

In response to a question by Co-Chair Hale, Mr. Wilson stated that Top Shelf Lobby, LLC, supported the Registered Apprenticeship Program because this was the exact remedy needed to solve Kentucky's workforce crisis.

In response to a question by Co-Chair Hale, Mr. Cox stated that Ion Apex Electric supported the Registered Apprenticeship Program because the shortage of skilled workers in the trades was becoming more pronounced. This was a step forward to alleviate the shortage and provide quality career paths.

In response to a question by Co-Chair Hale, Mr. Wolf stated that AGC of Kentucky supported the Registered Apprenticeship Program because American economic leadership depended on a skilled workforce, especially in the commercial construction industry.

In response to a question by Co-Chair Hale, Mr. Dougherty stated that AMTECK was concerned that Kentucky law allowed, except for prevailing wage or state-funded projects, an unrestricted number of unlicensed electrical workers as long as there was at least one (1) licensed electrician. The Registered Apprenticeship

Program would incentivize companies to more appropriately train employees.

Representative Frazier stated that she fully supported the Registered Apprenticeship Program.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY paragraph and Sections 1, 2, and 6 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Department of Financial Institutions: Administration

808 KAR 1:170. Licensing and registration. Joe Donohue, general counsel, represented the department.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY paragraph and Sections 1 through 4, 8, 10, and 11 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Check Cashing

808 KAR 9:050. Licensee change of control.

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. Erica Brakefield, section supervisor; Julie Brooks, regulation coordinator; and Leanna Caven, program evaluator, represented the division.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 2, 4 through 9, 14, 16 through 18, 20, and 22 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 Public Health: Division of Prevention and Quality Improvement: Programs for the Underserved

902 KAR 21:020. Kentucky Colon Screening Program. Julie Brooks, regulation coordinator, Devon McFadden, director, represented the division.

Division of Public Health Protection and Safety: Milk and Products

902 KAR 50:003. Repeal of 902 KAR 050:002. Julie Brooks, regulation coordinator, and Frank Jackson, program evaluator, represented the division.

902 KAR 50:005. Milk Advisory Committee.

Office of Inspector General: Division of Audits and Investigations: Controlled Substances

902 KAR 55:120. Disposal of prescription controlled substances. Stephanie Brammer – Barnes, regulation coordinator; Steve Davis, inspector general; and Jill Lee, pharmacist consultant, represented the division.

Department for Medicaid Services: Division of Fiscal Management: Hospital Service Coverage and Reimbursement

907 KAR 10:830 & E. Acute care inpatient hospital reimbursement. Jonathan Scott, regulatory and legislative advisor, represented the division.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs and Sections 1, 2, and 7 to comply with the drafting requirements of KRS Chapter 13A; (2) to amend Section 7 to clarify that Worksheet B is part of the CMS 2552 cost report; and (3) to amend Sections 2 and 7 to require, effective beginning May 10, 2019, pursuant to federal approval, that the department shall make the annual IME payment to state university teaching hospitals and provide a supplemental DGME payment for the direct costs of graduate medical education incurred by eligible in-state hospitals. Without objection, and with agreement of the agency, the amendments were approved.

Department for Aging and Independent Living: Division of Guardianship

910 KAR 2:040. Service provisions for adult guardianship. Shannon Gadd, commissioner; Jessica Wayne, assistant director; and Tonia Wells, director, represented the division. William Dolan, attorney, Kentucky Protection and Advocacy, appeared in opposition to this administrative regulation.

In response to a question by Representative Frazier, Ms. Wells stated that DNR orders and end-of-life decisions were person centered and physician directed. Family were notified and given an opportunity to provide feedback. If there was a conflict, guardianship procedures were discussed. At least two (2) physicians were included in the process.

In response to a question by Co-Chair Hale, Mr. Dolan stated that Kentucky Protection and Advocacy was concerned that guardian visits were going from four (4) required visits to just one (1). Guardians previously were required to procure services, while the new provisions were more of a sign off on case manager decisions. Kentucky Protection and Advocacy also had concerns regarding birth control provisions. Only one (1), rather the previous two (2) physicians, was required for a DNR situation.

In response to a question by Co-Chair Hale, Ms. Gadd stated that the change in guardian visit requirements was for the purposes of adding flexibility. Individuals under guardianship were under a wide variety of situations. The securing of services component was for compliance with the nationally recognized Uniform Act. Ms. Wells stated that birth control was a medical decision and medical decisions were made by guardians. These were physician based for various health reasons. Ms. Gadd and Ms. Wells stated that the change in the number of physicians required for a DNR was an access issue, especially in rural areas where it was difficult to timely consult two (2) physicians.

Co-Chair Hale encouraged the agency to continue dialogue with Mr. Dolan.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Sections 3, 4, and 15 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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

922 KAR 1:470. Central registry. Erika Bauford, section supervisor; Laura Begin, regulation coordinator; and Kristy Kidd, adoption specialist, represented the division.

Child Welfare

922 KAR 1:560. Putative father registry and operating procedures.

A motion was made and seconded to approve the following amendments: to amend material incorporated by reference. Without objection, and with agreement of the agency, the amendments were approved.

922 KAR 1:565. Service array for a relative or fictive kin caregiver.

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.

The following administrative regulations were deferred or removed from the September 16, 2019, subcommittee agenda:

COUNCIL ON POST SECONDARY EDUCATION: Nonpublic Colleges

13 KAR 1:020. Private college licensing.

STATE BOARD OF ELECTIONS: Forms and Procedures

31 KAR 4:120. Additional and emergency precinct officers.

FINANCE AND ADMINISTRATION CABINET: Teachers' Retirement System: General Rules

102 KAR 1:032. Bona Fide Retirement.

BOARDS AND COMMISSIONS: Board of Pharmacy

201 KAR 2:095. Pharmacist interns.

Board of Dentistry

201 KAR 8:540. Dental practices and prescription writing.

Real Estate Authority: Real Estate Commission

201 KAR 11:002. Repeal of 201 KAR 011:030, 201 KAR 011:045, 201 KAR 011:062, 201 KAR 011:090, 201 KAR 011:095, 201 KAR 011:100, 201 KAR 011:110, 201 KAR 011:115, 201 KAR 011:135, 201 KAR 011:145, 201 KAR 011:147, 201 KAR 011:175, 201 KAR 011:180, 201 KAR 011:195, 201 KAR 011:215, 201 KAR 011:225, 201 KAR 011:230, 201 KAR 011:232, 201 KAR 011:235, 201 KAR 011:240, 201 KAR 011:245, 201 KAR 011:250, 201 KAR 011:300, 201 KAR 011:350, 201 KAR 011:400, 201 KAR 011:410, 201 KAR 011:440, 201 KAR 011:450, and 201 KAR 011:460.

Real Estate Commission

201 KAR 11:011. Definitions for 201 KAR Chapter 011.

201 KAR 11:105. Advertising.

201 KAR 11:121. Standards of professional conduct.

201 KAR 11:170. Education provider requirements.

201 KAR 11:190. Consumer and administrative complaints; discipline; administrative hearings.

201 KAR 11:210. Licensing, education, and testing requirements.

201 KAR 11:220. Errors and omissions insurance requirements.

201 KAR 11:461. Repeal of 201 KAR 011:420.

Real Estate Appraisers

201 KAR 30:130. Education provider, instructor, and course. Tony Cotto, executive advisor, Public Protection Cabinet, and Marc Manley, acting general counsel, represented the board.

In response to a question by Co-Chair Hale, Mr. Manley requested that this administrative regulation be deferred to the October meeting of the subcommittee. Without objection, and with agreement of the agency, this administrative regulation was deferred.

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

301 KAR 2:185. Hunter education. Ron Brooks, director, Fisheries Division; Brent McCarty, branch manager, Recruitment, Retention, and Reactivation Branch; Steven Phillips, staff attorney; and Karen Waldrop, deputy commissioner, represented the department.

In response to questions by Representative Turner, Mr. McCarty stated that twenty-two (22) other states authorized hunter certification without an in-person course or range day. The department reached out to those states and, of those who responded, data indicated an increased number of certified hunters and a decrease in adverse hunting-related incidents. This administrative regulation would allow hunters to become certified via on-line courses. Because on-line certification would be convenient, previously exempt landowners hunting on their own property and born on or after January 1, 2002, would be required to be certified. Live-fire training for hunter certification would be optional, rather than mandatory.

Representative Turner stated that he was opposed to this policy because, during a time of debate regarding gun violence in America, the department might be taking away the one (1) chance

many youth would have for live-fire training pertaining to firearm safety. In response, Ms. Waldrop stated that many in-person course and range days provided little in-depth firearm handling. For example, firing an air rifle at a state fair would qualify for hunter certification. Often a youth would only handle a firearm once or twice at an in-person course or range day. The department intended to establish a more rigorous in-person course or range day for those hunters who so opted. Hunters could bring their personal firearms in order to gain better training regarding the circumstances they might encounter. Courses could be made better if there were fewer of them. Representative Turner stated that the department seemed to be suggesting that a hunter could be more acclimated to firearms through an on-line experience, rather than an in-person course or range day. In response, Ms. Waldrop stated that the on-line course was focused on firearm safety and other hunter safety issues, rather than firearm handling. Representative Turner stated that it seemed almost superfluous to require hunter certification at all without the live-fire handling component.

In response to a question by Representative Turner, Ms. Waldrop stated that the department was not making this proposal in order to procure federal matching funds, rather to remove barriers to hunter certification. Travel, time, and cost had become barriers to attaining hunter certification. An in-person course or range day would still be available for those who opted to attend. These courses would be more rigorous than many current events. Representative Turner stated that the live-fire requirement could save lives. In response, Mr. McCarty stated that, based on data that indicated that on-line courses reduced adverse hunting-related incidents, the failure to remove the requirement could itself result in adverse hunting-related incidents. Indiana had been implementing a similar policy since 2004 and had a decrease in adverse hunting-related incidents. The choice was between firearm training and quality firearm training. Ms. Waldrop stated that it was the goal of the department to properly train hunters and increase hunting opportunities.

In response to questions by Representative Frazier, Mr. McCarty stated that initially the department expected to lose money as a result of this policy because federal matching funds were not available for donated courses. The NRA had donated a free on-line course. Since that time, it was determined that federal matching funds could be used for donated courses. Ms. Waldrop stated that the department expected funding levels pursuant to this policy to be similar to previous levels and funding was not a component in the department's decisions regarding this policy. The department expected the policy to encourage more people to become hunter certified. Mr. McCarty stated that the other states that had implemented this policy initially experienced an upsurge in certifications due to noncompliant hunters opting to become certified due to the added convenience. The uptick was not necessarily due to new hunters. Typically, fifty (50) percent of hunters seeking certification still opted to take the in-person course or range day.

In response to questions by Co-Chair West, Ms. Waldrop stated that landowners hunting on their own property were previously exempt from hunter certification requirements. This policy change would require hunter certification for landowners hunting on their own land; however, it would only apply to those born on or after January 1, 2002. Mr. McCarty stated that these policy changes had significant support from stakeholders. Data indicated that on-line hunter certification resulted in more certified hunters and fewer adverse hunting-related incidents. Typically, most states experienced about a fifty (50) percent decrease in attendance of the in-person courses or range days. Ms. Waldrop stated that in-person courses and range days would still be available and would be more rigorous than in the past.

In response to a question by Representative Turner, Ms. Waldrop stated that, when she testified that federal matching funds were not an issue, the intention of the statement was that federal matching funds were not an issue in the policy-making decision. The department did expect federal matching funds. Mr. McCarty stated that the decision was based on increasing safety, even to the point when the department expected to lose money, although that was not now the case.

Representative Turner stated that it was important for every youth to have as much training in hunter safety as possible, especially with the level of gun violence in America. This policy would undermine youth hunter safety training. Representative Turner stated that, in good conscience, he could not support this policy. Many youth did not have mentoring regarding firearm safety. It was troubling that an agency would be insensitive to concerns regarding youth safety pertaining to firearms.

Representative Turner made a motion, seconded by Senator Raque Adams, to find this administrative regulation deficient. In response to a question by Co-Chair Hale, Ms. Waldrop requested that this administrative regulation be deferred to the October meeting of the subcommittee and asked the grounds for the finding of deficiency. Representative Turner withdrew the motion to find this administrative regulation deficient and stated that KRS 13A.030(2)(a) authorized the subcommittee to make a nonbinding determination of deficiency and, in this case, the basis was safety concerns. In response to a question by Representative Turner, Ms. Waldrop stated that the commission and sportsmen would need to know the safety concerns basis for a nonbinding determination of deficiency. A motion was made and seconded to defer consideration of this administrative regulation to the October subcommittee meeting. Without objection, and with agreement of the agency, this administrative regulation was deferred.

Co-Chair Hale stated that, while not questioning the department's motive, the perception of this policy seemed unappealing at this time. In response to a question by Senator Clark, staff stated that, if this administrative regulation was deemed deficient by this subcommittee, the Governor would be contacted in accordance with KRS 13A.330. The second committee that would consider this administrative regulation was expected to be the Natural Resources and Energy Committee. Co-Chair West stated that public perception and timing were concerns regarding this administrative regulation. Any administrative regulation should represent the intent of the General Assembly, and the intent of the General Assembly seemed to be, generally, toward more, rather than less firearm education.

A motion was made and seconded to approve the following amendments: to make technical changes to the agency contact information. Without objection, and with agreement of the agency, the amendments were approved.

ENERGY AND ENVIRONMENT CABINET: Department for Environmental Protection: Division of Water: Water Wells

401 KAR 6:001 & E. Definitions for 401 KAR Chapter 006.

401 KAR 6:211. Repeal of 401 KAR 006:200.

401 KAR 6:310 & E. Water supply well construction practices and standards.

401 KAR 6:320 & E. Certification of water well drillers and water well driller assistants.

401 KAR 6:350 & E. Monitoring well construction practices and standards.

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.

Division for Air Quality: Attainment and Maintenance of the National Ambient Air Quality Standards

401 KAR 51:010. Attainment status designations.

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.

Office of the Secretary

501 KAR 6:060. Northpoint Training Center.

501 KAR 6:140. Bell County Forestry Camp.

TRANSPORTATION CABINET: Department of Vehicle Licensing: 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.

ENERGY AND ENVIRONMENT CABINET: Department for Natural Resources: Division of Oil and Gas

805 KAR 1:001. Definitions for 805 KAR Chapter 001.

805 KAR 1:020. Protection of fresh water zones.

805 KAR 1:030. Well location and as-drilled location plat, preparation, form and contents.

805 KAR 1:050. Bonds, requirements, cancellation.

805 KAR 1:060. Plugging wells.

805 KAR 1:080. Gas storage reservoirs; drilling, plugging in vicinity.

805 KAR 1:110. Underground injection control.

805 KAR 1:120. Operating or deepening existing wells and drilling deeper than the permitted depth.

805 KAR 1:140. Directional and horizontal wells.

Division of Oil and Gas

805 KAR 1:170. Content of the operations and reclamation plan.

805 KAR 1:180. Production reporting.

805 KAR 1:190. Gathering lines.

805 KAR 1:200. General information associated with oil and gas permits.

Sanctions and Penalties

805 KAR 9:011. Repeal of 805 KAR Chapter 009.

PUBLIC PROTECTION CABINET: Department of Insurance: Agents, Consultants, Solicitors, and Adjustors

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 009:341.

806 KAR 9:350. Recognition of financial planning certification and designation for receipt of fees and commissions.

CABINET FOR HEALTH AND FAMILY SERVICES: Office of Inspector General: Division of Healthcare: Health Services and Facilities

902 KAR 20:036. Operation and services; personal care homes. Stephanie Brammer – Barnes, regulation coordinator; Kara Daniel, division director; Steven Davis, inspector general; and Wendy Morris, commissioner, represented the division. Betsy Johnson, president, and Joe Jurgensen, administrator, Kentucky Association of Health Care Facilities/Kentucky Center for Assisted Living, appeared in opposition to this administrative regulation.

In response to a question by Co-Chair Hale, Mr. Davis stated that the Office of Inspector General was the oversight agency within the cabinet and licensed child care and health care facilities, including Personal Care Homes (PCHs.) This administrative regulation was the result of a settlement agreement made by the cabinet for which the Office of Inspector General was the enforcement agency; however, the Office of Inspector General did not directly initiate this overall policy. There were two (2) primary types of PCHs, freestanding facilities that served clients with Severe Mental Illness (SMI), which received minimal federal funding, and assisted living-type facilities, which may charge a much higher amount. The cabinet was continuing to develop and reorganize PCH requirements. PCHs were not being expected to provide occupational, physical, or speech therapies. PCHs were expected to provide basic assistance with individuals who were transitioning out of facilities.

In response to questions by Co-Chair Hale, Ms. Morris stated that many initial concerns of stakeholders had been remedied by the Amended After Comments version of this administrative regulation. Required Activities of Daily Living (ADLs) and Instrumental Activities of Daily Living (IADLs) would be provided by existing provider employees and should require minimum burden. The agency planned to record instruction for the convenience of providers and was developing a comprehensive curriculum for training purposes. Reimbursement rates were always an ongoing concern. There were many stakeholders who commented during the public comment period. The agency also worked with Protection and Advocacy to ensure that these requirements and the training curriculum complied with the settlement agreement.

In response to a question by Co-Chair West, Ms. Morris stated that this administrative regulation was narrowly tailored to comply with the settlement agreement, which was an agreement to avoid litigation. The cabinet entered into a settlement agreement with Kentucky Protection and Advocacy based on the Olmstead decision of 1999. In accordance with the Olmstead decision, states were obligated to ensure that clients who did not wish to live in a congregate living system had ample services and supports in the community. The decision did not require the state to move people out, but to ensure that states were not relying exclusively on congregate living systems.

In response to a question by Co-Chair Hale, Ms. Johnson stated that Kentucky Association of Health Care Facilities/Kentucky Center for Assisted Living was opposed to this administrative regulation because the settlement agreement with Kentucky Protection and Advocacy prohibited the cabinet from developing its own policy. Although the terms of the settlement agreement negatively impacted private licensed PCHs and their clients, neither group were included in the settlement agreement process. Public policy should not be developed without all stakeholders having input, and the settlement agreement circumvented KRS Chapter 13A because agency decisions were held captive by the settlement

agreement, which lacked judicial review. This administrative regulation exacerbated the already severe underfunding of PCHs by subverting limited resources to a small group of residents to whom the settlement agreement applied. KRS 13A.270 and 13A.280 established a right for all stakeholders to have the opportunity to comment in a meaningful way regarding proposed administrative regulations. The promulgating agency then issues a Statement of Consideration. The settlement agreement, by limiting the agency's decision-making process, negated meaningful comments and responses pursuant to KRS 13A.270 and 13A.280. Additionally, the agency did not submit the required cost estimate required as part of the REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT. PCHs received forty (40) dollars and forty-seven (47) cents per day, per client and could not afford this unfunded mandate.

In response to a question by Co-Chair Hale, Mr. Jurgensen stated that many of Kentucky's most vulnerable citizens were entrusted into the care of specialized PCHs. For many of these residents with SMIs, no amount of community supports would allow them to live safely independent of a congregate living system. Funding for PCHs was grossly inadequate. PCHs received no more than forty (40) dollars and forty-seven (47) cents per day, per client, but were required to provide client care, quality meals, hygiene products, sponsored activities, assistance with physician services and medication, and assistance with the clients' financial management needs. The daily reimbursement had not been increased since 2006. The average reimbursement was seventeen (17) dollars per day, per client. PCHs operate in a highly regulated environment with low margins. Additional requirements would burden PCHs, which might be forced to close. The estimated cost increase to implement these policy changes was four (4) dollars per day, per client. Most PCHs would be required to add additional staff. Staff were not equipped for these new requirements, and adverse incidents might result. Stakeholders were not included in the settlement agreement.

In response to a question by Co-Chair West, Mr. Jurgensen stated that there were approximately eighty-eight (88) PCHs, including both types. It was likely if this administrative regulation became effective at these rates, that many PCHs would go out of business. Ms. Johnson stated that it would be preferable for the agency to remove the requirements pertaining to ADLs and IADLs. All stakeholders should be included in policy decisions surrounding the settlement agreement. PCHs could not continue to operate on forty (40) dollars and forty-seven (47) cents per day, per client.

In response to a question by Representative Marzian, Mr. Jurgensen stated that the number of clients varied among PCHs. Forty (40) to sixty (60) clients per PCH might be the state average.

In response to questions by Co-Chair Hale, Mr. Nemes stated that the cabinet was aware of some of the challenges PCHs were facing. The cabinet was working toward streamlining and reorganizing requirements. The reimbursements came from the General Fund. There were also inherent legal obstacles to funding. The cabinet did not believe that changes would add significant expenses to PCHs. The ADLs and IADLs were very simple in nature and were not expected to require additional staffing. Ms. Morris stated that there was a 2012 LRC study done regarding PCHs. Unfortunately, there were adverse outcomes for some clients within PCHs and after transitioning out. PCHs sometimes closed because of quality of care problems as well as funding problems. Some other states had similar settlement agreement issues and problems. The number of clients transitioning was very small per facility. Comprehensive training existed outside of this administrative regulation.

In response to questions by Co-Chair West, Mr. Nemes said that the streamlining process would take approximately nine (9) months for development. Many of the issues of concern would remain but would be more isolated. Rehabilitation should be a primary goal for these facilities. The settlement agreement needed to move forward; therefore, removing the requirements of concern for consideration at the 2020 Regular Session of the General Assembly was not preferable to the agency. Ms. Morris stated that these requirements were a small step toward making PCHs more rehabilitative for clients.

Representative Frazier stated that there were concerns about many aspects of this administrative regulation.

In response to a question by Representative Marzian, Ms. Morris stated that the agency expected to ask for increased funding for these and other related programs through DCBS. Mr. Nemes stated that the agency was the enforcement arm of the program, not the budgeting arm.

In response to a question by Co-Chair Hale, the agency agreed to defer consideration of this administrative regulation to the October meeting of the subcommittee. Without objection, and with agreement of the agency, this administrative regulation was deferred.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph; Sections 1 through 4 and 7; and the SMI Screening Form 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 20:370. Operations and services; private duty nursing agencies.

902 KAR 20:430 & E. Facilities specifications, operation and services; behavioral health services organizations for mental health treatment.

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.

Division of Policy and Operations: Behavioral Health

907 KAR 15:005 & E. Definitions for 907 KAR Chapter 015.

907 KAR 15:010 & 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.

907 KAR 15:015 & 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.

907 KAR 15:020 & E. Coverage provisions and requirements regarding services provided by behavioral health services organizations for mental health treatment.

907 KAR 15:022 & E. Coverage provisions and requirements regarding services provided by behavioral health services organizations for substance use disorder treatment and co-occurring disorders.

907 KAR 15:025 & E. Reimbursement provisions and requirements regarding behavioral health services provided by behavioral health services organizations.

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

922 KAR 1:320 & E. Service appeals.

The subcommittee adjourned at 12:50 p.m. The next meeting of the subcommittee is tentatively scheduled for October 8, 2019, at 1 p.m.

OTHER COMMITTEE REPORTS

COMPILER'S NOTE: In accordance with KRS 13A.290(10), the following reports were forwarded to the Legislative Research Commission by the appropriate jurisdictional committees and are hereby printed in the Administrative Register. The administrative regulations listed in each report became effective upon adjournment of the committee meeting at which they were considered.

INTERIM JOINT COMMITTEE ON TRANSPORTATION
Meeting of September 9, 2019

902 KAR 045:070
922 KAR 001:495

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Transportation for its meeting of September 9, 2019, having been referred to the Committee on September 4, 2019, pursuant to KRS 13A.290(6):

601 KAR 009:130
603 KAR 005:150

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2):

None

The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320:

None

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

The following administrative regulations were deferred pursuant to KRS 13A.300:

601 KAR 009:130

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the September 9, 2019 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

**INTERIM JOINT COMMITTEE ON HEALTH, WELFARE, AND
FAMILY SERVICES**
Meeting of September 9, 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 September 9, 2019, having been referred to the Committee on September 9, 2019, pursuant to KRS 13A.290(6):

201 KAR 008:581
902 KAR 002:070
902 KAR 015:010
902 KAR 045:075
902 KAR 045:090
910 KAR 002:020
922 KAR 001:310
922 KAR 001:350

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320:

902KAR 045:065

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the September 9, 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 September 10, 2019

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Natural Resources and Energy for its meeting of September 10, 2019, having been referred to the Committee on September 4, 2019, pursuant to KRS 13A.290(6):

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
301 KAR 001:152
301 KAR 001:152
301 KAR 004:090
401 KAR 058:005
405 KAR 010:001
405 KAR 010:015

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2):

None.

**INTERIM JOINT COMMITTEE ON LICENSING, OCCUPATIONS,
AND ADMINISTRATIVE REGULATIONS**
Meeting of September 11, 2019

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Licensing, Occupations, & Administrative Regulations for its meeting of September 11, 2019, having been referred to the Committee on September 4, 2019, pursuant to KRS 13A.290(6):

201 KAR 030:110
201 KAR 030:190
201 KAR 030:330

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2):

None

VOLUME 46, NUMBER 4– OCTOBER 1, 2019

The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320:

None

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

The following administrative regulations were deferred pursuant to KRS 13A.300:

None

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the September 11, 2019 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

CUMULATIVE SUPPLEMENT

Unless otherwise noted, information contained in these indexes relates only to administrative regulations printed in this, the 46th year of the *Administrative Register of Kentucky*, from July 2019 through June 2020.

Locator Index - Effective Dates

D - 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

D- 10

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

D- 27

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

D - 27

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

D - 28

A general index of administrative regulations published during this *Register* year, and is mainly broken down by agency.

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	45 Ky.R. Page No.	Effective Date	Regulation Number	45 Ky.R. Page No.	Effective Date
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REGISTER YEAR 45

The administrative regulations listed under VOLUME 44 are those administrative regulations that were originally published in Volume 44 (last year's) issues of the *Administrative Register of Kentucky* but had not yet gone into effect when the *2018 Kentucky Administrative Regulations Service* was published.

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 expire 180 days from the date filed; or 180 days from the date filed plus number of days of requested extension, or upon replacement or repeal, whichever occurs first.)

9 KAR 1:010E	3382	5-15-2019
Replaced See 46 Ky.R 405		9-6-2019
9 KAR 1:040E	3383	5-15-2019
Replaced See 46 Ky.R 405		9-6-2019
200 KAR 3:020E	2304	1-4-2019
Replaced See 46 Ky.R 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
Replaced See 46 Ky.R 937		9-9-2019
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
Replaced See 46 Ky.R 521		9-9-2019
922 KAR 1:350E	3033	4-1-2019
Replaced See 46 Ky.R 535		9-9-2019
922 KAR 1:495E	3042	4-1-2019
Replaced See 46 Ky.R 944		9-9-2019

ORDINARY ADMINISTRATIVE REGULATIONS:

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 015:060		
Repealed	3594	9-6-2019
103 KAR 015:061(r)	3594	9-6-2019
103 KAR 017:120		
Repealed	3595	9-6-2019
103 KAR 017:121(r)	3595	9-6-2019
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	9-11-2019
201 KAR 013:040		
Amended	3246	See 46 Ky.R.

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Regulation Number	45 Ky.R. Page No.	Effective Date	Regulation Number	45 Ky.R. Page No.	Effective Date
201 KAR 013:050			302 KAR 016:070		
Amended	3249	8-19-2019	Amended	3506	9-6-2019
201 KAR 013:055			302 KAR 016:091		
Amended	3251	See 46 Ky.R.	Amended	3507	9-6-2019
201 KAR 013:060			302 KAR 016:101		
Amended	3253	See 46 Ky.R.	Amended	3509	9-6-2019
201 KAR 020:370			302 KAR 016:111		
Amended	3469	See 46 Ky.R.	Amended	3510	See 46 Ky.R.
201 KAR 020:506			302 KAR 016:121		
Amended	3471	8-19-2019	Amended	3511	See 46 Ky.R.
201 KAR 022:135			302 KAR 016:131		
Amended	3258	7-19-2019	Amended	3513	See 46 Ky.R.
201 KAR 023:150	1459		302 KAR 078:020		
Withdrawn		7-30-2019	Repealed	3598	9-6-2019
201 KAR 025:062(r)	3597		302 KAR 078:021(r)	3598	9-6-2019
Withdrawn		7-2-2019	302 KAR 101:010	3599	See 46 Ky.R.
201 KAR 025:090			401 KAR 5:010		
Amended	3472	See 46 Ky.R.	Amended	3514	
201 KAR 041:020			401 KAR 008:030		
Amended	3475	9-6-2019	Amended	3516	See 46 Ky.R.
201 KAR 041:030			401 KAR 008:050		
Amended	3477	See 46 Ky.R.	Amended	3519	See 46 Ky.R.
201 KAR 041:040			401 KAR 011:001		
Amended	3478	See 46 Ky.R.	Amended	3522	See 46 Ky.R.
201 KAR 041:060			401 KAR 011:030		
Amended	3480	9-6-2019	Amended	3524	See 46 Ky.R.
201 KAR 041:065			401 KAR 011:040		
Amended	3482	See 46 Ky.R.	Amended	3527	See 46 Ky.R.
201 KAR 041:070			401 KAR 011:050		
Amended	3483	See 46 Ky.R.	Amended	3531	See 46 Ky.R.
201 KAR 041:080			401 KAR 011:060		
Amended	3486	See 46 Ky.R.	Amended	3535	See 46 Ky.R.
201 KAR 046:010			405 KAR 010:001		
Amended	2967		Amended	2979	See 46 Ky.R.
As Amended	3403	7-5-2019	405 KAR 010:015		
201 KAR 046:020			Amended	2982	See 46 Ky.R.
Amended	2970	7-5-2019	500 KAR 009:011(r)	3354	
201 KAR 046:030			500 KAR 0015:010	3355	
Amended	2971	7-5-2019	601 KAR 002:030		
201 KAR 046:040			Withdrawn		8-7-2019
Amended	2972	7-5-2019	704 KAR 003:303		
201 KAR 046:045			Amended	2987	
Amended	2975	7-5-2019	As Amended	3410	7-5-2019
201 KAR 046:081			704 KAR 008:060	2810	
Amended	2976	7-5-2019	Am Comments	3193	
202 KAR 003:010			As Amended	3410	7-5-2019
Amended	3259	9-6-2019	803 KAR 002:180		
202 KAR 007:520			Amended	2989	6-7-2019
Amended	2760		803 KAR 025:270	2534	
As Amended	3405	7-5-2019	Am Comments	2928	See 46 Ky.R.
202 KAR 007:560			804 KAR 007:020		
Amended	3489	See 46 Ky.R.	Amended	3262	See 46 Ky.R.
202 KAR 007:575	2805		804 KAR 007:030		
As Amended	3409	7-5-2019	Repealed	3360	8-2-2019
301 KAR 002:030			804 KAR 007:031(r)	3360	8-2-2019
Amended	3260	See 46 Ky.R.	805 KAR 003:100		
301 KAR 002:221			Amended	2991	
Amended	3491	8-20-2019	As Amended	3410	7-5-2019
301 KAR 002:222			805 KAR 003:110		
Amended	3493	8-20-2019	Amended	3538	See 46 Ky.R.
301 KAR 002:300			806 KAR 009:001		
Amended	3498	8-20-2019	Amended	3264	
301 KAR 003:090			806 KAR 009:020		
Repealed	2996	7-5-2019	Amended	3265	
301 KAR 003:091(r)	2996	7-5-2019	806 KAR 009:030		
302 KAR 016:010			Amended	3539	
Amended	3502	See 46 Ky.R.	806 KAR 009:061(r)	3361	
302 KAR 016:020			806 KAR 009:070		
Amended	3503	See 46 Ky.R.	Amended	3267	
302 KAR 016:040			806 KAR 009:110		
Amended	3504	See 46 Ky.R.	Amended	3541	See 46 Ky.R.

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Regulation Number	45 Ky.R. Page No.	Effective Date	Regulation Number	45 Ky.R. Page No.	Effective Date
806 KAR 009:190			Amended	3571	8-19-2019
Amended	3542		902 KAR 050:100		
806 KAR 009:200			Repealed	3364	7-19-2019
Amended	3543		902 KAR 050:101(r)	3364	7-19-2019
806 KAR 009:310			902 KAR 050:110		
Amended	3269		Amended	3316	7-19-2019
806 KAR 009:321(r)	3362		907 KAR 001:022		
806 KAR 009:341(r)	3600		Amended	2784	
806 KAR 009:350			Am Comments	3419	8-2-2019
Amended	3545		907 KAR 001:330		
806 KAR 010:030			Amended	2790	8-2-2019
Amended	1824		907 KAR 001:340		
Am Comments	2716		Amended	2793	8-2-2019
As Amended	3411	7-5-2019	907 KAR 001:441	2813	8-2-2019
806 KAR 010:050			907 KAR 001:436		
Repealed	3363	8-2-2019	Repealed	2813	8-2-2019
806 KAR 010:051(r)	3363	8-2-2019	907 KAR 001:604		
806 KAR 015:081(r)	3601		Amended	3318	See 46 Ky.R.
806 KAR 047:010			907 KAR 001:755		
Amended	2993	See 46 Ky.R.	Amended	2796	8-2-2019
806 KAR 047:020	2997		907 KAR 005:005		
Repealed	2997	9-6-2019	Amended	2496	
806 KAR 047:021(r)	2997	9-6-2019	As Amended	3412	7-5-2019
806 KAR 047:030	2997		908 KAR 001:340		
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807 KAR 005:056			908 KAR 001:341(r)	2538	8-19-2019
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808 KAR 001:180	2266		Amended	2500	
815 KAR 007:120			Am Comments	3195	See 46 Ky.R.
Amended	3274	8-2-2019	908 KAR 001:372	2539	
815 KAR 007:125			Am Comments	3215	See 46 Ky.R.
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831 KAR 001:020			Amended	3322	
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831 KAR 001:030			Amended	3573	See 46 Ky.R.
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902 KAR 045:090E	12	6-14-2019	103 KAR 025:050 Amended	1277	
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907 KAR 003:170E	18	6-14-2019	103 KAR 025:131 Amended	570	
907 KAR 010:830E	347	6-19-2019	As Amended	1084	
907 KAR 015:005E	356	6-28-2019	103 KAR 026:010 Amended	67	
907 KAR 015:010E	359	6-28-2019	103 KAR 026:030 Amended	1280	
907 KAR 015:015E	371	6-28-2019	103 KAR 026:050 Amended	1281	
907 KAR 015:020E	374	6-28-2019	103 KAR 026:070 Amended	571	
907 KAR 015:022E	385	6-28-2019	As Amended	1085	
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922 KAR 001:320E	400	6-28-2019	As Amended	1087	
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Am Comments	502		* Statement of Consideration not filed by deadline		
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902 KAR 050:003(r)	823		(r) Repealer regulation: KRS 13A.310(3)-on the effective date of		
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13B	922 KAR 001:320		202 KAR 006:090
13B.005-13B.170	013 KAR 001:020	65.7629	202 KAR 006:070
13B.140	907 KAR 010:830		202 KAR 006:080
15A.065	505 KAR 001:160		202 KAR 006:090
15A.067	505 KAR 001:160	65.7631	202 KAR 006:070
16.576	105 KAR 001:200		202 KAR 006:080
16.577	105 KAR 001:200		202 KAR 006:090
16.645	105 KAR 001:200	65.7635	202 KAR 006:080
17.500	902 KAR 020:430		202 KAR 006:090
	902 KAR 020:450	65.7636	202 KAR 006:080
18A.020	101 KAR 002:102	65.7639	202 KAR 006:080
	101 KAR 003:015		202 KAR 006:090
18A.030	101 KAR 002:102	65.7643	202 KAR 006:070
	101 KAR 002:210		202 KAR 006:080
	101 KAR 002:230		202 KAR 006:090
	101 KAR 003:015	66.480	702 KAR 003:130
18A.095	101 KAR 002:102	68.210	045 KAR 001:050
18A.110	101 KAR 002:102	78.510	105 KAR 001:390
	101 KAR 002:230	78.545	105 KAR 001:200
	101 KAR 003:015	91A.350	300 KAR 001:010
18A.140	101 KAR 002:102	91A.400	103 KAR 027:220
	101 KAR 003:015	118.035	101 KAR 002:102
18A.145	101 KAR 002:102		101 KAR 003:015
	101 KAR 003:015	121.015	032 KAR 001:061
18A.195	101 KAR 002:102	121.180	032 KAR 001:061
	101 KAR 003:015	131.010	103 KAR 001:010
18A.225	101 KAR 002:210	131.030	103 KAR 001:010
18A.990	101 KAR 002:102	131.081	103 KAR 001:010
	101 KAR 003:015	131.110	103 KAR 001:010
18A.2254	101 KAR 002:210		103 KAR 026:110
23A.010	922 KAR 001:320	131.130	103 KAR 002:030
43.010	601 KAR 009:130	131.155	103 KAR 001:060
43.070	045 KAR 001:050	131.180	103 KAR 001:010
43.075	045 KAR 001:050	132.020	103 KAR 008:130
45.149	601 KAR 009:130		103 KAR 008:141
45.237 - 45.241	922 KAR 001:565	132.200	103 KAR 008:130
45A	601 KAR 002:030E		103 KAR 008:141
	702 KAR 003:130	132.285	103 KAR 007:031
45A.045	200 KAR 006:015	132.370	103 KAR 005:151
49.220	103 KAR 001:010		103 KAR 005:160
49.250	103 KAR 001:010	132.530	103 KAR 007:031
61.373	101 KAR 003:015	136.181	103 KAR 008:011
61.394	101 KAR 002:102	136.182	103 KAR 008:011
	101 KAR 003:015	138.135	103 KAR 041:031
61.410	702 KAR 003:130		103 KAR 041:220
61.505	105 KAR 001:390	138.143	103 KAR 041:031
61.510	105 KAR 001:390		103 KAR 041:220
61.590	105 KAR 001:200	138.146	103 KAR 041:031
	105 KAR 001:390		103 KAR 041:220
61.595	105 KAR 001:200	138.195	103 KAR 041:031
61.623	105 KAR 001:200		103 KAR 041:220
61.637	105 KAR 001:200	138.450	103 KAR 027:100
	105 KAR 001:390	138.460	103 KAR 027:100
61.673	101 KAR 002:102	139.010	103 KAR 025:050
61.680	105 KAR 001:200		103 KAR 025:060
61.705	105 KAR 001:200		103 KAR 026:010
61.805 – 61.850	702 KAR 007:065		103 KAR 026:030
61.870 - 61.884	405 KAR 008:010		103 KAR 026:090
64.810	045 KAR 001:050		103 KAR 026:110
65.7621	202 KAR 006:070		103 KAR 027:080
	202 KAR 006:080		103 KAR 027:100
	202 KAR 006:090		103 KAR 027:140
65.7621 – 65.7643	202 KAR 006:010		103 KAR 027:180
	202 KAR 006:020		103 KAR 027:220

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	103 KAR 028:010	139.485	103 KAR 027:180
	103 KAR 028:090		103 KAR 027:220
	103 KAR 030:170	139.495	103 KAR 028:010
	103 KAR 030:270	139.540	103 KAR 026:110
	103 KAR 031:030		103 KAR 030:261
	103 KAR 031:111		103 KAR 031:030
139.200	103 KAR 025:050	139.550	103 KAR 025:060
	103 KAR 025:060		103 KAR 026:110
	103 KAR 026:010		103 KAR 030:261
	103 KAR 026:090		103 KAR 031:030
	103 KAR 026:110	139.590	103 KAR 025:131
	103 KAR 027:080		103 KAR 026:110
	103 KAR 027:100		103 KAR 031:030
	103 KAR 027:220	139.660	103 KAR 025:060
	103 KAR 028:010		103 KAR 031:030
	103 KAR 030:261	139.710	103 KAR 026:070
	103 KAR 030:270		103 KAR 031:030
	103 KAR 031:111	139.720	103 KAR 026:110
139.210	103 KAR 026:070		103 KAR 027:180
	103 KAR 027:220		103 KAR 031:030
139.240	103 KAR 026:070	139.730	103 KAR 026:070
	103 KAR 027:180	139.760	103 KAR 031:111
	103 KAR 031:030	139.980	103 KAR 025:131
139.250	103 KAR 031:030	139.990	103 KAR 025:131
139.260	103 KAR 026:070		103 KAR 031:111
	103 KAR 026:090	141.011	103 KAR 016:250
	103 KAR 026:110	141.120	103 KAR 016:400
	103 KAR 027:180	141.121	103 KAR 016:400
	103 KAR 027:220	141.200	103 KAR 016:200
	103 KAR 028:010		103 KAR 016:250
	103 KAR 030:261	141.201	103 KAR 016:250
	103 KAR 030:270	141.202	103 KAR 016:250
	103 KAR 031:030		103 KAR 016:400
	103 KAR 031:111	142.303	907 KAR 010:830
139.270	103 KAR 026:070	142.406	300 KAR 001:010
	103 KAR 026:110	146.200 – 146.360	401 KAR 010:001
	103 KAR 027:220		401 KAR 010:026
	103 KAR 030:261		401 KAR 010:029
	103 KAR 030:270		401 KAR 010:030
	103 KAR 031:111		401 KAR 010:031
139.280	103 KAR 030:270		405 KAR 008:010
	103 KAR 031:111	146.410 – 146.535	401 KAR 010:001
139.290	103 KAR 026:090		401 KAR 010:026
	103 KAR 027:220		401 KAR 010:029
	103 KAR 030:270		401 KAR 010:030
	103 KAR 031:111		401 KAR 010:031
139.300	103 KAR 031:111	146.550 – 146.570	401 KAR 010:001
139.310	103 KAR 026:070		401 KAR 010:026
	103 KAR 026:110		401 KAR 010:029
	103 KAR 027:220		401 KAR 010:030
	103 KAR 030:261		401 KAR 010:031
	103 KAR 030:270	146.600 – 146.619	401 KAR 010:001
139.330	103 KAR 026:110		401 KAR 010:026
	103 KAR 027:220		401 KAR 010:029
	103 KAR 030:261		401 KAR 010:030
	103 KAR 030:270		401 KAR 010:031
139.340	103 KAR 025:050	146.990	401 KAR 010:001
	103 KAR 026:070		401 KAR 010:026
139.430	103 KAR 031:111		401 KAR 010:029
139.440	103 KAR 031:111		401 KAR 010:030
139.470	103 KAR 026:050		401 KAR 010:031
	103 KAR 027:100	148.522	300 KAR 001:010
	103 KAR 027:180	148.525	300 KAR 001:010
	103 KAR 028:010	150.010	301 KAR 001:152
	103 KAR 030:170		301 KAR 001:201
	103 KAR 030:270		301 KAR 001:410
139.480	103 KAR 026:050		301 KAR 002:049
	103 KAR 026:090		301 KAR 002:090
	103 KAR 026:110		301 KAR 002:185
	103 KAR 027:220		301 KAR 004:090
	103 KAR 028:010	150.015	301 KAR 002:185
	103 KAR 030:261	150.025	301 KAR 002:090
	103 KAR 030:270	150.092	301 KAR 002:049
139.482	103 KAR 028:010	150.170	301 KAR 001:152

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	301 KAR 001:201	164.992	013 KAR 001:020
	301 KAR 001:410	165A.320	013 KAR 001:020
	301 KAR 002:049	176.050	603 KAR 005:150
150.175	301 KAR 003:100	176.430	401 KAR 010:030
	301 KAR 001:152	177.047	603 KAR 005:150
	301 KAR 001:201	177.103	603 KAR 005:150
	301 KAR 001:410	177.106	603 KAR 005:150
	301 KAR 003:100	186.010	601 KAR 002:030E
	301 KAR 004:090		601 KAR 009:130
150.180	301 KAR 004:090	186.050	601 KAR 009:130
150.183	301 KAR 004:090	186.053	601 KAR 009:130
150.235	301 KAR 001:410	186.162	601 KAR 009:130
150.305	301 KAR 002:090	186.172	601 KAR 009:130
	301 KAR 004:090	186.174	601 KAR 009:130
150.330	301 KAR 002:090	186.411	601 KAR 013:090
	301 KAR 004:090		601 KAR 013:100
150.340	301 KAR 001:201	186.440	601 KAR 002:030E
150.360	301 KAR 002:090		601 KAR 013:100
150.370	301 KAR 002:049	186.442	601 KAR 002:030E
	301 KAR 004:090	186.444	601 KAR 013:090
150.399	301 KAR 002:049		601 KAR 013:100
150.411	301 KAR 004:090	186.480	601 KAR 002:030E
150.445	301 KAR 001:152	186.531	601 KAR 002:030E
	301 KAR 001:410	186.560	601 KAR 002:030E
150.450	301 KAR 001:152	186.570	601 KAR 002:030E
150.470	301 KAR 001:185		601 KAR 013:090
150.620	301 KAR 001:201		601 KAR 013:100
	301 KAR 001:410	186A.060	601 KAR 009:130
150.722	301 KAR 004:090	186A.070	601 KAR 009:130
150.990	301 KAR 001:152	186A.120	601 KAR 009:130
	301 KAR 001:185	189.010	103 KAR 027:100
	301 KAR 001:201	189A.005	601 KAR 002:030E
	301 KAR 001:410	189A.010	601 KAR 002:030E
	301 KAR 002:049	189A.040	601 KAR 002:030E
	301 KAR 002:185	189A.070	601 KAR 002:030E
	301 KAR 004:090	189A.085	601 KAR 002:030E
150.995	301 KAR 002:049	189A.090	601 KAR 002:030E
151.100	405 KAR 016:100	189A.103	601 KAR 002:030E
	405 KAR 018:100	189A.105	601 KAR 002:030E
151.125	405 KAR 007:050	189A.107	601 KAR 002:030E
151.250	405 KAR 016:100	189A.200	601 KAR 002:030E
	405 KAR 018:100	189A.240	601 KAR 002:030E
151.297	405 KAR 007:050	189A.250	601 KAR 002:030E
156.029	702 KAR 003:130	189A.340	601 KAR 002:030E
156.070	702 KAR 007:065	189A.345	601 KAR 002:030E
156.076	702 KAR 003:130	189A.400	601 KAR 002:030E
156.160	702 KAR 003:130	189A.410	601 KAR 002:030E
156.200	702 KAR 003:130	189A.420	601 KAR 002:030E
156.290	702 KAR 003:130	189A.440	601 KAR 002:030E
156.496	922 KAR 001:565	189A.500	601 KAR 002:030E
158.6451	703 KAR 005:240	194A.005	922 KAR 001:320
158.6453	703 KAR 005:240		922 KAR 001:330
	703 KAR 005:280		922 KAR 001:565
158.6455	703 KAR 005:240	194A.025	907 KAR 015:005
	703 KAR 005:280	194A.030	922 KAR 001:320
158.782	703 KAR 005:280	194A.050	902 KAR 045:065
159.140	922 KAR 001:330		902 KAR 045:070
160	702 KAR 003:130		922 KAR 001:330
160.346	703 KAR 005:280		922 KAR 001:565
160.380	702 KAR 007:065	194A.060	907 KAR 003:170
160.445	702 KAR 007:065		922 KAR 001:560
161.420	102 KAR 001:032	194A.125	907 KAR 003:170
161.540	102 KAR 001:032	196	501 KAR 006:060
	702 KAR 003:130		501 KAR 006:110
161.560	702 KAR 003:130		501 KAR 006:140
161.605	102 KAR 001:032	197	501 KAR 006:060
161.677	102 KAR 001:032		501 KAR 006:110
161.700	102 KAR 001:032		501 KAR 006:140
161.770	701 KAR 005:090	198B.260	902 KAR 020:280
161.790	701 KAR 005:090		902 KAR 020:430
164.020	013 KAR 001:020	199.011	922 KAR 001:320
164.945	013 KAR 001:020		922 KAR 001:560
164.946	013 KAR 001:020		922 KAR 001:565
164.947	013 KAR 001:020	199.462	922 KAR 001:565

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199.470 - 199.590	922 KAR 001:565	223.210	401 KAR 006:211
199.480	922 KAR 001:560	224.071	405 KAR 007:050
199.505	922 KAR 001:560	224.01-300	103 KAR 030:261
199.555	922 KAR 001:320	224.1-310	103 KAR 030:261
199.557	922 KAR 001:320	224.1-010	401 KAR 010:001
199.990	922 KAR 001:560		401 KAR 010:026
200.080-120	505 KAR 001:160		401 KAR 010:029
200.503	902 KAR 020:430		401 KAR 010:030
202A.011	922 KAR 001:330		401 KAR 010:031
205.211	922 KAR 001:565	224.1-400	401 KAR 010:001
205.510	902 KAR 020:430		401 KAR 010:026
	907 KAR 003:170		401 KAR 010:029
	907 KAR 010:830		401 KAR 010:030
	907 KAR 015:005		401 KAR 010:031
205.520	902 KAR 021:020	224.1-405	401 KAR 006:350
	907 KAR 015:010	224.10-010	401 KAR 006:320
	907 KAR 015:015	224.10-100	401 KAR 006:320
	907 KAR 015:020		401 KAR 058:005
	907 KAR 015:022	224.10-110	401 KAR 006:211
	907 KAR 015:025	224.10-410	400 KAR 001:110
205.559	907 KAR 003:170	224.10-410 - 224.10-470	401 KAR 006:320
205.560	907 KAR 003:170	224.16-050	401 KAR 010:001
205.565	907 KAR 010:830		401 KAR 010:026
205.637	907 KAR 010:830		401 KAR 010:029
205.638	907 KAR 010:830		401 KAR 010:030
205.639	907 KAR 010:830		401 KAR 010:031
205.640	907 KAR 010:830	224.16-070	401 KAR 010:001
205.641	907 KAR 010:830		401 KAR 010:026
205.712	601 KAR 002:030E		401 KAR 010:029
205.8451	907 KAR 015:005		401 KAR 010:030
209.020	922 KAR 001:320		401 KAR 010:031
209A.020	922 KAR 001:320	224.20-100	401 KAR 051:010
210.005	902 KAR 020:430		401 KAR 058:005
211.005	902 KAR 045:065	224.20-110	401 KAR 051:010
	902 KAR 045:070		401 KAR 058:005
211.015	902 KAR 045:065	224.20-120	401 KAR 051:010
	902 KAR 045:070		401 KAR 058:005
211.025	902 KAR 045:065	224.20-300	401 KAR 058:005
	902 KAR 045:070	224.20-310	401 KAR 058:005
211.684	922 KAR 001:330	224.20-320	401 KAR 058:005
211.760	902 KAR 045:065	224.43-010 - 224.43-815	401 KAR 006:350
211.892	805 KAR 001:060	224.46-012 - 224.46-870	401 KAR 006:350
211.893	805 KAR 001:060	224.60-100 - 224.60-160	401 KAR 006:350
214.036	922 KAR 001:330	224.70-100 – 224.70-140	401 KAR 010:001
214.540	902 KAR 021:020		401 KAR 010:026
214.542	902 KAR 021:020		401 KAR 010:029
214.543	902 KAR 021:020		401 KAR 010:030
216.380	907 KAR 010:830		401 KAR 010:031
216.875	902 KAR 020:280	224.71-100 – 224.71-145	401 KAR 010:001
216.880	902 KAR 020:280		401 KAR 010:026
216.885	902 KAR 020:280		401 KAR 010:029
216B.020	902 KAR 020:370		401 KAR 010:030
216B.042	902 KAR 020:450		401 KAR 010:031
216B.050	902 KAR 020:430	224.73-100 – 224.30-120	401 KAR 010:001
216B.105	902 KAR 020:430		401 KAR 010:026
217.005 – 217.215	902 KAR 045:090		401 KAR 010:029
217.290	902 KAR 045:090		401 KAR 010:030
217.992	902 KAR 045:090		401 KAR 010:031
217B.555	902 KAR 045:090	224.99-010	401 KAR 058:005
217B.990	902 KAR 045:090	227.550	103 KAR 027:100
217C.010	902 KAR 050:005	241.067	804 KAR 010:040
217C.070	902 KAR 050:003	241.069	804 KAR 010:040
218A.205	201 KAR 008:540	241.021	804 KAR 010:040
223.400-223.460	401 KAR 006:001	243.720	103 KAR 040:091
	401 KAR 006:310	247	302 KAR 034:011
	401 KAR 006:320		302 KAR 035:011
	401 KAR 006:350		302 KAR 036:011
223.170	401 KAR 006:211	257.020	302 KAR 022:010
223.180	401 KAR 006:211		302 KAR 022:020
223.190	401 KAR 006:211		302 KAR 022:080
223.991	401 KAR 006:001	257.030	302 KAR 022:010
	401 KAR 006:310		302 KAR 022:040
	401 KAR 006:320	257.160	302 KAR 022:040
	401 KAR 006:350	260.850 - 260.869	302 KAR 050:050

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273.161 - 273.405	300 KAR 001:010	304.47-020	806 KAR 047:010
278	807 KAR 005:056	304.47-040	806 KAR 047:010
286.4	808 KAR 001:170	304.47-050	806 KAR 047:010
286.8-010	808 KAR 001:170	304.47-080	806 KAR 047:010
286.8-020	808 KAR 001:170	304.99-020	806 KAR 003:230
286.8-030	808 KAR 001:170	309.080	907 KAR 015:005
286.8-032	808 KAR 001:170	309.130	902 KAR 020:430
286.8-034	808 KAR 001:170		907 KAR 015:005
286.8-036	808 KAR 001:170	311.571	902 KAR 020:280
286.8-060	808 KAR 001:170	311.840	907 KAR 015:005
286.8-070	808 KAR 001:170	311.860	902 KAR 020:430
286.8-080	808 KAR 001:170	311A.015	202 KAR 007:020
286.8-090	808 KAR 001:170	311A.020	202 KAR 007:020
286.8-255	808 KAR 001:170	311A.145	202 KAR 007:020
286.8-260	808 KAR 001:170	313.060	201 KAR 008:540
286.8-290	808 KAR 001:170	313.085	201 KAR 008:540
286.9-010	808 KAR 001:170	314.011	907 KAR 015:005
	808 KAR 009:050	314.041	902 KAR 020:280
286.9-020	808 KAR 001:170		902 KAR 020:370
	808 KAR 009:050	314.042	902 KAR 020:430
286.9-030	808 KAR 001:170	314.051	902 KAR 020:370
	808 KAR 009:050	314A.110	201 KAR 029:015
286.9-040	808 KAR 001:170	314A.112	201 KAR 029:015
	808 KAR 009:050	314A.215	201 KAR 029:015
286.9-050	808 KAR 001:170	314A.220	201 KAR 029:015
	808 KAR 009:050	316	201 KAR 015:010
286.9-060	808 KAR 001:170	316.010	201 KAR 015:110
	808 KAR 009:050	316.030	201 KAR 015:040
286.9-070	808 KAR 009:050		201 KAR 015:050
286.9-071	808 KAR 001:170		201 KAR 015:110
	808 KAR 009:050	316.125	201 KAR 015:030
286.9-073	808 KAR 001:170		201 KAR 015:110
	808 KAR 009:050	316.127	201 KAR 015:110
286.9-080	808 KAR 001:170	316.130	201 KAR 015:030
	808 KAR 009:050		201 KAR 015:110
286.9-104	808 KAR 009:050	316.132	201 KAR 015:030
304.1-040	806 KAR 010:061	316.140	201 KAR 015:030
304.2-110	806 KAR 010:061		201 KAR 015:120
304.2-140	806 KAR 047:010	316.150	201 KAR 015:080
304.4-010	806 KAR 009:025	316.165	201 KAR 015:125
	806 KAR 009:221	316.170	201 KAR 015:015
	806 KAR 009:265	316.210	201 KAR 015:015
304.5-070	806 KAR 005:060	316.260	201 KAR 015:110
304.7-010 - 304.7-350	806 KAR 007:021	317A.020	201 KAR 012:030
304.7-361	806 KAR 007:031	317A.050	201 KAR 012:030
304.9-030	806 KAR 009:221	317A.060	201 KAR 012:030
304.9-105	806 KAR 009:025	319	907 KAR 015:010
	806 KAR 009:221	319.050	902 KAR 020:430
304.9-130	806 KAR 009:025	319.053	907 KAR 015:005
304.9-150	806 KAR 009:025	319.056	902 KAR 020:430
304.9-160	806 KAR 009:025		907 KAR 015:005
	806 KAR 009:221	319.064	902 KAR 020:430
304.9-190	806 KAR 009:221		907 KAR 015:005
304.9-230	806 KAR 009:025	319A.010	902 KAR 020:280
	806 KAR 009:221	319C.010	902 KAR 020:430
304.9-270	806 KAR 009:025		907 KAR 015:005
304.9-295	806 KAR 009:025	321	201 KAR 016:011
	806 KAR 009:221	321.193	201 KAR 016:210
304.9-320	806 KAR 009:221		201 KAR 016:220
304.9-430	806 KAR 009:025		201 KAR 016:230
	806 KAR 009:221		201 KAR 016:240
304.9-505	806 KAR 009:221		201 KAR 016:270
	806 KAR 009:265	321.201	201 KAR 016:216
304.10-030	806 KAR 010:061	321.207	201 KAR 016:214
304.10-040	806 KAR 010:061		201 KAR 016:250
304.10-140	806 KAR 010:061		201 KAR 016:260
304.13-057	806 KAR 013:120		201 KAR 016:272
304.13-167	806 KAR 013:120	321.211	201 KAR 016:210
304.13-400 - 304.13-420	806 KAR 013:120		201 KAR 016:270
304.14-120	806 KAR 014:061		201 KAR 016:280
304.14-642	806 KAR 009:221		201 KAR 016:290
304.15-700	806 KAR 009:221	321.221	201 KAR 016:240
304.17A-257	902 KAR 021:020		201 KAR 016:290
304.47-010	806 KAR 047:010	321.235	201 KAR 016:290

KRS SECTION	REGULATION	KRS SECTION	REGULATION
	201 KAR 016:310	324A.020	201 KAR 030:070
	201 KAR 016:400		201 KAR 030:110
321.240	201 KAR 016:210	324A.030	201 KAR 030:190
	201 KAR 016:212		201 KAR 030:330
	201 KAR 016:216	324A.035	201 KAR 030:040
321.351	201 KAR 016:200		201 KAR 030:110
	201 KAR 016:310		201 KAR 030:130
	201 KAR 016:400		201 KAR 030:190
321.360	201 KAR 016:310		201 KAR 030:330
	201 KAR 016:400	324A.040	201 KAR 030:110
321.441	201 KAR 016:212		201 KAR 030:190
	201 KAR 016:220	324A.045	201 KAR 030:110
	201 KAR 016:230		201 KAR 030:190
	201 KAR 016:240	324A.047	201 KAR 030:110
	201 KAR 016:270	324A.050	201 KAR 030:040
	201 KAR 016:290		201 KAR 030:070
321.181	201 KAR 016:300	324A.052	201 KAR 030:070
322	401 KAR 006:320		201 KAR 030:190
322.010	405 KAR 008:010	324A.065	201 KAR 030:110
322.340	405 KAR 008:010		201 KAR 030:190
322A	401 KAR 006:320	324A.075	201 KAR 030:190
324.010	201 KAR 011:011	324A.152	201 KAR 030:330
	201 KAR 011:121	324A.154	201 KAR 030:330
	201 KAR 011:170	324A.155	201 KAR 030:330
	201 KAR 011:210	324A.163	201 KAR 030:330
	201 KAR 011:220	325.240	201 KAR 001:100
324.020	201 KAR 011:210	325.261	201 KAR 001:190
	201 KAR 011:220	325.270	201 KAR 001:190
324.040	201 KAR 011:210	325.330	201 KAR 001:100
324.045	201 KAR 011:190	327.010	902 KAR 020:280
	201 KAR 011:210	334A.020	902 KAR 020:280
324.046	201 KAR 011:011	335.080	902 KAR 020:430
	201 KAR 011:170		907 KAR 015:005
	201 KAR 011:190	335.090	902 KAR 020:280
	201 KAR 011:210	335.100	902 KAR 020:430
324.085	201 KAR 011:170		907 KAR 015:005
	201 KAR 011:210	335.300	902 KAR 020:430
324.090	201 KAR 011:170		907 KAR 015:005
	201 KAR 011:210	335.500	201 KAR 036:060
324.111	201 KAR 011:011		902 KAR 020:430
	201 KAR 011:121		907 KAR 015:005
324.121	201 KAR 011:121	335.505	201 KAR 036:060
324.117	201 KAR 011:011	335.525	201 KAR 036:060
	201 KAR 011:105	342.020	803 KAR 025:260
324.141	201 KAR 011:210		803 KAR 025:271E
324.150	201 KAR 011:190	342.035	803 KAR 025:260
324.151	201 KAR 011:190		803 KAR 025:271E
324.160	201 KAR 011:011	342.640	702 KAR 003:130
	201 KAR 011:105	342.0011	803 KAR 025:260
	201 KAR 011:121		803 KAR 025:271E
	201 KAR 011:170	343	787 KAR 003:010
	201 KAR 011:190	344.030	101 KAR 002:102
	201 KAR 011:210		101 KAR 003:015
324.170	201 KAR 011:190	349.015	805 KAR 001:030
324.200	201 KAR 011:190		805 KAR 001:140
324.281	201 KAR 011:121		805 KAR 001:170
	201 KAR 011:170		805 KAR 009:011
	201 KAR 011:190	349.035	805 KAR 001:140
	201 KAR 011:210		805 KAR 009:011
324.282	201 KAR 011:002	349.040	805 KAR 001:140
	201 KAR 011:105		805 KAR 009:011
324.287	201 KAR 011:210	349.075	805 KAR 001:140
324.310	201 KAR 011:121		805 KAR 009:011
	201 KAR 011:210	349.335	805 KAR 001:080
324.330	201 KAR 011:210	349.045	805 KAR 001:020
324.360	201 KAR 011:121	349.105	805 KAR 001:170
324.395	201 KAR 011:220	349.110	805 KAR 001:020
324.410	201 KAR 011:011		805 KAR 009:011
324.420	201 KAR 011:011	349.115	805 KAR 001:030
324.990	201 KAR 011:210	349.120	805 KAR 001:050
324A	201 KAR 030:010		805 KAR 001:140
324A.020	201 KAR 030:190		805 KAR 001:170
324A.015	201 KAR 030:021		805 KAR 001:200
	201 KAR 030:040		805 KAR 009:011

KRS SECTION	REGULATION	KRS SECTION	REGULATION
349.155	805 KAR 001:140		405 KAR 016:210
	805 KAR 001:170		405 KAR 018:220
	805 KAR 009:011	350.415	405 KAR 020:040
350	405 KAR 010:001	350.420	405 KAR 007:050
	405 KAR 026:011		405 KAR 016:100
350.010	400 KAR 001:110		405 KAR 018:100
	405 KAR 005:002	350.445	405 KAR 026:011
	405 KAR 005:032	350.450	405 KAR 007:040
	405 KAR 026:011		405 KAR 008:010
350.020	405 KAR 007:050		405 KAR 016:210
	405 KAR 008:010		405 KAR 018:220
	405 KAR 010:050		405 KAR 020:040
	405 KAR 026:011		405 KAR 026:011
350.028	400 KAR 001:110	350.455	405 KAR 016:100
	405 KAR 026:011		405 KAR 018:100
350.050	405 KAR 007:040	350.465	400 KAR 001:110
	405 KAR 026:011		405 KAR 008:010
350.055	405 KAR 008:010		405 KAR 008:030
	405 KAR 026:011		405 KAR 010:050
350.057	405 KAR 007:040		405 KAR 016:100
	405 KAR 026:011		405 KAR 016:210
350.060	405 KAR 007:040		405 KAR 018:100
	405 KAR 008:010		405 KAR 018:220
	405 KAR 008:030		405 KAR 020:040
	405 KAR 010:050		405 KAR 026:011
	405 KAR 026:011	350.500 - 350.521	405 KAR 008:010
350.062	405 KAR 026:011	350.990	400 KAR 001:110
350.064	405 KAR 010:050		405 KAR 026:011
	405 KAR 026:011	350.0301	400 KAR 001:110
350.070	400 KAR 001:110	351.315	400 KAR 001:110
	405 KAR 008:010	351.330	805 KAR 004:050
	405 KAR 026:011	331.335	805 KAR 004:050
350.085	405 KAR 008:010	331.360	805 KAR 004:050
	405 KAR 026:011	351.345	400 KAR 001:110
350.090	400 KAR 001:110	351.350	400 KAR 001:110
	405 KAR 007:050	352.340	805 KAR 007:101
	405 KAR 008:010	353.050	805 KAR 001:140
	405 KAR 026:011	353.060	805 KAR 001:140
350.093	400 KAR 001:110	353.120	805 KAR 001:060
	405 KAR 010:050	353.160	805 KAR 001:190
	405 KAR 016:210	353.170	805 KAR 001:060
	405 KAR 018:220	353.180	805 KAR 001:060
	405 KAR 026:011		805 KAR 001:110
350.095	405 KAR 010:050		805 KAR 001:140
	405 KAR 016:210		805 KAR 001:170
	405 KAR 018:220	353.500	805 KAR 001:080
	405 KAR 026:011		805 KAR 001:160
350.100	405 KAR 016:100		805 KAR 001:190
	405 KAR 016:210	353.500 - 353.730	805 KAR 001:001
	405 KAR 018:100	353.510	805 KAR 001:110
	405 KAR 018:220		805 KAR 001:140
	405 KAR 020:040		805 KAR 001:170
	405 KAR 026:011	353.520	805 KAR 001:020
350.110	405 KAR 026:011		805 KAR 001:080
350.113	405 KAR 026:011		805 KAR 001:110
350.130	400 KAR 001:110		805 KAR 001:120
	405 KAR 005:032		805 KAR 001:140
	405 KAR 008:010		805 KAR 001:170
	405 KAR 010:050	353.540	805 KAR 001:080
350.131	405 KAR 010:050	353.550	805 KAR 001:030
350.135	405 KAR 008:010		805 KAR 001:060
	405 KAR 026:011		805 KAR 001:080
350.151	405 KAR 010:050		805 KAR 001:110
	405 KAR 018:100		805 KAR 001:180
	405 KAR 018:220		805 KAR 001:200
	405 KAR 026:011	353.560	805 KAR 001:080
350.240	405 KAR 005:002	353.561 - 353.564	805 KAR 001:140
	405 KAR 005:032		805 KAR 001:170
350.255	400 KAR 001:110	353.570	805 KAR 001:110
350.300	405 KAR 005:002	353.590	805 KAR 001:030
	405 KAR 005:032		805 KAR 001:050
350.405	405 KAR 016:210		805 KAR 001:110
	405 KAR 020:040		805 KAR 001:140
350.410	405 KAR 007:040		805 KAR 001:170

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353.5901	805 KAR 001:190		922 KAR 001:565
	805 KAR 001:140	600 - 645	505 KAR 001:160
	805 KAR 001:170	605.090	922 KAR 001:320
	805 KAR 001:190		922 KAR 001:330
353.592	805 KAR 001:140	605.120	922 KAR 001:565
	805 KAR 001:170	605.130	922 KAR 001:330
353.595	805 KAR 001:170		922 KAR 001:565
353.597	805 KAR 001:170	605.150	922 KAR 001:330
353.610	805 KAR 001:140		922 KAR 001:565
353.651	805 KAR 001:140	610.010	922 KAR 001:330
	805 KAR 001:170	610.110	922 KAR 001:320
353.652	805 KAR 001:140		922 KAR 001:565
	805 KAR 001:170	620.010 - 620.050	922 KAR 001:330
353.656	805 KAR 001:160	620.020	922 KAR 001:320
353.6601 - 353.6606	805 KAR 001:140		922 KAR 001:560
	805 KAR 001:170		922 KAR 001:565
353.730	805 KAR 001:140	620.030	902 KAR 020:280
	805 KAR 001:170	620.070	922 KAR 001:330
353.735 - 353.747	805 KAR 001:200	620.072	922 KAR 001:330
353.737	805 KAR 001:030	620.090	922 KAR 001:565
	805 KAR 001:140	620.140	922 KAR 001:320
	805 KAR 001:170		922 KAR 001:565
353.745	805 KAR 001:190	620.142	922 KAR 001:320
353.990	805 KAR 001:060		922 KAR 001:565
353.991	805 KAR 001:140	620.157	922 KAR 001:320
	805 KAR 001:170	620.170	922 KAR 001:565
	805 KAR 001:190	620.180	922 KAR 001:320
353.992	805 KAR 001:110		922 KAR 001:330
363.410	302 KAR 081:010	620.230	922 KAR 001:320
363.510	302 KAR 075:130	620.350	922 KAR 001:330
	302 KAR 076:100	620.363	922 KAR 001:320
	302 KAR 080:010	620.990	922 KAR 001:330
	302 KAR 081:010	625.065	922 KAR 001:560
363.610	302 KAR 081:010	2019 RS HB220	806 KAR 003:240
363.710	302 KAR 076:100	7 C.F.R.	405 KAR 008:030
363.720	302 KAR 075:130		405 KAR 010:001
363.730	302 KAR 075:130	12 C.F.R.	201 KAR 030:040
363.770	302 KAR 076:100		201 KAR 030:190
363.780	302 KAR 076:100		201 KAR 030:330
363.800	302 KAR 076:100	16 C.F.R.	201 KAR 015:110
365.650	103 KAR 025:060	21 C.F.R.	902 KAR 045:090
365.665	103 KAR 025:060		902 KAR 055:120
365.680	103 KAR 025:060	24 C.F.R.	201 KAR 011:121
369.101 - 369.120	907 KAR 015:010	26 C.F.R.	102 KAR 001:032
369.102	601 KAR 009:130		105 KAR 001:390
369.107	601 KAR 009:130	27 C.F.R.	405 KAR 008:010
383.085	902 KAR 045:065	28 C.F.R.	201 KAR 011:210
	902 KAR 045:070		902 KAR 045:065
387	922 KAR 001:565		902 KAR 045:070
387.010	902 KAR 045:065	29 C.F.R.	101 KAR 002:102
	902 KAR 045:070		101 KAR 003:015
403.270 - 403.355	922 KAR 001:565		902 KAR 045:065
405.024	922 KAR 001:565		902 KAR 045:070
422.317	201 KAR 008:540	30 C.F.R.	400 KAR 001:110
	907 KAR 003:170		405 KAR 008:010
424	805 KAR 001:140		405 KAR 008:030
424.110 - 424.120	405 KAR 008:010		405 KAR 010:001
424.260	702 KAR 003:130		405 KAR 010:050
431.600	922 KAR 001:330		405 KAR 016:100
434.840 - 434.860	907 KAR 003:170		405 KAR 016:210
439	501 KAR 006:060		405 KAR 018:100
	501 KAR 006:110		405 KAR 018:220
	501 KAR 006:140	40 C.F.R.	401 KAR 010:001
	501 KAR 006:160		401 KAR 010:029
439.3401	902 KAR 020:430		401 KAR 051:010
	902 KAR 020:450		401 KAR 058:005
503.110	922 KAR 001:330		405 KAR 008:030
527.100	922 KAR 001:565		405 KAR 010:001
527.110	922 KAR 001:565		805 KAR 001:110
529.010	922 KAR 001:330	42 C.F.R.	805 KAR 001:190
532.045	922 KAR 001:330		902 KAR 020:450
600.010	922 KAR 001:330		907 KAR 003:170
600.020	922 KAR 001:320		907 KAR 010:830
	922 KAR 001:330		907 KAR 015:005

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	907 KAR 015:010		202 KAR 006:050
	907 KAR 015:020		202 KAR 006:060
44 C.F.R.	201 KAR 011:121		202 KAR 006:070
45 C.F.R.	902 KAR 020:370		202 KAR 006:080
	902 KAR 020:430		202 KAR 006:090
	902 KAR 020:450		202 KAR 006:100
	907 KAR 015:010		
	907 KAR 015:020		
	922 KAR 001:320		
49 C.F.R.	805 KAR 001:190		
7 U.S.C.	302 KAR 050:050		
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		
	806 KAR 003:230		
16 U.S.C.	405 KAR 008:010		
	405 KAR 008:030		
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		
	301 KAR 003:100		
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		
	405 KAR 008:010		
	405 KAR 008:030		
	405 KAR 010:050		
	405 KAR 016:100		
	405 KAR 016:210		
	405 KAR 018:100		
	405 KAR 018:220		
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 020:450		
	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		

CERTIFICATION LETTER SUMMARIES

The certification process is established in KRS 13A.3104. If the certification letter states the regulation shall be amended, the administrative body shall file an amendment to the regulation within 18 months of the date the certification letter was filed. If the certification letter states that the regulation shall remain in effect without amendment, the last effective date of the regulation is changed to the date the regulations compiler received the letter.

* KRS 13A.010(6) - "Effective" means that an administrative regulation has completed the legislative review process established by KRS 13A.290, 13A.330, and 13A.331.

Regulation Number	Last 13A Review Effective Date*	Letter Filed Date	Action
012 KAR 001:120	08-24-1994	06-06-2019	To be amended, filing deadline 12-10-20
012 KAR 001:125	08-24-1994	06-06-2019	To be amended, filing deadline 12-10-20
012 KAR 001:130	08-24-1994	06-06-2019	To be amended, filing deadline 12-10-20
012 KAR 001:160	08-24-1994	06-06-2019	To be amended, filing deadline 12-10-20
012 KAR 001:170	08-24-1994	06-06-2019	To be amended, filing deadline 12-10-20
012 KAR 001:175	08-24-1994	06-06-2019	To be amended, filing deadline 12-10-20
012 KAR 004:080	09-28-1994	06-06-2019	To be amended, filing deadline 12-10-20
012 KAR 004:090	09-28-1994	06-06-2019	To be amended, filing deadline 12-10-20
012 KAR 004:100	09-28-1994	06-06-2019	To be amended, filing deadline 12-10-20
012 KAR 004:110	09-28-1994	06-06-2019	To be amended, filing deadline 12-10-20
012 KAR 004:120	11-13-1984	06-06-2019	To be amended, filing deadline 12-10-20
012 KAR 004:130	09-28-1994	06-06-2019	To be amended, filing deadline 12-10-20
012 KAR 004:140	09-28-1994	06-06-2019	To be amended, filing deadline 12-10-20
012 KAR 004:160	09-28-1994	06-06-2019	To be amended, filing deadline 12-10-20
012 KAR 004:170	04-12-2000	06-06-2019	To be amended, filing deadline 12-10-20
012 KAR 005:010	03-19-2001	06-06-2019	To be amended, filing deadline 12-10-20
012 KAR 005:020	03-19-2001	06-06-2019	To be amended, filing deadline 12-10-20
012 KAR 005:030	03-19-2001	06-06-2019	To be amended, filing deadline 12-10-20
012 KAR 005:040	03-19-2001	06-06-2019	To be amended, filing deadline 12-10-20
012 KAR 005:050	03-19-2001	06-06-2019	To be amended, filing deadline 12-10-20
012 KAR 005:060	03-19-2001	06-06-2019	To be amended, filing deadline 12-10-20
012 KAR 005:070	03-19-2001	06-06-2019	To be amended, filing deadline 12-10-20
020 KAR 001:010	09-12-1994	06-07-2019	Remain in Effect without Amendment
020 KAR 001:020	10-12-1994	06-07-2019	Remain in Effect without Amendment
020 KAR 001:030	10-12-1994	06-07-2019	Remain in Effect without Amendment
020 KAR 001:040	03-18-2004	06-07-2019	Remain in Effect without Amendment
020 KAR 001:050	10-12-1994	06-07-2019	Remain in Effect without Amendment
020 KAR 001:060	10-12-1994	06-07-2019	Remain in Effect without Amendment
020 KAR 001:070	11-15-1999	06-07-2019	Remain in Effect without Amendment
020 KAR 001:080	10-06-2006	06-07-2019	Remain in Effect without Amendment
020 KAR 001:090	03-18-2004	06-07-2019	Remain in Effect without Amendment
020 KAR 001:100	03-18-2004	06-07-2019	Remain in Effect without Amendment
040 KAR 001:010	09-24-1974	08-23-2019	Remain in Effect without Amendment
040 KAR 001:020	09-24-1974	08-23-2019	Remain in Effect without Amendment
040 KAR 001:030	02-08-1995	08-23-2019	Remain in Effect without Amendment
040 KAR 005:010	07-05-1996	08-23-2019	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 001:030	08-31-2007	07-03-2019	Remain in Effect without Amendment
102 KAR 001:038	08-31-2007	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 001:045	12-01-1976	07-03-2019	Remain in Effect without Amendment
102 KAR 001:050	04-05-1991	07-03-2019	Remain in Effect without Amendment
102 KAR 001:057	08-13-2003	07-03-2019	Remain in Effect without Amendment
102 KAR 001:060	05-06-2016	07-03-2019	Remain in Effect without Amendment
102 KAR 001:070	12-01-2017	07-03-2019	Remain in Effect without Amendment
102 KAR 001:100	08-13-2003	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 001:110	08-13-2003	07-03-2019	Remain in Effect without Amendment
102 KAR 001:130	04-05-1991	07-03-2019	Remain in Effect without Amendment
102 KAR 001:140	04-05-1991	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 001:150	03-18-2004	07-03-2019	Remain in Effect without Amendment
102 KAR 001:155	08-06-1980	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 001:165	11-04-2016	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 001:175	05-06-2011	07-03-2019	Remain in Effect without Amendment

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102 KAR 001:178	06-03-2011	07-03-2019	Remain in Effect without Amendment
102 KAR 001:180	04-05-1991	07-03-2019	Remain in Effect without Amendment
102 KAR 001:185	08-13-2003	07-03-2019	Remain in Effect without Amendment
102 KAR 001:195	04-05-1991	07-03-2019	Remain in Effect without Amendment
102 KAR 001:210	04-05-1991	07-03-2019	Remain in Effect without Amendment
102 KAR 001:220	01-23-2004	07-03-2019	Remain in Effect without Amendment
102 KAR 001:225	02-01-2013	07-03-2019	Remain in Effect without Amendment
102 KAR 001:230	05-03-2013	07-03-2019	Remain in Effect without Amendment
102 KAR 001:240	06-05-2009	07-03-2019	Remain in Effect without Amendment
102 KAR 001:245	03-01-2011	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 001:270	07-07-2014	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 001:290	11-04-2016	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 001:310	03-08-2013	07-03-2019	Remain in Effect without Amendment
102 KAR 001:320	05-31-2019	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 002:010	12-01-1976	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 027:130	04-03-2009	09-04-2019	Remain in Effect without Amendment
103 KAR 027:240	05-04-2007	06-07-2019	Remain in Effect without Amendment
103 KAR 028:020	01-08-1975	06-07-2019	Remain in Effect without Amendment
103 KAR 028:051	02-02-2018	06-07-2019	Remain in Effect without Amendment
103 KAR 028:130	01-08-1975	06-07-2019	Remain in Effect without Amendment
103 KAR 030:160	01-08-1975	06-07-2019	Remain in Effect without Amendment
103 KAR 030:235	02-02-2018	06-07-2019	Remain in Effect without Amendment
103 KAR 030:280	05-04-2007	06-07-2019	Remain in Effect without Amendment
103 KAR 031:011	11-21-1990	06-07-2019	Remain in Effect without Amendment
103 KAR 031:050	01-05-2018	06-07-2019	Remain in Effect without Amendment
103 KAR 031:102	02-02-2018	06-07-2019	Remain in Effect without Amendment
103 KAR 031:170	02-02-2018	06-07-2019	Remain in Effect without Amendment
103 KAR 031:190	01-05-2018	06-07-2019	Remain in Effect without Amendment
103 KAR 040:035	10-06-1982	08-05-2019	Remain in Effect without Amendment
103 KAR 040:100	05-04-1983	08-09-2019	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 041:150	05-04-2007	09-04-2019	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 043:330	08-01-2014	08-07-2019	Remain in Effect without Amendment
103 KAR 044:070	01-05-2018	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 044:100	01-05-2018	08-07-2019	Remain in Effect without Amendment
103 KAR 044:120	01-05-2018	08-07-2019	Remain in Effect without Amendment
103 KAR 045:015	05-04-2007	08-07-2019	Remain in Effect without Amendment
105 KAR 001:130	07-29-2009	06-28-2019	Remain in Effect without Amendment
105 KAR 001:150	07-17-2003	06-28-2019	Remain in Effect without Amendment
105 KAR 001:160	10-03-2008	06-28-2019	Remain in Effect without Amendment
105 KAR 001:170	10-03-2008	06-28-2019	Remain in Effect without Amendment
105 KAR 001:190	09-28-2011	06-11-2019	Remain in Effect without Amendment
105 KAR 001:220	10-03-2008	06-11-2019	Remain in Effect without Amendment
105 KAR 001:260	12-21-2000	06-11-2019	Remain in Effect without Amendment
105 KAR 001:400	10-24-2012	06-11-2019	Remain in Effect without Amendment
105 KAR 001:430	10-24-2012	06-28-2019	Remain in Effect without Amendment
105 KAR 001:440	01-06-2012	06-11-2019	Remain in Effect without Amendment

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201 KAR 008:540	02-01-2013	04-18-2019	To be amended. Amendment filed 06-14-19.
201 KAR 008:581	05-06-2011	04-08-2019	To be amended. Amendment filed 04-15-19.
201 KAR 023:020	03-04-2011	06-21-2019	Remain in Effect without Amendment
201 KAR 023:050	12-07-2011	06-21-2019	To be amended, filing deadline 12-21-20
201 KAR 023:060	10-13-1997	06-21-2019	Remain in Effect without Amendment
201 KAR 023:080	09-11-2000	06-21-2019	Remain in Effect without Amendment
201 KAR 023:120	01-04-1986	06-21-2019	Remain in Effect without Amendment
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
401 KAR 058:005	07-07-1998	07-30-2018	To be amended. Amendment filed 06-14-19.
702 KAR 003:100	01-14-2002	06-28-2019	Remain in Effect without Amendment
702 KAR 003:110	11-17-2000	06-28-2019	Remain in Effect without Amendment
702 KAR 003:120	11-01-1999	06-28-2019	Remain in Effect without Amendment
702 KAR 003:220	11-08-1991	06-28-2019	Remain in Effect without Amendment
702 KAR 005:030	01-16-2003	06-28-2019	Remain in Effect without Amendment
702 KAR 005:110	01-03-2011	06-28-2019	Remain in Effect without Amendment
702 KAR 006:110	10-07-2011	06-28-2019	Remain in Effect without Amendment
703 KAR 005:140	07-13-2012	06-28-2019	Remain in Effect without Amendment
705 KAR 002:140	11-17-2000	06-28-2019	Remain in Effect without Amendment
707 KAR 001:002	12-07-2007	06-28-2019	Remain in Effect without Amendment
707 KAR 001:310	11-05-2007	06-28-2019	Remain in Effect without Amendment
707 KAR 001:340	11-05-2007	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
780 KAR 002:040	05-01-2009	06-28-2019	Remain in Effect without Amendment
780 KAR 002:060	05-01-2009	06-28-2019	Remain in Effect without Amendment
780 KAR 002:140	05-01-2009	06-28-2019	Remain in Effect without Amendment
780 KAR 003:050	05-01-2009	06-28-2019	Remain in Effect without Amendment
780 KAR 003:120	05-01-2009	06-28-2019	Remain in Effect without Amendment
780 KAR 003:130	05-01-2009	06-28-2019	Remain in Effect without Amendment
780 KAR 003:140	05-01-2009	06-28-2019	Remain in Effect without Amendment
780 KAR 007:010	05-01-2009	06-28-2019	Remain in Effect without Amendment
902 KAR 008:130	08-19-1998	06-11-2019	Remain in Effect without Amendment
902 KAR 008:150	10-16-2002	06-11-2019	Remain in Effect without Amendment
902 KAR 008:160	08-17-2011	06-11-2019	Remain in Effect without Amendment
803 KAR 025:021	08-10-2006	08-20-2019	To be amended. Amendment due 2-20-21.
803 KAR 025:015	03-16-1998	08-20-2019	To be amended. Amendment due 2-20-21.
803 KAR 025:220	07-17-1997	08-20-2019	To be amended. Amendment due 2-20-21.
201 KAR 026:115	03-04-2011	09-05-2019	To be amended. Amendment due 3-5-21.
201 KAR 026:121	12-16-2015	09-05-2019	Remain in Effect without Amendment
201 KAR 026:125	07-17-2017	09-05-2019	Remain in Effect without Amendment
201 KAR 026:130	01-23-2019	09-05-2019	Remain in Effect without Amendment
201 KAR 026:140	01-23-2019	09-05-2019	Remain in Effect without Amendment
201 KAR 026:145	07-17-2017	09-05-2019	Remain in Effect without Amendment
201 KAR 026:155	07-17-2017	09-05-2019	Remain in Effect without Amendment
201 KAR 026:160	07-17-2017	09-05-2019	Remain in Effect without Amendment
201 KAR 026:165	07-17-2017	09-05-2019	Remain in Effect without Amendment
201 KAR 026:171	01-23-2019	09-05-2019	Remain in Effect without Amendment
201 KAR 026:175	01-23-2019	09-05-2019	Remain in Effect without Amendment
201 KAR 026:180	07-17-2017	09-05-2019	Remain in Effect without Amendment
201 KAR 026:185	07-17-2017	09-05-2019	Remain in Effect without Amendment
201 KAR 026:190	07-17-2017	09-05-2019	To be amended. Amendment due 3-5-21.
201 KAR 026:200	01-23-2019	09-05-2019	To be amended. Amendment due 3-5-21.
201 KAR 026:215	07-17-2017	09-05-2019	Remain in Effect without Amendment

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201 KAR 026:225	07-17-2017	09-05-2019	Remain in Effect without Amendment
201 KAR 026:230	03-04-2011	09-05-2019	To be amended. Amendment due 3-5-21.
201 KAR 026:250	07-17-2017	09-05-2019	To be amended. Amendment due 3-5-21.
201 KAR 026:270	03-04-2011	09-05-2019	Remain in Effect without Amendment
201 KAR 026:280	01-23-2019	09-05-2019	Remain in Effect without Amendment
201 KAR 026:290	07-17-2017	09-05-2019	Remain in Effect without Amendment
201 KAR 026:300	02-07-2002	09-05-2019	To be amended. Amendment due 3-5-21.
201 KAR 026:310	03-04-2011	09-05-2019	To be amended. Amendment due 3-5-21.
601 KAR 001:080	05-14-1975	09-09-2019	Remain in Effect without Amendment
601 KAR 001:140	11-20-1998	09-09-2019	Remain in Effect without Amendment
601 KAR 001:200	08-06-2010	09-09-2019	Remain in Effect without Amendment
601 KAR 009:115	06-09-1987	09-09-2019	Remain in Effect without Amendment
902 KAR 028:010	06-01-2012	09-11-2019	Remain in Effect without Amendment
902 KAR 028:020	06-01-2012	09-11-2019	Remain in Effect without Amendment
902 KAR 028:030	06-01-2012	09-11-2019	Remain in Effect without Amendment
902 KAR 028:040	06-01-2012	09-11-2019	Remain in Effect without Amendment
902 KAR 028:050	06-01-2012	09-11-2019	Remain in Effect without Amendment
902 KAR 028:060	06-01-2012	09-11-2019	Remain in Effect without Amendment

TECHNICAL AMENDMENT INDEX

The Technical Amendment Index is a list of administrative regulations that have had technical, nonsubstantive amendments entered since being published in the *2017 Kentucky Administrative Regulations Service*. These technical changes have been made by the Regulations Compiler pursuant to KRS 13A.040(9) and (10), 13A.2255(2), 13A.312(2), or 13A.320(1)(d). Since these changes were not substantive in nature, administrative regulations appearing in this index will NOT be published to show the technical corrections in the *Administrative Register of Kentucky*. NOTE: Copies of the technical amendments are usually posted on the Legislative Research Commission Web site for a short time before they are finalized. Regulations are available for viewing on the Legislative Research Commission Web site at <https://legislature.ky.gov/law/kar/pages/default.aspx>.

‡ - A technical change was made to this administrative regulation during the promulgation process, pursuant to KRS 13A.320(1)(e).

† - A nonsubstantive change was made by the Compiler pursuant to KRS 13A.040(9).

Regulation Number	Date Corrected	Regulation Number	Date Corrected
105 KAR 001:147	09-12-2019		
106 KAR 001:050†	09-04-2019		
302 KAR 035:060†	09-04-2019		
401 KAR 039:060	05-07-2019		
401 KAR 039:080	05-07-2019		
401 KAR 042:020	05-07-2019		
401 KAR 042:060	05-07-2019		
401 KAR 042:250	05-07-2019		
401 KAR 042:330	05-07-2019		
401 KAR 045:040	05-07-2019		
401 KAR 045:070	05-07-2019		
401 KAR 045:080	05-07-2019		
401 KAR 045:090	05-07-2019		
401 KAR 045:100	05-07-2019		
401 KAR 045:135	05-07-2019		
401 KAR 045:135	05-07-2019		
401 KAR 046:120	05-07-2019		
401 KAR 047:090	05-07-2019		
401 KAR 047:095	05-07-2019		
401 KAR 047:110	05-07-2019		
401 KAR 047:205	05-07-2019		
401 KAR 048:205	05-07-2019		
401 KAR 045:206	05-07-2019		
401 KAR 048:207	05-07-2019		
401 KAR 048:208	05-07-2019		
401 KAR 048:310	05-07-2019		
401 KAR 049:011	05-07-2019		
401 KAR 049:080	05-07-2019		
401 KAR 049:100	05-07-2019		
401 KAR 050:020†	09-04-2019		
401 KAR 055:010	09-04-2019		
401 KAR 059:010	09-04-2019		
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401 KAR 059:021	09-04-2019		
401 KAR 059:023	09-04-2019		
401 KAR 061:010	09-04-2019		
401 KAR 061:011	09-04-2019		
401 KAR 100:030	05-07-2019		
401 KAR 101:010	05-07-2019		
401 KAR 101:020	05-07-2019		
401 KAR 101:0.30	05-07-2019		
401 KAR 101:040	05-07-2019		
401 KAR 102:010	05-07-2019		
805 KAR 008:060	09-09-2019		
902 KAR 050:005‡ colon, Section 1(3)	09-01-2019		
908 KAR 001:370	08-18-2019		
911 KAR 001:850	08-29-2019		

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